



Sociedade Maranhense de Direitos Humanos

Em defesa da vida

CNPJ: 05761069/0001-51

Fundada em 12 de fevereiro de 1979.

Reconhecida como de utilidade pública pela Lei Estadual nº 4.868 A/88 e pela Lei Municipal nº 3.068/90

To the Human Rights Committee

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Comments of the “Sociedade Maranhense de Direitos Humanos” or “Maranhão Society of Human Rights” on the Brazilian State's response to question 16
- Prohibition of torture and other cruel or degrading treatment and the treatment given to persons deprived of liberty -

Dear Human Rights Committee Members,

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The comments that follow concern two central points present in Brazil's response to question 16: the establishment of a national mechanism to prevent and combat torture and the absence of information on complaints, investigations, judgments and compensation regarding cases of ill-treatment. or torture.

National Mechanism to Prevent and Combat Torture

According to the response prepared by the Brazilian State (found in item 82), the National Mechanism for the Prevention and Combat of Torture is fully operational in Brazil. However, the reality is different. The National Mechanism is foreseen in Federal Law nº 9.455/1997 which, in addition to typifying the crime of torture, installed the National System for the Prevention and Combat of Torture, regulated by Federal Decree nº 8.154/2013 and includes the National Mechanism for Prevention and Combating Torture (MNPCT) and the National Committee to Prevent and Combat Torture (CNPCT).

During the Bolsonaro government, the MNPCT and CNPCT were the target of intense attacks, mainly due to the impracticability of civil society participation in its composition, as well as the dismantling of its means of action. Mainly the MNPCT, composed of experts, suffered the impacts of this process, since there was the extinction of paid



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positions and their conversion into unpaid public services. This movement aimed to prevent exclusive dedication to work and, thus, institutionally weaken the mechanism. Subsequently, the Federal Supreme Court, in the judgment of the Argumentation of Non-compliance with a Fundamental Precept nº 607, determined that the Brazilian State should hire remunerated experts through the appointment of commissioned positions. This measure has not yet been implemented by the Brazilian State.

Another point of weakness is the capillarization of the mechanism through the construction of State Committees and Mechanisms to Prevent and Combat Torture, a measure that would expand the scope of the Protection System.

Only 9 of the 27 States of the Federation (Rio de Janeiro, Pernambuco, Rondônia, Paraíba, Espírito Santos, Maranhão, Goiás, Mato Grosso do Sul and Sergipe) have state legislation providing for the creation of these bodies and, some of these, despite the legal provision, have not yet formally instituted such spaces, as is the case in Maranhão.

Another 9 states (Acre, Alagoas, Amapá, Amazonas, Bahia, Ceará, Pará, Piauí and Rio Grande do Norte) have only a Committee, but do not follow the guidelines of national and international legislation.

Meanwhile, the others do not have either of the two bodies (Federal District, Mato Grosso, Minas Gerais, Paraná, Roraima, Rio Grande do Sul, São Paulo and Tocantins).

Therefore, what is observed is that, despite the existence of the legal provision establishing the National System for the Protection and Combat of Torture, the scenario is one of weakening of the control mechanisms, either through the erosion of its organizational structure or even its non-implementation. in much of the national territory.

Absence of data and information on torture

Although requested in the guiding questions, the Brazilian State does not provide concrete data on torture. In his answer, no information is mentioned about the number of complaints, investigations carried out, judgments or even indemnities. This occurs because there is no cataloging of data on torture in Brazil. This results in the institutional invisibilization of torture.

Most of the information available on reported cases of torture is produced by civil society organizations or depends on their insistent provocation for it to be disclosed by the State. It should also be noted that there are no data indicating the number of agents



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investigated and/or punished for the practice of torture, denoting the maintenance of a framework of impunity that legitimizes and encourages the practice of torture by police institutions.

Still, the lack of information hinders the exercise of social control by civil society entities. There is also the whole creation of an institutional bureaucracy that makes it difficult to obtain information. There is a lack of clear definitions about the investigative competences within the Public Prosecutor's Office, making it difficult to request information on the number of cases that generated judicial investigations and, eventually, convictions. Thus, it can be said that there is a violation of the state duty of transparency and publicity, since it is not a simple task to identify the state body responsible for producing and sharing information, making it difficult to address requests.

Another important point refers to the distortion of custody hearings. Essential mechanism for identifying and investigating cases of torture, through the immediate presentation of the prisoner to the judicial authority, soon after his arrest, the institute has faced strong institutional pressure to allow it to be carried out by videoconference, a practice that would make verification much more difficult of torture. Still, there are several reports of torture brought by prisoners in custody hearings that are not properly investigated by the State, showing a disregard for the investigation of such situations.

This scenario shows the maintenance of a state structure, involving both public security and institutions of the justice system, which legitimizes and reproduces the practice of torture. Such a phenomenon is neither new nor unexpected, especially if we consider that Brazil is a country whose rise of democracy was not accompanied by a total and complete rupture with the remnants of the military dictatorship that multiply in police practices, legislation and, mainly, in the popular imagination.

PROPOSED RECOMMENDATIONS

1. Creation of a National Information System on Torture, bringing together data on news of ill-treatment and torture, the progress of investigations and the respective responsibilities;
2. Obligation to hold custody hearings in person, avoiding their holding by videoconference;



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3. Implementation of the State Council for the Protection and Combat of Torture and the State Mechanism for the Protection and Combat of Torture in all states of the federation, thus expanding and strengthening spaces for popular participation.

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