ATTACHMENT I

|  |  |
| --- | --- |
| Students who passed courses on Human Rights in the EaD-Senasp Network, by course, from 2005 to 2018. | |
| Course | Number of students who passed |
| Assistance to Women in Situations of Violence | 51162 |
| Police Action in cases related to Vulnerable Groups | 50584 |
| Conception and Application of the Statute of the Child and Adolescent | 36955 |
| Fight against Sexual Exploitation of Children and Teenagers | 53295 |
| Human Rights Philosophy applied to Police Action | 63739 |
| Human Rights Philosophy applied to Police Action II | 1164 |
| Community Mediation | 14528 |
| Conflict Mediation 1 | 78385 |
| Woman Victim of Domestic Violence | 40844 |
| Prevention of and Fight against Torture | 12588 |
| Program for Protection of Children and Teenagers Threatened with Death | 10452 |
| Resolution of Agrarian Conflicts | 6668 |
| Public Security without Homophobia | 32197 |
| Non-Lethal Techniques and Technologies for Police Operations | 47923 |
| Differentiated Use of Strength | 141940 |

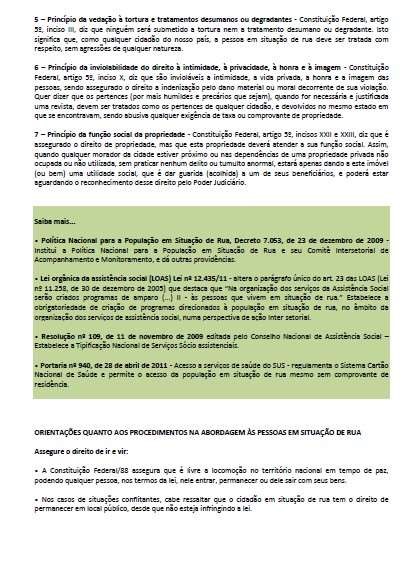
(Data unofficially provided by Senasp)

ATTACHMENT II

|  |  |
| --- | --- |
| Students who passed in the Ead-Senasp Network course on fight against torture, by career, from 2015 to 2018. | |
| Careers | Passed |
| Military Firefighters | 69 |
| Federal Police Officers | 4 |
| Federal Highway Patrol Officers | 51 |
| Municipal Guards | 2398 |
| Civil Police Officers | 2114 |
| Military Police Officers | 3436 |
| Expert Examination Professionals | 39 |
| Security system administrative servants | 53 |
| Prison system servants and officers | 4424 |
| Grand Total | 12588 |

ATTACHMENT III







**Legend**:

Ministry of Human Rights

National Office for Citizenship

Department for Promotion of Human Rights

General Coordination Office for the Rights of the Population in Street Situation

Guidelines for Police Approach to Street Population

The language below presents brief guidelines for police officers and other public security agents related to the approach to street population, based on the Booklet for Police Action in cases related to Vulnerable Groups, in the Booklet for Police Action in the Protection of Human Rights of persons in a Situation of Vulnerability, and in the guidelines of the Working Group (GT) for Public Security and Population in Street Situation, and the preparation of all materials count on the participation of the General Coordination Office for the Rights of the Population in Street Situation. It does not intend to cover the whole subject or to cover specific technical procedures of the field of public security, but it highlights the need for non-discriminatory and non-prejudiced actions and approaches, aiming at building a safer, more just society, and at creating a culture of peace.

POPULATION IN STREET SITUATION

Concept

According to Decree No. 7,053 of December 23, 2009, the population in street situation constitutes a heterogeneous population group that has in common their extreme poverty, interrupted or fragilized family bonds, and the inexistence of regular, conventional housing, as well as the fact that they use public spaces and degraded areas as a space for living and surviving, temporarily or permanently, as well as facilities intended for welcoming them for sleeping temporarily or as a permanent housing.

Characterization

The population in street situation is composed of persons with several differentiated profiles, and its origin comes from many factors. The fact that there are persons who live or survive on the streets is a phenomenon whose origin is related to the current economic model, and is a part of the poverty caused by Capitalism.

There are also many causes related to the population in street situation, such as broken family bonds, inexistence of a fixed address, and lack or insufficiency of income.

Among the persons in street situation, in addition to this condition that defines them, there are multiple situations of vulnerability: women, Afro-Brazilians, LGBTs, foreigners, and persons with disabilities.

There are also persons with mental suffering and other victims of chemical dependency, who are sick and need specific health care.

**5 - Principle of prohibition of torture and inhuman or degrading treatment** – The Brazilian Federal Constitution, article 5, item III, establishes that no one shall be submitted to torture or inhuman or degrading treatment. This means that, like any citizen of our country, a person in street situation must be treated with respect, without aggressions of any kind.

**6 – Principle of inviolability of the right to intimacy, privacy, honor, and image** – The Federal Constitution, article 5, item X provides that a person’s intimacy, private life, honor, and image are inviolable, and, in case of violation thereof, such person is entitled to compensation for property damage or pain and suffering. That means that one’s belongings (regardless of how humble and precarious), when search is necessary and reasonable, shall be treated like the belongings of any citizen, and returned in the same condition as they were before, and demanding any fees or proof of ownership is abusive.

**7 – Principle of social function of property** – The Federal Constitution, article 5, items XXII and XXIII, provides that the ownership right is ensured, but this property shall perform its social function. Thus, when any persons living in the city are close to or in the premises of an unoccupied or unused private property, not committing any offenses or unusual turmoil, they shall only be granting this property (or asset) a social value, which is to shelter (welcome) one of its beneficiaries, and they may await acknowledgement of such right by the Judiciary Branch.

**Learn more…**

**National Policy for the Population in Street Situation, Decree No. 7,053 of December 23, 2009** – Creates the National Policy for the Population in Street Situation and its Intersectoral Monitoring and Surveillance Committee, among other provisions.

**Organic Law of Social Assistance (LOAS) Law No. 12,435/11** – amends thesole paragraph of art. 23 of the LOAS (Law No. 11,258 of December 30, 2005) which stresses that “When organizing the Social Assistance services, programs shall be created to support (…) II – persons living in street situation.” It establishes that it is mandatory to create programs intended for the population in street situation, in the scope of the organization of the social assistance services, under an intersectoral action perspective.

**Resolution No. 109 of November 11, 2009, enacted by the National Social Assistance Council** – Establishes the National Classification of Social Assistance Services.

**Ordinance No. 940 of April 28, 2011** – Access to the Unified Health System (SUS) - regulates the National Health Card System and allows access to the population in street situation even without proof of residency.

**GUIDELINES REGARDING THE PROCEDURES FOR APPROACHING PERSONS IN STREET SITUATION**

**Ensure the right to come and go**:

The Federal Constitution of 1988 ensures that the locomotion in national territory is free in times of peace, and anybody, as provided by law, may enter, stay, or leave it with their belongings.

In case of conflicting situations, it is worth mentioning that citizens in street situation have the right to stay in a public place, as long as they are not breaking the law.

If a citizen is in a private place and is required to leave, the police officer must ensure the owner’s right, but also protect the person in street situation. The police officer may only act according to legal parameters, with respect, without discrimination and prejudice.

**Be careful with the belongings of the approached person**:

When searching belongings, be careful. Remember that these objects are very important for that person. Search belongings only if necessary and always act according to legal parameters.

**Instruct the approached person about shelters and other social assistance services**:

Inform the citizen about the existence of sheltering institutions that may welcome him/her safely.

Clarify that he/she is not required to accept the invitation, but that the institutions are open to welcome him/her. If possible, help him/her to find an institution that welcomes him/her.

It is important that the public security professional is informed about the existing services in his/her city, and that the Police Forces and Guards in the city check possibilities to work together with such institutions.

**Remember…**

**Living in the street is not a crime!**

“Begging” stopped being categorized as an infraction by Law No. 11,983 of July 16, 2009.

The police officer’s safety procedures may not be different than those used with any other citizen.

The police officer must consider and treat the person in street situation as a citizen with rights, ensuring his/her protection and safety. The public security professional must recognize the vulnerability of the person in street situation and ensure isonomy (equality and equity) in the treatment.

It is interesting that the team be informed in order to instruct citizens about the existence of sheltering institutions that may welcome them safely (highlighting that they are not required to leave the place where they are).

**In conclusion…**

Civil servants acting in the streets and dealing with persons in street situation in their work are operators for legal rules. As such, in several situations, they must interpret these rules, and may find solutions guided by judgment for difficulties that the population brings to them, instead of increasing the problem with another infringement of rights. At the same time, they must seek to apply them in the most **proper and humane** manner as possible, as established in the principles, laws, and guidelines related to their mission. Therefore, rather than causing an increase in the unsafety and outrage in the society, they must contribute to restoring in the society a feeling of trust in justice and in the institutions.

ATTACHMENT IV

Violations reported in ONDH involving persons deprived of their liberty



**Legend**:

TIPO DE VIOLAÇÃO = TYPE OF INFRINGEMENT

**PESSOAS EM RESTRIÇÃO DE LIBERDADE** = **PERSONS DEPRIVED OF THEIR LIBERTY**

NEGLIGÊNCIA = NEGLIGENCE

VIOLÊNCIA INSTITUCIONAL = INSTITUTIONAL VIOLENCE

VIOLÊNCIA FÍSICA = PHYSICAL VIOLENCE

VIOLÊNCIA PSICOLÓGICA = PSYCHOLOGICAL VIOLENCE

TORTURA E OUTROS TRATAMENTOS OU PENAS CRUÉIS, DESUMANOS OU DEGRADANTES = TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

OUTRAS VIOLAÇÕES = OTHER FORMS OF VIOLENCE

Source: ONDH’s Annual Balance Sheet – 2017

ATTACHMENT V

Health care provided in the federal penitentiary system between 2013 and 2017



**Legend**:

Atendimentos de Enfermagem = Nursing Assistance Services

Atendimentos Clínicos = Clinical Assistance Services

Atendimentos Odontológicos = Dental Assistance Services

Atendimentos Psicológicos = Psychological Assistance Services

Atendimento Psiquiátricos = Psychiatric Assistance Services

Source: “Assistance in Federal Prisons – 2017 annual data compendium” Report, Depen

ATTACHMENT VI

INTERMINISTERIAL ORDINANCE No. 4,226 of December 31, 2010.

Provides for the Guidelines on the Use of Force by Public Security Agents

The MINISTER OF STATE FOR JUSTICE and the MINISTER OF STATE HEAD OF THE OFFICE FOR HUMAN RIGHTS OF THE PRESIDENCY OF THE REPUBLIC, by using the powers vested in them in items I and II, sole paragraph, of art. 87, of the Brazilian Federal Constitution and,

CONSIDERING that the conception of right to humanized public security requires sedimentation of public policies for security guided by respect of human rights; CONSIDERING that the provision in the Code of Conduct for Law Enforcement Officers, adopted by the United Nations General Assembly through Resolution 34/169 thereof of December 17, 1979, in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in Havana, Cuba, form August 27 to September 7, 1999, in the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, adopted by the United Nations Economic and Social Council through Resolution 1,989/61 thereof of May 24, 1989, and in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly, in its XL Session, held in New York on December 10, 1984, and enacted through Decree No. 40 of February 15, 1991; CONSIDERING the need for guidance and standardization of the procedures for the action of public security agents regarding the international principles on the use of force; CONSIDERING the objective of gradually reducing the lethality rates resulting from actions involving public security agents; and CONSIDERING the conclusions of the Working Group, created to prepare the proposal for Guidelines on the Use of Force, composed of representatives from the Federal and State Police Forces, and Municipal Guards, as well as representatives of the civil society, the Office for Human Rights of the Presidency of the Republic and the Ministry of Justice, resolve the following:

Article 1. The Guidelines on the Use of Force by Public Security Agents are hereby set forth, pursuant to Attachment I of this Ordinance.

Sole Paragraph. The definitions included in Attachment II of this Ordinance shall apply to the Guidelines established in Attachment I.

Article 2. Compliance with the rules referred to in the preceding article is now mandatory by the Federal Police Department, by the Federal Highway Patrol, by the National Prison Department, and by the National Public Security Force.

Paragraph 1. The units referred to in the main section of this article shall have 90 days, of the enactment of this Ordinance, to standardize their operating procedures and their education and training process to the abovementioned guidelines.

Paragraph 2. The units referred to in the main section of this article shall have 60 days, of the enactment of this Ordinance, to set standardization mentioned in guideline No. 9 and to create the commission mentioned in guideline No. 23.

Paragraph 3. The units referred to in the main section of this article shall have 60 days, of the enactment of this Ordinance, to provide instructions to the Commission responsible for assessing the internal status of the unit regarding guidelines not mentioned in the preceding paragraphs and propose measures to ensure all required adjustments are made.

Article 3. The Office for Human Rights of the Presidency of the Republic and the Ministry of Justice shall establish mechanisms for encouraging and monitoring initiatives aiming at implementing actions for effecting the guidelines addressed in this Ordinance by the federative entities, pursuant to the division of jurisdiction provided for in art. 144 of the Brazilian Federal Constitution.

Article 4 The National Secretariat of Public Security of the Ministry of Justice shall take into account the compliance with the guidelines addressed in this ordinance for the transfer of funds to the governmental entities.

Article 5 This Ordinance becomes effective as of the date of its publication.

LUIZ PAULO BARRETO

Minister of State for Justice

PAULO DE TARSO VANNUCHI

Minister of State – Head of the Office of Human Rights of the Presidency of the Republic

ATTACHMENT I

GUIDELINES ON THE USE OF FORCE AND FIREARMS BY PUBLIC SECURITY AGENTS

1. The use of force by public security agents shall be based on the international documents for protection of human rights and shall consider, primarily:

1. the Code of Conduct for Law Enforcement Officials, adopted by the United Nations General Assembly through Resolution No. 34/169 of December 17, 1979;
2. the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, adopted by the United Nations Economic and Social Council through Resolution No. 1989/61 of May 24, 1989;
3. the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in Havana, Cuba, form August 27 to September 7, 1999;
4. the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly, in its XL Session, held in New York on December 10, 1984, and enacted through Decree No. 40 of February 15, 1991.
5. The use of force by public security agents shall respect the principles of legality, need, proportion, moderation, and convenience.
6. The public security agents shall not use firearms against persons, except in cases of legitimate self-defense or to defend another person from threatened death or serious injury.
7. The use of firearms is illegitimate against a person on the run that is unarmed or that, even if carrying any kind of firearm, does not pose immediate risk of death or severe injury to the public security agents or to others.
8. The use of firearms is illegitimate against a vehicle that ignores a police roadblock in a public road, unless this act poses immediate risk of death or severe injury to the public security agents or to others.
9. The so-called “warning shots” are not deemed acceptable for they do not meet the principles listed in Guideline No. 2 and due to the unpredictability of its effects.
10. The act of pointing a firearm to persons during procedures of approach shall not be a customary and indiscriminate practice.
11. Each public security agent that, due to his/her position, may be involved in situations where he/she uses force, shall carry at least two (2) less offensive instruments and protective equipment required for specific actions, irrespectively of carrying or not a firearm.
12. The public security bodies shall issue regulatory acts regulating the use of force by their agents, by objectively defining:
13. the types of authorized instruments and techniques;
14. the technical circumstances suitable for their use, for the environment/surroundings, and for the potential risk to third parties not involved in the situation;
15. the content and the minimum hours of trainings for qualification and periodic update regarding the use of each type of instrument;
16. the prohibition to use firearms and ammunition that may cause unnecessary injuries and pose unreasonable risk; and
17. the control on the public security agent holding and using weapons and ammunition. 10. When use of force causes injury or death of a person(s), the public security agent involved shall proceed as follows:
18. facilitate emergency assistance or medical assistance to the persons injured;
19. promote the correct preservation of the scene of the incident;
20. communicate the fact to your immediate supervisor and to the competent authority;
21. fill out the relevant individual report on the use of force, governed by Guideline No. 22. 11. When use of force causes injury or death of a person or persons, the public security body involved shall proceed as follows:
22. facilitating medical assistance and/or aid to the persons injured;
23. retrieving and identifying the firearms and ammunition of all involved persons, linking them to their respective carriers at the moment of the incident;
24. request forensic expert examination of the scene and object, as well as for medical-legal examinations;
25. communicate the facts to family members or friends of the injured or deceased person(s);
26. initiate, through the Internal Affairs Bureau of the institution, or equivalent body, immediate investigation on the facts and circumstances involving the use of force;
27. promoting medical assistance to persons injured as a result of the intervention, including attention to possible sequelae;
28. promoting the relevant psychological monitoring to the public security agents involved, allowing them to overcome or mitigate the effects arising from the incident;
29. temporarily dismiss the public security agents directly involved in incidents with lethal results from operational service, so they go through psychological assessment and stress relief.
30. The criteria for recruitment and selection of public security agents must take into account the psychological profile required for dealing with situations of stress and use of force and firearms.
31. The selection processes to join the public security institutions and the training and specialization courses for public security agents must include content related to human rights.
32. The training activities are part of the customary work of the public security agent and shall not be developed during his/her free time, as to preserve periods for rest, leisure, and social and family interactions.
33. The selection of instructors to lecture classes on any subject that comprise use of force must take in consideration a strict analysis of their formal résumé and their time of service, areas of expertise, previous experiences in core jobs, functional records, education in human rights and skill level of teaching. The instructors shall be subjected to assessments of theoretical and practical knowledge and their performance must be evaluated.
34. There shall be procedures prepared for qualification to use each type of firearm and less offensive instrument that include technical, psychological, and physical evaluation and specific training, with an expected minimum periodic review.
35. No public security agent shall carry any firearms or any less offensive instrument that he/she is not duly qualified to handle and whenever a new type of firearm or less offensive instrument is introduced to the institution there shall be a specific module of training set aiming at qualifying the agent for the use thereof.
36. The renewal of the qualification for using firearms in service must be obtained with a minimum frequency of one (1) year.
37. The use of less offensive techniques and instruments by public security agents shall be encouraged and prioritized, whenever possible, according to the specificity of the operational position and without restriction to specialized units.
38. In the curricula of the courses for qualification and of the programs for continuing education must include content on less offensive techniques and instruments.
39. Less offensive weapons shall be separated and identified in a different manner, according to their operational need.
40. The use of less offensive techniques must be constantly evaluated.
41. The public security bodies shall create internal commissions for controlling and monitoring lethality in order to monitor the actual use of force by its agents.
42. Public security agents shall fill out an individual report every time they use a firearm and/or less offensive instruments and that results in injuries or deaths. The report shall be submitted to the internal commission referred to in Guideline No. 23 and shall include at least the following information:
43. circumstances and justifications that led to the use of force or firearm by the public security agent;
44. measures taken prior to the shots fired/use of less offensive instruments or the reasons why the measures could not be taken;
45. the type of firearm and ammunition, the number of shots fired, the distance and the person at which the shots were fired;
46. the less offensive instrument(s) used, specifying the frequency, the distance and the person against which the instrument was used;
47. number of public security agents injured or killed during the incident, the means and the type of injury;
48. number of persons injured and/or killed after being hit by shots fired by the public security agent(s);
49. number of persons injured and/or killed after being hit by the less offensive instruments used by the public security agent(s);
50. total number of persons injured and/or killed during the mission;
51. number of projectiles fired that hit persons and their respective body regions hit;
52. number of persons hit by the less offensive instruments and their respective body regions hit;
53. actions taken to facilitate medical assistance and/or aid, when needed; and
54. if the site was preserved and, if not, present a justification.

25. The public security bodies shall, pursuant to the applicable laws and regulations, provide rehabilitation and reintegration into work to public security agents who may eventually have a physical disability as a result of the discharge of his/her duties.

ATTACHMENT II

GLOSSARY

Less offensive weapons: Weapons designed and/or used specifically to temporarily restrain, weaken, and disable persons, thus preserving lives and mitigating damages to their integrity.

Less offensive equipment: All artifacts, except for weapons and ammunition, developed and used to temporarily restrain, weaken, and disable persons, in order to preserve lives and mitigating damages to their integrity. Protective equipment: All device or product, for personal (Personal Protective Equipment (PPE)) or collective use (Collective Protective Equipment (CPE)) intended for reducing risks to the public security agents’ physical integrity or to life.

Force: Coercive intervention applied to the person or group of persons by the public security agent aiming at preserving public order and law.

Less offensive instruments: Set of weapons, ammunition, and equipment developed to preserve lives and mitigating damages to the persons’ integrity. Less offensive ammunition: Ammunition designed and used specifically to temporarily restrain, weaken, and disable persons, in order to preserve lives and mitigate damages to integrity of involved persons.

Level of Use of Force: Intensity of the force chosen by the public security agent in response to a real or potential threat.

Principle of Convenience: The force shall not be used when, depending on the context, it may cause more relevant damages than the legal purposes intended.

Principle of Legality: The public security agents may only use force for achieving a legal purpose and pursuant to the limits of law.

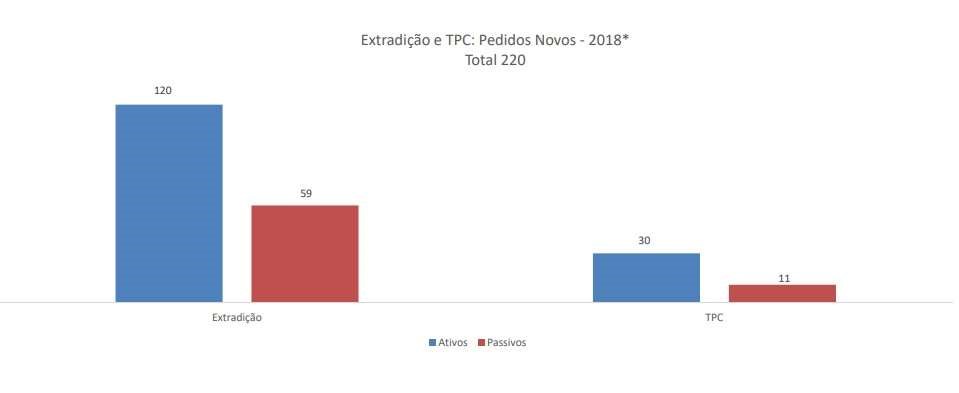
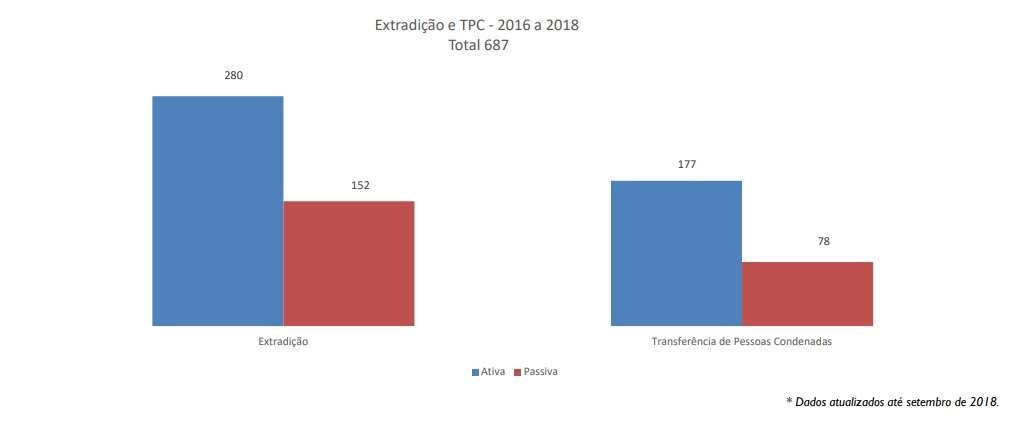
Principle of Moderation: Principle of Necessity: Certain level of force shall only be used when lower intensity levels are not sufficient to achieve the legal purposes intended.

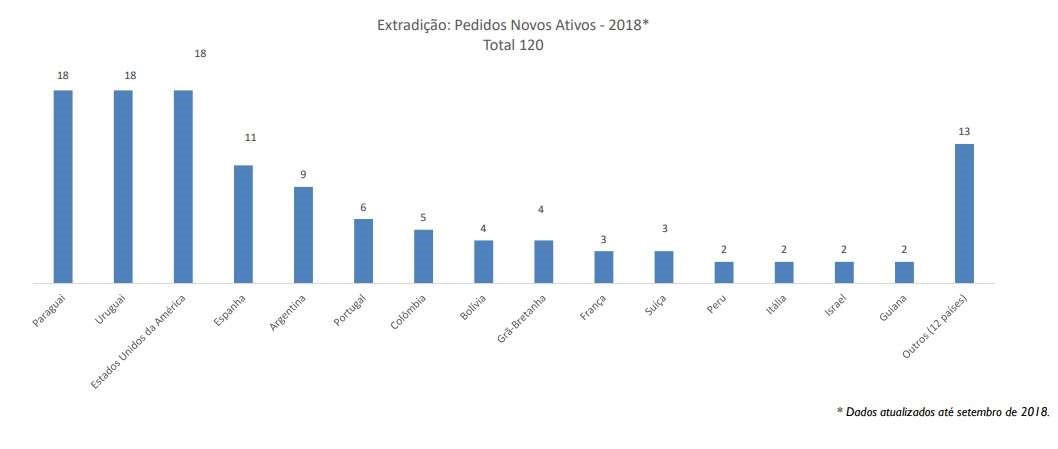
Principle of Proportionality: The level of force used shall always be consistent with the severity of the threat represented by the action of the opponent and for the purposes intended by the public security agent.

Less offensive techniques: Set of procedures used in interventions demanding the use of force, through the use of less offensive instruments, aiming at preserving lives and mitigating damages to integrity of involved persons.

Differentiated Use of Force: Proper Selection of the level of use of force in response to a real or potential threat, aiming at limiting the resort to means that may cause injuries or deaths.

ATTACHMENT VII





Legend:

Extradição: Pedidos Novos Ativos – 2018\* = Extradition: New Active Requests – 2018\*

Total 120 = Total 120

Paraguai = Paraguay

Uruguai = Uruguay

Estados Unidos da América = United States of America

Espanha = Spain

Argentina = Argentina

Portugal = Portugal

Colômbia = Colombia

Bolívia = Bolivia

Grã-Bretanha = Great Britain

França = France

Suiça = Switzerland

Peru = Peru

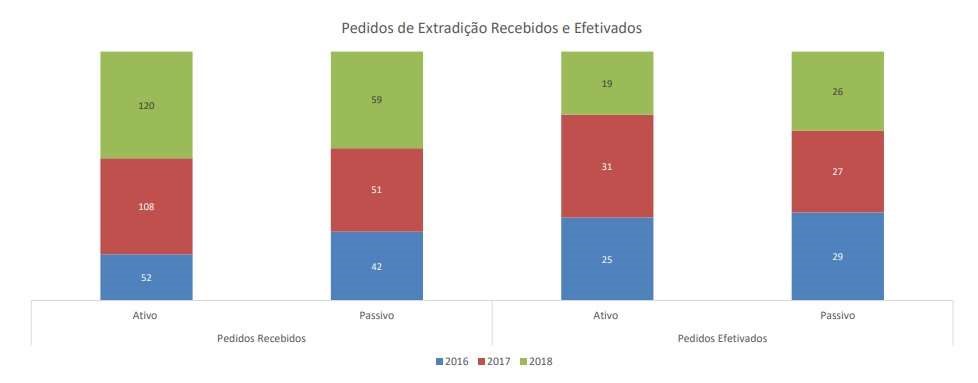
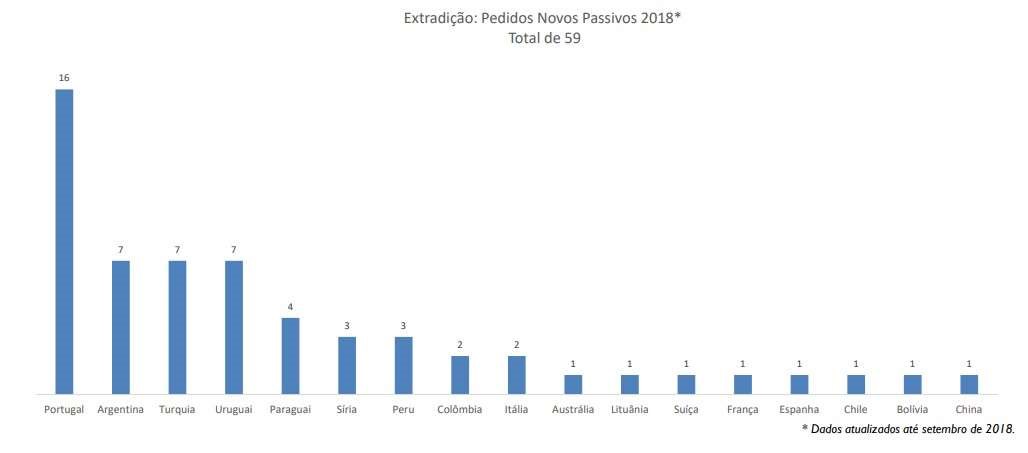
Itália = Italy

Israel = Israel

Guiana = Guyana

Outros (12 países) = Others (12 countries)

\*Dados atualizados até setembro de 2018. = \*Data updated by September 2018.



Source: Ministry of Justice. Available on http://justica.gov.br/suaprotecao/cooperacaointernacional/estatisticas/indicadores-drci-2018-setembro-cooperacao-juridicainternacional.pdf.

ATTACHMENT VIII

LAW NO. 12,847 OF AUGUST 2, 2013.

(See Decree No. 8,154 of 2013)

Creates the National System to Prevent and Combat Torture; establishes the National Committee to Prevent and Combat Torture and the National Mechanism to Prevent and Combat Torture; and makes other provisions.

PRESIDENT OF THE REPUBLIC I declare that the National Congress enacts and I approve the following Law:

CHAPTER I

NATIONAL SYSTEM TO PREVENT AND COMBAT TORTURE – SNPCT

Art. 1 It is hereby established the National System to Prevent and Combat Torture – SNPCT, aiming at strengthen prevention and fight against torture, through coordination and cooperative action of its members, among other ways, thus allowing exchange of information and good practices.

Art. 2 The SNPCT shall be composed of public and private bodies and entities with legal or statutory attributions to monitor, supervise, and control facilities and units where there are people deprived of their liberty, or to promote the defense of these parsons’ rights and interests.

Paragraph 1 The SNPCT shall be composed of the National Committee to Prevent and Combat Torture - CNPCT, the National Mechanism to Prevent and Combat Torture – MNPCT, the National Council for Criminal and Correctional Policies – CNPCP, and the body of the Ministry of Justice in charge of the national correctional system.

Paragraph 2 The SNPCT may be also composed of the following bodies and entities, among others:

1. - state and district committees and mechanisms to prevent and combat torture;

1. - bodies of the Judiciary Branch operating in the childhood, youth, military, and law enforcement areas;

1. - human rights commissions of the federal, state, district, and local legislative branches;

1. - bodies of the Prosecutor's Office operating for the external control of the police activity, by the prosecutor’s offices and military, childhood and youth, and for citizen protection prosecutor’s offices, or by those bound to the criminal enforcement;

1. - public defender’s offices;

1. - state and district community and correctional councils;

1. - internal affairs bureau and police ombudsman offices, for the federal, state, and district correctional systems, as well as other offices of the ombudsman operating to prevent and combat torture, including the agrarian bureaus;

1. - state, local, and district councils for human rights;

1. - guardian councils and councils for the rights of children and teenagers; and

1. - non-governmental organizations acknowledgedly work to fight against torture.

Paragraph 3 Act of the Executive Branch shall provide for the SNPCT operation.

Article 3. For the purposes of this Law, the following terms shall mean:

1. - torture: all criminal offenses provided for in Law No. 9,455, of April 7, 1997, according to definition included in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishments, enacted by Decree No. 40, of February 15, 1991; and

1. - persons deprived of their liberty: those obliged, by warrant or order of a judicial, administrative, or police authority, to remain in certain public or private place, which they may only leave regardless their will, which include places of long-stay custody, detention centers, correctional facilities, psychiatric hospitals, custody houses, social and educations institutions for teenagers in conflict with the law, and disciplinary detention centers in the military scope, as well as in facilities maintained by the bodies listed in art. 61 of Law No. 7,210, of July 11, 1984.

Art. 4 The following are the SNPCT principles:

1. - protection to human being dignity;

1. - universality;

1. - objectiveness;

1. - equality;

1. - impartiality;

1. - non-selectivity; and

1. - non-discrimination.

Art. 5 The following are the SNPCT guidelines:

1. - full respect to human rights, especially to rights of persons deprived of their liberty;

1. - coordination with the other government and power spheres and with the bodies in charge of the public security, custody of persons deprived of their liberty, places for long-stay custody, and protection to human rights; and

1. - adoption of measures, in the scope of its competences, required for prevention and combat of torture and other cruel, inhuman, or degrading treatment or punishments.

CHAPTER II

THE NATIONAL COMMITTEE FOR PREVENTION AND FIGHT AGAINST TORTURE – CNPCT;

Art. 6 It is hereby established in the scope of the Office of Human Rights of the Presidency of the Republic, the National Committee to Prevent and Combat Torture – CNPCT, in order to prevent and combat torture, other cruel, inhuman, or degrading treatment or punishments, upon exercise of the following attributions, among others:

1. - monitor, evaluate, and propose improvement to the actions, programs, projects, and plans for preventing and combating torture, and other cruel, inhuman, or degrading treatment or punishments developed nationally;

1. - monitor, evaluate, and cooperate to improve the work of bodies in the national, state, district, and local scope, which function is related to their purposes;

1. - monitor the processing of procedures for administrative and judicial verification, aiming at quickly complying with it;

1. - monitor the processing of regulatory proposals;

1. - evaluate and monitor the cooperation projects executed by and between the Brazilian government and international organizations;

1. - recommend the preparation of studies and researches and encourage the conduction of campaigns;

1. - support the creation of similar committees or commissions in the state and district sphere for monitoring and evaluating local actions;

1. - working together with local, regional, national and international organizations and bodies, specially within the scope of the Inter-American System and the of the United Nations Organization;

1. - participate in the implementation of the MNPCT recommendations and engage with it a dialogue on possible implementation measures;

1. - provide the MNPCT with data and information;

1. - create and maintain a database, containing information on the work of governmental and non-governmental bodies;

1. - create and maintain a registry of claims, criminal complaints, and court decisions;

1. - disseminate the good practices and successful experiences of bodies and entities;

1. - prepare an annual report on activities, in such form and term as provided for in its internal regulations; XV – provide information related to the number, treatment, and conditions of detention of persons deprived of their liberty; and

XVI – prepare and approve its internal regulations.

Art. 7 The CNPCT shall be composed of twenty-three (23) members, chosen, and designated by the President of the Republic, being eleven (11) representatives of bodies of the federal Executive Branch and twelve (12) members of professional councils and of the civil society organizations, such as entities representing workers, students, businessmen, education and research institutions, human rights movements, and other organizations which action is related to the theme addressed by this Law.

Paragraph 1. CNPCT shall be chaired by the Minister of State – Head of the Office for Human Rights of the Presidency of the Republic.

Paragraph 2. The Vice-Chairmen shall be elected by the other members of CNPCT and hold a fixed term of office of one (1) year, ensuring alternation between representatives of the federal Executive Branch and representatives of councils of professionals and organizations of the civil society, pursuant to the regulation.

Paragraph 3. There shall be one (1) alternate for each full member of CNPCT.

Paragraph 4. Representatives of the Prosecution Service, the Judiciary Branch, the Public Defender’s Office, and other public institutions shall participate in CNPCT as permanent guests entitled to speak.

Paragraph 5. At the Chairman’s invitation, experts and representatives of public or private institutions that develop significant activities in the fight against torture may participate in CNPCT meetings.

Paragraph 6. Participation in CNPCT shall be deemed an unpaid provision of significant public services.

Paragraph 7. The Executive Branch shall provide for the composition and operation of CNPCT.

Paragraph 8. For the composition of the National Committee for Prevention and Fight against Torture – CNPCT, a prior public consultation to choose class members and civil society members shall be ensured, pursuant to the relevant representativeness and diversity of the representation.

CHAPTER III

NATIONAL MECHANISM TO PREVENT AND COMBAT TORTURE (MNPCT)

Article 8 The National Mechanism to Prevent and Combat Torture (MNPCT) is hereby created, member body of the structure of the Office for Human Rights of the Presidency of the Republic, responsible for preventing and combating torture and other cruel, inhuman, or degrading treatment or punishment, pursuant to Article 3 of the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, enacted by Decree No. 6,085 of April 19, 2007.

Paragraph 1. The MNPCT shall be composed of eleven (11) experts, chosen by CNPCT among persons with well-known knowledge and higher education, actions, and experience in the field of prevention and fight against torture and other cruel, inhuman, or degrading treatment or punishment, and indicated by the President of the Republic, for the fixed term of office of three (3) years, with the possibility of one reelection.

Paragraph 2. The members of the MNPCT shall have independence in their actions and guarantee of their term of office, of which they shall only be dismissed by the President of the Republic in cases of final and unappealable criminal conviction, or of a disciplinary proceeding, pursuant to Laws No. 8,112 of December 11, 1990, and No. 8,429 of June 2, 1992.

Paragraph 3. The preliminary exclusion of a member of the MNPCT may be determined by a well-grounded decision from CNPCT, in case of confirmation of circumstantial evidence of materiality and perpetration of a crime or serious violation of official duties, which shall last until the conclusion of the disciplinary proceeding referred to in Paragraph 2.

Paragraph 4. The following may not compose the MNPCT as experts:

1. - persons with executive positions in political party associations;

1. - persons with no conditions to act impartiality in exercising MCPCT’s competences.

Paragraph 5. States may create the State Mechanism to Prevent and Combat Torture (MEPCT), a body responsible for prevention and fight against cruel, inhuman, or degrading treatment or punishment within the scope of states.

Paragraph 6. Periodic visits referred to in item I of the main section and paragraph 2, both in Article 9, shall be carried out together with the State Mechanism, to be communicated with a twenty-four (24)-hour notice.

Paragraph 7. The absence, refusal, or impossibility of the State Mechanism to monitor the periodic visit on the date and time scheduled does not prevent the actions of the MNPCT.

Article 9. The MNPCT is responsible for:

1. - planning, making, and monitoring the periodic and regular visits to persons deprived of liberty in all Federative units, in order to verify the factual and legal conditions to which these persons are subjected;

1. - working together with the United Nations Subcommittee on Prevention, provided for in Article 2 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, enacted by Decree No. 6,085 of April 19, 2007, as to support its missions within the national territory, aiming at unifying the strategies and policies to prevent torture and other cruel, inhuman, or degrading treatment or acts;

1. - requesting the competent authority to initiate a criminal and administrative procedure upon confirmation of evidence of torture and other cruel, inhuman, or degrading treatment and acts;

1. - preparing a detailed report on each visit made pursuant to item I and, within no more than thirty (30) days, submit it to CNPCT, to the Office of the Prosecutor General, and to the authorities responsible for detention, among other competent authorities;

1. - preparing an annual detailed and systematically outlined report on the set of visits made and on the recommendations formulated, notifying the immediate head of the facility or unit visited and the chief head of the body or institution to which such facility or unit is bound in any of the governmental entities, or to the competent private entity, of the full content of the report prepared, so that the problems identified are resolved and the system is improved;

1. - providing recommendations and notes to public or private authorities responsible for persons in places of deprivation of liberty, aiming at ensuring compliance with the rights of these persons;

1. - disclosing the reports on the periodic and regular visits made and the annual report and promoting their diffusion;

1. - suggesting proposals and remarks regarding the currently effective laws and regulations; and

1. - preparing and approving its internal regulations.

Paragraph 1. The MNPCT shall act without prejudice to the powers vested in other bodies and entities with similar duties.

Paragraph 2. In the visits set forth in item I of the main section, the MNPCT may be represented by all of its member or by smaller groups and may invite representatives of entities of the civil society, experts, and specialists acting in similar fields.

Paragraph 3. The selection of projects that use funds arising from the National Penitentiary Fund, the National Fund for Public Security, the National Fund for the Elderly, and the National Fund for the Child and Adolescent shall take into account the recommendations formulated by the MNPCT.

Paragraph 4. The Federal Police Department and the Federal Highway Patrol shall provide the support required for the actions of the MNPCT.

Article 10. The following is ensured to the MNPCT and its members:

1. - I – autonomy of positions and opinions adopted while discharging its duties;

1. - access, regardless of authorization, to all the information and records related to the number, identity, conditions of the detention, and the treatment received by persons deprived of liberty;

1. - access to the number of facilities for detention or imprisonment and the respective maximum capacity and location of each;

1. - access to all places listed in item II of the main section of article 3, whether public or private, intended for deprivation of liberty and to all the facilities and equipment of such places;

1. - the possibility to interview persons deprived of liberty or any other person that may provide relevant information, in private and with no witnesses, in a place that ensure the necessary safety and confidentiality;

1. - the possibility to choose places to visit and persons to interview, including with the possibility to record them with audiovisual equipment, as long as the intimacy of the persons involved is respected; and

1. - the possibility to request official expert examinations, pursuant to the international rules and guidelines and to art. 159 of Decree-Law No. 3,689 of October 3, 1941 – Brazilian Code of Criminal Procedure.

Paragraph 1. Information obtained by the MNPCT shall be public, pursuant to the provisions of Law No. 12,527 of November 18, 2011.

Paragraph 2. The MNPCT shall protect the personal information of the persons deprived of liberty, as to preserve their safety, intimacy, private life, honor, or image, and the disclosure of any personal data without express consent is prohibited.

Paragraph 3. The documents and reports prepared regarding the visits made by the MNPCT pursuant to item I of the main section of art. 9 may be used as evidence in court, pursuant to the prevailing laws and regulations.

Paragraph 4. No person, body, or entity shall be impaired for providing information to the MNPCT, nor shall any public servant or authority be allowed to tolerate or order, apply, or allow sanctions related to this fact.

Article 11. The MNPCT shall work together with the other bodies that compose the SNPCT and shall, on an annual basis, account for the activities developed to CNPCT.

CHAPTER IV

FINAL AND TRANSITIONAL PROVISIONS

Article 12. The Office for Human Rights of the Presidency of the Republic shall ensure technical, financial, and administrative support required for the operation of the SNPCT, CNPCT, and the MNPCT, especially so that the MNPCT may carry out the periodic and regular visits set forth in item I of the main section of art. 9 in all of the federative units.

Article 13. The Office for Human Rights of the Presidency of the Republic shall support the creation of mechanisms to prevent and combat torture within the States or the Federal District, pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, enacted by Decree No. 6,085 of April 19, 2007.

Article 14. The first members of the MNPCT shall have differentiated terms of office, as follows:

1. - three (3) experts shall be appointed for a term of office of two (2) years;

1. - four (4) experts shall be appointed for a term of office of three (3) years; and

1. - four (4) experts shall be appointed for a term of office of four (4) years.

Sole paragraph. For the subsequent terms of office, the provisions of paragraph 1 of art. 8 shall apply.

Article 15. This Law becomes effective on the date of its publication. Brasília, August 2, 2013; 192 years after the Independence and 125 years after the Republic.

DILMA ROUSSEFF

José Eduardo Cardozo

Maria do Rosário Nunes

ATTACHMENT IX

Resolution No. 213 of December 15, 2015

Summary: Provides for the attendance of every person in custody before a judicial authority within 24 hours.

Source: President’s Office

THE CHAIRMAN OF THE NATIONAL JUSTICE COUNCIL – CNJ, by using the legal and regulatory powers vested;

CONSIDERING article 9, item 3, of the UN’s International Covenant on Civil and Political Rights, as well as article 7, item 5, of the American Convention on Human Rights (Pact of San Jose, Costa Rica);

CONSIDERING the decision in the records of Claim of Breach of Fundamental Precept No. 347 of the Brazilian Supreme Court, stating the requirement for presentation of the inmate to the applicable legal authority;

CONSIDERING the provisions in sub-item “a” of item I of article 96 of the Brazilian Federal Constitution, which delegates to courts the possibility of addressing the jurisdiction and operation of their services and jurisdictional and administrative bodies;

CONSIDERING the decision rendered in Direct Action based on Unconstitutionality No. 5240 of the Brazilian Supreme Court, declaring the constitutionality of discipline by Courts for the presentation of the inmate to the applicable legal authority;

CONSIDERING the report prepared by the Subcommittee on Prevention of Torture (CAT/OP/BRA/R.1, 2011), by the UN’s Working Group on Arbitrary Detention (A/HRC/27/48/Add.3, 2014), and the report on the use of temporary imprisonment in Americas for the Organization of American States;

CONSIDERING the diagnosis of imprisoned persons submitted by CNJ and the INFOPEN of the National Prison Department of the Ministry of Justice (DEPEN/MJ), published, respectively, in 2014 and 2015, revealing the disproportionate contingent of temporary inmates;

CONSIDERING that imprisonment, as provided for in the Constitution (Federal Constitution, article 5, items LXV and LXVI), is an extreme measure applied only to cases expressed in the law and when no alternative preliminary injunctions apply;

CONSIDERING that innovations introduced in the Brazilian Code of Criminal Procedure by Law No. 12,403 of May 4, 2011, imposed to the judge the requirement to convert the arrest of a person caught in the act into pre-trial detention only when there is an impossibility of relaxation or granting of temporary liberty, with or without a preliminary injunction other than incarceration;

CONSIDERING that the immediate presentation of the inmate to the legal authority is the most effective way to prevent and curb torture during arrest, thus ensuring the right to physical and psychological integrity for the persons submitted to state custody, as provided for in article 5.2 of the American Convention on Human Rights and article 2.1 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment;

CONSIDERING the provisions in CNJ Recommendation No. 49 of April 1, 2014;

CONSIDERING the plenary decision taken in the judgment of Normative Act No. 0005913- 65.2015.2.00.0000, in the 223rd Ordinary Session, held on December 15, 2015;

DECIDES:

Article 1. To determine that all persons caught in the act and arrested, regardless of motivation or of the type of crime, are mandatorily taken before the applicable judicial authority, in up to 24 hours of the time he/she was caught, so that he/she is heard about the circumstances of his/her arrest or seizure.

Paragraph 1. The communication of the arrest of a person caught in the act to the judicial authority, which shall take place by sending the report of arrest of a person caught in the act, according to the routines set forth for each State of the Federation, does not substitute the need for appearing personally, as established in the main section.

Paragraph 2. Applicable judicial authority means the one set forth as such by the local judicial organization laws, or, except for cases of omission, defined by a normative act of the Court of Appeals or local Federal Court which institutes the appearance hearings, including the judge on duty.

Paragraph 3. In case of arrest of a person caught in the act under original Court jurisdiction, the arrested person may appear before the judge designated for this purpose by the President of the Court or Reporting Judge.

Paragraph 4. In case the arrested person is suffering from a serious disease, or in case there is an evidenced exceptional circumstance that makes it impossible for him/her to appear before the judge within the term established in the main section, the hearing shall be held wherever he/she is, and, when transportation proves to be unfeasible, the custody hearing shall be held immediately after his/her condition is reestablished.

Paragraph 5. CNJ, upon hearing the local judicial authorities, shall enact a complementary act to this Resolution, regulating, exceptionally, the terms for the arrested person to appear before the judicial authority in Cities or regional headquarters to be specified when the applicable judge or judge on duty is unable to meet the deadline established in the main section.

Article 2. The Office of Prison Management or the Office of Public Security, according to local regulations, shall be in charge of the transportation of the person caught in the act and arrested to the place of the hearing and then, later, to a specific detention facility, in case of decision for pre-trial detention.

Sole paragraph. The courts may enter into partnerships as to enable the holding of the custody hearing outside the relevant judicial unit.

Article 3. In case there is no judge available in the judicial district, due to any reason, until the end of the term established in art. 1, the arrested person shall be immediately taken before the legal alternate, pursuant to paragraph 5 of art. 1, as appropriate.

Article 4. The custody hearing shall be held in the presence of the Prosecution Service and the Public Defender’s Office, in case the arrested person does not have an appointed lawyer at the moment of the drawing-up of the report.

Sole paragraph. The presence of the police officers responsible for the arrest or by the investigation during the custody hearing is prohibited.

Article 5. In case the person caught in the act and arrested appoints a lawyer before the end of the drawing-up of the report of arrest of a person caught in the act, the Police Commissioner shall notify him/her, using the most common means, such as email, telephone, or text message, so that he/she attends the custody hearing, and register that in the records.

Sole paragraph. In case no lawyer is appointed, the arrested person shall be served by the Public Defender’s Office.

Article 6. Before the arrested person appears before the judge, he/she is ensured to be previously and privately served by a lawyer appointed by him/her or by a public defender, without the presence of police officers, and an accredited employee shall clarify the reasons, foundations, and procedures related to the custody hearing.

Sole paragraph. An adequate place shall be reserved aiming at ensuring confidentiality to the prior service of the lawyer or public defender.

Article 7. Before the person caught in the act and arrested appears before the applicable judicial authority, he/she shall mandatorily register with the Custody Hearings System (SISTAC).

Paragraph 1. The SISTAC, a free of charge nationwide electronic system made available by CNJ for all judicial units responsible for holding custody hearings, is intended for making the collection of data produced in the hearing and resulting from the appearance of the person caught in the act and arrested before a judge easier, and its objectives are the following:

1. - to formally record the flow of the custody hearings in the courts;

1. - to systematize the data collected during the custody hearing, as to enable the control of the information produced related to arrests of persons caught in the act, court decisions, and the entry into the prison system;

1. - to produce statistics on the number of persons caught in the act and arrested, of persons granted temporary liberty, of interim measures adopted indicating the respective type, of reports related to torture and ill-treatment, among others;

1. - to prepare standard minutes of the custody hearing;

1. - to make consulting previous records easier, in order to enable updating the profile of the persons caught in the act and arrested at any time, and binding the record of their personal information to new procedural acts;

1. - to enable the registration of reports of torture and ill-treatment before they are forwarded for investigation;

1. - to keep records of the voluntary social referrals, recommended by the judge or indicated by the technical team, as well as the records of the *corpus delicti* examination requested by the judge;

1. - to analyze the effects, impacts, and results of the implementation of the custody hearing.

Paragraph 2. The person caught in the act and arrested shall be brought to the court after the protocol and distribution of the report of arrest of a person caught in the act and the respective judgment of misconduct containing the reason for arrest, the name of the perpetrator and the witnesses of the flagrant, to the office responsible for operationalizing the act, in compliance with the local rules.

Paragraph 3. The report of arrest of a person caught in the act shall support the information to be registered in the SISTAC, together with those obtained from the report of the person caught in the act himself/herself.

Paragraph 4. Data extracted from the reports referred to in item III of paragraph 1 shall be made available in CNJ’s website, reason why the competent judicial authorities shall ensure that the SISTAC is correctly and continuously fed.

Article 8. During the custody hearing, the judicial authority shall inquire the person caught in the act and arrested, and:

1. - clarify what is a custody hearing, emphasizing the matters to be analyzed by the judicial authority;

1. - ensure that the arrested person is not handcuffed, except for cases of resistance and well-founded fear of escape or danger to his/her own or others’ physical integrity. Any exceptionalities shall be justified in writing;

1. - inform the person about his/her right to remain silent;

1. - ask if he/she was informed about and given an effective opportunity to exercise the constitutional rights inherent in his/her condition, especially the right to consult an attorney or public defender, to be treated by a doctor, and to communicate with his/her family members;

1. - ask about the circumstances of his/her arrest or apprehension;

1. - ask about the treatment received in all places he/she passed before being brought to court for the hearing, making questions about the occurrence of torture and ill-treatment and taking the applicable measures;

1. - verify if a forensic medical examination was carried out, and ordering an examination when:

1. it had not been carried out yet;

1. the records are insufficient;

1. the claim of torture and ill-treatment refers to a moment after the examination carried out;

1. the examination was performed in the presence of a police officer, as provided for in CNJ Recommendation 49/2014 regarding formulation of questions to the expert;

1. - refrain from asking questions with the intention to produce evidence for the investigation or criminal action related to the facts subject matter of the report of arrest of a person caught in the act;

1. - take the measures under his/her responsibility to remediate possible non-conformities;

1. – verify, through inquiry and visual assessment, hypotheses of pregnancy, existence of children or dependents under care of the person caught in the act and arrested, background of severe health condition, including mental disorders, and drug abuse, to analyze the need for referral to assistance and granting provisional liberty, with or without application of interim measure.

Paragraph 1. After the testimony of the person caught in the act and arrested, the judge shall grant to the Prosecution Service and to the technical defense, in this order, new questions consistent with the type of crime, and should deny questions related to merits from the crimes that may create any accusation, enabling them to later request:

1. - injunction of the arrest of a person caught in the act;

1. - granting of provisional liberty with or without interim measure alternative to detention;

1. - adjudication of pre-trial detention;

1. - adoption of other measures required for preserving the rights of the imprisoned person.

Paragraph 2. The testimony of the imprisoned person will be filed, preferably, in media, waiving the formalization of the manifestation term of the imprisoned person or of the content of the requests of the parties, and will be filed at the unit in charge of the custody hearing.

Paragraph 3. The minutes of the hearing shall include, only and briefly, the justified resolution of the magistrate regarding the legality and continuation of the arrest, the appropriateness of the provisional liberty with or without applying interim measures alternative to detention, taking into account the request of each party, as well as the measures taken, in case evidence of torture and mistreatment is confirmed.

Paragraph 4. As the custody hearing is concluded, a copy of the minutes shall be delivered to the person caught in the act and arrested, the Defender, and the Prosecution Service, notifying all, and only the report of arrest of a person caught in the act, including criminal background and a copy of the minutes, shall be disclosed.

Paragraph 5. Once the decision that grants an injunction to the arrest of a person caught in the act is rendered, granting the provisional liberty with or without the enforcement of an interim measure alternative to detention, or when the immediate filing of the investigation is determined, the person caught in the act and arrested shall be promptly released, upon issuance of a court order for his/her release, and shall be informed of his/her rights and obligations, except if, due to any other reason, the person shall remain under custody.

Paragraph 6. In case Paragraph 5 applies, the police authority shall be notified and if the victim of domestic and family violence against women is not present in the hearing, it shall, before the issuing the court order for his/her release, be notified of the decision, without prejudice to the summoning of his/her public defender. (Included by Resolution No. 254 of September 4, 2018)

Article 9. The application of interim measures alternative to detention, provided for art. 319 of the CPP, shall comprise the evaluation of the actual adequacy and need for the measures, with stipulation of deadlines for its application and re-evaluation of its maintenance, pursuant to Protocol I of this Resolution.

Paragraph 1. The monitoring of the interim measures alternative to detention determined in court shall be reserved to the services of monitoring of alternative penalties, referred to as the Integrated Centers of Alternative Penalties, structured preferably within the scope of the state Executive Branch, relying on multidisciplinary teams, which shall also be responsible for the execution of the referrals necessary to the Unified Health System (SUS) and to the network of social assistance of the Single Social Assistance System (SUAS), as well as to other policies and programs offered by the Government, and the results of the assistance and monitoring shall be duly and regularly informed to the court to which the report of a person caught in the act was delivered after the custody hearing is held.

Paragraph 2. Once the demands covered by the protection or social inclusion policies implemented by the Government are identified, the judge shall be responsible for referring the person caught in the act and arrested to the service of monitoring of alternative penalties, which is responsible for working together with the social welfare network and for identifying policies and programs suitable for each case or, in the Judicial Districts where there is no monitoring of alternative penalties, indicating the direct referral to existing protection or social inclusion policies, raising awareness of the person caught in the act and arrested to voluntary attendance.

Paragraph 3. The judge shall seek to ensure to the persons caught in the act and arrested right to medical and psychosocial care whenever necessary, as long as this services are voluntary in nature, as of the referral to the service of monitoring of alternative penalties; provided that the enforcement of interim measures for the involuntary commitment or treatment of persons caught in the act and arrested that present a condition of mental disorder or drug addiction shall not apply, violating the provisions of art. 4 of Law No. 10,216 of April 6, 2001 and of art. 319, item VII, of the CPP.

Article 10. The enforcement of the interim measure alternative to detention set forth in art. 319, item IX, of the Brazilian Code of Criminal Procedure, shall be exceptional and determined only when there is proven impossibility to grant provisional liberty with no injunction to enforce other less serious interim measure, subject to periodic re-evaluation as to the need and adequacy of its maintenance, being exclusively intended for persons caught in the act for felonies punishable by maximum deprivation of liberty for more than four (4) years or sentenced for another felony in final and unappealable decision, except as provided for in item I of the main section of art. 64 of the Brazilian Penal Code, as well as for persons under urgent protective measures accused of crimes involving domestic and family violence against woman, child, adolescent, elderly, sick person, or person with disabilities, when no other less serious measure is applicable.

Sole paragraph. For it encompass data that imply confidentiality, the use of information collected through electronic monitoring of persons shall depend on court authorization, pursuant to art. 5, XII, of the Brazilian Federal Constitution.

Article 11. If the person caught in the act and arrested declares he/she was a victim of torture and ill-treatment or if the judicial authority understands there is evidence of torture, the registration of such information shall be determined and the applicable measures shall be taken in order to investigate the reports and to preserve physical and psychological safety of the victim, who shall be referred to specialized medical and psychosocial assistance.

Paragraph 1. In order to ensure effective combat to torture and ill-treatment, the legal authority and its servants shall comply with Protocol II to this Resolution aiming at ensuring conditions suitable for the testimony and for reputably taking the deposition of persons caught in the act and arrested in the custody hearing, as well as ensuring that procedures that allow verification of the evidence of torture during the deposition are implemented and that applicable measures are taken in case of identification of practices of torture.

Paragraph 2. The civil servant responsible for collecting data of the person caught in the act and arrested shall care for the collection of the following information, respecting the will of the victim:

1. - identification of the aggressors, informing the institution in which they work and their operational facility;

1. - places, dates, and approximate times of the facts;

1. - description of facts, including the methods adopted by the aggressor and indication of the injuries suffered;

1. - identification of witnesses that may cooperate in the investigation of the facts;

1. - verification of the records of injuries suffered by the victim;

1. - existence of a record indicating torture or ill-treatment in the report prepared by the experts from the Brazilian Institute of Forensic Medicine;

1. - registration of the referrals made by the judicial authority to require investigation of the reports;

1. - record of the implementation of a protective measure to the arrested person by the judicial authority, in case the nature or severity of the facts pose danger to the life or safety of the person caught in the act and arrested, of his/her family, or of witnesses.

Paragraph 3. The records of the injuries may be made through photographs or audiovisual equipment, respecting intimacy and upon written consent of victim.

Paragraph 4. In case the judicial authority verifies the need for taking any measure for protection of the person caught in the act and arrested, whether due to communication or report of practices of torture or ill-treatment, personal integrity shall be primarily ensured to the reporter, the witnesses, the servant who reported the occurrence of abusive practices, and to his/her family members, and, if applicable, confidentiality of information shall also be ensured.

Paragraph 5. The referrals made by the judicial authority and the information arising therefrom shall be informed to the judge in charge of the discovery phase of the proceeding.

Article 12. The term of the custody hearing shall be attached to the investigation or criminal action.

Article 13. It shall also be ensured that persons arrested as a result of the execution of warrants for preliminary custody or arrest are taken before the judicial authority within 24 hours and that the procedures provided for in this Resolution shall apply, as appropriate.

Sole paragraph. All arrest warrants shall expressly include the order for immediate referral, as of the execution of such warrants, of the arrested person to the judicial authority that determined the issuance of the arrest warrant or, in cases in which the warrants are executed outside the jurisdiction of the prosecuting judge, before the applicable judicial authority, pursuant to local laws of judiciary organization.

Article 14. The courts shall issue the required acts and shall support the judges in the enforcement of this Resolution, in consideration of the local reality, and they are allowed to make partnerships and take management measures required for full enforcement thereof.

Article 15. The Courts of Appeals and Federal Regional Courts shall have 90 days of the entry into force of this Resolution to include the custody hearing within the scope of their respective jurisdictions.

Sole paragraph. Within the same term, the persons caught in the act and arrested before the implementation of the custody hearing that have not been taken to another hearing during the prejudgment phase shall have his/her right to be taken before the judicial authority, pursuant to the terms of this Resolution.

Article 16. The monitoring of the enforcement of this Resolution shall count on the technical support provided by the Office for Monitoring and Inspecting the Prison System and Implementing Socio-educational Measures.

Article 17. This Resolution becomes effective as of February 1, 2016.

Justice Ricardo Lewandowski

PROTOCOL I

Procedures for the application and monitoring of interim measures alternative to detention for persons under custody taken to custody hearings

This document aims at presenting instructions and guidelines on the application and monitoring of interim measures for persons under custody taken to custody hearings.

1. Legal grounds and purpose of the interim measures alternative to detention

Law of Interim Measures (Law No. 12,403/11) was established aiming at restraining abusive use of pre-trial detention. By expanding the possibilities of interim measures, the Law of Interim Measures introduced alternatives to pre-trial incarceration in the criminal legal system.

With the dissemination of custody hearings in Brazil and given the fact that the person caught in the act and arrested is taken before a judge, it is possible to better calibrate the need for converting the arrest of a person caught in the act to pre-trial detentions, as already evidenced through the statistics on such practice in all Federative Units.

The longer the criminal proceeding, the lower the chances that the person has his/her right to a penalty alternative to arrest ensured.

Accordingly, the recidivism rates are also lower when the defendants are not subjected to imprisonment.

Incarceration reinforces the cycle of violence by contributing to rupture of family and community bonds of the person deprived of their liberty, who also suffers with the stigmatization and the consequent difficulties to access job market, increasing the situation of marginalization and the chance of occurring new criminalization processes.

Despite this scenario, the National Penitentiary Information Survey (2015), consolidated by the National Prison Department, indicates that 41% of the prison population in Brazil is composed of persons that were not convicted and are awaiting trial while deprived of their liberty.

In this regard, a survey published by IPEA (2015) on Application of Penalties and Alternative Measures indicates that, in 37.2% of the cases in which defendants were temporarily arrested, they were not sentenced to jail in the end of the proceeding, which mostly resulted in acquittal or conviction to penalties restricting rights. The survey confirms the diagnoses made by international observers, regarding “the systematic, abusive, and disproportionate use of the pre-trial detention by the justice system” in the country.

Interim measures should add new paradigms to their application, so the adequacy of the measure is translated into accountability of the arrested person, ensuring, at the same time, autonomy and liberty to be under these alternatives, without prejudice to the referral to protection and social inclusion programs and policies already established and provided by the Government.

In this regard, as provided for in Cooperation Agreements No. 05, No. 06, and No. 07, of April 9, 2015, executed between the National Justice Council and the Ministry of Justice, the interim measures alternative to detention applied in custody hearings shall be referred for monitoring in services brought preferably within the scope of the state Executive Branch, called Integrated Centers of Alternative Penalties or other nomenclature, as well as Electronic Monitoring Centers, in specific cases. The National Prison Department, a body related to the Ministry of Justice, shall be responsible for preparing management guides for these practices, indicating the methods for monitoring these measures, in a partnership with National Justice Council.

Still in compliance with the cooperation agreements, interim measures alternative to detention shall take into account the following purposes:

1. promotion of autonomy and citizenship of the person subjected to the measure;

1. incentive to participation of both the community and the victim in solving conflicts;

1. self-accountability and maintenance of the bond of the person subjected to the measure with the community, guaranteeing their individual and social rights; and

1. restoration of social relationships.

2. Guidelines for application and monitoring of interim measures alternative to detention

In order to ensure the legal grounds and purposes for application and monitoring of the interim measures alternative to detention, the judge shall observe the following guidelines:

1. Rule of law or legality: The application and monitoring of interim measures alternative to detention shall be based on the hypotheses provided for in the laws and regulations, and restrictive measures that exceed legality are not applicable.

1. Vicarious liability and minimum criminal intervention: Criminal intervention shall be limited to the minimum and the arrest shall be a last resort with the criminal justice system, while other responses to social problems and conflicts shall be preferred. Criminal interventions should be limited to the most serious violations to human rights and applied to the minimum necessary to stop the violation, considering the social costs involved in the application of pre-trial detention or interim measures that impose restrictions to liberty.

1. Presumption of innocence: Presumption of innocence should guarantee to persons the right to liberty, defense, and due process of law, and pre-trial detention, as well as application of interim measures alternative to detention should be applied as a last resort. Granting a provisional release with or without interim measures alternative to detention is a right and not a benefit, and presumption of innocence of the accused persons shall always be considered. Accordingly, the rule should be granting provisional release without application of interim measures, and this right shall be protected especially with respect to the segments of the population most vulnerable to criminalization processes and with less access to justice.

1. Dignity and liberty: The application and monitoring of interim measures alternative to detention shall give priority to the persons’ dignity and liberty. This liberty assumes active participation of the parties in the construction of measures, ensuring individualization, remediation, restoration of relationships, and fair measures for all involved persons.

1. Individuation, respect for individual trajectories, and recognition of potentialities: The application and monitoring of interim measures alternative to detention should respect the individual trajectories while promoting solutions that positively bind the parties, pursuant to the personal potentialities of the individuals, depriving the measures of a sense of mere retribution over past acts, incompatible with the presumption of innocence ensured by the Constitution. It is necessary to promote emancipatory meanings for the persons involved, contributing to the construction of a culture of peace and reduction of the different forms of violence.

1. Respect and promotion of diversities: In the application and monitoring of interim measures alternative to detention, the Judiciary Branch and the enforcement programs should ensure respect for generational, social, ethnic/racial, gender/sexuality, origin and nationality, income and social class, religion, belief, and any other diversities.

1. Accountability: Interim measures alternative to detention should promote accountability with autonomy and liberty of the individuals involved therein. In this regard, the application and monitoring of interim measures alternative to detention should be established from and with the commitment of the parties, so that the adequacy of the measure and its compliance translate into viability and meaning for those involved.

1. Temporality: The application and monitoring of interim measures alternative to detention should be based on the temporality of the measures, considering the desocializing impact entailed by the restrictions. The delay of the criminal proceeding may mean an indefinite or unjustifiably prolonged period of measure, which undermines the reasonability and the principle of minimum criminal law. In this regard, the interim measures alternative to detention should always be applied with a determined termination of the measure, in addition to ensure the periodic reassessment of the restrictive measures applied.

1. Normality: The application and monitoring of interim measures alternative to detention should be outlined from each concrete situation, in line with the rights and individual trajectories of the persons to be served. Thus, such measures should not impact, or do so in a less impactful way, the routines and daily relationships of the persons involved, limited to the minimum necessary for the protection intended by the measure, at risk of deepening the processes of marginalization and criminalization of the persons subjected to the measures.

1. Non-penalization of poverty: The situation of social vulnerability of the persons penalized and taken to the custody hearing cannot be a criterion of selectivity to their disadvantage while considering the conversion of the arrest of a person caught in the act into pre-trial detention. Especially in the case of homeless persons, the grounds of prosecution or the difficulty to be summoned to attend procedural acts is not a circumstance that can justify the pre-trial detention or preliminary injunction, and social referrals should be guaranteed in a non-mandatory way, whenever necessary, as long as the liberty and autonomy of the individuals is preserved.

3. Procedures for monitoring of interim measures and social inclusion

Interim measures, when applied, should comply with procedures that ensure their enforceability, considering:

1. the adequacy of the measure to the ability to ensure its monitoring, without letting the burden of management difficulties fall on the arrested person;

1. the conditions and the arrested person’s ability to serve it;

1. the need to ensure referrals to the social demands of the arrested person, in a non-mandatory way.

In order to ensure effectiveness of the interim measures alternative to detention, each agency or body shall stick to its competences and knowledge, in a systematic and complementary way.

In addition to the application of the measure, it is necessary to ensure instances of execution of interim measures, with qualified methods and teams capable of allowing adequate monitoring to the execution of interim measures alternative to detention.

Therefore, the Ministry of Justice, in a partnership with the National Justice Council, shall be responsible for developing management guides with methods, procedures, and workflows, as well as promoting technical and financial support for the establishment of structures for monitoring the measures, as provided for in Cooperation Agreements No. 05, No. 06, and No. 07, of April 09, 2015.

In this regard, the Integrated Centers of Alternative Penalties or equivalent bodies, as well as the Electronic Monitoring Centers, shall be preferably structured within the scope of the state Executive Branch and shall have multidisciplinary teams regularly trained to monitor precautionary measures.

3.1. The actions of the Judge shall consider the following procedures:

1. After presenting reasons for his/her decision pursuant to art. 310 of the CPP, safeguarding the principle of presumption of innocence, the judge shall be responsible for granting provisional release or imposing, on a substantiated basis, the application of interim measures alternative to detention, only when necessary, justifying the reason for non-application if he/she decides to order pre-trial detention;

1. Provide the arrested person with the right to any necessary medical and psychosocial care, protecting the voluntary nature of these services, from the referral to the Integrated Centers of Alternative Penalties or similar bodies, avoiding the application of interim measures for treatment or custody of persons caught in the act in violation of the law that suffer from mental disorders, including chemical dependence, in violation of the provisions of Art. 4 of Law 10,216 of 2001 and Art. 319, item VII, of Decree Law 3,689 of 1941.

1. Articulate, at a local level, appropriate procedures for referring persons under interim measures alternative to detention to Integrated Centers of Alternative Penalties or similar bodies, as well as procedures for receiving persons under these measures, monitoring the measures taken, and making the referrals to public social inclusion policies; i. In the Judicial Districts where the abovementioned Centers do not exist, the psychosocial staff of the court responsible for the custody hearings shall seek to integrate the arrested person in broad networks with the state and municipal governments, ensuring social inclusion in a non-mandatory way, based on the specificities of each case.

1. Articulate, at a local level, the appropriate procedures for referring persons under the preliminary injunction alternative to detention provided for in Art. 319, item IX, of the Brazilian Code of Criminal Procedure, to the Electronic Monitoring Centers, as well as procedures for receiving the monitored persons, monitoring the measures taken, and making the referrals to public social inclusion policies.

1. Ensure respect for and compliance with the following guidelines when applying the preliminary injunction of electronic monitoring:

1. Effective alternative to pre-trial detention: The application of electronic monitoring shall be exceptional and should be used as an alternative to pre-trial detention and not as an additional control for arrested persons who, by the circumstances assessed in court, would already face charges in freedom. Thus, as a preliminary injunction alternative to detention, electronic monitoring should be applied exclusively to persons accused of a felony punishable by a maximum imprisonment of more than four (04) years or convicted of another felony, in a final and unappealable decision, except as provided for in item I of the main section of art. 64 of the Brazilian Penal Code, as well as persons under urgent protective measures accused of crimes involving domestic and family violence against women, children, adolescents, the elderly, the sick or persons with disabilities, always exceptionally, if any other less serious interim measure is not applicable.

1. Need and Adequacy: The preliminary injunction of electronic monitoring may only be applied when the need for electronic surveillance of the person prosecuted or investigated is verified and justified, after the inapplicability of granting provisional release, with or without bail, is demonstrated, as well as the insufficiency or inadequacy of the other interim measures alternative to detention, always taking the presumption of innocence into account. Accordingly, monitoring should only be applied when the adequacy of the measure with the situation of the person prosecuted or investigated is verified, as well as objective aspects related to the criminal process, especially with respect to disproportionate application of the electronic monitoring measure in cases in which imprisonment shall not apply at the end of the proceeding, if there is a conviction.

1. Temporality: Considering the severity and extent of the restrictions that electronic monitoring imposes on persons subjected to the measure, their application should pay particular attention to temporality, ensuring a periodic reevaluation of their need and adequacy. Electronic monitoring measures applied for an indefinite term or excessively long periods (example: six months) are prohibited. Regular compliance with the judicially imposed conditions should be considered an element for reviewing the electronic monitoring applied, revealing the needlessness for the excessive control imposed, which may be replaced by less severe measures that favor the self-accountability of the arrested person under the established obligations, as well as his/her effective social inclusion.

1. Minor damage: The application and monitoring of electronic monitoring measures shall be directed towards mitigation of physical and psychological damage caused to the electronically-monitored persons. The adoption of flows, procedures, methods, and technologies that are less harmful to the monitored person shall be encouraged, mitigating the stigmatization and embarrassment caused by the use of the device.

1. Normality: The application and monitoring of interim measures of electronic monitoring shall seek to reduce the impact caused by the restrictions imposed and by the use of the device, limited to the minimum necessary for the protection intended by the measure, at risk of deepening the processes of marginalization and criminalization of the persons subjected to the measures. The routine of the monitored person should be similar to the routine of persons not subjected to electronic monitoring, thus favoring social inclusion. Thus, it is imperative that the inclusion and exclusion area and other restrictions imposed, such as any time restrictions, should be modestly determined, taking into account the individual characteristics of the persons monitored and their needs to perform daily activities of many different dimensions (education, work, health, culture, leisure, sports, religion, family and community life, among others).

3.2. The actions of the Integrated Centers of Alternative Penalties or similar bodies shall consider the following procedures:

I. Seek to participate in broad networks for social service and assistance in order to voluntarily include the accused persons based on the guidance provided by the judge, on the specificities of each case, and of the social demands directly presented by the accused persons, emphasizing the following fields or any other deemed necessary:

1. emergency demands such as food, clothing, housing, transportation, among other;

1. work, income, and professional qualification;

1. judicial assistance;

1. cultural development, production, education, and diffusion especially for young persons.

1. Care for the referrals, whenever necessary, to the Health Care Network of the Unified Health System (SUS) and to the social assistance network of the Single Social Assistance System (SUAS), in addition to other policies and programs provided by the government and the results of the assistance and monitoring of the accused person, as indicated in the court decision, which shall be informed, on a regular basis, to the Court to which the report of arrest of a person caught in the act was assigned after conclusion of the custody hearing routine.

1. Consolidate suitable networks for the hospitalization and treatment of the convict, ensuring right to medical and psychosocial attention whenever necessary, as long as this services are voluntary in nature; provided that the referral of persons caught in the act and arrested that present a condition of mental disorder, including drug abuse, to involuntary commitment or treatment shall not apply, violating the provisions of Art. 4 of Law No. 10,216 of 2001 and of Art. 319, item VII, of Decree-Law 3,689 of 1941.

1. Executing or building partnerships with other expert institutions for implementation of thematic groups or groups for holding the accused persons accountable based on the type of crime committed, including cases related to violence against women within the context of Maria da Penha Law.

i. These groups shall be implemented only upon court order and as a type of interim measure until mandatory attendance in court, provided for in item I of Art. 319 of the Brazilian Code of Criminal Procedure.

3.3. The actions of the Centers of Electronic Monitoring of Persons shall consider the following procedures:

1. Ensuring receipt and monitoring by multidisciplinary teams responsible for integrating the social protection and inclusion network made available by the government and for the monitoring of the implementation of the measures established in court, through individual interaction with the persons under monitoring.

1. Ensuring priority to the implementation, maintenance, and rehabilitation of the measure once the liberty is granted, including in cases of violation, preferably adopting measures to raise awareness and to provide assistance implemented by a psychosocial team, and the judicial authority shall only be contacted on a vicarious and exceptional basis, after all measures adopted by the technical team in charge of monitoring such persons have come to an end.

1. Excelling in the adoption of proper standards of security, confidentiality, protection, and use of data of persons under monitoring; provided that such data shall be processed according to the purpose of the collections. In this regard, one should consider that data collected during implementation of the measures for electronic monitoring have a specific purpose, related to monitoring of the conditions set forth in court. Information on the persons under monitoring may not be shared with third parties that are not included in the investigation or criminal investigation process that supported the implementation of the measure. The access to data, including by public security institutions, may only be requested within the scope of a specific police investigation in which the duly identified person under monitoring is already a suspect, and it shall be provided to the judicial authority, which shall analyze the particular case and resolve upon granting or not the request.

1. Seeking to integrate with broad networks for social service and assistance in order to voluntarily include the accused persons based on the guidance provided by the judge, on the specificities of each case, and of the social demands directly presented by the accused persons, emphasizing the following fields or any other deemed necessary:

1. emergency demands such as food, clothing, housing, transportation, among other;

1. work, income, and professional qualification;

1. judicial assistance;

1. cultural development, production, education, and diffusion especially for young persons.

V. Care for the referrals, whenever necessary, to the Health Care Network of the Unified Health System (SUS) and to the social assistance network of the Single Social Assistance System (SUAS), in addition to other policies and programs provided by the government and the results of the assistance and monitoring of the accused person, as indicated in the court decision, which shall be informed, on a regular basis, to the Court to which the report of arrest of a person caught in the act was assigned after conclusion of the custody hearing routine.

PROTOCOL I

Procedures for testimony, registration, and referral of reports of torture and other cruel, inhuman, or degrading treatment [1]

This document aims at guiding courts and magistrates as for procedures for reporting torture and cruel, inhuman, or degrading treatment.

The concept of torture, the guidelines on the conditions suitable for taking the deposition of the person under custody during the hearing, the procedures related to the verification of evidence of torture during the deposition of the person under custody, and the measures to be taken in case of verification of the practices of torture and cruel, inhuman, or degrading treatment.

1. DEFINITION OF TORTURE

Considering the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Punishment or Treatment of 1984, the Inter-American Convention to Prevent and Punish Torture of December 9, 1985, and Law 9,455/97 of April 7, 1997, which defines crimes of torture, among other provisions, it is possible to note that the definition of torture in national and international laws and regulations includes two essential elements:

1. The purpose of the act, directed to obtain information or confessions, punishment, intimidation, or coercion, or any other reason based on discrimination of any kind; and

1. Deliberate infliction of physical or mental pain or suffering.

Thus, it is recommended that the judicial authority pay attention to the conditions under which the person under custody was taken before it in order to verify the practice of torture or cruel, inhuman, or degrading treatment taking into account two assumptions:

1. the practice of torture constitutes serious violation of the right of the person under custody;

1. the person under custody shall be informed that torture is illegal and unreasonable, irrespectively of the allegation or actual sentence imputable thereto.

The following may be deemed evidence of the occurrence of torture and other cruel, inhuman, or degrading treatments:

1. If the person under custody has been held in a non-official or secret detention facility;

1. If the person under custody has been held incommunicable for any period of time;

1. If the person under custody has been held in official state vehicles or police escorting vehicles for a period longer than necessary for the direct transportation between the facilities;

1. If the proper custody records have not been kept correctly or if there is any significant discrepancy between these records;

1. If the person under custody has not been informed correctly about his/her rights at the moment of the arrest;

1. If there is information that the public official has offered benefits in exchange for favors or payments in cash by the person under custody;

1. If the person under custody was prevented from contacting an attorney or public defender;

1. If a person under custody, who is a foreign citizen, was prevented from contacting the respective Consulate;

1. If the person under custody has not been through a medical examination immediately after the arrest or if the exam verifies aggression or injury;

1. When the medical records have not been duly kept or if there was inappropriate interference or forgery;

1. If the deposition(s) has(have) been taken by investigation authorities without the presence of an attorney or public defender;

1. If the circumstances in which the depositions were taken were not duly recorded and if the depositions themselves have not been fully reproduced at the time;

1. If the depositions have been improperly changed afterwards;

1. If the person under custody has been blindfolded, hooded, gagged, or handcuffed with no written justification recorded or if the person has been subject to any physical restraint, or has been unreasonably deprived of his/her own clothes at any time during detention;

1. If the independent inspections or visits to the detention facility carried out by the competent institutions, human rights organizations, or pre-established or specialized visit programs are impeded, postponed, or have suffered any interference;

1. When the person has been taken before the judicial authority after the maximum term established for the custody hearing or has not even been taken thereto;

1. If other reports of torture and cruel, inhuman, or degrading treatments, under similar circumstances or involving the same officers, indicate likelihood of the allegations.

2. SUITABLE CONDITIONS FOR TAKING THE TESTIMONY OF THE PERSON UNDER CUSTODY DURING CUSTODY HEARING

The custody hearing shall be held under proper conditions that make possible to take the deposition of the person under custody, free of potential threats or intimidations that may inhibit the complaint about practices of torture and other cruel, inhuman, or degrading treatments or punishments to which the accused persons has been subjected.

Among the required conditions for proper taking the testimony of the person under custody, it is recommended that:

1. The person under custody shall not be in handcuffs during his/her testimony in the initial hearing, being accepted the use of handcuffs only “in cases of resistance and reasonable fear of escape or danger to physical integrity to himself/herself or to others, by the arrested person or third parties, as long as the exceptionality is justified in writing, under penalty of civil and criminal disciplinary accountability of the agent or authority, and invalidity of the arrest or of the procedural acts referred to in, without prejudice to the civil liability of the State” (STF – Binding Precedent No. 11);

1. The person under custody shall always be accompanied by an attorney or a public defender, ensuring prior confidential interview, with no presence of police agents and in a suitable/reserved place, in order to ensure effective judicial assistance;

1. A foreign person held under custody shall have ensured assistance of an interpreter, and so does the hearing-impaired person regarding the assistance of a Brazilian Sign Language (LIBRAS) interpreter, which is an essential requirement for fully understanding the questions and taking the deposition, complying with the following: (i) the person under custody must agree to use an interpreter; (ii) the interpreter must be informed of the confidentiality of the information, and; (iii) the interviewer must maintain direct contact with the person under custody, avoiding to talk exclusively to the interpreter;

1. The agents in charge of the security of the court and, whenever necessary, of the custody hearing, shall be organized separately and independently from the agents in charge of the arrest or the criminal investigation. The person under custody must wait for a hearing to be held in a place physically separated from the agents in charge of his/her arrest or criminal investigation;

1. The agent in charge of the custody, arrest, or investigation of the crime shall not be present during the testimony of the person under custody.

1. The agents in charge of the security of the custody hearing shall not carry lethal weaponry.

1. The agents in charge of the security of the custody hearing shall not participate or issue opinion on the person under custody during the hearing.

3. PROCEDURES RELATED TO THE COLLECTION OF INFORMATION ON PRACTICES OF TORTURE DURING THE HEARING OF THE PERSON UNDER CUSTODY

Pursuant to the conditions suitable for the verification, during testimony of the person under custody, of practices of torture and other cruel, inhuman, or degrading treatments or punishments that the person under custody may have been subject to, it is important that the Judge adopt a series of procedures aiming at ensuring that the deposition of the person under custody is reputably taken.

One of the goals of the custody hearing is the collection of information on practices of torture, the Judge shall always inquire about the occurrence of aggression, abuse, threat, among other types of violence, adopting the following procedures:

1. Inform the person under custody that torture is expressly prohibited, and that such behavior is unacceptable, so the complaints of torture shall be referred to the competent authorities for investigation;

1. Inform the person under custody about the purpose of the testimony, highlighting all possible risks of providing information and the protective measures that may be used to ensure this person’s safety and the safety of others, as well as the measures to be adopted regarding investigation of the practices of torture and other cruel, inhuman, or degrading treatments reported;

1. Ensure appointment of witnesses or any other sources of information that may corroborate the truthfulness of the report of torture or cruel, inhuman, or degrading treatments, ensuring confidentiality;

1. Request support of the psychosocial team in cases of severe expression of physical or mental suffering or difficulties in mental orientation (memory, space and time orientation, language, understanding and expression, reasoning) in order to assist and orient the individual as to enhance the approach or immediate referral of the case.
2. Question the persons under custody as for the treatment discharged to him/her as of the moment of his/her arrest, in all places and by all bodies and agencies through which he/she was conducted, paying attention to reports and signs indicating the occurrence of practices of torture and other cruel, inhuman, or degrading treatments.

4. PROCEDURES FOR TAKING DEPOSITION OF A VICTIM OF TORTURE

The testimony taken during the custody hearing does not have the objective of evidencing the occurrence of practices of torture, which shall be assessed through specific procedures with this purpose.

Its purpose is to perceive and materialize the evidence regarding the occurrence of torture and other cruel, inhuman, or degrading treatments, considering the severe consequences that may arise from the maintenance of custody of the imprisoned person under the responsibility of the agents allegedly responsible for the practices of torture, especially after report of the practices made by the person under custody before the judicial authority.

When taking the deposition, the Judge should take into account the specific situation of vulnerability of the persons subjected to practices of torture or cruel, inhuman, or degrading treatments, adopting the following practices in the testimony, whenever necessary:

1. Repeat the questions. Questions shall be repeated or rephrased, as some persons may take a longer time to absorb, comprehend, and remember information.

1. Keep questions simple. The questions shall be simple, as some persons may have difficulty to understand them and answer to them. They may also have a limited vocabulary and have difficulties to explain thing in a way persons find easy to follow up.

1. Make open and non-threatening question. The questions should not be threatening as persons may have an excessively aggressive response to harsh inquiries or may try to please the persons conducting the interview. The questions should also be open as some persons may have the tendency to repeat information provided or suggested by the interviewer.

1. Give priority to listening. Inaccuracy or even mental confusion is common in reports of cases of torture and, thus, inconsistencies do not indicate invalidity of the reports. In cases of difficulty in understanding the report, we advise that the question shall be rephrased in a different way. It is important to respect the decision of the victims that do not want to comment on the violations suffered.

1. Adopting a respectful attitude as for the gender of the person under custody. Women and LGBT persons may feel particularly discouraged to provide information on events of violence experienced by them, especially in cases of sexual harassment or violence, in the presence of men. Men may also feel embarrassed to report cases of sexual abuse suffered by them. The adequacy of language and tone of the interviewer, as well as the presence of women, may be necessary in this context.

1. Respecting the limits of the victim of torture, as this person may not feel comfortable to comment on the violations suffered by him/her, ensuring, among other things, all time required for the reports.

5. QUESTIONNAIRE TO HELP TO IDENTIFY AND REGISTER TORTURE

DURING THE VICTIM’S TESTIMONY

A brief questionnaire may help the judicial authority to identify the practice of torture, at the time of the custody hearings, enabling it to proceed to the procedures for investigation of the alleged crime of torture, in case it is identified.

1. How were you treated since your detention?

Comment: The intention of this question is that the person under custody reports the history, since the police approach until the moment of the hearing, the relationship between him/her and the public officials in charge of his/her custody.

1. What happened?

Comment: In case the person under custody reported a practice of violent acts by the public official responsible for the approach and custody, it is necessary that the report about the officials’ conduct is detailed in order to make it possible to identify an alleged abuse of use of force or violence that may be considered a practice of torture.

1. Where did it happen?

Comment: The report about the place where the violence reported happened may help monitoring the possibility of retaliation by the official responsible for the violence reported, and it may provide the judicial authority with information about the frequency of acts with persons under custody in police stations, battalions, among others.

1. What is the approximate date and time of the occurrence of the violent act by the public official, including the most recent one?

Comment: The information about the time and date is important in order to identify possible contradictions in information present in the police report, making it possible to produce useful information about the real circumstances of the arrest of the person under custody.

1. What is the content of any conversations held with the person (torturer)? What have you been told or asked?

Comment: This question aims at identifying any threats made by the public official, as well as illegal methods to obtain information accusing somebody else. All illegal forms of obtaining information from the arrested person are necessarily made possible due to the practice of torture.

1. Was anybody else informed of the occurrence? Who? What was this person’s response to this report?

Comment: This question aims at verifying persons that may possibly have received threats from public officials, enabling, if the judicial authority decides to do so, threatened persons to be indicated to participate in programs for protection of victims.

6. MEASURES TO BE TAKEN IN CASE OF VERIFICATION OF EVIDENCE OF TORTURE AND OF OTHER CRUEL, INHUMAN, OR DEGRADING TREATMENT

If the existence of evidence of torture and other cruel, inhuman, or degrading treatment is confirmed, the Judge shall take the applicable measures to ensure safety of the person under custody, taking the measures required so that it does not come to knowledge of the officers allegedly accountable for the practice of torture.

Below, there is a list of possible measures to be adopted by the judicial authority that might face such situation, according to the circumstances and particularities of each case, without prejudice to other measures that the Judge may deem necessary for the immediate interruption of the practices of torture or cruel, inhuman, or degrading treatment, in order to ensure health and safety to the person under custody and to support any future accountability of the officers:

1. Recording the detailed deposition of the person under custody with respect to the practices of torture and other cruel, inhuman, or degrading treatment that such person claims to have been subjected to, including a detailed description of the situation and of the persons involved;

1. Inquiring whether the practices were reported at the moment where the report of arrest of a person caught in the act was drawn-up, verifying the existence or not of the proper written registration;

1. Making a photographic and/or audiovisual record whenever the person under custody report or present signs of torture or cruel, inhuman, or degrading treatment, given that this evidence is often unrepeatable;

1. Applying voluntary protective measures to ensure safety and integrity of the person under custody, of his/her family members, and of any witnesses, including immediate transfer of the custody, allocating the responsibility therefor to another body or to other officers; grant of provisional liberty, regardless of the existence of conditions authorizing the change to pre-trial detention, whenever it is not possible to ensure safety and integrity of the person under custody; and other measures required for ensuring safety and integrity of the person under custody.

1. Determining the performance of the *corpus delicti* examination:

(i) if one has not been performed already;

(ii) if the records prove to be insufficient;

(iii) if the potential practice of torture and other cruel, inhuman, or degrading treatment has been committed after the examination was performed;

(iv) if the examination has been performed in the presence of a security agent.

1. Still regarding the *corpus delicti* examination, the following shall be observed: a) the protective measures implemented when the person under custody is taken in order to ensure his/her safety and integrity, b) Recommendation No. 49/2014 of the National Justice Council regarding the provision of requirements to the expert in cases of identification of practices of torture and other cruel, inhuman, or degrading treatment, c) the presence of the lawyer or public defender during the examination.

1. Ensuring that the person victim of torture and other cruel, inhuman, or degrading treatment has the immediate necessary full health assistance, aiming at reducing physical and mental damage and suffering and at providing the possibility to elaborate and resignify such experience;

1. Submitting a copy of the deposition and of other relevant documents to bodies responsible for verifying accountabilities, mainly the Prosecution Service and the Internal Affairs Bureau and/or the Office of the Ombudsman of the body to which the agent held accountable for committing torture or other cruel, inhuman, or degrading treatment is bound;

1. Notifying the judge in charge of the criminal proceeding of the referrals made by the judicial authority and of information arising from this procedure.

1. Recommending to the Prosecution Service that the person is included in victim or witness protection programs, as well as his/her family members or witnesses, when such referral may apply.

[1] During the preparation of the protocol, the orientations present in manuals and guides on preventing and combating torture were taken into account, specially the “Istanbul Protocol – Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment”, “The torture reporting Handbook” (1st edition by Camille Giffard – 2000, and 2nd edition by Polona Tepina – 2015), and “Protecting Brazilians from Torture: A Manual for Judges, Prosecutors, Public Defenders and Lawyers” (Conor Foley, 2013), in addition to the experience gathered with the custody hearings and development of actions to prevent torture within the country.

ATTACHMENT X

Recommendation No. 49 of April 1, 2014

Summary: Provides for the need for compliance, by Brazilian magistrates, with the standards – principles and rules – of the document referred to as the Istanbul Protocol, of the United Nations – UN, and of the Brazilian Protocol of Forensic Expert Examination, in cases of crime of torture, among other provisions.

Source: President’s Office

THE CHAIRMAN OF THE NATIONAL JUSTICE COUNCIL – CNJ, by using the legal and regulatory powers vested;

CONSIDERING the provisions of international treaties entered into by the Federative Republic of Brazil on the matter of direct or indirect combat to torture, especially what is set forth in the Universal Declaration of Human Rights, adopted and proclaimed through Resolution 217 A of the United Nations – UN – General Assembly on December 10, 1948 (art. V); in the Standard Minimum Rules for the Treatment of Prisoners, adopted by the 1st United Nations Congress on the Prevention of Crime and Treatment of Offenders held Geneva in 1955, passed by the UN Economic and Social Council through Resolution 663 C I of July 31, 1957, amended by Resolution 2076 of May 13, 1977 and re-ratified through Resolution 1984/47, of the UN Economic and Social Council on May 25, 1984 (Rules 32 and 33, among others); in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, passed during the 8th United Nations Congress on the Prevention of Crime and Treatment of Offenders (art. 86, item “a”); International Covenant on Civil and Political Rights (Resolution 2200 A (XXI) of General Assembly of December 16, 1966); in the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (Resolution 39/46 of the General Assembly of December 10, 1984, art. 15); in Resolution 40/33 of the General Assembly of the United Nations of November 29, 1985; in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice; in the Convention on the Rights of the Child (Resolution 44/25 of the General Assembly of November 20, 1989); in the American Convention on Human Rights of 1969, ratified by Brazil in 1992 (Pact of San Jose, Costa Rica – art. 8, paragraph 3);

CONSIDERING the content of items III and XLIII and paragraph 3, all from art. 5 of the Brazilian Federal Constitution;

CONSIDERING the provisions of Decree No. 40 of February 15, 1991, which enacted the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (1984);

CONSIDERING the content of Legislative Decree No. 483 of December 20, 2006, through which the Optional Protocol to the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment passed in Brazil on December 18, 2002;

CONSIDERING the provisions of Law No. 9,455/97, which defines the crimes of torture within the scope of the Brazilian legal system, among other provisions;

CONSIDERING the guidelines and standards – principles and rules – registered with the Istanbul Protocol of the United Nations, referred to as the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, submitted to the United Nations High Commissioner for Human Rights on August 9, 1999, aiming at supporting forensic examination experts on how to proceed with the identification, classification, and clarification of the crime of torture;

CONSIDERING the guidelines and standards – principles and rules – registered with the Brazilian Protocol of Forensic Expert Examination in the Crime of Torture, created in 2003, in the scope of the Office for Human Rights of the Presidency of the Republic, aiming at adapting the standards, rules, and guidelines of the Istanbul Protocol to the Brazilian reality for forensic examination experts, police officers, police ombudsman and internal affairs officials, attorneys, members of the Prosecution Service, of the Public Defender’s Office, and of the Judiciary Branch;

CONSIDERING the plenary decision taken in the judgment of Normative Act No. 000235204.2013.2.00.0000, in the 184th Ordinary Session of this Council, held on March 11, 2014;

DECIDES TO:

Art. 1 Recommend to the Courts:

1. – compliance with the guidelines and standards – principles and rules – of the so called Istanbul Protocol, of the UN, as well as of the Brazilian Protocol of Forensic Expert Examination, created in 2003, intended for supporting forensic examination experts and legal professionals, including magistrates, on how to proceed with the identification, classification, and clarification of the crime of torture;

1. – whenever the magistrates become aware of concrete or reasonable news of practices of torture, the formulation of requirements to the expert medical examiner or to another forensic expert (in cases of joint work), depending on the particular case, which shall be structured as follows:

1st) are there medico-legal findings that evidence the practice of physical torture?

2nd) is there clinical evidence that indicates the practice of psychological torture?

3rd) are there medico-legal findings that evidence summary execution?

4th) is there medico-legal evidence that may be typical, indicative, or suggestive of the occurrence of torture against the examinee that might, however, be exceptionally caused by something else? Please specify the answer;

1. – to pay attention to the need for including in the records of the police investigation or of the case other evidence that may be relevant for the clarification the facts that may classify the crime as torture, such as:

1. photographs and footage of the persons assaulted;

1. need for including the fingerprint(s) of the victim(s) in the corresponding forensic medical examination report (AECD), in order to prevent frauds in the corresponding identification;

1. request to take the victim before the judge on duty or the person responsible for receiving, eventually, the report/complaint provided by the Prosecution Service;

1. obtaining the general list of incarcerated persons or inmates of the facility of deprivation of liberty;

1. a list of the incarcerated persons, criminal patients, or adolescents authorized by the administrative authority to, on the day of the facts, attend to courses or any other activities outside the facility of deprivation of liberty or detention facility, so that they may be subject to forensic medical examination (AECD) as quickly as possible;

1. request for a copy of the records of the infirmary of the penitentiary, public prison, custody hospital, hospital for psychiatric treatment, or detention unit, including the name of the inmates assisted on the date of the possible offense;

1. referral of the employee(s) of the prison, custody hospital, or detention unit to go through the AECD, especially those appointed as potential offenders;

1. request to general hospitals or emergency rooms close to the incarceration facilities, public prisons, custody hospitals, or detention units the list of persons assisted on the day and time of the alleged criminal act, which may allow an indirect AECD;

1. testimony in court of the directors or persons responsible for the prisons, public prisons, custody hospitals, or detention units on the reports or suspicions of torture;

IV – require that the police commissioners responsible for carrying out investigations, the judges on duty, or the judges responsible for judging such proceedings film the depositions of arrested persons, criminal patients, or adolescents, in case of report or suspicion of the occurrence of torture.

Article 2. Enact and submit a copy of this Recommendation to all Courts.

Justice Joaquim Barbosa

Chairman of the National Justice Council

ATTACHMENT XI



**Legend**:

III ENCONTRO NACIONAL DE COMITÊS E MECANISMOS DE PREVENÇÃO E COMBATE À TORTURA = III NATIONAL MEETING OF NATIONAL COMMITTEES AND MECHANISMS FOR PREVENTING AND COMBATING TORTURE

Brasília Letter

Brasília, July 3, 4, and 5, 2018

The parties participating in the III NATIONAL MEETING OF NATIONAL COMMITTEES AND MECHANISMS FOR PREVENTING AND COMBATING TORTURE, representatives of the National Committee and Mechanism for Preventing and Combating Torture (Law 12,847/2013), of the State Committees and Mechanisms for Preventing and Combating Torture, and State Councils for Human Rights, NGOs and social movements, Justice System officials, among other areas, researches and authorities, together on July 3, 4, and 5, 2018, in the Ministry of Human Rights, in Brasilia, Federal District, present the competent authorities and the Brazilian society all proposals[[1]](#footnote-1) resulting from the analyses of the needs to strengthen the National System to Prevent and Combat Torture in Brazil (SNPCT), created by Federal Law No. 12,847/2013:

1. WAR ON DRUGS AND TORTURE: ASSESSMENTS ON A PROHIBITIONIST WAR

* 1. Urgent revision of the current Brazilian public prohibitionist policy on drugs, one of the main instruments used to promote the genocide of Afro-Brazilian youth, as to prevent and combat torture, minimizing overcrowding in prisons and the social stigma related to the criminalization of illegal drug possession and trade.[[2]](#footnote-2)
  2. Implementation of public policies specific to children and teenagers working in drug trade, characterizing them as victims (of slavery, for example), instead of criminalizing them;
  3. Completion and expansion the implementation of provisions/services of the social assistance and healthcare policy, Law No. 10,216/2001 and MS Ordinance No. 3,088/2011 that ensure treatment, with no restriction of liberty under a secularism and damage reduction point of view. Access by the population deprived of liberty to these provisions/services shall be ensured;
  4. A more realistic campaign for education and prevention regarding alcohol and other drugs based on evidence and seeking a credible dialogue between State and society;

1.5. Repudiation of the recent MS Ordinance No. 3,588/2017, that contradicts the psychiatric reform and the recommendations of Federal Law No. 10,216/2001 and MS Ordinance No. 3,088/2011;

1.6. Preparation of a full compensation policy for persons and territories impacted by the current drug policy.[[3]](#footnote-3)

1. JUSTICE SYSTEM IN THE GUARANTEE OF PREVENTION AND FIGHT AGAINST TORTURE

* 1. Management towards effective participation of the justice system institutions in state committees;
  2. Integration with CNJ, CNMP, MPs, DPEs, DPU, PFDC, PRDCs with PGEs to promote creation of state systems for prevention and fight against torture;
  3. Promote, within the justice system institutions, continuing education policies for agents regarding the Istanbul Protocol;
  4. Creation and reinforcement of independent external ombudsman offices, under the responsibility of civil society, and politically and financially independent, in the MPs, DPEs, and Police Departments;
  5. Recommendation that Public Defender’s Offices create specialized centers to inspect police stations and provide social and legal assistance to persons caught in the act and investigated in police procedures;
  6. Potentiation of the affirmative action policy and the quota system for inclusion in institutions of all scopes of the justice system;
  7. Preparation, together with CF/OAB and the representation bodies of the Defender’s Offices and CNJ, of a national protocol to the drawing-up of offenses that provides, among others, for the absence of an attorney or public defender to necessarily entail the nullity of the act.

1. DENIAL OF ELEMENTARY RIGHTS AS TORTURE
   1. Reinforcement of the concept of denial of elementary rights as inducer of physical and moral suffering caused intentionally, hence, torture;
   2. Involve the competent authorities in the process of specific identification of torture victims through denial of elementary rights, pursuant to the national and international laws and regulations;
   3. List and disclose to society memorable cases of violation of elementary rights that are deemed torture.

1. THE RIGHT TO COMMUNICATION IN ENVIRONMENTS OF DEPRIVATION OF LIBERTY AS A GUARANTEE OF FIGHT AGAINST THE STATE OF EXCEPTION

* 1. To request the preparation and implementation of the protocol on the exercise of the right to communication (internal and external) in places of deprivation of liberty from the bodies of the Federal and State Executive Branch, together with the rights councils, ensuring participation of the civil society;
  2. To request the preparation and implementation of a protocol on the dialogue with arrested persons and official representatives during and after institutional inspections, surveys, and visits from the inspecting bodies;
  3. To request that the Federal and State Executive Branch hold debates about the service of intelligence within the scope of the places of deprivation of liberty in order to define a specific public policy and limits for their actions (including about censorship).
  4. To request, through the inspecting bodies, that the managers of the prison facilities input the records related to assistance (health, education, legal assistance, etc.) into the information systems to ensure access.

1. IMPRISONED WOMEN: STRATEGIES FOR ERADICATING THE INVISIBILITY OF THE VIOLENCE AGAINST WOMEN IN THE PRISON SYSTEM.

* 1. Linking and strengthening the state committees and other forums about policies for women who are imprisoned or former inmates (MJ and SPM/PR Interministerial Ordinance No. 210/2014);
  2. Raising awareness among centers for education of members of the justice system and of the socio-educational system and for criminal enforcement and public security agents on the issues of ethnicity and race, of imprisoned women and LGBT persons, highlighting the debate about the Bangkok Rules (UN Resolution No. 2010/16) with emphasis on preventing and combating torture;
  3. Committees and state mechanisms must produce recommendations and reports on the specificities of women and of the Afro-Brazilian and LGBT populations, appropriating the documents/proposals already produced regarding these populations;
  4. The committees and mechanisms must monitor the execution of HC No. 143641/SP/STF and of pardon decrees for women, as well as bills about the legal framework for early childhood.

1. SINASE: HOW TO STRENGTHEN THE MODEL OF THE SOCIO-EDUCATIONAL SYSTEM AND STOP THE IMPRISONMENT OF ADOLESCENTS UNDER THE SAME CIRCUMSTANCES AS ADULTS

* 1. Monitoring, establishing contrary position, and resolving upon the non-approval of the Constitutional Amendment Proposals (PECs) on reduction in the age of criminal responsibility and of the Bills aiming at increasing the length of imprisonment, as well as of the militarization of socio-educational agents and facilities;
  2. Resolving upon the implementation of the preliminary hearing in up to 24 hours, with the presence of the defense, according to the American Convention on Human Rights (Pact of San José, Costa Rica) and the Statute of the Child and Adolescent (ECA), in the scope of the investigation of the infraction;
  3. Resolving upon the increase in the co-financing of non-custodial measures (Probation (LA) and Community Services (PSC)) in Brazil by States of the Federal Government;
  4. Articulating the CNPCT/MNPCT with CONANDA in order to prepare national guidelines on prevention and intervention security in detention units emphasizing socio-education and prevalence of the pedagogical nature of the socio-educational measures;
  5. Monitoring, through CNPCT/MNPCT, the Evaluation and Monitoring Committee of SINASE established within the scope of CONANDA, ensuring inclusion of the MNPCT Reports and Reports of the State Mechanism to Prevent and Combat Torture (MECPTs) in the diagnosis of the evaluation and monitoring process;
  6. Working together with the National Justice Council (CNJ) to implement monitoring of the application of Precedent No. 492/STJ in the Courts of Appeals of the Brazilian states (the infraction similar to drug trafficking shall not mandatorily lead to imposition of detention).

1. FIGHT AGAINST THE PRAISE OF TORTURE IN THE MEDIA

* 1. The Mechanisms and Committees shall create work groups, in partnership with the institutions of the Prosecution Service, the Federal Public Defender’s Office, and the Brazilian Bar Association (OAB), on media and citizenship, for education, enforcement of rights, and compensation for damage, through judicial and extrajudicial actions;
  2. Intensifying the administrative actions through the Ministry of Communications and expanding the public repercussion of the responsibility of the State to promote democratization of communication;
  3. Suggesting that the committees and mechanisms choose as their main theme the approach to the media and the praise of violence and torture and that the monitoring missions of the MNPCT take into consideration the effects of praise of torture in the local media;
  4. The SNPCT shall operate as to pressure the Government through its several institutional expressions, and shall use efforts and active legal measures in order to restrain abuse and violation in TV shows;
  5. The committees and mechanisms shall repudiate vehemently the media practices that directly or indirectly incite fear and violence;
  6. The mechanisms shall recommend, considering the violations committed on the means of information, that: the public security agents shall safeguard the fundamental rights of the imprisoned and confined persons, restraining their exposition on TV shows.

1. INTERSECTORAL COORDINATION FOR ASSISTANCE TO VICTIMS AND FAMILY MEMBERS

* 1. Engaging the Public Defender’s Office and the Prosecution Service in the access to justice and remediation;
  2. Training SUS and SUAS agents to provide assistance services for victims and their family members;
  3. Coordinating the protection systems, seeking to construct instruments and forms of inclusion of victims or potential victims of the practice of torture or ill-treatment in specific protection programs and to use efforts for the implementation of the Protection Service for Special Deponents (SPDE) in States;
  4. Mapping the national experiences (CNPCT’s duty), together with other national collegiate bodies, especially the National Commission for Eradication of Slavery – CONATRAE, related to victims and family members;
  5. Constructing, in social control spaces, guidelines enabling systematization of a policy for full compensation of the victims of torture and violence by the State, as well as of their family members;
  6. Promoting in social control environments a dialogue for construction of services for psychosocial care within the scope of the SUS and the SUAS for assistance of victims of violence of the State and their family members.

1. THE POLICE THAT KILLS AND DIES: WHAT IS OUR MODEL OF POLICE?

* 1. Encouraging the in-depth debate, based on the perspective of prevention and combat to torture, by the committees and mechanisms on the current police operational system, given the two axes below:

Structural Axis:

1. National police model x Local model;
2. Full cycle;
3. Unified public inclusion gateway for military and civil police departments;
4. Demilitarization – Preventive, humanized, and community police.

Non-operational Axis:

1. Strengthening of external ombudsmen offices – ensuring their independence;
2. Continuing education focused on the model of police forces trained for ensuring rights to all citizens, respecting their specificities;
3. Developing flows and protocols aligned between all institutions in the criminal justice system for the monitoring of reports of torture and especially within the scope of custody hearings;
4. Developing an integrated methodology of a database for registration of the profile of the victim and of the aggressor: race, gender, location, etc.;
5. Revoking administrative prison within the scope of military police forces.

* 1. Acting towards revocation of Law No. 13,491/2017, which amended the Brazilian Military Criminal Code.
  2. Articulating the representatives of the organizations related to the memory and truth in committees and promoting public policies directed to justice in transition that effect the right to memory, justice, truth, full compensation, and non–repetition of violations of human rights, pursuant to the recommendations of National Truth Commission (CNV);
  3. That mechanisms incorporate visits to military prisons to their work plans.

10. EFFECTIVENESS OF SNPCT: CREATION OF CEPCTs and MEPCTs

* 1. Creation of the National Network of State Committees for Prevention and Fight Against Torture and bodies of representatives of state committees and state mechanisms to participate in CNPCT meetings;
  2. Mobilization of bodies of the Justice System, PGR, and Legislative Assemblies at the national level (CNPCT) to verify the incidence thereof on the effectiveness of committees and mechanisms for prevention and fight against torture in the UFs, with responses to official letters to the states’ focal points;
  3. Establishment of a financing policy for the National System to Prevent and Combat Torture (SNPCT), prioritizing managements before the National Penitentiary Fund (FUNPEN);[[4]](#footnote-4)
  4. Draft of a term of commitment for the candidates of the 2018 elections;
  5. Implementation of a permanent strategy of virtual communication between mechanisms;
  6. Holding of annual face-to-face meetings, and each mechanism shall take turns organizing them;
  7. Holding of meetings with the State Committees for Prevention and Fight Against Torture to build the II Integrated Action Plan for Prevention and Combat;
  8. Holding of the IV National Meeting of Committees and Mechanisms for Prevention and Fight Against Torture, considering the past meetings – the I, II, and III Meeting – in 2019, organized by the General Coordination of Fight Against Torture and Institutional Violence of the Ministry of Human Rights, by the National Committee for Prevention and Fight Against Torture, the National Mechanism of Prevention and Fight Against Torture, state mechanisms, and a representative of the National Network of State Committees for Prevention and Fight Against Torture to discuss and approve the II Integrated Action Plan for Prevention and Fight Against Torture;
  9. Promotion of the attendance and participation of Afro-Brazilians in all selection processes and/or public notices for experts in all mechanisms, through the enactment of affirmative policies currently consolidated in ethnic and racial quotas, from which other important social stakeholders have benefited;
  10. Ensure attendance and participation of Afro-Brazilian Social Organizations of national relevance, historically involved in prevention and fight against all forms of torture and social exclusion, in the State and National Committees;
  11. Ensure all reports prepared by National and State Mechanisms and Committees ensure insertion of the ethnic and racial topics, and their singularities, as a proposal for deconstruction of the myth of racial democracy, denaturalization of subjective and objective racism, and consolidation for the social landscape of a new, important moment of overcoming of inequalities;
  12. Management to ensure proper work conditions, as compatible with the position and the exercise of prerogatives, including health hazard conditions due to exposure of experts during their activities;
  13. Promotion of monitoring visitations by MNPCT aiming at reinforcing the creation of state committees and mechanisms;
  14. Creation by CNPCT of committees to promote creation of committees in the states that do not have such bodies;
  15. Prepare a national campaign to create and implement state committees and mechanisms, prepared by CNPCT together with the National Network of State Committees for Prevention and Fight Against Torture;

* 1. Follow-up, in addition to torture in prisons, on torture in public spaces, such as political protests, occupancies, evictions and others, as well as against the population in street situation.

11. MONITORING REPORTS

* 1. Drafting a cooperation agreement between the National Ombudsman for Human Rights and Committees and Mechanisms of Prevention and Combat to Torture, in order to establish the communication protocol to monitor the reports received (subject matter of the reports, the bodies responsible, and aimed responses);
  2. Implementing a post-visit protocol between the National Ombudsman for Human Rights, Mechanisms, Committees and state and national Councils of social control of the reports received from the states and facilities visited, aiming at a protection and prevention policy regarding potential retaliations against the victims of torture and their family members;
  3. The National Ombudsman for Human Rights shall implement a protocol for monitoring complaints, given the lack or insufficiency of responses from the bodies responsible, through the notification to the regulatory authorities (CNJ, CNMP, and state internal affairs bureaus);
  4. Implementing routine monitoring of urgent or emblematic cases between CNPCT and the MNPCT in order to implement routine processing of complaints pursuant to Resolution No. 04/2016 of the CNPCT.

12. EXPERT EXAMINATION IN THE CRIME OF TORTURE

* 1. Developing strategies to diffuse and implement the Istanbul Protocol and the Brazilian Protocol of Forensic Expert Examination in the Crime of Torture nationwide for all agents involved in preventing and combating torture;
  2. Creating interdisciplinary groups of experts from Brazilian Forensic Examination Institutes to work specifically with the complaints regarding practices of ill-treatment, cruel, inhuman, and degrading treatment, and torture;
  3. Creating and promoting the integration between the expert examination and institutions for protection of victims.
  4. Working towards the separation of the forensic examination institutes from the public security structures and the like, ensuring administrative and financial autonomy and independence.

1. For purposes of registration, all proposals were adopted unanimously. In cases of divergence, the Selection Commission conducted the voting session and registered the votes. In this cases, we present the registration number in a footnote in the end of the proposals. [↑](#footnote-ref-1)
2. There were disagreements regarding the prohibitions, leading to the following vote: in favor (37), against (13), and abstentions (3). [↑](#footnote-ref-2)
3. There were disagreements: 1 participant was against the proposal [↑](#footnote-ref-3)
4. There were disagreements regarding the inclusion of the National Penitentiary Fund: in favor (23), against (2), and abstentions (3). [↑](#footnote-ref-4)