Alternative report to the second periodic review of Brazil before the United Nations Committee against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

About the authors:

AGENDA NACIONAL PELO DESENCARCERAMENTO	**The National Agenda for Decarceration emerged in 2013 and, in 2016, at the First National Meeting for Disarmament, it was consolidated as a national social movement that today brings together civil society organizations, family members and survivors of imprisonment. Its mission is to confront mass incarceration and the violence produced by the prison system. The articulations of the organization take place to denounce and combat the project of death managed by the State through its penal policies against the black, indigenous and poor population.**
conectas direitos humanos	**Conectas Human Rights is a civil society organization whose mission is the realization of human rights and the fight against inequalities with the aim of building a just, free and democratic society.**
justiça global	**Justiça Global is a civil association dedicated to promoting social justice and human rights through research, training and the preparation of materials on the human rights situation in Brazil.**

PASTORAL CARCERÁRIA "Estive preso e vieste me visitar"	**The National Prison Pastoral is a social pastoral of the National Conference of Brazilian Bishops (CNBB), responsible for providing and organizing religious and humanitarian assistance in prisons in the country, based on Article 5, item VII of the Constitution of the Republic, and Articles 11, 24 and 41 of the Law of Criminal Enforcement. Present in all states of the country, it is guided by the uncompromising defense of life and the physical and psychological integrity of people subjected to punishment, collecting complaints of violations of rights and torture against prisoners and referring them mainly to the organs of Criminal Enforcement.**
OMCT SOS-Torture Network	**The World Organisation Against Torture (OMCT) works together with the 200 organisations that make up the SOS-Torture Network to end torture, fight impunity and protect human rights defenders around the world. Together, we are the largest collective mobilised globally in opposition to the practice of torture in over 90 countries. As a loudspeaker for local voices, we support our allies on the ground and provide direct assistance to victims. Our International Secretariat is based in Geneva and has offices in Brussels and Tunis**

1. Introduction

This report analyses the country's situation in relation to its international obligations on the eradication of torture. The more than 20 years since the country's last review have been marked by hyper incarceration, with Brazil's prison population jumping from 230,000 in 2000 to over 773,000 in 2019[1]. In the pandemic, the number may have reached 919,000 people imprisoned according to the National Council of Justice[2].

[1] Brasil. Dados sobre população carcerária são atualizados. 2020. https://www.gov.br/pt-br/noticias/justica-e-seguranca/2020/02/dados-sobre-populacao-carceraria-do-brasil-sao-atualizados

[2] https://oglobo.globo.com/brasil/noticia/2022/06/pandemia-pode-ter-levado-brasil-a-ter-recorde-historico-de-919651-presos.ghtml

The report was produced by civil society organisations operating in various regions of the country, as well as with international experience. The authors of the report have direct contact with places of deprivation of liberty in the country, including the experience of people directly affected by imprisonment.

1.1.Legal status of the absolute prohibition of torture

Brazilian legislation does not consider acts of torture to be universal crimes, but there are some provisions that authorize its application to acts committed outside the national territory, provided that certain requirements are met. The law that criminalizes torture, in its article 2, foresees its application for crimes committed outside national territory only in two cases: the victim was Brazilian; or the person responsible for the act of torture was in a place under national jurisdiction. Apart from these hypotheses, it is still possible, in theory, to apply the general rule on extraterritoriality provided for in article 7, II, of the Brazilian Penal Code, which brings two other hypotheses for the application of Brazilian criminal law that can be used in relation to acts of torture: an act committed by a Brazilian citizen; or an act committed in a Brazilian aircraft or vessel, of private property, as long as it has not been tried in the foreign territory where it was committed. In these two cases, there are five additional requirements that further limit its practical application.[3]

As for the criminalisation of all forms of Cruel, Inhuman or Degrading Treatment, cases that do not leave serious and obvious physical marks are often disregarded for crimes with soft penalties, such as ill-treatment and abuse of authority.

2. National System for the Prevention of Torture (SNPCT)

Brazil implemented its National System for Preventing and Combating Torture, headed by the National Mechanism for Preventing and Combating Torture, in 2014. While the Mechanism has been gathering momentum since its creation, it has been severely attacked by the Bolsonaro administration and has been dealing with a significant backlog.

On 10 June 2019, through Decree 9.831, the Federal Government exonerated all the experts of the MNPCT, transformed the positions into volunteers and changed the composition of the Committee. That year, after articulation by civil society, the ADPF 607 was presented to the STF, which aimed to declare the non-receipt of the Decree for incompatibility with constitutional

[3] Article 7º, §2º: § 2º - In cases under clause II, application of Brazilian law depends on the concurrence of the following conditions: a) the perpetrator enters Brazilian territory; b) the fact is punishable also in the country where it was committed; c) the crime is included among those for which Brazilian law authorizes extradition; d) the perpetrator is not acquitted abroad or has not served his sentence there; e) the perpetrator is not pardoned abroad or, for another reason, punishability is not extinguished under the most favorable law.

principles, and a Public Civil Action against the legislation, which is underway in the Federal Court. The latter had its injunction granted, ensuring the temporary suspension of part of the Decree and reappointing the experts. The former was finally judged to be unanimously valid in March 2022.

Furthermore, since last year a series of manoeuvres have been carried out by the Ministry of Women, Family and Human Rights to prevent the members of the National Committee for the Prevention and Combat of Torture from taking office. The Committee was created together with the National Mechanism to integrate civil society and the government in the analysis of public policies related to the eradication of torture in the country, ensuring the participation of civil society in the selection of MNPCT experts and guaranteeing the follow-up of its recommendations. By law, the body is chaired by the head of the Ministry of Women, Family and Human Rights, but it has a majority of its members representing civil society, ensuring that civil society's view prevails in the discussions. The Ministry has a history, since the beginning of the administration in 2019, of trying to empty the body: in that year, the elected members of civil society were only sworn in and had a meeting called 10 months after the beginning of the mandate.

In 2021, the government tried to prevent the registration of organisations nominated by civil society, forcing representatives to seek the judicial system for simple demands and, effectively, prolonging the non-functioning of the collegiate since June 2021.

In relation to the state mechanisms, according to a survey carried out by the Mechanisms themselves, there are only four local mechanisms functioning in the country, in the states of Pernambuco, Rio de Janeiro, Rondônia and Paraíba, all of which operate with a number of experts far below that required, the first two with 6 and the last two with 3.

Summing all Mechanisms, the structure is composed of 29 experts at federal and state level to act in a country with approximately 1,381 prisons; 453 socio-educational units; 159 public psychiatric hospitals, in addition to private ones; 1,800 therapeutic communities; 4,533 shelters; and 7,292 long-stay institutions for the elderly, data that are not updated or complete and that refer to 2020. Thus, we are talking about at least 15.618 spaces of deprivation of freedom and millions of people deprived of freedom, which demonstrates the unfeasibility of the meager implementation so far.

In relation to the State Committees, the situation is not better according to the survey. Of the 20 States that, in theory, have formed its Committee, 18 count with public security members in its composition, hurting the autonomy of these collegiate to act in the confrontation of institutional violence.

In at least 12 of the 26 States and the Federal District do not possess any legislation that foresees the institution of mechanisms or committees; 7 do not possess forecast for Mechanisms, being that

4 of them have forecasts in the respective Laws attributing to the committees competences that are part of the work of the Mechanisms, without the MEPCTs even being foreseen. It is even more serious if we observe in these same Committees the presence of State agents, including those belonging to the public security forces - further restricting the debate of civil society and generating insecurity for whistleblowers of rights violations committed by the State.

Brazil desperately needs to implement its antitorture public policy in line with Law 12.847\2013 and its international obligations, giving civil society full control of the NPM and expanding the system with more local Mechanisms that would adequately cover all places of detention in the continental country.

3. Torture in times of mass incarceration

According to data provided by the National Penitentiary Department (DEPEN), the number of people detained in the country increased by over 707% between 1990 and 2016, jumping from around 90,000 to over 726,000. The growth in the number of incarcerated women was even more accelerated, increasing by 656% between the years 2000 and 2016 alone.[4]

This large incarceration is structured by racial discrimination and ethnic selectivity, which manifests itself in the material and symbolic construction of punishment, evoking the slave tradition of cruel control of bodies, most of which are of black origin. Although the Brazilian population is made up of 53% self-declared black individuals, 66% of those imprisoned are black. Such number is reached by a policy of police approaches (stop-and-frisk) that disproportionately affect black people and foster the number of preventive arrests for trivial crimes and police violence.

One of the dimensions of the criminal justice system's disproportionate impact on non-white people is the practice of criminal recognition by photographs. In the first plan it is highlighted that there are no official data on the subject in the whole country, but the Public Defender's Offices have conducted two researches that point to the high incidence of racism in the justice system and in the police regarding criminalisation. The first is from the Rio de Janeiro Public Defender's Office, which determined that 80% of the cases of miscarriage of justice that led to imprisonment and subsequent acquittal based on photographic recognition fell on black people[5] , and in 86.2% of these, preventive detention was decreed between the years 2019 and 2020. The second, made by CONDEGE[6] analyses the situation for two months throughout the country from the analysis of

[4] Tortura em tempos de encarceramento em massa. Pastoral Carcerária. 2018.
[5] https://sistemas.rj.def.br/publico/sarova.ashx/Portal/sarova/imagem-pge/public/arquivos/Relat%C3%B3rio__DPE-RJ.pdf
[6] https://sistemas.rj.def.br/publico/sarova.ashx/Portal/sarova/imagem-dpge/public/arquivos/Relat%C3%B3rio_-_CONDEGE_-_Reconhecimento_Fotogr%C3%A1fico.pdf

28 cases and 32 accused who were in the situation described above. Cases of imprisonment due to judicial error based on photographic recognition occurred in 10 states with 24 of the 32 affected being black and remand in custody being decreed for 19 of these.

3.1.Custody Hearings

The large majority of people detained in Brazil were arrested 'in the streets', as the direct result of stop-and-frisk tactics, or in flagrante delicto for small patrimonial or drug related charges. Despite that, Brazil never had a policy for first hours of detention, and people would be in jail for months before appearing before a judge. This started to change in 2015 as the judicial system started to implement 'custody hearings', in which a person arrested must appear before a judge within 24 hours.

There is no specific provision in national legislation ensuring that detained persons are immediately informed of their rights. The only provision in this sense is item LXIII of Article 5 of the Brazilian Constitution, which states that "the prisoner shall be informed of his rights, including the right to remain silent". The constitutional provision, however, has not been interpreted as self-applicable. At this moment, the issue is being partially debated by the Federal Supreme Court in the judgment of Extraordinary Appeal 1.177.984, in which the Court will decide whether the duty to inform the prisoner of his right to remain silent is mandatory during a police approach, under penalty of the evidence collected being considered illicit. Outside the specific issue of the right to silence and in these limiting circumstances, there is no legal guarantee that the person arrested will be informed of their rights. The guarantee of the custody hearing, analyzed below, however, could, in theory, collaborate to mitigate the problems arising from this lack.

The custody hearing, which was only created by an administrative bylaw of the National Council of Justice[7], was incorporated into the legal system on 23 January 2020, through the amendment of Article 310 of the Code of Criminal Procedure by Law 13.649/2019. The original text expressly prohibited the holding of custody hearings in virtual mode. Despite this advance in formal terms, there was quickly a series of setbacks during the COVID-19 pandemic, some of which are proving more and more likely to become definitive.[8]

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

[7] Resolution CNJ 213/2015 - https://atos.cnj.jus.br/atos/detalhar/2234
[8] https://atos.cnj.jus.br/atos/detalhar/3246

In the same period, the CNJ approved Resolution 329/2020[9] that stabilized the virtual hearing[10] as a rule in criminal proceedings. The second step, in November 2020 in spite of the legislation, the CNJ also allowed the realization of virtual custody hearing (Resolution 357)[11] . The virtual hearing was defended in an international event by the then President of the Federal Supreme Court and the National Council of Justice on April 30, 2021, demarcating the body's guideline for implementing this method that will potentially make the detection of torture by the custody hearing unfeasible[12].

It is important to highlight that Resolutions do not have the power to modify federal laws, but also seeking to suppress the recently approved legislation the Association of Judges of Brazil filed in June 2021 in the Supreme Court the Action of Unconstitutionality of n. 6.841 under argument of celerity for the criminal process and supposedly to ensure the distance measures established for the pandemic - which was known to be exceptional, even if the result of an ADI is not. The case itself was voted on in the virtual plenary session, with the majority of the Justices voting for the injunction authorizing the procedure by videoconference, with a highlight being requested by one of the Justices referring the vote to the in-person plenary session, removing it from the agenda. Even so, the prohibition of virtual custody hearing is suspended by the injunction.

According to the organization Institute for the Defense of the Right to Defense (IDDD), in 2021, with the cooling down of the pandemic, only a few states had returned with in-person custody hearings: Mato Grosso do Sul, Distrito Federal, Espírito Santo, Rio de Janeiro and Amapá . Some other states, such as São Paulo, have recently resumed hearings in person. [13]

It is essential to highlight the violations of rights that occurred during this period, as well as the possible setbacks if virtualization becomes an effective practice: the Public Defender's Office of Bahia, in a recent survey, pointed out the underreporting of 84% of torture cases during the pandemic because of the suspension of in-person hearings, and it is worth noting that such impact further aggravated the situation of concealment of torture data against black people in the country, since the average profile of people arrested in the capital of the State of Bahia, Salvador, is of black

[9] https://atos.cnj.jus.br/atos/detalhar/3364

[10] Since 2019, the National Council of Justice had been seeking the implementation of videoconferencing for hearings in general, as revealed by the approval of Resolution 55/2019, which guided State and Federal Courts to adopt virtual procedural acts in criminal actions, including in the Jury Procedure, despite the existence of several notes on the negative impacts that the virtualization of criminal proceedings could bring (such as the curtailment of broad defence, difficulty of communication between defender or lawyer and assisted and, mainly, the unfeasibility of detecting torture).

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

[13] https://iddd.org.br/wp-content/uploads/2021/10/justica-virtual-e-direito-de-defesa-1.pdf

people (98%)[14] . A survey conducted by the Public Defender's Office in Rio de Janeiro also indicated that the absence of custody hearings had a direct impact on the detection of torture, considering that only 0.83% of the cases were registered between March and August 2020, the period in which these hearings were suspended, and with the return of these hearings, 24% of those interviewed between August and December of the same year, once again the majority of those affected were black (8 out of every 10) and in 65% of the cases the perpetrator of the torture was a police officer[15].

A survey by the São Paulo Public Defender's Office, for its part, indicates that only 2% of the arrests in flagrante delicto made in São Paulo during the pandemic - the period in which custody hearings were suspended - had expert reports, which, in practice, makes it impossible to verify possible police violence and violations of rights. Finally, a survey conducted by the CNJ itself and published by the Folha de Sao Paulo newspaper pointed out that 52.9% of the places where virtual custody hearings were held in the state capitals and 64.7% in the interior did not have a camera that could see the whole room or an external camera that would guarantee that there were no agents in the vicinity.

It is important to note that the process of identifying and documenting the practices of torture and other cruel, inhuman and degrading treatment was already challenging when the custody hearings began to be implemented in a face-to-face setting, so from the determination of the National Council of Justice (Resolution CNJ 213/2015) the judicial authorities were given detailed guidelines on how to prevent and combat torture, including those methods that do not leave visible and/or assessable marks in the corpus delicti examination. The authorities were also given guidance on the environment in which custody hearings should be held, with explicit prohibitions on the presence of police officers responsible for the arrest or investigation during this time or even during the corpus delicti exams.[16]

However, a survey conducted by Conectas Human Rights soon after the implementation of the custody hearings, between 2015 and 2016, found that the institutions of the São Paulo justice system were already acting without observing the CNJ guidelines, sometimes reproducing

[14] https://www.defensoria.ba.def.br/noticias/subnotificacao-de-torturas-durante-prisoes-em-flagrante-atinge-84-na-pandemia-mostra-pesquisa-da-defensoria/

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

[16] Publication by Conectas Human Rights systematizes the main national and international norms on the topic and, especially, the guidelines present in Resolution 213/2015 of the National Council of Justice (CNJ), in the Istanbul Protocol and in reports from civil society research conducted on custody hearings in recent years. Available at: https://www.conectas.org/publicacao/caderno-de-apoio-identificacao-documentacao-e-prevencao-de-tortura-em-audiencias-de-custodia/ .

institutional violence against people in custody or invalidating their accounts and even justifying abuses committed by police officers, omitting to forward the complaints made for proper investigation.[17]

Another important survey conducted by the same organization from this first one, in 2015, and by the Institute for the Defense of the Right to Defense, in 2018[18], which focused on investigating the flow of complaints made in custody hearings, found that the military police of the state of São Paulo was identified as at least one of the parties responsible in more than 70% of the cases with reports of torture or mistreatment. On the other hand, of the 53 cases analyzed, none led to the institution of criminal proceedings against the military, nor did any convictions or charges at the administrative level. This scenario was strongly endorsed by the omission of the actors of the common justice system but also supported by the enactment of Law No. 13.491 of 2017, which expanded the jurisdiction of the Military Justice, a point that will be addressed in detail below.[19]

3.2 Food Insecurity

The pandemic revealed the systematic violations of rights that exist in the Brazilian prison system. One of them concerns hunger. The lack of basic food has always been a reality in Brazil's prisons. In a scenario in which the provision of food by the State to prisoners is already extremely precarious, the curtailment of the possibilities of sending food and basic survival items by the families themselves to people deprived of liberty has further limited the minimum conditions of food. Restricted to what is provided by the State, the food has become insufficient, inadequate and sickening, which demonstrates the logic even more perverse.

According to the organisation Pastoral Carcerária[20] the delivery of food by family members was suspended in at least 65.9% of the country's prison units with less than a month of the pandemic. The survey conducted in 2021 by the National Agenda in 15 Brazilian states indicates that there has been a severe worsening of conditions, especially with regard to food security. This became scarce and with an extremely insufficient variety of nutrients, being pointed out that the average food in the country is only three meals a day, with around 12 hours of interval between dinner and breakfast, a period in which prisoners would not be able to obtain food. It also highlights that a

17 Tortura Blindada: como as instituições do sistema de justiça perpetuam a violência nas audiências de custódia. Disponível em: https://www.conectas.org/publicacao/tortura-blindada/#wpcf7-f18339-o1

18 Instituto de Defesa do Direito de Defesa. O fim da liberdade: a urgência em recuperar o sentido e efetividade das audiências de custódia. Disponível em: https://iddd.org.br/wp-content/uploads/2020/07/SumExecutivo_web_simples.pdf

19 Investigações em labirinto: os caminhos da apuração das denúncias de violência policial apresentadas em audiências de custódia. Disponível em: https://www.conectas.org/publicacao/investigacoes-em-labirinto/

20 Pastoral Carcerária Nacional. **Pastoral Carcerária divulga dados de questionário sobre coronavírus nas prisões.** 9 de abril de 2020. Disponível em: <https://carceraria.org.br/combate-e-prevencao-a-tortura/pastoral-carceraria-divulga-dados-de-questionario-sobre-coronavirus-nas-prisoes>.

large part of the food is supplied by outsourced companies, affecting 1/3 of the states surveyed (6), which have in their curriculum complaints of irregularity in the timetable, meals unfit for consumption and low quantity and quality in several of these states. In at least 8 of the 15 states there were reports of food poisoning (Acre, Amazonas, Bahia, Goiás, Paraná, Piauí, Ceará and Minas Gerais). In relation to hunger, the situation is even more worrying: the research brought that in Ceará there were, in March 2021, 30 inmates hospitalized with symptoms of vitamin C and D deficiency being these related to nutritional issues; in Piauí, two units between 2020 and 2021, according to technical report of the Ministry of Health had an outbreak of beriberi[21], a disease caused by lack of vitamin B1 and related to an inadequate and poor diet in nutrients, leading to death at least six prisoners; In Rio de Janeiro, according to data collected by the State Mechanism for the Prevention and Combat of Torture in 2020, 26.6% of prisoners who died were emaciated, cach cachectic or dehydrated and in 2021 this number increased to 36.9% of the cases[22]. Finally, the survey conducted by the National Agenda for Decarceration pointed out that in at least three states the cut of food and water as collective punishment occurred in 2020 (Amazonas, Paraná and Minas Gerais).

In April 2020, the National Pastoral Carcerária, an entity that provides humanitarian and religious assistance in prisons throughout Brazil, conducted a questionnaire5 with the aim of understanding, together with family members, pastoral agents, employees of the prison system among other people with direct contact with people deprived of liberty, the situation of the pandemic in Brazilian prisons. In this opportunity, only one month after the decree of the global pandemic by the World Health Organization (WHO) of the 1,213 responses obtained, 65.9% reported that food and hygiene materials were no longer entering the prisons. As we will see below, in compliance with all basic human rights, the closure of prisons during the Covid-19 pandemic has greatly aggravated the situation of prisoners.[23]

The frequency of food provided in Brazilian prisons is known to be insufficient and to impose the practice of fasting for long hours between meals. In general, three meals are served: breakfast, lunch and dinner, and the interval between dinner and the next breakfast can be longer than 12 hours. In Goiás, for example, dinner is served at 3.40pm. In addition to the small quantity, there is also little nutritional variety in the diet, being meals poor in protein, fruit and vegetables, which also contributes to low immunity and deficiency of basic nutrients.

3.2.1. Outsourced companies for food supply

[21] El País. **Presos morreram por falta de comida adequada em cadeia do Piauí, aponta relatório do Ministério da Saúde.** Disponível em: <https://brasil.elpais.com/brasil/2021-04-02/presos-morreram-por-falta-de-comida-adequada-em-cadeia-do-piaui-aponta-relatorio-do-ministerio-da-saude.html>

[22] http://mecanismorj.com.br/relatorios/

[23] Pastoral Carcerária Nacional. **Questionário sobre coronavírus nas prisões revela que situação no cárcere está muito pior um ano após o início da pandemia.**
19 de abril de 2021. Disponível em: <https://carceraria.org.br/combate-e-prevencao-a-tortura/questionario-sobre-coronavirus-nas-prisoes-revela-quesituacao-no-carcere-esta-muito-pior-um-ano-apos-o-inicio-da-pandemia>.

In most units the food supply is done through third-party companies, as is the case of units in Rio de Janeiro, Amazonas, Minas Gerais, Ceará, Espírito Santo, Rio Grande do Norte, among others.

It is important to mention the quentinhas scandal occurred in Ceará that came to light by The Intercept Brazil last year, which revealed that one of the supplier companies, won almost half of the contracts for meals for prisons in Ceará in the last 12 years and received millions from the state government for non-existent prisoners: [...] the government bought four meals a day for six months for about 13,000 inmates and approximately 1,000 servers of eight state prison units. However, in April, according to data from the Secretariat of Penitentiary Administration, there were less than 9 thousand prisoners in the prison units that were listed in the agreement [...]. It is a difference of 16 thousand daily meals. [24]

3.2.2. Illness and deaths caused by contaminated food or hunger

In states such as Acre, Amazonas, Bahia, Goiás, Paraná, Piauí, for example, several reports of prisoners who became ill due to food poisoning were received. It is common the situation of people deprived of liberty to find themselves forced to eat sour food, visibly spoiled, in order not to go hungry. It is reported the barbarity of finding snails and nails in the food, as is the case in Rondônia, or shards of glass and urine, as is the case in Paraná.

In the women's prison in Acre, there were reports of spoiled breakfast, with sour milk and moldy bread. In Amazonas, it is worth recording some reports: "in August 2019, when I opened the lunch box (lunch), I found a snail, (in CDPM1), apart from the times that it came sour (CDPM1, UPP and COMPAJ)". In Bahia, it was reported that the Feira de Santana Penal Complex lacks everything in terms of food, and even the water provided contains worms. It is reported that an inmate became ill for weeks because of the food he ate, presenting symptoms of severe pain, fever and vomiting.

In Ceará, in March 2020, more than 30 prisoners from the Centre for Penal Execution and Social Integration Vasco Damasceno Weyne (CEPIS) were admitted to the Hospital São José, located in Fortaleza, presenting anaemia and lesions on the gums. According to a professional who was in contact with the patients coming from the prison unit, although the diagnosis has not yet been finalized, all inmates had great deficiency of vitamins C and D and these symptoms were related to nutritional issues.

In Minas Gerais, at the beginning of the pandemic, some prisoners had food poisoning in the Prison Professor Jacy de Assis, in Uberlândia, and hunger is common in units in general. In Paraná, in

[24] The Intercept. A RAINHA DAS QUENTINHAS: Empresária recebe milhões do governo do Ceará para entregar quentinhas a presos inexistentes. Disponível em: <https://theintercept.com/2020/07/06/empresaria quentinhas-nao-entregues-presos-ceara/.

the units of Complexo de Piraquara, Pce, CCP, PEP1, PEP2, there are reports of sour lunches, with little or no protein, with shards of glass and the smell of urine.

In Piauí, there are cases of prisoners who went bad due to the food in the Public Prison of Altos (CPA), in 2020, and in Major César, in 2021. Technical report from the Ministry of Health10 showed that at least six people imprisoned in the CPA died due to an outbreak of beriberi, a disease caused by the lack of vitamin B1 and related to an inadequate and poor diet in nutrients. In other words, they died of malnutrition.

One family member who visits her husband in Rondônia reports: "my husband had diarrhea for 15 days, it was horrible, because I couldn't help my husband with medicine or a doctor at the time, because they don't care. Despair also occurs in São Paulo: "my husband has already had problems with food, with constant diarrhea and vomiting, in addition to the prisoners who went to the infirmary because of the glass in the food.

3.3. Inhumane body searches

Nor has the country taken any effective measures to combat sexual violence against women and visitors, including vexatious searches. Research conducted by a series of organisations, collectives and groups in 2021 used a questionnaire answered by family members to identify the occurrence or not of vexatious searches in the five Brazilian regions, and it was proven that this is systematic and widespread in the country. Thus 77.7% of the people interviewed had suffered the violation, being 97.7% of these women and 69.9% black, and the reports informed that the visitors were forced to undress, bend down in front of a mirror and sometimes contract the muscles and cough during the procedure. It was reported that also in 56.1% of the cases, the officers cussed, threatened and humiliated them during the procedure. It is important to note that children also suffered the practice, 70% of whom were black and in 23.1% of the cases the mother was not allowed to be present, especially in cases where the family members were black (77.7%). Even more serious is the fact that at least 1.4% of the women were searched by male agents. Cases of refusal to submit to the practice are a minority, but 21.1% of those who refused had sanctions imposed on them, 98.4% of whom were female and 71.8% black. Finally, 34.5% of those interviewed have already given up visiting because of the procedure.

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

3.4.Disproportionate impact on women

In relation to birth without handcuffs, the Fiocruz research "Born in prisons"[25] brings the treatment of pregnant women in the Brazilian prison system between 2012 and 2014, pointing out that 70% of pregnant prisoners were black, 83% were mothers of more than one child and 89% had been imprisoned already pregnant. Only 32% had access to adequate prenatal care, and 8% of the prisoners reported taking more than 5 hours to be attended to when the delivery began. In relation to the childbirth itself, 36% were taken by police car and not ambulance, only 10% had the childbirth informed to relatives and 3% had the right to companion, 30% reported to have suffered verbal and physical violence in the maternity hospitals. It was also reported that 36% were handcuffed at some point during the hospitalization of the delivery and 8% during the delivery.

In 2017, Law 13.434 was sanctioned, which added in article 292/CPP the single paragraph prohibiting handcuffed childbirth. Nevertheless, there are still reports of both deliveries with handcuffs and other forms of obstetric violence and torture. Given the absence of public data on this issue, we bring as an example Rio de Janeiro whose Maternal and Child Unit was considered a "model prison" for pregnant and postpartum women. In 2018-2021 the visit reports of the State Mechanism for the Prevention and Combat of Torture pointed out that handcuffs continued to be used in the journeys to the health unit, being removed only at the time of expulsion, as well as hearing reports of a series of physical and psychological aggressions both in the hospital during 2018, and in the prison unit and in transportation in the year 2021.

We understand that one of the main solutions to the issue of maternity and imprisonment would be the application of alternative measures to prison for mothers and pregnant women, which in theory would have had an evolution from the approval of the Early Childhood Framework (Law 13.769/18) that changed article 318 of the Code of Criminal Procedure allowing mothers of single-parent families in pre-trial detention to serve home detention, a law that was interpreted by the Federal Supreme Court from the Collective HC n 143.641. However, research carried out by the Instituto Terra, Trabalho e Cidadania (Land, Work and Citizenship Institute) [26]and by the Public Defender's Office of Rio de Janeiro indicate that the law is not being fully applied. The first research informs exactly the resistance of the system of justice in the deferment of home arrest and provisory release to women mothers and pregnant when the imputed conduct is traffic, even being crime without violence against the person. This is read as a very exceptional reason that generates the maintenance of the measure of deprivation of liberty. They also pointed as determinants for the low effectiveness of the measure the mobilization in decisions of the abstract category of preservation of the public order and doubts on if effectively the mother is indispensable to the child and questionings on the maternity.[27]

[25] https://www.scielo.br/j/csc/a/PpqmzBJWf5KMTfzT37nt5Bk/?format=pdf&lang=pt
[26] maternidadesemprisao-diagnostico-aplicacao-marco-legal.pdf (ittc.org.br)
[27] https://www.defensoria.rj.def.br/noticia/detalhes/8904-DPRJ-lanca-perfil-de-mulheres-que-passaram-por-audiencia-de-custodia

In this sense, the change had a minor impact in benefit to pregnant women and negligible in relation to mothers in provisional detainment. What is perceived is a resistance from the justice system to apply the Framework, especially based on elements of gender discrimination. Moreover, there is no provision for the same benefit for convicted women.

It should not be forgotten that strip searches are used throughout the country, which is especially serious for transgender women and transvestites, as well as for transgender men and non-binary people who are in units with profiles different from their gender identity.

At this point, we highlight the recent decision of the Federal Supreme Court in March 2021, which determines the possibility of transferring trans women to women's units, as a step forward, even though this is not implemented in practice. In most of the country, transgender women and transvestites are commonly found in male units, especially in the safe areas, an area intended for prisoners at risk of suffering violence in prison units, which is not only isolated, but also has access to fewer activities than the other wings.

It is relevant to emphasize thus the absence of any measures that prevent sexual violence against women prisoners, as well as there is no establishment of formal protocols for women prisoners to access legal provisions for care and assistance, among which we cite the procedures provided for in the Next Minute Law (Law 12845/2013). Today there is no public data on how many women have suffered sexual violence in women's prison units or of the LGBTQI+ population.

The absence of protocol for care or prevention is noticeable in a number of cases that have occurred in the country in recent years. In 2015, a transgender woman was raped collectively in the same location as a form of punishment, with no care provided to her, which ended up causing her contamination by HIV. In 2015, another case occurred at the Penitenciária Femina de Teresina, in Piauí, where the rape was carried out by an agent, who threatened the prisoner with retaliation if she reported it. In 2019, in the state of Santa Catarina, 27 women reported sexual violence through coercion by agents. This was repeated in 2021 in the José Frederico Marques Public Prison in Rio de Janeiro, which was the only case in which we had news of the agent being held responsible, but the procedures determined by law for the care and reception of the victim were not ensured.

3.5. Differential Disciplinary Rules

Despite the general rule providing for a maximum duration of two years, provided for in Article 52, I, of the Criminal Enforcement Law, Brazilian legislation, with the advent of Law No. 13,964 of 2019, now brings at least one hypothesis of extension for an indefinite period, even if under annual reassessment. According to paragraph 4 of the same article, the RDD can be extended successively, every year, but without limitation on the number of extensions, if the person

imprisoned: presents "high risk to the order and security of the penal establishment of origin or society"; and maintains links with criminal organization.[28]

3.6.Use of Force in the Prison System

In 2019, an amendment to the Federal Constitution was approved that included prison officers as public security forces in article 144. From this, the criminal police was created that could only act within the prison space. However,[29] according to a survey carried out by the Inter-institutional Working Group in Defense of Citizenship, its implementation by the states was marked by a complete mismatch between the constitutionally provided and the international standards themselves. In many states, it operates without any form of regulation or external control, sometimes accumulating functions that include not only the custody of prisoners and security inside the walls, but also ostensive policing, riot control, investigation, escort and intelligence - which obviously increases cases of abuse and violence due to excessive attributions and lack of control. Cases of summary executions, arbitrary arrests, participation in mega operations outside the walls were detected by the articulation in Acre, Rio de Janeiro, Rio Grande do Norte, Alagoas and Rondônia.

However, the intensification of violence by state agents is also part of a scenario of harsh setbacks imposed by the practice of torture institutionalised in the special operations groups. The National Mechanism for the Prevention and Combat of Torture (MNPCT) points since 2017 to the creation of the Federal Penitentiary Intervention Task Force (FTIP), which operates in support of state executives in cases of episodic disturbances in situations of serious crisis in the prison system. Its training includes federal, state and federal district prison officers, operating through agreements or cooperation agreements with the National Force, and may perform services of custody, surveillance and guard.

Since the creation of the Task Force, control and monitoring bodies have pointed out the risks inherent to the lack of regulation of the FTIP, as well as its lack of protocols, guidelines and parameters of action, added to the lack of transparency that cause difficulty in controlling possible abuses perpetrated. Since its creation, the FTIP has conducted interventions in Rio Grande do Norte, Pará, Amazonas, Rio Grande do Sul, Roraima and Ceará, and on March 17, 2022 it was issued an ordinance that left it ready for training also in Rondônia[30].

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[28] Penal Enforcement Law, Article 52, paragraph 4: § 4 In the hypothesis of the preceding paragraphs, the differential disciplinary regime may be extended successively, for periods of 1 (one) year, if there is evidence that the prisoner: I - continues to present a high risk to the order and security of the penal establishment of origin or of society; II - maintains links with a criminal organization, criminal association or private militia, considering also the criminal profile and the function performed by him in the criminal group, the lasting operation of the group, the supervening of new criminal proceedings and the results of prison treatment.

[29] Força de Cooperação Penitenciária — Departamento Penitenciário Nacional (depen.gov.br)

[30] PORTARIA MJSP Nº 50, DE 17 DE MARÇO DE 2022 - PORTARIA MJSP Nº 50, DE 17 DE MARÇO DE 2022 - DOU - Imprensa Nacional (in.gov.br)

From the reports of the MNPCT on its action in Ceará[31], Pará[32] and Rio Grande do Norte[33] it was detected a series of practices of torture and ill-treatment as a form of management of the space. The detainees are forced to sit naked, "embedded" in each other with their hands on their heads after the command of the agents, and this routine is applied at any time of the day or night, with reports of people who have spent hours in this stressful position, receiving jets of pepper spray and having their fingers broken by tonfas or boots if they make any movements, complain or talk among themselves. These reports were confirmed by later medical reports which were consistent with torture. The body then denounces the current modus operandi of the FTIP: incommunicability of prisoners, with suspension of visits by family members and lawyers; failure to conduct people to hearings in the Court of Justice; interruption of medical care, outpatient care and technical teams; withdrawal of basic items from prisoners, such as clothing, hygiene material, among others; application of collective sanction in a systematic way; torture through the imposition of "procedures" such as the one reported above; closure of units and transfer in a systematic way, generating purposeful aggravation of overcrowding.

These events are not only perpetrated by the FTIP: recently a prisoner in Brasília was disfigured by the use of elastomeric bullets in the region of the face[34]; in Rio de Janeiro in 2021, after a riot, moral effect bombs were thrown towards the mattresses of a cell generating a fire that left one prisoner dead, three seriously burned and one received a shot of elastomeric bullet near the eye and was having difficulty to see fully, according to the State Mechanism for Prevention and Fight against Torture. There is no report of accountability in any of the cases.

4. Accountability and Investigation for Crimes of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

According to data made available by the National Penitentiary Department for the period between January and June 2022 , from a total universe of 689,036 people imprisoned in prison establishments (excluding those under police custody, such as in jail cells, police battalions and the like), 623 would be imprisoned, in physical cells, for the crime of torture. Another 36 people are under house arrest. The public data does not indicate whether these persons are public agents or not.[35]

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31 relatorio-cearacc81-missacc83o-conjunta.pdf (wordpress.com) relatariomissoceara2019.pdf (wordpress.com)
32 relatorio_mnpct_para_2019.pdf (wordpress.com)
33 relatorioriograndedonorte2017.pdf (wordpress.com)
34 Preso fica com rosto desfigurado após ser atingido por bala de borracha em presídio, no DF | Distrito Federal | G1 (globo.com)

35 https://app.powerbi.com/view?r=eyJrIjoiY2Q3MmZlNTYtODY4Yi00Y2Q4LWFlZDUtZTcwOWI3YmUwY2IyIiwidCI6ImViMDkwNDIwLTQ0NGMtNDNmNy05MWYyLTRiOGRhNmJmZThlMSJ9

3.1 Military Justice

In October 2017, Law No. 13,491 was approved, representing an unprecedented expansion of the scope of military crimes in Brazil. This occurred due to the expansion of the concept of military crimes beyond the specific legislation, to the extent that, by amending art. 9, II, of the Military Criminal Code, Law No. 13.491/17 circumscribed in the concept of "military crimes in times of peace" not only the crimes provided in the CPM, but also those provided in the ordinary criminal law when committed in the situations provided in lines "a", "b", "c", "d" and "e". These provisions are extremely broad and include crimes committed by military personnel against civilians. In this way, depending on the situation of the military personnel, all common criminal legislation can be transformed and applied by the military courts in Brazil, criminalizing conduct that has nothing to do with military activity and the need to safeguard the hierarchy and discipline of the troops.[36]

These changes allowed the Military Courts to judge acts of torture committed by military personnel, whether military police or military personnel of the Armed Forces, against civilians. With this, in recent years, it is already possible to verify the processing of military criminal actions for acts of torture committed by military personnel against civilians, for example, in the Military Courts of the State of Minas Gerais and the State of São Paulo. Just as an illustration, in June 2022, the Military Court of the State of Minas Gerais confirmed an acquittal in the first instance for a crime of torture allegedly committed by military police officers against civilians during a police approach (Case No. 0000291-58.2009.9.13.0003).

Research conducted in São Paulo by Conectas Human Rights in partnership with IDDD[37] (already mentioned in this report) compared the investigation of complaints of torture reported in custody hearings before and after the 2017 legislative change. In complaints reported in 2015, investigated by the Common Justice, 48% resulted at least in the opening of a police investigation (conducted by the Civil Police), while in cases after 2017, already in the Military Justice, 86% of the cases were filed without even yielding a Preliminary Investigation or a Military Police Inquiry. With the change of competence in Law No. 13.492, the crimes of a PM are ascertained by a preliminary investigation, a procedure without any legal basis, conducted by an officer of his own battalion.

[36] Art. 9 of the CPM: "Military crimes are considered crimes in peacetime: (...) II - the crimes provided for in this Code and those provided for in criminal law, when committed a) by active military personnel or those similar to them, against active military personnel or those similar to them; b) by active military personnel or those similar to them, in a place subject to military administration, against retired or reserve military personnel or those similar to them, or civilians; c) by military personnel on duty or acting by reason of their function, in a military commission, or in formation, even if outside the place subject to military administration, against a reserve, retired, or civilian military personnel; d) by military personnel during the period of maneuvers or exercises, against a reserve, retired, or similar military personnel, or civilian personnel; e) by active military personnel, or similar personnel, against property under military administration, or against military administrative order;"

[37] Investigações em labirinto: os caminhos da apuração das denúncias de violência policial apresentadas em audiências de custódia. Disponível em: https://www.conectas.org/publicacao/investigacoes-em-labirinto/

Law 13.491/2017, which expanded the competence of Military Justice, in practice perfected the mechanisms to shield the State's structural violence.

The incompatibility of such legislative changes with international human rights standards has been strongly criticized by the Office for South America of the United Nations High Commissioner for Human Rights (OHCHR) and the Inter-American Commission on Human Rights (IACHR). The two bodies argue that once it has entered into international human rights instruments that guarantee all persons trial by competent, independent and impartial tribunals, such as the International Covenant on Civil and Political Rights and the American Convention on Human Rights, the Brazilian State must comply with such agreements.[38]

A few months after the law was approved, more than a thousand cases were transferred from ordinary justice to military justice. Contrary to the constitutional provision that intentional homicides committed by state military personnel should be processed in common justice and judged by the Jury Tribunal, data analyzed by the Paraná State Public Defender's Office reveal that even cases of this type were investigated through military enquiries in 71% of the homicides analyzed in the research.[39] [40]

The expansion of the jurisdictional competence of Military Justice in Brazil has also been verified through emblematic cases, such as the actions that resulted in the deaths of the musician Evaldo Rosa and the recyclable material collector Luciano Macedo[41], or the Salgueiro mass killings[42]. In the first episode, ten soldiers present at the moment when the army set fire to Rosa's car, wrongly

[38] CIDH. ONU Direitos Humanos e CIDH rechaçam de forma categórica o projeto de lei que amplia jurisdição de tribunais militares no Brasil (13 de Outubro de 2017). Disponível em: https://www.oas.org/en/iachr/media_center/PReleases/2017/160.asp. Acesso em 8 mar. 2023.

[39] Inquéritos foram abertos pela polícia civil em 27% dos casos e pelo Ministério Público em apenas 1,2%. PARANÁ. Nota Técnica No 01/2021 – NUPEP/DPE-PR, 2021. Disponível em: https://docplayer.com.br/209312008-Nota-tecnica-no-01-2021-nupep-dpe-pr.html . Acesso em 8 mar. 2023.

[40] Another situation that highlights the seriousness of the movements around the expansion of the jurisdictional competence of the Military Justice is the processing of Bill No. 9.432 of 2017. Produced by the Foreign Relations and National Defense Commission, such Bill alters provisions of Decree-Law No. 1,001, of October 21, 1969 (Military Penal Code), and art. 1 of Law No. 8,072, of July 25, 1990 (Hedonado Crimes Law). Having been approved by the Chamber of Deputies in February 2022, and is currently in the Federal Senate to be judged, PL 9432/2017 provides that intentional killings of civilians perpetrated by federal military personnel will be judged by military courts. Consequently, the civil police no longer has the power to conduct investigations into federal military officers who kill civilians in the course of peace operations and actions to guarantee law and order, among other subsidiary activities. The investigation and trial of such crimes, which were previously conducted by civilian authorities in civilian courts, are now left to the military. This is, therefore, an extremely worrying development, since the validation of this type of legislative proposal does not break with the unconstitutionalities and abuses promoted by the laws already in force, but only reinforces all of them, thus hurting the commitments assumed by Brazil before the international community in relation to impartial trials.

[41] https://www.hrw.org/news/2019/04/09/statement-human-rights-watch-army-operation-resulted-one-killing-rio-de-janeiro

[42] https://raceandequality.org/english/salgueiro-massacre-brazilian-black-population-calls-for-help/

identified, were arrested but later released by the Military Superior Court[43]; in the case of the Salgueiro Massacre, the military's investigations were criticised for ignoring evidence linking the military to the murder of eight people during a joint operation by police and military forces[44].

One case that illustrates the current state of torture accountability in the country is know as the "Red Room" case. In 2018, during federal military intervention in the state of Rio de Janeiro, Brazilian army officials tortured several black young men with electroshocks, use of less lethal weapons and psychological violence.

After hours of torture, the young men were taken to prison, had their normal custody procedure and even went through medical examinations, which were perfunctory and pro forma. Only after months in prison, the Public Defenders responsible for the case, who had documented clear marks of violence, managed to convince a judge to ask for further forensic examination. With the support of the Open Society Justice Initiative and IBAHRI, who, together with Pau Perez from SIRA, provided legal and medical expertise regarding the Istanbul Protocol to local forensic doctors, and new exams showed that they carried physical and psychological marks compatible to torture[45].

After months in jail, the young men received a release order, but would have to wait another 3 months for a military court to also agree with the release. Even in such paradigmatic case where undeniable evidence was able to be produced – despite many official shortcomings – the investigation for the acts of torture was only initiated after an extenuating legal path, and was subsequently discontinued by military prosecutors.

In this context, the mobilizations in the field of defense and guarantee of human rights echo in the appropriate instances: At least six (6) constitutional cases are under trial at the Federal Supreme Court that deal with the expansion of the jurisdiction of the Military Justice, one of which, the Argument of Noncompliance with Fundamental Precept (ADPF) No. 289, deals with the definition of the competent authority to investigate, prosecute and judge the murder of civilians and other human rights violations committed by military personnel of the Armed Forces in the exercise of atypical functions, including torture, such as when they intervene in the public security of Brazilian cities during Operations to Guarantee Law and Order.

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[43] IAHRC. Situation of Human Rights in Brazil OEA/Ser.L/V/II Doc. 9 [339-40]. https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/050.asp f

[44] Chacina em São Gonçalo: documentos revelam que investigadores ignoram provas que ligam assassinatos a militares. Disponível em: https://oglobo.globo.com/epoca/rio/chacina-em-sao-goncalo-documentos-revelam-que-investigadores-ignoraram-provas-que-ligam-assassinatos-militares-24889542 . Acesso em 8 mar. 2023.

[45] A LUTA POR JUSTIÇA E REPARAÇÃO DAS VÍTIMAS DO CASO DA SALA VERMELHA. Le monde Diplomatique, 26 de junho de 2020. https://diplomatique.org.br/sala-vermelha-como-sobreviver-as-marcas-invisiveis-da-tortura/

The position of the United Nations Human Rights Committee on the issue is also noteworthy, since it firmly defends that military courts should not have jurisdiction to judge civilians and that it is the role of the State to guarantee that civilians accused of committing criminal offences of any nature are judged by civilian courts[46].

Objectively speaking, it is not possible to affirm that, under current legislation, the right of access to justice is being guaranteed in Brazil. After all, the rights to a fair trial, to an effective investigation, and even less effective compensation for human rights violations - as established by different international and regional human rights treaties ratified by the Brazilian State - are not being guaranteed.

3.1 Police Lethality

According to data from the Brazilian Yearbook of Public Safety, 47,503 people were victims of violent and intentional death in Brazil in 2021. Of the total, 50% were between 12 and 29 years old, 77.9% were black and 91.3% were male. Of these victims 6,145 were victims of police action[47].

Unfortunately, the numbers of police violence in the state reflect a public security policy that feeds police violence and confrontation. One of these reflections, in the field of public security, is the well-known figure of the police approach as one of the main instruments of ostensive policing made available to the State by the legal system. The use of such vague expression, from the scope of undetermined legal concepts, operates in practice to legitimize the arbitrary restriction of the freedom to come and go, intimacy and privacy.

In a model in which police targets mean flagrant arrests of young people carrying or selling small quantities of drugs in retail, it is young people, especially blacks, from the outskirts and slums who, daily, run the risk of being the targets of illegal searches and arrests, physical and verbal aggression, forged charges, unjustified approaches, beatings and death.[48]

The homicidal behaviour of the Brazilian police, especially in São Paulo, was the target of concern even to the UN, as we can observe in the report A/HRC/11/2/Add.2, of 23 March 2009, produced by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston. The inspection confirmed the data on the extremely high level of police lethality in Brazil and

[46] United Nations Human Rights Committee, E/CN.4/Sub.2/2005/9, Principle n. 4: “Military courts should, in principle, have no jurisdiction to try civilians. In all circumstances, the State shall ensure that civilians accused of a criminal offence of any nature are tried by civilian courts” (tradução livre). Avaliable at: http://www2.ohchr.org/english/bodies/subcom/57/aevdoc.htm .

[47] Anuário brasileiro de Segurança Pública. Avaliable at: https://forumseguranca.org.br/wp-content/uploads/2022/06/anuario-2022.pdf?v=5

[48] Idem.

concluded that executions are carried out by the police not only on duty but also off duty with death squads.

The UN Report also specifically addressed the crimes that occurred in May 2006 in the city of São Paulo, when two forms of police lethality were used at the same time: both "autos de resistência" and the actions of extermination groups. Covering up the killings, the UN also included in the report the intentional misconduct of investigations. It was noted that the deaths were directed to police stations different from those where they should be presented, indicating, for the UN Rapporteur, a deliberate action by the police to make any investigation of the facts difficult. The Rapporteur also claims to have had access to hard evidence on the tampering of the locations of the deaths, leaving, in these cases, only the testimony of the police officers about what happened.

Just as an example, in the last two years there have been very serious violations of human rights by the Brazilian police. Even the civil police - responsible for the investigation of crimes - and the federal police - responsible for the inspection and coordination of the federal road system - were involved in emblematic cases with a high number of deaths: the massacre in the Jacarezinho[49] favela (Rio de Janeiro), the massacre in the Salgueiro[50] favela (Rio de Janeiro) and the murder under torture of Genivaldo de Jesus Santos which occurred in Sergipe[5152].

Not without reason, the demand for independent forensics continues to be a priority in the demands of social movements led by family members of victims of violent actions by Brazilian security forces and human rights organisations. It is noteworthy here the evident non-compliance with the guidelines established by the Minnesota Protocol, in addition to those already mentioned in this report.

4. Recommendations

[49] A police operation carried out by the Civil Police on 6 May 2021 in the Jacarezinho favela turned into a massacre that resulted in the death of 28 residents. Far from being an isolated event, the Jacarezinho massacre should be understood as an emblematic episode, being the massacre with the highest number of victims in the state of Rio de Janeiro since the return to democracy.

[50] Motivated by retaliation, the Salgueiro massacre, in the city of São Gonçalo, metropolitan region of Rio de Janeiro, in November 2021, also occurred in direct disobedience to the decision of the Supreme Court to suspend police operations in the state's slums. In this brutal episode, 9 people were killed as a result of the state's action - there were even celebratory parties for the agents involved in the operation, according to an urgent appeal sent to the United Nations High Commissioner by dozens of civil society organizations.

[51] Torture and executions corrode the Rule of Law. Conectas. 2022. https://www.conectas.org/en/noticias/torture-and-executions-corrode-the-rule-of-law/

[52] Brazil: The police must be held accountable for arbitrary use of force. https://www.omct.org/en/resources/statements/brazil-the-police-must-be-held-accountable-for-arbitrary-use-of-force

- **Food security should be guaranteed to prisoners, with quality and quantity compatible with the nutritional demands of adults, taking into account the specificities of those who are ill;**

The incarceration of people, for an undetermined period of time, in isolation and incommunicability, as observed in the differentiated disciplinary regime, should be impeded;

The practice of inhumane searches must be forbidden in the whole country and understood as torture, including in relation to imprisoned people, and agents and managers who carry out the practice may be held responsible, considering that it is sexual violence;

- **The guarding or presence of male agents in female prisons be forbidden, as well as that it be ensured that trans and travesti women are not searched by men;**

- **Preference be given to the application of alternative sentences to the LGBTQIA+ population, especially taking into account the complete lack of structure for their adequate custody;**

Alternative to prison be applied to prisoners with sensory, motor or mental disabilities and with serious illnesses, especially taking into account the lack of access to health care and the risk of death that they are exposed to due to the lack of health care structure and minimum salubrity in prisons;

The Brazilian State should take adequate measures to protect whistleblowers of torture in detention, especially sexual violence, including analysis by the justice system to apply alternative sentences in cases with risk of retaliation;

The justice system should improve the custody hearing, ensuring that it is conducted in person, so that it can effectively detect torture and that provisional detainment is only applied in very exceptional cases, as provided for in the international legal system, and freedom should be evaluated as a measure of reparation and non-repetition for victims of torture;

The system of virtual custody hearings be completely forbidden, considering the deep damage to the due defense and the adversary system that it causes, especially regarding documentation of police brutality;

Legislation be created to ensure the application of alternative measures to sentenced prisoners who are pregnant or have children, considering the centrality of this for

children and adolescents, also ensuring the effective application of article 316, CPP for mothers and pregnant women, and should be prioritized freedom in cases of pre-trial detention;

Create a policy to ban obstetric violence if women must give birth while under arrest;

Strengthen effective measures of accountability for judges and prosecutors who legitimize and minimize torture in their decisions, considering its absolute prohibition;

That the use of lethal weapons be banned inside prison units, as well as the use of less lethal equipment such as kinetic ammunition, flashbangs, pepper spray and other irritants, and tear gas in spaces of secluded spaces of deprivation of liberty, as to the lack of ventilation and space poses serious risks to the bodily integrity of the prison population;

The national force and the Penitentiary Intervention Task Force should be under external control, with civil society participation, including with regard to accountability for cases of abuse, torture and mistreatment;

Security agents should have no authority over the System to Prevent and Combat Torture, including the Mechanism and Committee, and their participation should be limited to hearing and providing information;

The right to family life among prisoners and their families should be guaranteed, including the right to immediate information on death, health or transfers, the right to visit, with adequate structure inside and outside the prison walls, as well as the right to memory, ensuring the transport of the body to the prisoner's place of origin;

Ensure the implementation of state-level Preventive Mechanisms throughout the country, with special emphasis on respect for the rules of autonomy and independence of experts recommended by the OPCAT;

- **Remove any legal interpretation that allows the military justice to judge cases of torture or other human rights violations against civilians, as well as the investigation of the facts by persons not subject to the military hierarchy**

- **Build a database of all allegations of torture arising from custody hearings, with public information on the flow of investigation and accountability for results.**

- **Maintain disaggregated data by race on the number of people approached by the police in ostensible policing and ensure that the security forces can only search people if there is founded suspicion proven by solid and verifiable evidence.**

- **Promote the decarceration of people, favouring alternatives to provisional imprisonment and the granting of sentence progression, in order to reduce prison overcrowding for all crimes;**

Reform all 'war on drugs' policies, including in stop-and-frisk policing, military operations in urban settings and disproportionate sentencing of people with marginal involvement in the drug trade.