

Report to the Third Review of the Federative Republic of Brazil

by the UN Human Rights Committee - 138th session

**Civil and Political Rights: Institutional Violence Against
Persons Deprived of Liberty**

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A. Introduction:

1. Conectas Direitos Humanos¹ is a leading Brazilian non-governmental organization based in São Paulo, Brazil. We work to protect and expand the rights of all, especially for the most vulnerable. Conectas was accorded consultative status with the United Nations in 2006, and since February 2022, it has been an observer of the Convention- UN Climate Change Framework.
2. This document is an alternative report for Brazil's review by the UN Human Rights Committee during its 138th session. Considering the List of Issues, the State report, and its Written Replies to the List of Issues, Conectas examines Brazil's compliance with its international human rights obligations to defend and promote human rights against institutional violence, especially in the prison system (section B).

B. Human rights violations in the Brazilian prison e public security system:

Non-discrimination (arts. 2, 19–20 and 26)

3. Despite Brazil's rhetorical commitment to combat state violence against poor and black youth, this group suffers arbitrary and violent approaches by the police, resulting in death or imprisonment. And Brazil's Drug Policy has guided and justified the policy of mass incarceration applied in this country. The practice of racial profiling consists of police approaches made without objective criteria or based only on skin color. Conectas Direitos Humanos recently reported this practice at the 52nd session of the UN Human Rights Council, demanding that Brazil urgently combat structural and institutional racism.
4. **Racial profiling** - The practice of racial profiling in Brazil has a close connection with the history of enslavement of the African descendant population, which, since the formal abolition, has been the main target of police surveillance. One of the serious results of this logic is the mass incarceration of the black population, the correlation with police lethality, which affects the same population, as well as the way in which approaches are constituted in the field of public security, targeting, not as citizens, black, poor and peripheral people.
5. It is undeniable that suspicion has fallen mostly on historically marginalized groups, violating not only fundamental rights of equality, locomotion, physical and psychological

¹ Conectas Human Rights, Homepage, 2023, accessed May 29, 2023, <https://conectas.org/>. Contact: arquias.cruz@conectas.org.

integrity, but also the right to life. In these cases, agents of the State conduct personal searches based on the color of the skin, without any concrete and objective evidence of criminal practice and, later, justify the action by giving an appearance of legality. We speak of appearance, because the personal search motivated by racial profiling is illicit, due to the absence of legitimate and consistent motivation of the perpetration of a crime capable of authorizing the adoption of an extreme measure.

6. According to data collected by the Brazilian Public Security Yearbook 2022,² Brazil has 820,689 people imprisoned in its prison system, 67.4% of whom are black. In practice, race/color has been the main marker for black people to be criminalized by the Criminal Justice System, first in the police approach and later in the judicial decisions.
7. The Inter-American Commission on Human Rights, in its report published in 2021 on the human rights situation in Brazil, reaffirmed that people of African descent are historically inserted into a context of structural discrimination and institutional racism. The same concern was expressed by the Committee Against Torture, in a recent review of the Brazilian State.
8. The racial profile practice is being debated in a trial in the Federal Supreme Court in a collective Habeas Corpus petition. The trial of Habeas Corpus No. 208.240 has special relevance because the Supreme Court has the opportunity to positively impact the Brazilian justice system by recognizing the illegality of institutional practices such as these, in which agents of the State reproduce institutional racism that highlights a structure of maintenance of inequalities anchored in racial hierarchies. These racial inequalities challenge the democratic structure proposed in the current constitutional order.
9. If the court recognizes the inexistence of the materiality of the crime due to the illegality of the evidence derived from a personal search based on racial filtering, it will again materialize a relevant guideline on the theme. It is important to keep in mind that the decision may be fundamental to the reduction of racial inequalities produced in the scope of the criminal justice system in Brazil. This is an opportunity to reinforce the precedents of this Court in strengthening democracy.
10. **Use of body cameras** - The Supreme Federal Court has assumed an important role in recognizing constitutional and international guidelines to combat racism and all forms of racial discrimination, but the implementation of decisions still needs attention. ADPF

² Available at:

<https://forumseguranca.org.br/wp-content/uploads/2022/07/20-anuario-2022-as-820-mil-vidas-sob-a-tutela-do-estado.pdf> - Access on 22 February 2023.

No. 635, which determined the creation of a plan to reduce police lethality in the state of Rio de Janeiro in order to guarantee the right to life in the favelas (a territory occupied mostly by black people), is an example. The action was proposed during the pandemic and was an important mechanism for reducing police operations. Currently, however, we have observed repeated noncompliance with the decision, as well as resistance from the Government of Rio de Janeiro to implement the plan to reduce police lethality and the installation of cameras in police uniforms.

11. It is important to note that when the State of São Paulo installed portable operational cameras in police officers' uniforms³, it drastically reduced police lethality. The use of cameras by public security agents, with the consequent institution of transparency and social control mechanisms, can be an important instrument to control some of the effects of institutional racism and should be recommended.
12. **Drug policies** - Brazil appears in last place - with the title of country with the worst drug law - in ranking which compares drug policy in 30 countries. The study was conducted by the Harm Reduction Consortium, a global initiative that brings together 190 organizations focused on harm reduction and drug policy. The ranking shows how closely drug policies and their implementation align with the UN principles of human rights, health and development. Brazil obtained a score of 26, with a global average of 48 points. The evaluation found that Brazil bases its drug policy not on health care and care, but on incarceration mass, police lethality and compulsory detention.
13. The Drug Law (Law No. 11.343 of 2006) in force in the country started to differentiate "user" from "trafficker" by decriminalizing the conduct of personal use (Article 28), not fitting in theory the term of imprisonment for people who use drugs. However, the law lacks regulation, since there are no criteria to differentiate between subjects ("user" and "trafficker") or distinguish whether the drug carried was intended for commercial activity or for personal consumption purposes. The article determines highly subjective criteria for such a distinction, such as "the social and personal circumstances" and the "place and conditions in which the action took place". In the end, the filtering task is at the discretion of police officers at the time of approach and the police authority in the criminal framework through racial profiling: white people and middle class are "users" and black, poor and peripheral people are read as "traffickers".

³ [Câmeras corporais nos uniformes policiais: o caso de São Paulo | Portal FGV:](https://www.google.com/url?q=https://portal.fgv.br/artigos/cameras-corporais-uniformes-policiais-caso-sao-paulo&sa=D&source=docs&ust=1685453062543011&usg=AOvVaw17Qc7ip5XNhHkQuj15PfhR)

<https://www.google.com/url?q=https://portal.fgv.br/artigos/cameras-corporais-uniformes-policiais-caso-sao-paulo&sa=D&source=docs&ust=1685453062543011&usg=AOvVaw17Qc7ip5XNhHkQuj15PfhR>

14. Such criteria facilitate greater criminalization of those with low incomes, especially those residing in poor and peripheral neighborhoods, as they are always in a suspicious situation in the eyes of the police forces and the judiciary, including the Public Ministry. For state bodies, the existence of drugs in these locations will always have a presumption of commercial purpose. Thus, reports of people arrested for a tiny amount of drugs are not common.
15. **Police Lethality** - In Brazil, according to data from Amnesty International and the Brazilian Public Security Forum⁴, we have the most lethal police in the world. This despite the fact that in the country the death penalty is prohibited, except in the case of declared war. And this is where the “War on Drugs” and its ostensible and selective policy comes in, legitimizing selective imprisonment, torture and killing of people and not of drugs. 74% of homicides in Brazil are of black people and that 79% of those killed by the police are also black people, according to the Brazilian Forum of Public Security (FBSP).
16. **Criminalization of people who use drugs** - Whether in Rio de Janeiro, São Paulo, large metropolises and other regions on the Brazilian periphery, the arm of the State arrives in the form of repression and criminalization. In São Paulo, in the Sufoco operation, managers in conjunction with the state government used police repression as an instrument to disperse people who use drugs in the region known as cracolândia (the same region that is the object of forced removals and where several people in situations of road). The expulsion actions consisted of torture tactics against these people, since, for example, they wet the earth to make staying in the place unbearable due to the cold, generating despair in people.
17. Conectas Human Rights and other entities have already denounced the police action at drug use scenes to the Inter-American Commission on Human Rights (IACHR)⁵. and to the United Nations (UN), for reporting in the areas of health, arbitrary detention, housing and torture, requiring clarification from the Government. Despite the international visibility and local litigation, the practice of criminalization and violence continues to occur, even in times of pandemic.
18. It so happens, however, that the public policy aimed at people who use drugs continues to be based on the deprivation of freedom, either by the criminalization of people who

⁴Data Brazilian Public Security Forum. Available at: <https://forumseguranca.org.br/anoario-brasileiro-seguranca-publica/> (accessed on Nov. 11, 2021)

⁵ Available at: <http://www.forumjustica.com.br/wp-content/uploads/2012/01/Apelo-Urgente.pdf>.

use drugs, black and poor, framing them as drug dealers, or on the use of hospitalizations, so-called volunteers, in hospitals or Therapeutic Communities.

19. We have observed in Brazil, hospitalization as the most common treatment for dependents, taking place in private services, with long-term hospitalizations, most with religious orientation, and some of them depriving the use of medication⁶ and other psychosocial therapies, using work and prayer as a form of 'treatment', in addition to other violent practices. People living on the streets have been the preferential victims of these actions, considered to be of a hygienist nature.
20. Even with all the international guidelines established by the Ministry of Health for care to take place in community-based services (and not in hospitals or clinics), public investments have not been made to expand the Psychosocial Care Network (in the Alcohol Psychosocial Care Centers and drugs (CAPS AD) and other care resources, such as the Consultórios na Rua, public policies belonging to the Unified Health System and Social Assistance System), but rather brought back to support Therapeutic Communities⁷.

Violence against women, and domestic violence (arts. 2–3, 6–7 and 26)

21. **Menstrual Dignity** - In relation to people who menstruate and are incarcerated or their relatives, on May 28 civil society organizations and public authorities submitted an urgent appeal to CIDH and UN High Commissioner for Human Rights, denouncing human rights violations against family members and prisoners in Brazil. May 28 is International Menstrual Hygiene Day, a date dedicated to ensuring menstrual health, which includes sexual and reproductive rights. However, such rights have been systematically violated in the prison environment throughout the Brazilian state.
22. Brazil is the third country that incarcerates the most in the world. In ranking of female prisoners, it is also in third position. In 2022, nearly 660,000 persons were in prison in Brazil⁸, the majority being young, black, poor, vulnerable and with low education. Currently, the states of São Paulo and Minas Gerais have, on average, respectively,

⁶ See the Report of the National Mechanism to Combat and Prevent Torture in Therapeutic Communities - <https://site.cfp.org.br/wp-content/uploads/2018/06/Relat%C3%B3rio-da-Inspe%C3%A7%C3%A3o-Nacional-in-Comunidades-Terap%C3%AAuticas.pdf>

⁷ See Bill of Law approved in November 2021 that grants tax exemption to the Therapeutic Communities. <https://www.viomundo.com.br/blogdoazinha/adilson-silva-e-leonardo-pinho-projetos-no-congresso-drenam-mais-dinheiro-publico-para-comunidades-terapeuticas.html>

⁸ <https://app.powerbi.com/view?r=eyJrIjojNWQ0ODM1OTQzMmQ2Ny00M2IyLTk4YmUtMTdhYzI4N2ExMWwzM3IiwidCI6ImViMDkwNDIwLTQ0NGMtNDNmNy05MWYyLTRiOGRhNmJmZThlMSJ9>

197,000 and 66,000 persons imprisoned in overcrowded cells and without decent conditions for survival, as well as the rest of the country.

23. The 2nd Edition of National Survey of Penitentiary Information - INFOPEN Women, 2018, indicated that female prison population, on June 2016, comprised a total of 42,355 women for a total of 27,029 vacancies, meaning an occupancy rate of 156.7%⁹. In concluding observations of UN Committee on the Elimination of Racial Discrimination in November 2022¹⁰ and of UN Committee Against Torture in May 2023¹¹, both expressed concern about reports of appalling detention conditions in Brazil, including the situation of women and lesbian, gay, bisexual and transgender (LGBT) persons, in most correctional facilities, which lack hygiene and sanitation services, access to drinking water and insufficient access to medical care, among other human rights violations.
24. It is worth mentioning the recent inspections carried out by National Mechanism for the Prevention and Combat of Torture (MNPCT) in several prison units in Brazil¹², as well as recent inspections carried out by Public Defender Office of the State of São Paulo (DPE-SP) in detention facilities in the state of São Paulo¹³, which holds nearly a third of Brazil's prison population. The following violations were found: (i) supply by prison units of insufficient quantity of pads, which are of poor quality and low absorbent, resembling a daily protector, without the necessary layers to contain regular menstrual flow; (ii) supply of insufficient amount of soaps; (iii) reports of women prisoners who need to improvise the use of pieces of old sheets, towels, mattress or bread to replace the use of pads; (iv) lack of minimum health teams in prison units and lack of specialized and adequate medical care; (v) lack of sufficient water for personal hygiene; (vi) lack of toilets with adequate structure in the cells, which sometimes lack sinks and showers, or have broken items; (vii) decreases in the supply of personal hygiene products and clothing, which is reinforced for transsexual women and transvestites; (viii) lack of sufficient products for cleaning cells and clothing; and (ix) during the inspections carried out by the DPE-SP in the period of Covid-19 pandemic, 60.9% of women arrested in the State of São Paulo understood that the supply of pads is insufficient.

⁹ BRAZIL. National Survey of Penitentiary Information - INFOPEN Women, 2nd Ed. Org.: Thandara Santos; collaboration of Marlene Inês da Rosa... [et al]. Brasília: Ministry of Justice and Public Security. National Penitentiary Department - DEPEN, 2017.

¹⁰https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FCO%2FBRA%2FCO%2F18-20&Lang=en

¹¹https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FCO%2FBRA%2FCO%2F2&Lang=en

¹² <https://drive.google.com/file/d/1v1Fk96Bj27rwPizLqU-qVrsfEThip9IJ/view>

¹³ <https://drive.google.com/file/d/1drW9XBx8aCK5d6jMnCExwYYHZCzCqS0V/view>

25. This situation is no different in other states of Brazil. In the state of Maranhão, National Prison Pastoral Service – CNBB found that incarcerated women receive only 1 (one) pack of pads per month. The amount is insufficient, causing them to use other materials to contain the flow⁹.
26. Moreover, there are reports from family members of prisoners who visit detention facilities that, sometimes, they are forced to change the pad in front of unit employees to enter the place, as well as there is not enough and adequate supply of this product. The violations of the right of visitors also have been extending to girls and boys, according to complaints received by AMPARAR and ITTC¹⁴.
27. Regarding the systematic violation of human rights of women and all persons deprived of their liberty who menstruate, the signatories request that those responsible for special procedures, as well as UN Committee on Human Rights, recommend that the Brazilian State the adoption of measures to guarantee to all prisoners who menstruate and who are deprived of their liberty the right to menstrual health, which includes hygiene products, including soaps and pads in sufficient and adequate quantity and quality, basic conditions in cells for the management of your personal hygiene, including uninterrupted access to water; and access to specialized medical care.
28. **Invasive/intimated body searches** - In relation to the vexatious search, nor has the country taken any effective measures to combat sexual violence against women and visitors. Research conducted by a series of organizations, collectives and articulations in 2021 made use of a questionnaire answered by family members to identify the occurrence or not of vexatious search in the five Brazilian regions, and it was proven that this is systematic and widespread in the country. Thus 77.7% of the people interviewed had suffered the violation, being 97.7% of these women and 69.9% black, and the reports informed that the visitors were forced to undress, bend down in front of a mirror and sometimes contract their muscles and cough during the procedure. It was reported that still in 56.1% of the cases, the agents cursed, threatened, and humiliated them during the procedure.
29. It is important to note that children were also subjected to this practice, 70% of them were black, and in 23.1% of the cases the mother was not allowed to be present, 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 agents. The cases of refusal to submit to the practice are a minority, but 21.1% of those who refused had

¹⁴ <https://drive.google.com/file/d/1g--SR1JtNO1-B7AptUCcZgnQDsw--JYZ/view>

sanctions imposed on them, 98.4% being female and 71.8% black. Finally, 34.5% of the interviewees have already given up visiting because of the procedure. 45 These data prove that not only has the country failed to adopt effective measures to prevent the practice of sexual violence against black women, but that it is still institutionalized when it comes to the prison system and its visitors. It should be emphasized that even in states where the practice was prohibited by law, such as Rio de Janeiro and São Paulo, it continued to be used.

Prohibition of torture and other cruel, inhuman or degrading treatment or punishment and treatment of persons deprived of their liberty (arts. 6–7 and 10)

30. **OPCAT Mecanism** - In relation to the National System for the Prevention and Combating of Torture, despite the Brazilian state's response mentioning the creation of the National System for the Prevention and Combating of Torture as a policy to address the recurring torture reported in detention facilities, several measures have been taken by the Federal Government over the past few years that have weakened the system.
31. On June 10, 2019, through Decree 9,831, the Federal Government dismissed all the experts of the MNPCT, transformed the positions into volunteers, and changed the composition of the Committee. Although this measure was considered unconstitutional by the Supreme Court (ADPF 607), its effects have not completely ended.
32. By incorporating the recommendations of the OPCAT, the Brazilian state, given its territorial extension, as well as the number of people deprived of their liberty, adopted a model that foresees a National System, allied to State Systems to Prevent and Combat Torture, that is, each federative unit of Brazil must implement State Mechanisms, ensuring independence and autonomy to the experts.
33. The fact is that the model established by Decree No. 9831/19, together with the nonprioritization of the policy to combat torture, inspired some State Governments to implement mechanisms based on the voluntary work of experts. For no other reason, the Brazilian response does not mention the situation of the state mechanisms for the prevention and combat of torture.
34. Of the 27 federative entities, there are only 3 State Mechanisms in operation. Goiania, Minas Gerais, Paraná and Tocantins still do not have state committees for the prevention and combat of torture in operation, in Rio Grande do Sul, Santa Catarina and São Paulo the committees are not even provided for by law; 15 states - Acre, Alagoas, Amazonas, Amapá, Bahia, Ceará, Minas Gerais, Mato Grosso do Sul, Mato Grosso, Paraná, Rio

Grande do Norte, Rio Grande do Sul, Santa Catarina and São Paulo - do not even have legislation providing for the institution of mechanisms. In Distrito Federal and Tocantins there are only draft laws, in Espírito Santo, Maranhão and Sergipe the state mechanisms are foreseen in law, but are not in operation.

35. During the Committee Against Torture (CAT) revision, Brazilian Government compromised to articulate with federated states to establish local committees and mechanisms. However it does not explain which initiatives are those concretely, and what has been its impact, if any, considering that, up to the present date, only 4 states (out of 27) have established these local bodies.
36. **Use of force in Prison Systems** - In relation to the use of force in the Prison System, Brazilian prison system has its special tactical groups, usually called "Rapid Intervention Team" (GIR), designed to act in riots, procedures, and reviews in the prison. The group is historically known in national territory for the excessive use of force, especially attacks on the physical and psychological integrity of prisoners. In 2017, there was the creation of the Federal Penitentiary Intervention Task Force (FTIP), which operates similarly to GIR in support of state executives in cases of episodic disturbances in situations of serious crisis in the prison system. Since the creation of the Task Force, control and monitoring bodies have pointed out the risks inherent to the lack of regulation of the FTIP, as well as its lack of protocols, guidelines and parameters of action, added to the lack of transparency that cause difficulty in controlling possible abuses perpetrated.
37. The civil society organizations and public authorities reported to the Committee Against Torture (CAT) earlier this year a series of violations committed by the Brazilian prison system special tactical groups, and recommended that all prison officers, especially tactical groups, the national force and the Penitentiary Intervention Task Force should be under external control, with civil society participation, including with regard to accountability for cases of abuse, torture and mistreatment. It also highly recommended the use of body cameras, such as police forces.
38. A recent episode demonstrates the situation of Brazil's prison units and the mechanisms adopted by the authorities to address the issue. Between the night of March 13 and the early morning of March 14, twenty cities in Rio Grande do Norte - including the capital, Natal - were the target of shooting attacks and arson attacks on public buildings, businesses, and vehicles¹⁵. The early morning was marked by attacks on Military Police

¹⁵ Available at

<<https://g1.globo.com/rn/rio-grande-do-norte/noticia/2023/03/16/veja-a-cronologia-dos-ataques-no-rio-grande-do-norte.ghtml>>.

battalions, supermarkets, minibuses, stores, and banks in Natal and in the interior of the state. It was initially reported that the wave of attacks and riots throughout the state was motivated by the poor conditions of prisons and the chronic scenario of serious human rights violations inside the prisons, but the Public Prosecutor's Office of the State of Rio Grande do Norte positioned itself in the sense that the absence of "perks" inside the prisons could be the main cause of the attacks that occurred, highlighting the prohibition of intimate visits, fans and televisions in the cells, in addition to complaints related to access to communication with the outside world.¹⁶

39. On March 22, the National Mechanism for the Prevention and Combat of Torture, an autonomous and independent state body that makes up the National System for the Prevention and Combat of Torture, published a report of inspections conducted in five units of deprivation of liberty in the state of Rio Grande do Norte¹⁷. The report made 138 recommendations to the competent authorities, at state and federal level, in order to reverse what was called a "serious humanitarian crisis to which people deprived of their liberty are subjected in the state," including the creation of expert positions under the State Mechanism for the Prevention and Combat of Torture, currently non-existent in Rio Grande do Norte. Among the numerous human rights violations in the state prison system pointed out by the MNPCT, the following stand out poor and unfit food for consumption; total lack of health care, leading to serious health problems and outbreaks of diseases such as tuberculosis; sunbathing every 15 days with a maximum duration of 30 minutes; very low access to education and work; lack of hygiene and cleaning kits provided by the state; overcrowding; lack of legal assistance; systematic operation of prison units based on a protocol called "procedure" - common between prisons task forces, without objectivity of the disciplinary rules to which prisoners are subjected; torture, mistreatment and other cruel, inhuman and degrading treatment; water rationing.
40. In April of this year, Conectas Direitos Humanos and Instituto Brasileiro de Ciências Criminais (IBCCrim) submitted an urgent appeal to the United Nations Special Procedures and the Special Rapporteurs on Human Rights reporting serious violations of human rights in prisons in the state of Rio Grande do Norte, Brazil.
41. No effective measures were taken by the Brazilian State, culminating in the riots and attacks that occurred this year, as well as the finding, by the National Mechanism for the

¹⁶ Available at: <<https://www.youtube.com/watch?v=aQruNyyXo6o>>. Accessed on April, 10, 2023.

¹⁷ MECANISMO NACIONAL DE PREVENÇÃO E COMBATE À TORTURA – MNPCT. Relatório de Inspeções Regulares no Estado do Rio Grande do Norte, 2023. Available at: <<https://mnpctbrasil.wordpress.com/2023/03/22/mnpct-publica-relatorio-de-inspecao-em-unidades-de-privacao-de-liberdade-do-rio-grande-do-norte/>>. Accessed on April, 10, 2023.

Prevention and Combating of Torture, that torture and mistreatment continue as common practice in the prison system of Rio Grande do Sul. The state response to the demonstrations and the Mechanism's report was police repression, visitation bans, and an increase of police forces on the streets of the state's cities and in the prison units.

42. **Body searches as torture** - As aforementioned, the country has not taken any effective measures to combat sexual violence against women and visitors, mostly black women, as it still maintains the abusive search procedures in an institutionalized manner. It should be noted that even in states where the practice was prohibited by law, it continued to be used. We suggest the following questions and recommendations: First, the practice of inhumane searches must be understood as torture, considering that it is sexual violence. Second, the right to family life among prisoners and their families should be guaranteed, including the right to immediate information on death, health or transfers, the right to visit.
43. **Investigation, documentation and accountability of the state and its agents for cases of torture and ill-treatment** - Brazil fails to promote accountability for cases of torture and ill-treatment. The country does not promote the systematization of reports of torture and ill-treatment. At the CAT meeting earlier this year, for example, the data presented refers to cases filed and reported, not reports filed - and almost always filed without even being investigated.
44. **Military Justice and torture** - In 2017, a legislative change expanded the jurisdiction of Military Justice in Brazil and crimes such as torture and mistreatment are now investigated and prosecuted by military courts. After the Law No. 13.492/17, the crimes of a Military Police are ascertained by a preliminary investigation, a procedure without any legal basis, conducted by an officer of his own battalion of the Military Police officer accused of violence. The person who investigates the occurrence or not of torture is the hierarchical superior of the person who committed it, someone who, many times, is in operation together with the accused person. And, even more serious, when called upon, the victims of police torture are heard in the police battalions to which the accused belong, being subjected to new practices of torture, threats and other ill-treatment. The Law 13.491/2017, which expanded the competence of Military Justice, in practice perfected the mechanisms to shield the State's structural violence. According to a [research](#) conducted by Conectas, 70% of the cases brought in the Military Justice ended without punishment. The incompatibility of such legislative changes with international human rights standards has been strongly criticized by the Office for South America of

the OHCHR and the Inter-American Commission on Human Rights. The two bodies argue that once it has entered into international human rights instruments that guarantee all persons trial by competent, independent and impartial tribunals. So, its highly recommended that Brazil to remove any legal interpretation that allows the military justice to judge cases of torture or other human rights violations against civilians, as well as the investigation of the facts by persons not subject to the military hierarchy.

45. **Lack of forensic independence** - The lack of independence of the forensics system and the non-observance of international forensic protocols such as the Istanbul Protocol and the Minissota Protocol also hinder the documentation and accountability of the state for acts of Torture. The Instituto Médico Legal (IML), the institution responsible for forensic expertise in Brazil, is linked to the Civil Police and the Secretariat of Public Security. As a consequence, the same body that may incur in torture will also conduct forensic examination.

Liberty and security of the person and the treatment of persons deprived of their liberty (arts. 9 and 10)

46. **Unconstitutional state of affairs** - The Brazilian state's response regarding overcrowding, paragraph 88, references the national policy for alternative sentences and ADPF n. 347. But the reality worsens every year and overcrowding is a problem that continues to intensify, as can be seen in the numbers of people incarcerated. In 2018 it was 744 thousand and by the end of 2022 the total population was 909.061 thousand, according to CNJ. Despite mentioning the premises, principles and guidelines directing the national policy and the building of a management model for the alternative criminal sanctions, there is no mention as to the number of people sentenced to alternative sentences and thus, it is not possible to measure the total universe of crimes and convictions, nor to identify if this policy has in fact been implemented and to whom it is applied.
47. There are no indicators that would allow us to identify how many crimes are registered, how many people are sentenced according to the type of sentence, and what is the socioeconomic profile of each group. There is no platform within the justice system that offers this systematized data. This absence makes the process of evaluating the implementation of this policy difficult and distances civil society from this reality, since the only way to monitor this information is to request it, through the access to

information law, from the state institutions themselves, which consist of several criminal courts. It is necessary to demand that the Brazilian State present indicators so that we can measure and evaluate qualitatively and quantitatively the application of this policy.

48. The number of provisional detainees has remained stable over the years, showing little significant decrease in recent years, in 2018 there were 261 thousand provisional detainees, in 2019 there were 229 thousand, 239 thousand in 2020, 225 thousand in 2021 and 210 thousand in 2022. After the pandemic, however, data from the CNJ show a trend of resumption of prison population growth in custodial hearings¹⁸.
49. Each small population increase means a worsening of the degrading and dehumanizing conditions to which prisoners and their families are subjected. This is because the way to effectively eliminate serious violations of rights, aggravated by the scenario of overcrowding, is by reducing the number of people in prison and adopting alternative sentences, which do not necessarily have to fall within the field of criminal and punitive justice. The Brazilian state is going in the opposite direction to solve these problems, it has imprisoned more people in recent years, as SENAPPEN's data indicate¹⁹.
50. **Overcrowding and torture, need for decarceration measures** - In this sense, we understand that it is not possible to fight torture without a State commitment to adopt measures to reduce people deprived of liberty. In the past 4 years, Brazil has not adopted pardon measures that really benefited the prison population. Even during the Pandemic, judges refused to adopt alternative measures of incarceration, recommended by National Consul of Justice. There are too many people serving time in a rigorous penitentiary system when they were supposed to be in a lighter regime. Besides, contrasting with the international recommendations, with the advent of Law No. 13,964 of 2019, the maximum security regim (know in Brasil as Regime Disciplinar Diferenciado - RDD) can be extended without limitation. Brazilian Government show be recommended to promote the decarceration of people, favoring alternatives to provisional imprisonment and the granting of sentence progression, in order to reduce prison overcrowding for all crimes.
51. **Food insufficiency and starvation penalty** - The pandemic has exposed the systematic violations of rights that exist in the Brazilian prison system. One of them concerns hunger. The lack of basic food has always been a reality in Brazil's prisons. In a scenario

¹⁸ [Estatísticas sobre Audiências de Custódia Nacional \(cnj.jus.br\)](https://www.cnj.jus.br/estatisticas-sobre-audiencias-de-custodia-nacional)

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<https://app.powerbi.com/view?r=eyJrIjoiMTQ2ZDc4NDAtODE5OS00ODZmLTlhYTEtYzI4YTk0MTc2MzJkIiwidCI6ImViMDkwNDIwLTQ0NGMtNDNmNy05MWYyLTRiOGRhNmJmZThlMSJ9&pageName=ReportSection045531d3591996c70bde>

in which the supply of food by the State to the inmates is already extremely precarious, the curtailment of the possibilities of sending food and basic survival items by the families themselves to the people deprived of liberty has limited even more the minimum conditions of food. Restricted to what is provided by the State, food has become insufficient, inadequate, and sickening, which demonstrates an even more perverse logic.

52. According to Pastoral Carcerária,²⁰ food delivery by family members has been suspended in at least 65.9% of the country's prisons with less than one month of pandemic. The survey conducted in 2021 by the National Agenda²¹ in 15 Brazilian states indicates that there has been a severe worsening of conditions, especially with regard to food security. This has become scarce and with an extremely insufficient variety of nutrients, being pointed out that the average food in the country is only three meals a day, with about 12 hours between dinner and breakfast, a period in which prisoners would not be able to get food.
53. It also highlights that a large part of the food is supplied by outsourced companies, affecting 1/3 of the states surveyed (6), which have on their resume complaints of irregular hours, meals unfit for consumption and low quantity and quality in several of these states. In at least 8 of the 15 states there were reports of food poisoning (Acre, Amazonas, Bahia, Goiás, Paraná, Piauí, Ceará and Minas Gerais). In relation to hunger the situation is even more worrying: the research brought that in Ceará there were, in March 2021, 30 inmates hospitalized with symptoms of vitamin C and D deficiency being related to nutritional issues; in Piauí, two units between 2020 and 2021, according to a technical report from the Ministry of Health²², had an outbreak of beriberi, a disease caused by a lack of vitamin B1 and related to an inadequate, nutrient-poor diet, leading to the death of at least six prisoners; in Rio de Janeiro according to data collected by the State Mechanism for the Prevention and Combat of Torture in 2020, 26.6% of the prisoners who died were emaciated, cachectic or dehydrated and in 2021 this number increased to 36.9% of the cases²³. Finally, the survey done by the National

²⁰ Pastoral Carcerária Nacional. **Pastoral Carcerária divulga dados de questionário sobre coronavírus nas prisões.** 9 de abril de 2020. Available at: <<https://carceraria.org.br/combate-e-prevencao-a-tortura/pastoral-carceraria-divulga-dados-de-questionario-sobre-coronavirus-nas-prisoas>>. Access on 19 de abril de 2021.

²¹ Destacamos que este relatório não foi publicado, servindo apenas como insumo para pedidos de audiências públicas, mas entendemos ser uma importante fonte de dados primários para este documento.

²² 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>> . Access on 18 de abril de 2021.

²³ <http://mecanismoj.com.br/relatorios/>

Agenda for Decarceration pointed out that in at least three states the cutting of food and water as collective punishment occurred in 2020 (Amazonas, Paraná, and Minas Gerais).

54. **Drug Policy and people deprived of liberty** - As mentioned above, it is worth noting that torture and ill-treatment do not occur only in prison units. The Drug Policy in Brazil has been based on the policy of deprivation of liberty, both prison units and hospitalization in Therapeutic Communities (TCs). TCs are private entities that provide temporary residential care for people with problem drug use. There are countless reports of human rights violations in TCs, with different levels of severity, including torture. Their model is based on isolation, abstinence and, in most cases, association with religious denominations, which diminish the freedom of those who are sheltered and, in the case of entities that receive public funding, violate the principle of State secularism. There is no evidence that treatment or sheltering at TCs is effective for the recovery of people with problem drug use or drug addicts. TCs' actions violated the anti-asylum precepts of Law 10.216/20012 – known as the Psychiatric Reform Law and UN Resolution on Mental Health. In recent years, the amount of public funds spent on TCs has increased. The amount of federal, state governments and capital city halls, reached BRL 560 million²⁴. With the enactment of Complementary Law 187/2021, TCs now have the right to seek tax immunity and thus receive indirect public funding. Brazilian Government has now department of support of TC's entities inside its structure, so the trend is that the investment will continue to grow, while Federal public investment in the Public System of Psychosocial Care Network (RAPS) has been tragically reduced in recent years. On the contrary, the TCs are subject to very few controls, and it is not clear which institutions are responsible for their inspection and how this inspection is performed.

Access to justice, independence of the judiciary and fair trial (arts. 2 and 14)

55. **Custody hearing** - The COVID-19 pandemic and the social distancing measures brought challenges to the effective implementation of the custody hearing: from the beginning it was possible to suspend the procedure by Recommendation 62 of March 17, 2020, amended by Resolution 68 of June 17 of the same year, which provided for the need to maintain some procedures - analysis of the act of arrest in *flagrante delicto* and *corpus delicti* examination - even with the possibility of suspending the in-person hearing.

²⁴<https://www.conectas.org/publicacao/financiamento-publico-de-comunidades-terapeuticas-brasileiras-entre-2017-e-2020/>

56. In the same period, the CNJ approved Resolution 329/2020²⁵ that stabilized the virtual hearing as a rule in criminal proceedings. The second step, in November 2020 despite the legislation, the CNJ also allowed the holding of virtual custody hearing (Resolution 357)²⁶.
57. The virtual hearing was defended in an international event by the then President of the Supreme Court and of the National Council of Justice on April 30, 2021, demarcating the body's directive to implement this method that will potentially make the detection of torture by the custody hearing unfeasible. The state response, paragr. 93 and 94, defends virtual custody hearings as a model that does not cause harm in inspections and expresses the intention to invest more public money in the policy.
58. Since 2019, the National Council of Justice had been seeking the implementation of videoconferencing for hearings in general, as revealed by the approval of Resolution 55/2019, which guided State and Federal Courts to adopt virtual procedural acts in criminal actions, including in the Jury Procedure, despite the existence of several notes on the negative impacts that the virtualization of criminal proceedings could bring, such as the curtailment of broad defense, difficulty of communication between defender or lawyer and assisted and, especially, the unfeasibility of detecting torture.
59. With the end of the emergency period caused by the Covid19 epidemic, on September 14, 2022 the National Council of Justice ordered all the Courts of Justice and Federal Regional Courts to regulate, within 30 days, the resumption of in-person custody hearings. Despite the determination, several courts of justice are not complying, and in many cases the hearings are still being held virtually. Custodial hearing was a matter of discussion during Brazilian CAT review and, at the time, the Brazilian State compromised to make efforts to resume face-to-face hearings. However, so far, there has been no progress.
60. **Virtualization of the justice system** - We register here our special concern with the virtualization of the justice system as a whole. Even after the pandemic, a large part of the Brazilian Justice System continues to operate in a virtual format. Some state court clerks continue to work remotely, leading to long lines for the general population. People serving alternative sentences, for example, who need to go to the Court Clerks every month have been facing long lines and being forced to go more than once to the Courthouse, increasing transportation costs and losing days of work. The Public Defender's Office of the States has also been performing virtual services and not going

²⁵ <https://atos.cnj.jus.br/atos/detalhar/3400>

²⁶ <https://atos.cnj.jus.br/atos/detalhar/3595>

to prison units, especially in more distant places, jeopardizing the access to justice, as well as the prevention and combat of torture.

Elimination of slavery, servitude and trafficking in persons (arts. 2, 7–8 and 26)

61. The right to work while in prison affects several dimensions of the fulfillment of the sentence and the rights of people discharged from prison, dignity in the fulfillment of the sentence, the differentiation between compliance regimes and the possibilities of remission and impact on the progression of sentence, concrete means of subsistence in prison and outside it and the maintenance of family ties.
62. **“Semi-fake”** - It happens that in many states of Brazil, the Secretariats of Penitentiary Administrations have "opened" vacancies in semi-open regime in units of Provisional Detention or Closed Regime in "pulls" without minimum structures, aiming to circumvent the Precedent 56 of the STF - which determines that the lack of adequate penal establishment does not authorize the maintenance of the condemned in a more burdensome prison regime and not to promote decarceration - , as well as to use the labor of people imprisoned in semi-open regime for internal services in the units. As a result, people are held in a more burdensome prison regime, therefore, and used in unpaid work.
63. **Pecarious work or analogous to slavery in prisons** - There is an exploitation of labor, with the submission of people imprisoned to conditions of precarious work or analogous to slavery in prisons, whose main responsible and beneficiary is the State itself. There is the exploitation of prison labor in various functions of maintenance of prison units such as masons' services, paintings, electrical, gardening, as well as administrative and care functions (in the wards, for example).
64. These cases, the use of "indirect" labor as it is called, is often not paid properly - some wages reach derisory values of ten reais per month. The payment of these amounts comes from a discounted percentage of the remuneration of people also deprived of liberty who work for private companies, in São Paulo, it happens through FUNAP - Foundation "Prof. Dr. Manoel Pedro Pimentel". In places where there is no contract with companies for formal work, such as Provisional Detention Centers, there is no remuneration of indirect labor (MOI) used by the State.
65. Conectas has a provisional measure in the Inter-American Court of Human Rights to monitor the situation of the Pedrinhas Complex in São Luis do Maranhão and conducts

frequent inspections of the units. During the last inspections carried out in the Complex, he received several complaints about lack of adequate remuneration, extremely degrading conditions and forced labor occurring especially in a block factory installed and managed by the State Department of Penitentiary Administration. Unfortunately, the conclusion is that this "business" model does not occur only in Maranhão, but has been replicated in some other states of Brazil, such as Santa Catarina and the perspective is that the model is expanded.

Participation in public affairs (arts. 25–26)

66. The Brazilian Constitution of 1988 is widely known as the Citizen Constitution, not only for having been enacted after a long period of civil-military dictatorship, but also for bringing in its text a large list of fundamental rights applicable to all Brazilian citizens.
67. With regard to political rights, it is common to find the assertion that their maximum expansion was guaranteed, as there is no exclusion in their text due to income, gender or even literacy, thus allowing everyone to be considered able to vote.[13] However, little is said about a restriction on political rights that remained in the constitutional text and, in the current scenario, prevents a large number of Brazilian citizens with well-defined characteristics from having access to the ballot boxes in electoral elections: in its article 15, item III, the suspension of the political rights of those who have a final and unappealable criminal conviction is foreseen, while its effects last.
68. This means that those who are in prison and permanently sentenced will not be able to vote, but also those who are serving their sentences in an open regime, in the form of restrictive rights or who have benefited from probation and parole.
69. Until the beginning of the 20th century, the requirement of literacy as a criterion for exercising the right to vote was responsible for the exclusion of a huge number of citizens from electoral processes (which only changed with Constitutional Amendment No. 25 of 1985, responsible for the expansion the right to vote for the illiterate). It can be said that this single restriction on political rights reshaped the exclusion model, but kept the same affected population.
70. Although, in theory, all those who enter the criminal justice system must have preserved all rights that are not affected by their sentence, it seems that, despite the Brazilian redemocratization initiated in the 1980s, the right to vote for inmates is a non- -question.
71. According to Infopen data from 2017, in 1990 the Brazilian prison population was approximately 90 thousand people, with an incarceration rate of approximately 61

individuals per 100 thousand inhabitants; and, in consultation with data from the Information System of the National Penitentiary Department (SISDEPEN), in December 2020 this prison population would have been 811,707 people for a total of 545,060 places, which represents an increase of approximately 801.896% in relation to the year of 1990, with a rate of 383.32 prisoners for every 100,000 inhabitants.

72. The number of people whose political rights are suspended cannot be established in a direct line with those in the prison system. As seen, in Brazil, by virtue of the wording of article 15, III, of the Constitution of the Republic, the suspension of political rights of inmates occurs in a general and unrestricted manner, therefore, not only for those who are in custody, but also for those who are in an open regime, in compliance with penalties that restrict their rights or who have been granted the benefits of probation and parole. Thus, based on data obtained from the Superior Electoral Court (TSE), it is estimated that in 2022, the date of the last presidential election, more than 1.500.000 individuals were unable to vote due to having a final and unappealable criminal conviction. However, the number of people who effectively fail to turn up at the polls for reasons related to the criminal justice system is much higher.
73. It so happens that, despite the fact that provisional prisoners have the right to vote, few measures are taken to exercise it. In the same year 2022, according to TSE, only 1,62% of those were able to exercise their right to vote in the first round of elections, which allows, in the end, to conclude that in the presidential elections of the year 2022 at least 1.751.555 people stopped voting for, of somehow, be involved with the penal system. This number represents more than 1,12% of all Brazilian electorate.
74. But an effective analysis of the people who have their right to vote restricted goes, certainly, through an observance of their profile and the conditions to which they are submitted within the prison system – about which they are prevented from manifesting themselves politically in search of improvements.
75. According to Infopen 2017 and data from SISDEPEN, between 2000 and 2017 there was an average growth of the prison population of 7.14% per year, and in 2000, the deficit of vacancies was 97,045, changing to a deficit of approximately 266,647 places in 2020. When we look at the age group of the prison population, we see that 29.95% of them are between 18 and 24 years old, 24.11% between 25 and 29 and 18.33% between 30 and 34 years, which demonstrates, in short, that the prison population is essentially young. Thinking about the race of those deprived of liberty, it appears that, while in the Brazilian population there is a total of 43.6% whites, 46.8% browns and 8.6% blacks, in

the prison system the percentage of whites drops. to 35.48%, being 46.27% brown and 17.37% black. With regard to education, 51.35% of the prison population has incomplete primary education,

76. In addition to a large number of votes from a specific population regarding their age, racial and educational profile, it should be noted that individuals who enter the prison system are not evenly distributed within the regions that make up the large urban centers.
77. Taking the city of São Paulo as an example, through data from the survey Vale a Pena?, by Instituto Sou da Paz, it is seen that, in view of the information provided by provisional prisoners to the Public Defender of the State of São Paulo, it is possible to estimate from which regions of the capital of São Paulo the individuals who enter the prison system come from and, consequently, go through a great chance of having their political rights suspended while the effects of their sentence last.
78. While some administrative districts recognized for the good socioeconomic conditions of their inhabitants - such as Moema, Jardim Paulista, Perdizes and Alto de Pinheiros - have an imprisonment rate of about 10 individuals per 100,000 inhabitants for the years 2016 and 2017, in the districts in Jardim Ângela, Brasilândia and Capão Redondo, the rate exceeds 50 individuals per 100,000 inhabitants. In the districts of Brás and Sé - where the Cracolândia region mentioned in this report is located, in 2017, the imprisonment was, respectively, of 177.9 and 192.6 people per 100,000 inhabitants, and it should also be noted that , in the 10 administrative districts with the highest absolute numbers of provisional arrests, one fifth of the population of São Paulo is concentrated.
79. Considering only the above data, among many other equally contrasting ones that appear in the Map of Inequality, there is another major problem with the removal of the right to vote from those who are sent to the prison system: it removes the potential to vote from people of certain and well-being. demarcated regions of the city of São Paulo (which, of course, can be extended to other large national urban centers), in which the most fragile socioeconomic conditions are present.
80. In the end, criminal law ends up removing the right to political expression from a huge group with very well demarcated characteristics, being prevented from electing representatives who will pay attention to the needs and interests of specific communities, as well as the needs they face within the system. prison.
81. The effects of the suspension of voting rights arising from criminal convictions fall on specific individuals and communities. In the 2018 elections, approximately 1,021,000 people withdrew from voting because they had final convictions or were in prison

awaiting trial. These have a clearly demarcated profile: most of them are young people, brown or black, from communities with more fragile socioeconomic conditions. It is what prison survivors call a political death.