

**SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW  
(FOURTH CYCLE): 41<sup>ST</sup> SESSION OF THE UPR WORKING GROUP,  
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**REPORT: TORTURE AND THE PRISON SYSTEM IN BRASIL**

 <p>AGENDA NACIONAL PELO DESENCARCERAMENTO</p>	<p>The <b>Agenda Nacional pelo Desencarceramento</b> (National Agenda for Deincarceration) emerged in 2013 and, in 2016, at the I National Meeting for Disincarceration; it has consolidated itself as a national social movement that currently unites together civil society organizations, prison survivors, and their relatives. Its mission is to fight mass incarceration and the violence produced by the prison system. The organization's articulations seek to denounce and fight the killing project created by the State through its penal policies against the black, indigenous, and poor populations.</p> <p>patriciadeoliveira2003@gmail.com/ <a href="http://www.desencarcera.org">www.desencarcera.org</a></p>
 <p>conectas direitos humanos</p>	<p><b>Conectas Direitos Humanos</b> is a civil society organization with the mission to enforce human rights and to fight inequalities in order to build a fair, free, and democratic society.</p> <p>violencia_institucional@conectas.org / <a href="http://www.conectas.org">www.conectas.org</a></p>
 <p>justiça global</p>	<p><b>Justiça Global</b> (Global Justice) is a civilian association dedicated to the promotion of social justice and human rights through research, training and the elaboration of materials on the status of human rights in Brazil; its institutional goals include the submission of complaints to regional and universal human rights protection systems.</p> <p>juridico@global.org.br / <a href="http://www.global.org.br">www.global.org.br</a></p>
 <p>PASTORAL CARCERÁRIA "Estive preso e vieste me visitar"</p>	<p>The <b>Pastoral Carcerária Nacional</b> is a social ministry of the National Conference of Bishops of Brazil (CNBB), which is responsible for providing and organizing religious and humanitarian assistance in the country's prisons, based on article 5, item VII, of the Brazilian Constitution, and articles 11, 24 and 41 of the Penal Enforcement Law. With presence in all national states, it is guided by the uncompromising defense of the life and physical and psychological integrity of people subjected conviction, collecting complaints of rights violations and torture against prisoners and sending these complaints to Criminal Enforcement bodies.</p> <p>juridico@carceraria.org.br / <a href="http://www.carceraria.org.br">www.carceraria.org.br</a></p>
 <p>OMCT SOS-Torture Network</p>	<p>The World Organization Against Torture (OMCT) works together with the 200 organizations that make up the SOS-Torture Network to end torture, fight impunity, and protect human rights defenders around the world. Together, we are the largest globally mobilized collective that fights the practice of torture in over 90 countries. As a loudspeaker for local voices, we support our allies on the ground and provide direct assistance to victims. Our International Secretariat is based in Geneva and has offices in Brussels and Tunis.</p> <p>hea@omct.org/ <a href="https://www.omct.org/">https://www.omct.org/</a></p>

## I. INTRODUCTION AND METHODOLOGY

1. This report analyzes the country's current situation in relation to its international obligations on the eradication of torture. The findings and recommendations are based on the various recommendations made in the 3 previous cycles, many of which have not advanced and are relevant, and bring updates on the strategies listed, concrete results of policies indicated by the country as a response to the UPR and current issues that demand international attention, especially with the weakening of the fight against torture and the open promotion of state violence led by the current administration.
2. The report was produced by civil society organizations operating in different regions of the country, counting on international experts. The authors of the report have direct contact with places of deprivation of liberty in the country, including the experience of people directly affected by incarceration, as well as with the control of security forces.
3. To this end, the OHCHR guidelines and methodology developed by Coletivo RPU Brasil were used in their reports<sup>1</sup>.

## II. ASSESSMENTS

### A. Custody Hearing

4. The recommendations of the 3rd Cycle of the Universal Periodic Review made in relation to Brazil that establishes the need to implement the procedure of presenting the arrested person before a judge within 24 hours after the detention - **recommendations 36 (Uganda), 78 (Spain) 88 (Turkey), 101 (Serbia), 105 (Germany) -, are partially met, but with setbacks.** We will also discuss recommendations that deal with the reduction of pre-trial detainees and the duration of their time of deprivation of liberty as proposed in **recommendations 107 (United States) and 108 (Slovenia), which are not being fulfilled.**
5. The custody hearing<sup>2</sup> was finally incorporated into the legal system on January 23, 2020, through the amendment of article 310 of the Criminal Procedure Code by Law 13.649/2019. The original text expressly prohibited the holding of a custody hearing in the virtual modality.

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<sup>1</sup> Thus, this report presents: a) evaluations of the recommendations, indicating the degree of compliance with them as “Fulfilled”, “Partially Fulfilled” or “Not Fulfilled”. In the latter case, there is an indication on whether the evaluated theme, in addition to not being complied with, is undergoing setbacks; b) for each evaluation, a small text containing data (laws, public policies, official publications, newspaper articles, among others) that justify the evaluation; c) association with one or more of the Sustainable Development Goals (SDGs) of the 2030 Agenda

<sup>2</sup> Custody Hearing was at first established on the regulations of the National Council of Justice - CNJ Resolution 213/2015 - <https://atos.cnj.jus.br/atos/detalhar/2234>

6. Despite this formal advance, a series of setbacks occurred in swift succession during the COVID-19 pandemic, some of which increasingly tend to become definitive.

7. With pandemic, social distancing measures brought challenges to the effective implementation of the custody hearing: from the outset, two acts from CNJ<sup>34</sup>, enabled the suspension of the procedure, establishing the need to maintain certain procedures - analysis of the arrest report in *flagrante delicto* and examination of the *corpus delicti* - even with the possibility of suspending the in-person hearing.

8. In the same period, the CNJ approved a Resolution<sup>5</sup>, which established the virtual hearing<sup>6</sup> as a rule in criminal proceedings. Then, in November 2020, despite the legislation, the CNJ also allowed the holding of virtual custody hearings (Resolution 357)<sup>7</sup>, which was defended at an international event by the then President of the Federal Supreme Court and the National Council of Justice.<sup>8</sup>

9. According to the organization Instituto de Defesa do Direito de Defesa (IDDD), in 2021, with the deceleration of the pandemic, only a few states had returned with in-person custody hearings: Mato Grosso do Sul, the Federal District, Espírito Santo, Rio de Janeiro, and Amapá. Other states, such as São Paulo, have recently resumed in-person hearings.<sup>9</sup>

10. The Public Defender's Office of Bahia, in a recent survey, pointed out the underreporting of 84% of cases of torture during the pandemic due to of the suspension of in-person hearings; it should be noted that this impact further aggravated the situation of concealment of data on torture against black people in the country, since the average profile of arrested individuals in the capital of the State of Bahia, Salvador, is black (98%)<sup>10</sup>. A survey carried out by the Public Defender's Office of Rio de Janeiro also pointed out that the absence of custody hearings directly impacted the detection of torture, given that only 0.83% of cases

<sup>3</sup> <https://atos.cnj.jus.br/atos/detalhar/3246>

<sup>4</sup> <https://atos.cnj.jus.br/atos/detalhar/3364>

<sup>5</sup> <https://atos.cnj.jus.br/atos/detalhar/3400>

<sup>6</sup> Since 2019, the National Council of Justice has been seeking to implement videoconferencing for hearings in general, as revealed by the approval of Resolution 55/2019, which instructed the State and Federal Courts to adopt virtual procedural acts in criminal cases, including in the Jury Proceedings, despite the existence of several observations about the negative impacts that the virtualization of criminal proceedings could bring (such as the restriction of ample defense, difficulty in communication between the defender or lawyer and the assisted individual and, mainly, the impossibility of detecting torture).

<sup>7</sup> <https://atos.cnj.jus.br/atos/detalhar/3595>

<sup>8</sup> One must note that Resolutions do not have the power to modify federal laws; however, in another attempt to suppress the recently approved legislation, the Association of Magistrates of Brazil filed the Unconstitutionality Declaration Action (ADI) no. 6,841 at the Federal Supreme Court in June 2021, with the argument of expediting criminal proceedings and to supposedly ensure the social distancing measures established for the pandemic – which was known to be exceptional, even if the consequences of an ADI are anything but. The action itself was voted on in the virtual panel session, with the majority of Justices voting in favor of the injunction to authorize proceedings mediated by videoconferences, with a request for separate voting by one of the Justices, submitting the vote to the full panel in person, removing it from the docket. Regardless, the ban on virtual custody hearings has been suspended by the injunction.

<https://www.cnj.jus.br/ministro-fux-defende-audiencia-de-custodia-por-videoconferencia-em-debate-internacional/>

<sup>9</sup> <https://iddd.org.br/wp-content/uploads/2021/10/justica-virtual-e-direito-de-defesa-1.pdf>

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<https://www.defensoria.ba.def.br/noticias/subnotificacao-de-torturas-durante-prisoas-em-flagrante-atinge-84-na-pandemia-mostra-pesquisa-da-defensoria/>

were registered during March and August 2020, a period in which in-person hearings were suspended, and the detection increased with the return of the in-person hearings to 24% of the interviewees between August and December of the same year – once again, the majority of those affected were black (8 out of 10) and in 65% of the cases the perpetrator of torture was a police officer<sup>11</sup>. A survey by the Public Defender's Office of São Paulo, in turn, points out that only 2% of arrests made in *flagrante delicto* carried out in São Paulo during the pandemic – a period in which custody hearings were suspended – had expert reports attached to them, which, in practice, prevents the verification of any police violence and of rights violations<sup>12</sup>. Finally, a survey carried out by the CNJ itself and published by the Folha de S.Paulo newspaper<sup>13</sup> pointed out that 52.9% of the places where the virtual custody hearings took place in the capitals and 64.7% of these establishments the countryside did not have a camera that could provide views to the entire room or an external camera that assured that there were no agents nearby, revealing that only 15% of the cases had a forensic examination attached to the proceedings before the hearing and that, in more than 60% of the cases, there were unauthorized persons in the room.

## B. Racism and the Criminal Justice System

11. As for the broad defense and efficiency of the criminal justice system, **recommendations 103 (Azerbaijan), 104 (Haiti), 107 (United States of America) and 108 (Slovenia) are thus unfulfilled and undergoing setbacks**. The over-involvement of black people in torture cases points to the **non-implementation of recommendation 49 (Namibia)**. Regarding the lack of accountability for torture and other abuses and the adoption of measures to prevent torture, **recommendations 61 (United States), 62 (Botswana), 63 (Czech Republic), 64 (France), 72 (Algeria), 73 (Georgia), 80 (Bolivarian Republic of Venezuela) and 83 (Austria) have not been implemented and are, in fact, undergoing setbacks**.

12. Also regarding the justice system, we must point out the **non-compliance with recommendation 98 (Indonesia) in the 3rd Cycle on racial profiling**. 66% of those arrested are black, even though they correspond to about 50% of the general population. This number is achieved by a policy of stop-and-frisk that disproportionately affects black people and encourages the number of preventive arrests for trivial crimes and police violence.

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<sup>11</sup>

<https://www1.folha.uol.com.br/cotidiano/2021/12/com-retorno-de-audiencia-de-custodia-presos-voltam-a-relatar-tortura-no-rio.shtml#:~:text=Cerca%20de%2030%25%20dizem%20ter,pris%C3%A3o%2C%20aponta%20estudo%20da%20Defensoria&text=Com%20o%20retorno%20das%20audi%C3%Aancias,tratados%20no%20momento%20da%20pris%C3%A3o.>

<sup>12</sup> <https://www.defensoria.sp.def.br/dpesp/Repositorio/31/Documentos/Relatorio%20pesquisa%20tortura.pdf>

<sup>13</sup>

<https://www1.folha.uol.com.br/cotidiano/2021/11/mais-da-metade-das-audiencias-de-custodia-virtuais-nao-respeita-exigencias-da-justica.shtml>

13. One of the dimensions of the disproportionate impact of the criminal justice system on people of color is the practice of recognition of criminals by photographs. Initially, one must note that there is no official data on the subject across the country, but the Public Defender's Offices<sup>14</sup> carried out two surveys that point to the high incidence of racism in the justice system and in the police with regard to criminalization. Cases of arrest by miscarriage of justice based on photographic recognition occurred in 10 states, with 24 of the 32 individuals affected being black and preventive detention being decreed for 19 of them.

### C. Overcrowding

14. One must also take into account the seriousness of the problem when we look at the data from the *Justiça em Números* (Justice in Numbers) report<sup>15</sup>, produced by the National Council of Justice, which provides perspective on the current situation of the criminal justice system: in the last available version (2020), in that year alone, 1.9 million criminal cases entered the justice system, with 91.9% of claims in state courts and with a collection of 12.2% - which is the third largest number of cases since the survey began in 2009. The criminal justice system has a total of 5.9 million pending cases. The same survey also reports 1.7 million pending trials, of which 1.14 million refer to custodial sentences, which in turn also continue to be the most applied sentence in the country (52.7%). Observing the data from the Public Safety Yearbook that present the most recent data on the prison population, in 2020 there were already 753,966 people imprisoned in the prison system, which represents an increase of 226.3% of the incarcerated population in the country in 20 years, with more than 242,561 people exceeding the available vacancies. Of this total, 228,976 (30.4%) prisoners have not yet been convicted. Of all prisoners in the country, 66.3% are black. Such information also accounts for the **non-implementation and setback in recommendations against overcrowding and effectiveness of justice, such as recommendations 79 (Turkey), 83 (Austria), 103 (Azerbaijan), 104 (Haiti), 107 (United States of America) and 108 (Slovenia).**

15. Obviously, the lack of a significant reduction in overcrowding implies the failure to comply with a series of other recommendations, especially those dealing with prison conditions, complete respect for human rights, and reduction of torture and mistreatment.

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<sup>14</sup> The first was carried out by the Public Defender's Office of Rio de Janeiro, which determined that 80% of the cases of judicial error that led to the arrest and subsequent acquittal based on photographic recognition fell on black people, and in 86.2% of these cases, the preventive detention was enacted between 2019 and 2020. The second survey, carried out by CONDEGE, analyzes the situation across the country during two months from the analysis of 28 cases and 32 defendants who were in the situation described above.

[https://sistemas.rj.def.br/publico/sarova.ashx/Portal/sarova/imagem-dpge/public/arquivos/Relat%C3%B3rio\\_DPE-RJ.pdf](https://sistemas.rj.def.br/publico/sarova.ashx/Portal/sarova/imagem-dpge/public/arquivos/Relat%C3%B3rio_DPE-RJ.pdf)  
<sup>15</sup> [relatorio-justica-em-numeros2021-221121.pdf \(cnj.jus.br\)](https://sistemas.rj.def.br/publico/sarova.ashx/Portal/sarova/imagem-dpge/public/arquivos/Relat%C3%B3rio_DPE-RJ.pdf)

16. The recommendations to improve the conditions of the prison units, present in the **3rd Cycle, were not implemented and are undergoing setbacks**, such as recommendations **no. 76 (Republic of Korea), 77 (South Africa), 95 (Australia), 82 (Angola), 84 (Cape Verde) and 89 (Vatican City)**, recommendations on respect towards human rights in prisons, such as **recommendation 91 (Italy)**, and the expansion of efforts to prevent torture in recommendations no. **72 (Algeria) and 73 (Georgia)**.

#### D. Food insecurity

17. Prison meals are insufficient and are known to be complemented by the food delivered by the inmates' relatives.

18. According to the Pastoral Carcerária organization<sup>16</sup> the delivery of food by family members was suspended in at least 65.9% of the country's prisons within less than a month of the outbreak of the pandemic. The survey carried out in 2021 by Agenda Nacional<sup>17</sup> in 15 Brazilian states indicates that there has been a severe worsening of conditions, particularly with regards to food security. The food has become scarce and with an extremely insufficient variety of nutrients, and the average diet in the country consists of only three meals a day, with a break of around 12 hours between dinner and breakfast, period in which the Prisoners would not be able to obtain food. Also of note, a large part of the food is supplied by outsourced companies, affecting 1/3 of the states surveyed (6); these companies have received complaints about irregular hours, meals that are unfit for consumption and food in low quantity and quality in several of these states. In at least 8 of the 15 states, there were reports of food poisoning. In relation to hunger, the situation is even more worrying: the research showed that, in March 2021, in Ceará, 30 inmates were hospitalized with symptoms of vitamin C and D deficiency, both related to nutritional issues; in Piauí, two prison units between 2020 and 2021, according to a technical report by the Ministry of Health<sup>18</sup> had an outbreak of beriberi, a disease caused by a lack of vitamin B1 and related to an inadequate and nutrient-poor diet, leading to the death of at least six inmates; in Rio de Janeiro, according to data collected by the State Mechanism for the Prevention and Combat of Torture in 2020, 26.6% of prisoners who died were emaciated,

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<sup>16</sup> Pastoral Carcerária Nacional. **Pastoral Carcerária divulga dados de questionário sobre coronavírus nas prisões**. April 9, 2020. Available at: <https://carceraria.org.br/combate-e-prevencao-a-tortura/pastoral-carceraria-divulga-dados-de-questionario-sobre-coronavirus-nas-prisoas>. Accessed on April 19, 2021.

<sup>17</sup> We emphasize that this report was not published, and serves as input for requests for public hearings, but we understand that it is an important source for primary data for this document.

<sup>18</sup> El País. **Presos morreram por falta de comida adequada em cadeia do Piauí, aponta relatório do Ministério da Saúde**. Available at: <https://brasil.elpais.com/brasil/2021-04-02/presos-morreram-por-falta-de-comida-adequada-em-cadeia-do-piaui-aponta-relatorio-do-ministerio-da-saude.html>. Accessed on April 18, 2021.

cachectic, or dehydrated; and in 2021 this number increased to 36.9% of cases<sup>19</sup>. Finally, the survey carried out by the National Agenda for Deincarceration pointed out that, in at least three states, the denial of food and water as collective punishment occurred in 2020.

### **E. Safety Forces**

19. In 2019, an amendment to the Federal Constitution was approved to characterize prison officers as public safety forces in article 144. As a result, the criminal police was created, and it could only act within the prison space. However, according to a survey carried out by the Interinstitutional Work Group in Defense of Citizenship<sup>20</sup>, its implementation by the States was noted by the complete mismatch between what was constitutionally determined and the international rules themselves. In many states, this force operates without any form of external regulation or control, sometimes accumulating functions that include not only the custody of inmates within the prison walls, but also ostensible policing, riot control, investigations, escorting, and intelligence - which obviously increases cases of abuse and violence due to excessive attributions and lack of control. Cases of summary executions, arbitrary arrests, and participation in extramural mega-operations were detected by the work group in at least in 6 states.

20. However, the intensification of violence by state agents is also part of a scenario of severe setbacks imposed by the practice of institutionalized torture in special operations groups. Since 2017, the National Mechanism for the Prevention and Combat of Torture (MNPCT) has pointed to the creation of the Federal Penitentiary Intervention Task Force (FTIP), which operates in support of state officers in cases of episodic disturbances in situations of severe crisis in the prison system. They are composed of federal, state and federal district prison officers, operating through agreements or cooperation agreements with the National Force, being allowed to perform custody, surveillance, and guard services.

21. Since the creation of this Task Force, control and monitoring bodies have pointed out the risks that are inherent to the lack of standardization of the FTIP, as well as its lack of protocols, guidelines and parameters of action, added to the lack of transparency that hinders the control of abuses that can be perpetrated<sup>21</sup>.

<sup>19</sup> <http://mecanismorj.com.br/relatorios/>

<sup>20</sup> Since its creation, the FTIP has carried out interventions in Rio Grande do Norte, Pará, Amazonas, Rio Grande do Sul, Roraima, and Ceará, and on March 17, 2022, an ordinance was issued that determined that the task force should also be established in Rondônia -

[http://www.mpf.mp.br/atuacao-tematica/ccr7/dados-da-atuacao/gt-interinstitucional-de-defesa-da-cidadania/documentos/nt-09\\_policiaPENAL.pdf](http://www.mpf.mp.br/atuacao-tematica/ccr7/dados-da-atuacao/gt-interinstitucional-de-defesa-da-cidadania/documentos/nt-09_policiaPENAL.pdf)

<sup>21</sup> [PORTARIA MJSP Nº 50, DE 17 DE MARÇO DE 2022 - PORTARIA MJSP Nº 50, DE 17 DE MARÇO DE 2022 - DOU - Imprensa Nacional \(in.gov.br\)](https://www.imprensa.nacional.gov.br/portaria/mjsp/50-de-17-de-marco-de-2022)

22. Based on the MNPCT reports on the task force's actions in Ceará<sup>22</sup>, Pará<sup>23</sup> and Rio Grande do Norte,<sup>24</sup> a series of torture and mistreatment practices were detected as a form of space management. Prisoners are required to sit naked, "crammed" together with their hands on their heads after orders by the agents, with this routine being applied at any time of the day or night, with reports of people spending hours in this stressful position, being sprayed with pepper spray and having their toes broken by tonfas or boots if they made any movement, complained or spoke to each other. Such reports were confirmed by later medical reports as being compatible with torture. The agency then denounces the current *modus operandi* of the FTIP: keeping detainees incommunicado, with suspension of visits by family members and lawyers; failure to take inmates to court hearings; interruption of appointments by medical, outpatient, and technical staff; removal of basic items from prisoners, such as clothes, hygiene material, among others; application of collective sanctions in a systematic manner; torture through the imposition of "procedures" such as the one described above; systematic closure of units and transfers, generating intentional aggravation of the overcrowding issue.

23. These events are not just perpetrated by the FTIP: recently, an inmate in Brasília was disfigured by the use of elastomer bullets shot against his face<sup>25</sup>; in Rio de Janeiro in 2021 after a riot, tear gas canisters were thrown towards the mattresses of a cell, generating a fire that left one inmate dead, three seriously burned and one having received an elastomer bullet close to the eye, preventing him from seeing, according to the State Mechanism for the Prevention and Combat of Torture. There are no reports of anyone being held accountable in either case.

#### **F. National System for the Prevention and Combat of Torture (MNPCT)**

24. As one may notice, the supervision and external control of prison establishments are crucial for the prevention, documentation, investigation and accountability of torture in the country. However, since 2019, a dismantling of the National System for the Prevention of Torture has been carried out by the federal government, as well as an insufficient and inadequate enforcement of the OPCAT.

25. On June 10, 2019, through Decree 9,831, the Federal Government exonerated all MNPCT experts, transformed the positions into volunteer posts and changed the composition of the Committee. That year, after efforts by civil society, ADPF 607 was submitted to the STF, which aimed to prevent the Decree from being accepted due to its incompatibility with

<sup>22</sup> [relatorio-cearacc81-missacc83o-conjunta.pdf \(wordpress.com\)](#) [relatoriomissoceara2019.pdf \(wordpress.com\)](#)

<sup>23</sup> [relatorio\\_mnpct\\_para\\_2019.pdf \(wordpress.com\)](#)

<sup>24</sup> [relatoriograndedonorte2017.pdf \(wordpress.com\)](#)

<sup>25</sup> [Preso fica com rosto desfigurado após ser atingido por bala de borracha em presídio, no DF | Distrito Federal | G1 \(globo.com\)](#)



constitutional principles. Almost 3 years after, in March, 2022, ADPF 607 was finally ratified unanimously.

26. Furthermore, since last year, a series of actions have been carried out by the Ministry of Women, Family and Human Rights to prevent members of the National Committee<sup>26</sup> to Prevent and Combat Torture from taking office. By law, the body is chaired by the head of the Ministry of Women, Family and Human Rights, but the majority of its members represent civil society, ensuring the prevalence of a societal perspective in the discussions. Since the beginning of the Bolsonaro administration in 2019, the Ministry has a history of attempts to empty the body: that year, the elected members of civil society were only sworn in and had a meeting called within 10 months from the start of the term. In 2021, the government attempted to prevent the registration of organizations appointed by civil society, forcing representatives to seek the judiciary system for simple claims and, effectively, prolonging the inertia of the collegiate body since June 2021.

27. In relation to the state-level versions, according to a survey carried out by the Mechanisms themselves, there are only four local mechanisms in operation in the country, in the states of Pernambuco, Rio de Janeiro, Rondônia, and Paraíba, all operating with a much lower number of experts than necessary<sup>27</sup>, the first two with 6 and the last two with 3.

28. In relation to the State Committees, the survey indicates a situation that is not much better. Of the 20 States that, in theory, formed their Committee, 18 have public security bodies in their composition, undermining the autonomy of these collegiate bodies to act precisely in the face of institutional violence.

29. At least 12 of the 26 states and the Federal District do not have any legislation that establishes mechanisms or committees; 7 do not have provisions for Mechanisms, and 4 of them have provisions in the respective Laws attributing powers to the committees that are under the purview of the Mechanisms, without the creation of MEPCTs even being determined. It is even more egregious to observe the presence of State agents in these same Committees, including those belonging to public safety forces - further excluding civil society from the debate and generating insecurity for those who denounce rights violations committed by the State.

30. Thus, the **partial implementation with setbacks of the recommendations made in the 3rd Cycle** on OPCAT and Torture Prevention Mechanisms becomes evident, namely in

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<sup>26</sup> The Committee was created together with the National Mechanism to integrate civil society and government in the analysis of public policies related to the eradication of torture in the country, ensuring the participation of civil society in the choice of MNPCT experts and ensuring adherence to its recommendations.

<sup>27</sup> Adding all the Mechanisms together, the structure comprises 29 experts at the federal and state levels to work in a country with approximately 1,381 prisons; 453 socio-educational units; 159 public psychiatric hospitals, in addition to private ones; 1,800 therapeutic communities; 4,533 shelters; and 7,292 long-stay institutions for the elderly, data that are not updated or complete and that refer to 2020. Thus, we are speaking of at least 15,618 spaces of deprivation of liberty and millions of people deprived of their liberty, which demonstrates how the sparse implementation seen until now is unfeasible.

regards to recommendations **58 (Slovakia)**, **74 and 86 (Ghana)**, **88 (Denmark)**, and **87 (Turkey)**. Still in relation to the above, we report the **non-implementation with setbacks of recommendations 61 (United States)**, **62 (Botswana)**, **63 (Czech Republic)**, **64 (France)**, **72 (Algeria)**, **73 (Georgia)**, **79 (Turkey)**, **80 and 83 (Bolivarian Republic of Venezuela)**, and **83 (Austria)**. Regarding the lack of accountability for torture and other abuses and the adoption of measures to prevent torture, the recommendations are also not implemented and are undergoing setbacks. Finally, we point out the **non-implementation of the code of conduct for the repression of protests and riots as seen in recommendation 58 (Slovakia)**.

### G. Gender Violence

31. The aforementioned scenario becomes more drastic when reflecting on vulnerable groups. In the **3rd Cycle**, there were several general and specific recommendations for these groups. The data presented below indicates **partial compliance with recommendation 94 (Denmark)** on adhering the Bangkok Rules on handcuff-free births, **non-compliance with recommendation 96 (Thailand)** on spaces of deprivation of liberty for pregnant and postpartum women, **93 (Sweden)** increase in the number of gynecologists in prisons, **90 (Ireland)** on the protection of vulnerable groups such as Women and the LGBTIQ+ population, **41 (Chile)** on the promotion of laws and initiatives to ban discrimination and violence on grounds of gender and sexuality, **49 (Namibia)** on the adoption of measures to eradicate discrimination against black Brazilian women and **67 (Canada)** on the investigation into hate crimes.

32. Regarding childbirth without handcuffs, the research “Nascer nas prisões” (Births in Jail)<sup>28</sup> by Fiocruz sheds light on the treatment of pregnant women in the Brazilian prison system between 2012 and 2014, pointing out that 70% of incarcerated pregnant women were black, 83% were mothers of more than one child and 89% had been arrested while already pregnant. Only 32% had access to adequate prenatal care, and 8% of the inmates reported having to wait more than 5 hours for medical care when the delivery started. Regarding the birth itself, 36% were taken to hospitals by police vehicles and not ambulances, only 10% had the birth notified to family members and only 3% were entitled to have a companion present, while 30% reported having suffered verbal and physical violence in maternity wards. It was also reported that 36% were handcuffed at some point during hospitalization for childbirth and 8% during the delivery.

33. In 2017, Law 13,434 was ratified and added to article 292/ CPP the paragraph that prohibits childbirth with handcuffs. However, there are still reports of both deliveries with

<sup>28</sup> <https://www.scielo.br/j/csc/a/PpqrzBJWf5KMTfz/T37nt5Bk/?format=pdf&lang=pt>

handcuffs and other forms of obstetric violence and torture. In view of the lack of public data on this issue, we mention the example of Rio de Janeiro, whose Maternal and Child Unit was seen as a “model prison” for pregnant and postpartum women. In 2018-2021 the visit reports of the State Mechanism for the Prevention and Combat of Torture<sup>29</sup> point out that handcuffs continued to be used on the way to the health unit, being removed only during of expulsion, as well as hearing reports of a series of physical and psychological aggressions both in the hospital during 2018, in the prison unit and during transportation in 2021.

34. In theory, this situations would undergone an evolution with the approval of the Early Childhood Legal Framework (Law 13,769/18), which amended article 318 of the Criminal Procedure Code, allowing mothers of single-parent families in pretrial detention to serve house arrests, a law that was interpreted by the Federal Supreme Court as a result of Collective Habeas Corpus no. 143.641. However, research carried out by the Instituto Terra, Trabalho e Cidadania<sup>30</sup>, as well as those carried out by the Public Defender's Office of Rio de Janeiro<sup>31</sup> point out that this law is not fully complied with. The first research informs the resistance of the justice system in deferring house arrests and provisional releases to mothers and pregnant women when the alleged conduct is drug trafficking, even if it is a victimless crime. This crime is read as an extremely exceptional reason that leads to the maintenance of the imprisonment measure. Other determining factors for the low effectiveness of the measure are the employment in court decisions of the abstract category of preservation of public order, as well as doubts on whether the mother is effectively essential to the child and questions regarding their motherhood. In this sense, the legal change had a minor impact in terms of benefiting pregnant women and a negligible impact in relation to mothers in pretrial detention. Furthermore, there is no provision for the same benefit to be granted to convicted women.

35. It cannot be overlooked that the strip searches of detainees is used throughout the national territory, which is especially serious for trans women and transvestites, as well as for trans men and non-binary people who are in prison units that do not match their gender identity.

36. At this point, we must highlight the recent March 2021 decision of the Federal Supreme Court that determines the possibility of transferring trans women to prisons for women as an advance, although it does not materialize in practice. In a great portion of the country, trans women and transvestites are commonly found in male prisons, especially in safe areas, areas intended for prisoners at risk of suffering violence in prison units, which are not only isolated, but also tend to grant access to fewer activities than the other prison wings.

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<sup>29</sup> [www.mecanismo.org.br](http://www.mecanismo.org.br)

<sup>30</sup> [maternidadeseprisao-diagnostico-aplicacao-marco-legal.pdf](https://maternidadeseprisao-diagnostico-aplicacao-marco-legal.pdf) ([ttc.org.br](http://ttc.org.br))

<sup>31</sup>

<https://www.defensoria.rj.def.br/noticia/detalhes/8904-DPRJ-lanca-perfil-de-mulheres-que-passaram-por-audiencia-de-custodia>

37. It is therefore relevant to highlight the absence of any measures to prevent sexual violence against women inmates, as well as the lack of formal protocols for women inmates to access legal provisions of care and assistance, among which we mention the proceedings provided for in the “Next Minute Act” (Law 12845/2013). There are currently no public data on how many women have suffered sexual violence in female or LGBTQI+ prisons.

38. The absence of a protocol for care or prevention is noticeable in a series of cases that have occurred in the country in recent years. In 2015, a trans woman was gang-raped in the same location as a form of sanction, and she was not provided with care, which ended up leading her to be contaminated by HIV. In 2015, a new case took place at the Women’s Penitentiary of Teresina in Piauí, where the rape was carried out by a prison officer, who threatened to retaliate against the prisoner if she reported the case. In 2019, in the state of Santa Catarina, 27 women reported sexual violence through coercion by prison officers. This was repeated in 2021 at the José Frederico Marques Public Prison in Rio de Janeiro, this being the only case in which we had news of the agent being held accountable; however, the procedures determined by the Law for the care and sheltering of the victim were not ensured

#### **H. Humiliating Searches**

39. The country has taken any effective measures to combat sexual violence against women and visitors, including humiliating searches. A survey carried out by a series of organizations, collectives and bodies in 2021 used a questionnaire answered by family members to identify the occurrence of humiliating searches in the five Brazilian regions, proving that this is systematic and widespread in the country. Thus, 77,7% of the people interviewed were raped, 97,7% of them were women and 69,9% of them were black, and the reports informed that the visitors were forced to undress, bend down in front of a mirror and sometimes instructed to contract their muscles and cough during the procedure. It was reported that in 56,1% of the cases, the agents cursed, threatened and humiliated them during the procedure. It is important to establish that children also suffered with this practice, with 70% of them being black and in 23,1% of the cases the mother's presence was not authorized, especially in cases where the family members were black (77,7%). Even more serious is the fact that at least 1.4% of the women were searched by male officers. There are a minority of cases of refusal to submit to the practice, but 21,1% of those who refused had sanctions imposed against them, 98,4% of these individuals being female and 71,8% of them black. Finally, 34,5% of respondents have already given up on a visit because of the procedure.

40. These data prove that not only has the country not been adopting effective measures to prevent sexual violence against black women, but also that it maintains these practices at an institutional level when it comes to the prison system and its visitors. It should be noted that even in states where the practice was prohibited by law, such as Rio de Janeiro and São Paulo, it continued to be observed.

### III. RECOMMENDATIONS

In view of the non-compliance and setbacks regarding most of the relevant recommendations made in the 3rd Cycle, we believe it is necessary to include new recommendations in a complementary manner:

- Food security must be guaranteed to prisoners, with quality and quantity compatible with the nutritional demand of adults, taking into account the specificities of those who are sick;
- The sheltering of people, as observed in the differentiated disciplinary regime, for an indefinite period in an incommunicado isolation regime must be prevented;
- The practice of humiliating searches must be prevented throughout the country, including in relation to prisoners, with agents and prison managers who carry out the practice being held accountable, in view of the fact that this is sexual violence;
- Male agents should not be allowed to act as guards or even be present in women's prisons, and trans women and transvestites should not be searched by men.
- Preference should be given to the application of alternative sentences for the LGBTQIA+ population, especially considering the complete absence of a structure for their adequate custody;
- Alternative measures to prison should be applied to prisoners with sensory, motor or mental disabilities and with serious illnesses, especially taking into account the lack of access to health care and the risk of death to which they are exposed to due to the lack of minimum healthy and clean care structures in prisons;
- Adequate measures should be taken to protect people who denounce torture in deprivation of liberty settings, particularly sexual violence, including analysis by the justice system of the application of alternative sentences in cases where there is a risk of retaliation;

- Custody hearings should be improved in the justice system, ensuring that they be held in person, so that torture can be effectively detected and provisional detention be enforced only in extremely exceptional cases and freedom must be evaluated as a measure of reparation and non-repetition for victims of torture. The system of virtual hearings should be completely prohibited,;
- Legislation should be created to ensure the application of alternative measures for sentenced prisoners who are pregnant or have children, in view of its importance for children and adolescents, and freedom must be a priority in cases of preventive detention;
- Any practice of obstetric violence in childbirth of persons deprived of their liberty should be prohibited;
- Effective accountability measures for judges and prosecutors that legitimize and disregard torture in their decisions should be strengthened, given that these are crimes against humanity;
- The use of lethal weapons inside prison units should be banned, as well as the use of less lethal equipment such as kinetic ammunition, controlled explosion grenades, pepper spray and other irritants, and tear gas in spaces of deprivation of liberty, due to the very serious damage to the physical integrity and life of the detainees;
- A, external control mechanism should be created over national forces and the Penitentiary Intervention Task Force, including with regard to accountability for cases of abuse, torture and mistreatment;
- The participation of agents of safety forces and other agents or employees of institutions of deprivation of liberty in the System for the Prevention and Combat of Torture, including Mechanisms and Committees on the subject, should be prevented.
- A criminal enforcement structure compatible with the number of people deprived of liberty should be guaranteed in the justice system, especially due to the delay in granting progression of a regime compatible with their sentence time, avoiding illegal arrests;
- The right to family life among inmates and their families should be guaranteed, including the right to immediate information about deaths, health or transfers, the right to visits, with an adequate structure inside and outside prison walls, as well as the right to memory, ensuring, in case of death, the transportation of the body to place of origin of the arrested person;

- The implementation of Mechanisms to Prevent and Combat Torture at state level throughout the country should be guaranteed, with special emphasis on respecting the rules of autonomy and independence of experts recommended by the OPCAT;
- A database should be built with all allegations of torture arising from custody hearings, with public information on the investigation flow and accountability for the results.
- Race-disaggregated data should be maintained on the number of people suffering stop-and-frisk practices by the police in overt policing, and it should be ensured that safety forces can only search people if there is a well-founded suspicion supported by solid and verifiable evidence.
- People should be deincarcerated, favoring alternatives to provisional detention and granting sentence progressions in order to reduce prison overcrowding.