

2nd Cycle Universal Periodic Review – BRAZIL

Joint submission by relevant stakeholders on HUMAN RIGHTS VIOLATIONS IN PLACES OF DEPRIVATION OF LIBERTY IN BRAZIL

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I. Introduction

1. The policy of mass incarceration is present in the current Brazilian landscape. Between 2000 and 2009, the number of prisoners in Brazil grew by 102%.ⁱ Currently, there are almost half a million prisoners in the country.ⁱⁱ High incarceration indexes and ever more severe sentences do not help Brazil to advance with respect to a more humane system of justice. In light of that, this system is marked by a selectivity that directly criminalizes the poor.

2. The Brazilian criminal justice system is, in fact, complex. Denunciations of torture and violence, high rates of recidivism, overpopulated prisons and power exercised by criminal factions are recurring themes.

3. During Brazil's first passage through the UPR process, the country received and accepted the following recommendations: "*Give a more thorough consideration to the issues of (...) poor detention conditions*" (Republic of Korea) and "*While continuing its positive initiatives, invest more rigour in evaluating the outcomes of planned activities in many of these areas: prisons conditions, criminal justice system (...)*" (Recommendation 3 - United Kingdom.)

4. Upon a most rigorous evaluation of the results, we can affirm that Brazil has advanced very conservatively in these areas. The lack of both information and data production is shockingly high in the sphere of the judicial and prison systems. According to the Parliamentary Commission for Investigation (CPI) of the Prison System, "there exists no data indicative of the profile of individuals held in Brazilian prisons, either in terms of their income, familial structure, religion or time during pre-trial incarceration."ⁱⁱⁱ Production of this data is fundamental for the State to be able to develop new public policies and to evaluate their results of implementation. Furthermore, the production and disclosure of reliable data on these subjects can be valuable tools for judges to understand both the social context in which their decisions are being inserted and the type of results they are substantiating.

5. WE RECOMMEND the production and systemization of data relevant to the income of the prison population and their families, as well as to the length of pre-trial incarceration.

II. Deficiency in Access to Justice:

Inadequate Public Defender's Office

6. During Brazil's first passage through the UPR process, Mexico recommended and Brazil accepted the recommendation to "*Enhance access to justice as well as improve the judicial system*" (Recommendation 8 – Mexico).

7. Essential for the fulfillment of this recommendation is better preparation of public defender's offices. The Brazilian state of Santa Catarina, for example, does not even have a Public Defender's Office.

8. Today, there exist only 500 public defenders in the state of São Paulo, of which merely 250 work in the area of criminal defense^{iv} (compared to the 1,800 prosecutors/members of the Public Prosecutor's Office working in São Paulo).

9. Because the prison population of the state of São Paulo is of more than 170 thousand,^v and the great majority of this population does not have sufficient resources to bear the cost of a private attorney,^{vi} defense falls to the Public Defender's Office, either directly or indirectly (by agreements), such as in the agreement made with the Brazilian Bar Association and the "Prof. Dr. Manoel Pedro Pimentel" Foundation (FUNAP), both of which are targets of severe criticisms by the individuals they attend.

10. There exists no information available to the public surrounding the number of cases that each public defender is currently responsible for.^{vii}

11. According to a study carried out in 2009, only 22 municipalities of the state of São Paulo rely on legal assistance provided by the Public Defender's Office. The remaining municipalities depend on agreements made with other entities; in all, 250 districts in the state do not receive assistance from the Public Defender's Office.^{viii}

12. WE RECOMMEND the systematization and disclosure of data surrounding the performance of the Public Defender's Office in the whole country.

13. WE RECOMMEND the creation of a Public Defender's Office in the state of Santa Catarina and the issuance of a public examination for contracting public defenders in the state of Goiás.

14. WE RECOMMEND an increase in the total number of public defenders.

III. Torture in the Prison System

15. Several human rights mechanisms of the UN have affirmed that torture is "widespread and systematic" in Brazil.^{ix} The Brazilian government admitted to the existence of torture and the seriousness thereof in the National Report presented during the country's first passage through the UPR process.^x

16. With respect to this issue, Brazil received and accepted the following two recommendations during its first passage through the UPR process: (i) "*Make greater efforts regarding prisons systems in a number of states of the federation in order to be transformed into rehabilitation centres*" (Recommendation 7 - Uruguay); and (ii) "*Take action to improve prison conditions and implement recommendations made by the Committee against Torture and by the Human Rights Committee*" (Recommendation 6 - Germany).

17. Upon ratifying the Optional Protocol to the UN Convention against Torture, Brazil came under the obligation to create a National Committee and Mechanism for Combating Torture. Nonetheless, in spite of Brazil demonstrating concern for the subject and indicating that it was taking steps toward the creation of the National Mechanism during the country's first passage through the UPR process,^{xi} this obligation remains unfulfilled. Bill No. 2.442/2011, which intends to establish the National System for Preventing and Combating Torture, which would create the National Committee and Mechanism for Preventing and Combating Torture, has been pending before the National Congress since October 2011; however, this bill is not in conformity with the terms stipulated by OPCAT, as it sets forth that members of the Committee shall be selected and appointed by the President of the Republic (Art. 7) and that members of the Mechanism shall be selected by the Committee and appointed by the President (Art. 8, Sec. 1). Such a means for member selection directly compromises the autonomy and independence of the two bodies.

18. Some states of the federation, such as Rio de Janeiro, Alagoas and Paraíba, have created their own state mechanisms based on the models set forth by the Protocol; nonetheless, most of them are yet active.

19. WE RECOMMEND that Brazil creates the National Mechanism for Preventing and Combating Torture in a way that guarantees the independence and autonomy of its members and that the country continue to create state Mechanisms for Combating and Preventing Torture, under the same terms.

a) Humiliating Searches

20. The UN Special Rapporteur on torture^{xiii} recommended that, “*security checks during visits should be respectful of [visitors’] dignity.*”^{xiii} Nevertheless, this continues to be a grave problem faced by Brazil.

21. Due to security discourse, prisons have carried out humiliating searches. The form in which family members of prisoners are subjected to searches constitutes a grave violation of rights. The search of prisoner visitors is regulated by resolution No. 9 of 2006 of the National Board of Criminal Prison Policy – CNPCP,^{xiv} which requires inspection by electronic devices (metal detector, X-rays and other security equipment), in order to decrease the potential for embarrassment among prisoner visitors.

22. Nevertheless, the organizations signing this document receive various reports of manual and intimate searches – which frequently involve genital examinations and nudity.

23. This practice extends the suspicion of criminal guilt to family members of prisoners and institutionalizes a prejudiced behavior, according to which any prisoner relative or friend must also be considered suspicious.

24. Humiliating searches persist even when the State uses technological equipment. In spite of each of the devices not having its functioning compromised by a person’s use of clothing, many prisons still demand that family members of prisoners stand naked or in their underwear or, in the case of the metal detector bench, sit down naked or in their underwear without any protection from or sterilization of the bench between one user to the next.

25. In light of this portrait of grave violations to the human rights of family members and friends of incarcerated persons, **WE RECOMMEND the passage of a federal law that: (i) prohibits intimate searches of prisoner visitors; (ii) prohibits manual searches and requires that visitor searches be conducted by electronic equipment; (iii) permits manual searches only in cases of founded suspicion that the visitor has brought with him or her objects whose entry would be prohibited and/or that would put the security of the prison establishment at risk; (iv) requires that such founded suspicion be determined objectively and recorded by the prison’s administration in its own books, signed by the person being searched, witnesses and the employee; and (v) requires that the visitor be provided with a written statement surrounding the objective reasons that justify the manual search, allowing the visitor the option of refusing to submit to such procedure and deciding not to carry out the visit.**

b) Solitary Confinement

26. The UN Special Rapporteur on torture dedicated a thematic report to solitary confinement. Solitary confinement can, in and of itself, constitute torture or cruel, inhuman and degrading treatment; furthermore, solitary confinement increases the potential for torture to occur by virtue of its associated lack of witnesses and monitoring. The Rapporteur recommended that States prohibit solitary confinement as a form of discipline – either as part of judicially imposed sentences or as disciplinary measures. He recommends that States develop alternative disciplinary sanctions in order to avoid the use of solitary confinement.^{xv} According to the report, negative health effects can begin to

occur within merely a few days of isolation, and risks to health increase with each day that a prisoner remains in solitary confinement.^{xvi}

27. WE RECOMMEND the express prohibition by law of solitary confinement for any reason.

(i) Differentiated Disciplinary Regimen - RDD

28. RDD was established by Law No. 10.792/2003. The individuals eligible for RDD include those who: committed crimes or serious offenses while incarcerated; present a high risk to the security and order of the prison or society; or are suspected of participating in criminal organizations, quadrilles or gangs.

29. This regimen can last for up to 360 days. During such time, a person is confined to an individual cell, with merely two hours of sun intake per day and 22 hours in total cell isolation. The law authorizes weekly visits of two persons for two hours.

30. Such regimen was expressly condemned in the thematic reported which was presented in August 2011 by the Special Rapporteur on torture to the UN General Assembly, by virtue of it constituting a nightmarish form of solitary confinement.^{xvii}

31. The constitutionality of RDD is under debate in the Supreme Federal Court (STF) by virtue of the Direct Unconstitutionality Action Act 4.162 (initiated in 2008), promoted by the Brazilian Bar Association. The action requests that STF declare as unconstitutional the above-cited characteristics of RDD, which were created in order to increase the punitive severity for disciplinary offenses and are now being utilized for punishment and discipline.

32. The unconstitutionality of RDD lies in the fact that such regimen constitutes an affront to legal due process and a person's right to a fair hearing and full defense, considering that a prisoner's participation in RDD merely depends on a request by the prison administrations and approval from a judge (undergoing no process or procedure).

33. Furthermore, the regimen constitutes an affront to the dignity of human beings and to the prohibition of torture, cruel punishments and degrading treatment. The prisoner remains isolated and out of communication with others, with severe restrictions on his or her receipt of visitors. As if this were not enough, the regimen also constitutes an affront to constitutional guarantees, according to which "the sentence shall be carried out in distinct establishments, in accordance with the nature of the offense, as well as the age and sex of the convict" (Art. 5, XVIII). The kind of prison differentiation established by RDD is not foreseen by the Constitution.

34. Aside from the absurdity of this regime existing in a Democratic State based on the Rule of Law, which is guaranteed by law, there exist new prisons that follow a model that is analogous to that of RDD, even though they are not required to do so by law.

35. Such prisons, as in the case of new Provisional Detention Centers of the state of Espírito Santo, are not used merely for punishment and discipline, but rather for all pre-trial prisoners. In such prisons, cells are individual, and prisoners remain isolated for 22 to 23 hours per day, having the right to sun intake for a maximum of two hours, also in isolation. The organizations signing this document received reports that in some of these prisons, prisoners merely have the right to a single minute-long shower per day.

36. WE RECOMMEND the end to the Differentiated Disciplinary Regimen and to analogous regimens.

(ii) Federal Prisons

37. Prisons of freedom deprivation in Brazil are of the responsibility of individual state governments. Nevertheless, there exist four federal prisons (Porto Velho- RO, Mossoró- RN, Campo Grande- MS and Catanduvas- PR and a plan to construct another in Brasília- DF).^{xviii} Because there are so few such prisons, prisoners usually serve sentences far away from their families and are therefore unable to receive visits.

38. All of the federal prisons are of maximum security and subject their prisoners to a regimen of: solitary confinement, individual areas for sun intake and great restrictions on visitations. The length of time in such conditions must be fixed and may not be greater than 360 days, renewable for an equal period of time.

39. According to what is set forth by law, the federal prisons are intended to hold pre-trial and convicted prisoners whose incarcerations therein are justified by the interest of safety to the public or to the prisoner him or herself, aside from housing pre-trial and convicted prisoners who are subject to RDD.^{xix}

40. Although prior authorization from a federal judge is necessary to transfer a prisoner to a federal maximum security prison, the prisoner has no right to defense at such time.

41. WE RECOMMEND an increase in the time allowed for sun intake in the federal prisons.

42. WE RECOMMEND that prisoners have contact with other prisoners in the federal prisons.

(iii) Punishment Cell

43. In addition to the two solitary confinement models introduced above, the Brazilian prison system also has cells intended for punishment in the state prisons. These cells are used as a form of prisoner discipline, and the determination of a person's placement in such requires authorization by the prison director and judge. Nonetheless, the decision to place a prisoner in a punishment cell is determined by a jury comprised of the prison's own employees and approved by the prison director. There is no defense attorney present, thus violating the prisoner's right to full defense and a fair hearing.

44. According to Brazilian Criminal Enforcement Law, the isolation of a prisoner in his or her own cell or in another suitable space, when the prison possesses collective housing, constitutes a type of disciplinary sanction.^{xx}

45. The maximum amount of time that a prisoner can remain in a punishment cell is 30 days, renewable by another 30.

46. Still, as a rule, these cells do not receive natural or artificial light, causing them to be dark and humid, aside from having extremely poor sanitary conditions.

47. During the period of confinement in a punishment cell, the prisoner is denied the right to take in sun, receive visitors – even those of religious assistance – and live among other prisoners.

48. WE RECOMMEND the end to solitary confinement for the purpose of punishment in prisons.

(iv) Safe Cell

49. There furthermore exist cells designated for the security or protection of prisoners who are threatened by other prisoners. Generally, these are the same cells as those used for punishment. Therefore, a prisoner may remain in a safe cell for years and, many times, without sun intake.

50. Even though they are not required by law, prisoners who suffer from threats remain in solitary confinement.

51. WE RECOMMEND the end to the unsanitary and humiliating conditions of safe cells and that sun intake be guaranteed for prisoners placed therein.

c) Extremely poor detention conditions

52. This matter was already the subject of discussion in a side UN event,^{xxi} as well as of the Thematic Hearing of the Inter-American Commission on Human Rights,^{xxii} and was furthermore the subject of investigation of a CPI created in the Brazilian House of Representatives.^{xxiii}

53. Detainment conditions in Brazil are inhumane. The inspection reports carried out by CNPCP,^{xxiv} as well as the final CPI report,^{xxv} demonstrate a situation of calamity throughout the entire country.

54. Currently, Brazil has a need for 197,976 additional spaces for prisoners.^{xxvi} To meet this demand, it would be necessary to construct 396 new prisons, with the capacity to hold 500 prisoners each. However, as the number of prisoners entering the system per month is greater than the number leaving, construction of new spaces is an inadequate strategy to solve the problem of overcrowding.

55. Overcrowding in Brazil's prisons for freedom deprivation generate conditions in which torture and abuses occurs daily. The UN Special Rapporteur on torture recommended that Brazil immediately end the overcrowding,^{xxvii} yet the problem persists.

56. Aside from overcrowding, medical care is a very serious problem. In the overcrowded cells, the health of prisoners remains highly compromised. The lack of hygiene and the absence of adequate ventilation and lighting create an environment that is conducive to the spread of diseases and epidemics. Furthermore, the impossibility of rest generates serious psychiatric illnesses.

57. Furthermore, the State does not provide the necessary number of doctors. According to official data, Brazil has 422 general practitioners and 496 nurses for the entire prison system.^{xxviii} CNPCP Resolution No. 9 of 2006 states that it is necessary to have at least one medical clinician and one nurse for every 500 prisoners.^{xxix} Even supposing that all of the doctors and nurses that are on the full official list of professionals in the prison system are currently active, the number would already be highly insufficient, as there would be a need for approximately 992 additional doctors and 992 additional nurses, or in other words, the current numbers ought to be doubled.

58. Educational assistance is extremely precarious. A shocking number of 283,040 prisoners did not complete middle school,^{xxx} while less than 10% of all prisoners are involved in some kind of educational activity.^{xxxi} In 2011, Law No. 12,433 was enacted, guaranteeing the right to sentence reduction for studies. According to the law, for every 12 hours studied, a prisoner shall have the right to 1 day of sentence reduction.

59. WE RECOMMEND that Brazil adopt urgent measures to guarantee the right to health in prisons, making at least one general practitioner and one nurse available for every 500 prisoners.

60. WE RECOMMEND that Brazil adopt urgent measures to guarantee the right to education in all prisons – including within those prisons designated for pre-trial prisoners – building physical infrastructure and producing a pedagogical project that is adequate to serve this specific population.

61. WE RECOMMEND the constant presence of public defenders in all detention locations. The presence of defenders in these prisons is an important means for preventing and combating the torture of prisoners and for guaranteeing effective legal assistance to prisoners. One of the causes of torture in the country is the lack of accountability of those accused of committing this kind of crime. One of the factors compromising this process consists of the difficulty faced by victims in denouncing torture. The presence of the Public Defender's Office would act in this area, pursuing legal actions against the appropriate authorities when crimes of torture are committed.

(i) Very poor detention conditions for women

62. According to data from the CPI of the Prison System, in Brazil there are 508 prisons with female prisoners, of which only 58 are exclusively female and 450 are designated for both sexes.^{xxxii} In mixed prisons there is little difference in the installations, "which reveals, in practice, that the criminal enforcement policies simply ignore the issue of gender."^{xxxiii}

63. Only 27% of the prisons have infrastructure for pregnant women specifically, 19% have nurseries and 16% have day care centers.^{xxxiv} According to the CPI report, "there are

newborn children in most prisons in this Country, many of which are living in subhuman conditions.”^{xxxv}

64. The rights of babies and their incarcerated mothers are constantly disrespected. One can point to the example of disrespect for the amount of time mothers remain together with their newborn children. According to CNPCP resolution No. 4 of 2009, the child shall remain with its mother until it competes one and a half years and, following this time, a gradual process of separation shall be carried out which shall last for another six months;^{xxxvi} nonetheless, this timeline is not respected. In 12% of prisons, children are breastfed and remain with their mothers until they are four months old, in 58% they remain until they are six months old and in 6%, they remain until they are two years old.^{xxxvii}

65. In some states of the country, pregnant women who are incarcerated remain handcuffed in the delivery room, in serious violation of the Minimum Rules for Treatment of Female Prisoners (Bangkok Rules).

66. WE RECOMMEND the discontinued use of the prisons that currently house women and the construction of prisons accounting for the specific needs of women, including the right of mothers to remain with their children.

67. WE RECOMMEND the end to the use of handcuffs on pregnant women in labor and during delivery.

d) Abuse in the application of pre-trial detention

68. 44% of the Brazilian prison population consists of pre-trial prisoners, due to the abuse of its application.^{xxxviii} In this context, Law No. 12.403 was enacted in 2011, which creates alternative precautionary measures to pre-trial detention. This law has the power to bestow great benefits upon the question of prison overcrowding since, up until its enactment, judges had only the ability to decide whether to incarcerate defendants or allow them to remain free before sentencing. Now there exist ten additional alternatives, such as electronic monitoring, the prohibition on frequenting certain places, the prohibition on leaving the district or country and the prohibition on maintaining contact with certain individuals.

69. The law is still very recent, and we do not have consistent information on the impact of its enactment.

70. The Pre-trial Detention Centers of the state of São Paulo are overcrowded and have populations that are, on average, three times greater than those allowed by the centers' maximum capacity. We cite, as an example, the Pre-trial Detention Center II of Guarulhos, which has a capacity to hold 768 prisoners and held, in 2010, 2,054 prisoners.^{xxxix}

71. Furthermore, the detention conditions for these pre-trial prisoners are similar to the conditions described above. There is no separation, as required by law,^{xl} between pre-trial and convicted prisoners. This fact was the subject of critique by the UN Special Rapporteur on torture who recommended that the legal provision be fulfilled.^{xli}

72. The Pre-trial Detention Centers do not have an adequate physical structure to receive all of these individuals. For instance, they do not have space for classrooms, and they do not offer any educational activities to the prisoners confined therein.

73. Another serious problem having to do with pre-trial prisons is that, currently, the first contact that a judge has with the incarcerated person is merely at the pre-trial hearing and trial. Within 24 hours, a copy of the arrest record of a person caught-in-the-act is sent to the judge and, if the defendant does not present a private attorney, is then sent to the Public Defender's Office.^{xlii}

74. A research study recently carried out by the Nucleus of Studies on Violence (NEV-USP) found a delay of more than 3 months for the achievement of the preliminary hearing. It is only in this preliminary hearing that the defendant has the first contact with a public defender. According to the study, only in 17% of cases was the hearing carried out within

90 days; in 55.5% of cases there was a delay of 90 to 150 days; and, in 27.5% of cases there was a delay of more than 150 days.^{xliii}

75. WE RECOMMEND that the public defender's office provide effective assistance to the prison population, by means of regular legal assistance shifts in the prisons themselves.

76. WE RECOMMEND that a law be enacted to guarantee the introduction of the defendant to the judge within a maximum of 24 hours and with the presence of a defense attorney.

IV. Deprivation of Freedom and Mental Health

77. The lack of medical services, especially for mental health, in the prisons and the lack of coordination with the healthcare system result in psychiatric diagnoses that are inexistent or wrong, endangering a mental health situation that is already naturally exacerbated by prison conditions. Furthermore, the use of medication has become evermore common, and psychotropic medications have been used as a means for pacifying and controlling prisoners, especially in female units. The attention to prisoners' mental health ought to be of constant concern to authorities charged with the management of prison sentences.

78. In cases where safety measures are applied in the form of a hospital commitment, the lack of hospital spaces for custody and psychiatric treatment results in the permanence of individuals with mental disorders in the prisons, which do not have adequate structures for treatment. Once they are sent to the legal asylum, these individuals are subjected to a mixed prison-hospital regimen, leaving them marked by a double stigmatization that makes it very difficult for them to reintegrate back into society. It is quite common to find that a person's permanence in a custodial and psychiatric treatment hospital is extended for long periods of time, sometimes even in perpetuity. Even when the safety measure determined as most appropriate for individuals is hospital commitment, many such individuals are maintained in prisons due to the lack of vacancies in the custodial and psychiatric treatment hospitals. There are states, such as Maranhão, in which there has never existed a psychiatric hospital for the prison population. This urges the justice system to uphold the principles of Law No. 10.216/01, which establishes that hospital commitment must be the solution of last resort and merely for application during short periods of time, abolishing the legal asylum model and electing instead for outpatient therapies.

79. Since 2007, the Experimental Health Unit (UES), located in the city of São Paulo, has received young adults who have graduated from the juvenile corrections system and are diagnosed with some kind of psychiatric disorder. Generally, given the end of their hospital commitment term and without any motive that would justify permanence in the juvenile corrections system, the youth are transferred to UES under the alleged need for medical treatment in a regimen of freedom deprivation. Nevertheless, UES does not have the organizational structure of a medical facility, either at the state level or at the federal level. UES operates, therefore, at the margin of the law, subjecting young adults to illegal constraints.

80. The reality of both the custodial and psychiatric treatment hospitals and the Experimental Health Unit, demonstrates that the justice system is impermeable to the provisions set forth in Law No. 10.216/01, which require hospital commitment as a tool of last-resort and only on a short term basis. For the effective replacement of this panorama, it is necessary for the justice system to accept the above-mentioned provisions, abolishing the asylum model and electing instead for outpatient therapies.

81. WE RECOMMEND that the Experimental Health Unit be extinguished and, at the same time, that the youth in the custody thereof be transferred, as necessary, to already-existing public health facilities.

82. WE RECOMMEND that the custodial and psychiatric treatment hospitals be transformed into health facilities, under the responsibility of the health sector – and not the criminal justice arena.

83. WE RECOMMEND full compliance with Law No. 10.216 (Law of Psychiatric Reform) by the justice system, with adoption of the anti-asylum model and prioritization of alternative therapies with regard to mental health treatment.

ⁱ InfoPen Statistic. Brasília, 2000-2010. Available at:

<http://portal.mj.gov.br/data/Pages/MJD574E9CEITEMIDC37B2AE94C6840068B1624D28407509CPTBRNN.htm>.

Last visited September 26, 2011.

ⁱⁱ InfoPen Statistic. Brasília, 2010. Available at:

<http://portal.mj.gov.br/data/Pages/MJD574E9CEITEMIDC37B2AE94C6840068B1624D28407509CPTBRNN.htm>.

Last visited September 26, 2011.

ⁱⁱⁱBRASIL, National Congress. House of Representatives. Parliamentary Commission for Investigation of the Prison System. Brasília: House of Representatives, House Editions, 2009 (Parliamentary action series no. 384). P.74.

^{iv} See: Public Defender's Office Notices, Issue No. 72 – September 16, 2011, 252nd Session of the Board of the Public Defender's Office carried out on September 9, 2011.

^v InfoPen Statistic. Brasília, 2010. Data refers to the state of São Paulo. Available at:

<http://portal.mj.gov.br/data/Pages/MJD574E9CEITEMIDC37B2AE94C6840068B1624D28407509CPTBRNN.htm>.

Last visited September 26, 2011.

^{vi} The Public Defender's Office provides assistance to individuals who have a total family income that is less than or equal to three minimum wage salaries.

^{vii} The information was requested by the Ombudsman of the Public Defender's Office, the Nucleus of Citizenship and Human Rights and the Criminal Area Partnership. Finally, they indicated that the body possessing such data is the Internal Affairs Section of the Public Defender's Office, which requested that information be solicited by email. There has still been no response received to the email sent on September 19, 2011.

^{viii} See: Third Diagnosis of the Public Defender's Office in Brazil, Ministry of Justice, Brazil, 2009 - Available at: <http://www.defensoria.sp.gov.br/dpesp/>, p. 127.

^{ix} For example: UN, Committee against Torture. "Report on Brazil produced by the Committee under art. 20 of the Convention," Document CAT/C/39/2, paragraph 178 (in the original report: "torture and similar ill-treatment continues to be meted out on a widespread and systematic basis").

^x UN, General Assembly. Human Rights Council. Working group of the Universal Periodic Review. "National report submitted in accordance with paragraph 15(a)." A/HRC/WG.6/1/BRA/1, March 7, 2008, paragraph 51. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/BRSession1.aspx>. Last visited September 26, 2011.

^{xi} UN Document, A/HRC/WG.6/1/BRA/1, March 7, 2008, paragraph 55. Available at:

<http://www.ohchr.org/EN/HRBodies/UPR/PAGES/BRSession1.aspx>. Last visited September 26, 2011.

^{xii} Nigel Rodley, visit to Brazil in 2000.

^{xiii} UN, Economic and Social Council. Commission on Human Rights. *Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43- Addendum – Visit to Brazil*, March 30, 2001, Document E/CN.4/2001/66/Add.2. Paragraph 169,d. (in the original report: "Security checks during visits should be respectful of their dignity").

^{xiv} CNPCP Resolution No. 9 of July 12, 2006. Available at:

<http://portal.mj.gov.br/data/Pages/MJC7BBEEA7ITEMID87C3151463B7482291859239FE0F483DPTBRNN.htm>.

Last visited September 26, 2011.

^{xv} UN. General Assembly. Torture and other cruel, inhuman or degrading treatment or punishment. Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment. A/66/268. August 5, 2011. Paragraph 84. (In the original report: "The Special Rapporteur urges States to prohibit the imposition of solitary confinement as punishment — either as a part of a judicially imposed sentence or a disciplinary measure. He recommends that States develop and implement alternative disciplinary sanctions to avoid the use of solitary confinement").

^{xvi} UN. General Assembly. Torture and other cruel, inhuman or degrading treatment or punishment. Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment. A/66/268. August 5, 2011. Paragraph 62 (in the original report: "Negative health effects can occur after only a few days in solitary confinement, and the health risks rise with each additional day spent in such conditions").

^{xvii} UN. General Assembly. Torture and other cruel, inhuman or degrading treatment or punishment. Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment. A/66/268. August 5, 2011. Paragraph 24. (In the original report: "**States around the world continue to use solitary confinement extensively** (see A/63/175, para. 78). In some countries, the use of Super Maximum Security Prisons to impose solitary confinement as a normal, rather than an "exceptional", practice for inmates is considered problematic. (...) For example, **in Brazil, Law 10792 of 2003, amending the existing "Law of Penal Execution", contemplates a "differentiated" disciplinary regime in an individual cell for up to 360 days, without prejudice to extensions of similar length for new offences and up to one sixth of the prison term**"). Emphasis added.

^{xviii} Ministry of Justice. Available at:

<http://portal.mj.gov.br/data/Pages/MJ887A0EF2ITEMID5AC72BD609F649AEBDB09A5A1D5A28B9PTBRNN.htm>

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- ^{xix} Law No. 11.671/2008.
- ^{xx} Art. 53, IV and V of Brazilian Criminal Law.
- ^{xxi} The parallel event entitled Human Rights in Brazil: Violations in the Prison System – the case of Espírito Santo occurred on March 15, 2010.
- ^{xxii} Thematic Hearing entitled The Prison System in Brazil, carried out on March 29, 2010, in the Padilha Vidal Hall, Room B.
- ^{xxiii} The Parliamentary Commission for Investigation was established on August 21, 2007.
- ^{xxiv} The reports are available in Portuguese, on the Internet, at:
<http://portal.mj.gov.br/data/Pages/MJE9614C8CITEMIDA5701978080B47B798B690E484B49285PTBRNN.htm>.
- ^{xxv} BRASIL, National Congress. House of Representatives. Parliamentary Commission for Investigation of the Prison System. Brasília: House of Representatives, House Editions, 2009 (Parliamentary action series no. 384).
- ^{xxvi} InfoPen Statistic. Brasília, 2010. Available at:
<http://portal.mj.gov.br/data/Pages/MJD574E9CEITEMIDC37B2AE94C6840068B1624D28407509CPTBRNN.htm>.
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- ^{xxvii} UN, Economic and Social Council. Commission on Human Rights. *Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43- Addendum – Visit to Brazil*, March 30, 2001, Document E/CN.4/2001/66/Add.2. Paragraph 169,w. (in the original report: “*The appalling overcrowding in some provisional detention facilities and prisons needs to be brought to an immediate end, if necessary by executive action?*”).
- ^{xxviii} InfoPen Statistic. Brasília, 2010. Available at:
<http://portal.mj.gov.br/data/Pages/MJD574E9CEITEMIDC37B2AE94C6840068B1624D28407509CPTBRNN.htm>.
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- ^{xxix} CNPCP Resolution No. 9 of November 13, 2009. Available at:
<http://portal.mj.gov.br/data/Pages/MJC7BBEEA7ITEMIDF250F7EFB32E4A798B4D8429FD19374DPTBRNN.htm>.
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- ^{xxx} 25,319 prisoners are illiterate. Merely 55,783 prisoners are literate. 201,938 prisoners never completed middle school. InfoPen Statistic. Brasília, 2010. Available at:
<http://portal.mj.gov.br/data/Pages/MJD574E9CEITEMIDC37B2AE94C6840068B1624D28407509CPTBRNN.htm>.
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- ^{xxxii} BRASIL, National Congress. House of Representatives. Parliamentary Commission for Investigation of the Prison System. Brasília: House of Representatives, House Editions, 2009 (Parliamentary action series no. 384). P. 283.
- ^{xxxiii} BRASIL, National Congress. House of Representatives. Parliamentary Commission for Investigation of the Prison System. Brasília: House of Representatives, House Editions, 2009 (Parliamentary action series no. 384). P. 283.
- ^{xxxiv} BRASIL, National Congress. House of Representatives. Parliamentary Commission for Investigation of the Prison System. Brasília: House of Representatives, House Editions, 2009 (Parliamentary action series no. 384). P. 283.
- ^{xxxv} BRASIL, National Congress. House of Representatives. Parliamentary Commission for Investigation of the Prison System. Brasília: House of Representatives, House Editions, 2009 (Parliamentary action series no. 384). P. 283.
- ^{xxxvi} CNPCP Resolution No. 4 of July 15, 2009. Available at: <http://portal.mj.gov.br/main.asp?ViewID={C7BBEEA7-FE56-4874-870D-244D269A8716}¶ms=itemID={F7896C41-8CF1-4EFF-807F-AC27F1F6A178}&UIPartUID={183ACEAD-EEF8-4BD1-9B10-C12459181A73}>. Last visited September 26, 2011.
- ^{xxxvii} BRASIL, National Congress. House of Representatives. Parliamentary Commission for Investigation of the Prison System. Brasília: House of Representatives, House Editions, 2009 (Parliamentary action series no. 384). P. 288.
- ^{xxxviii} InfoPen Statistic. Brasília, 2010. Available at:
<http://portal.mj.gov.br/data/Pages/MJD574E9CEITEMIDC37B2AE94C6840068B1624D28407509CPTBRNN.htm>.
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- ^{xxxix} Information available at: <http://www.sap.sp.gov.br/>. Last visited September 26, 2011.
- ^{xl} Art. 84, caput, Brazilian Criminal Law. Art. 300 of the Code of Criminal Procedure (redacted by Law no. 12.403/11). Art. 7 of Resolution No. 14/1994 of the National Board of Criminal Prison Policy.
- ^{xli} UN, Economic and Social Council. Commission on Human Rights. *Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43- Addendum – Visit to Brazil*, March 30, 2001, Document E/CN.4/2001/66/Add.2. Paragraph 169,w. (in the original report: “*The law requiring separation of categories of prisoner should be implemented?*”).
- ^{xlii} Art. 306, §1 of the Code of Criminal Procedure: Within 24 (twenty-four) hours following incarceration, the arrest record of a person caught-in-the-act shall be submitted to the judge presiding over the case and, if the accused does not provide the name of his or her lawyer, a full copy of this report shall be sent to the Public Defender’s Office.
- ^{xliiii} JESUS, Maria Gorete Marques de et al. “Pre-trial Prison and the Law on Drugs: identifying obstacles and opportunities for greater effectiveness. Preliminary results. Research Study by the Nucleus of Studies on Violence/USP.” August 2011. Available at: <http://www.nevusp.org/>.