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The Permanent Mission of Brazil to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights – Special Procedures Branch – and, with reference to the letter from the Special Rapporteur on countering terrorism, dated 29 May 2020, has the honor to submit herewith the Brazilian government inputs to the preparation of the report to the 75th session of the UN General Assembly on “human rights, humanitarian law and counter-terrorism” .

The Permanent Mission of Brazil in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 15 July 2020



To: Office of the UN High Commissioner for Human Rights (OHCHR) -
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With regard to the call for inputs, issued in May 2020 by the Special Rapporteur on the promotion and protection of human rights while countering terrorism, in the context of the preparation of the report to be presented in the 75th session of the UN General Assembly, the Brazilian Government presents the following information:

(1) The issue of combating terrorism is regulated in Brazil in Law No. 13,260 of 16 March 2016. It establishes as punishment prison sentences upon conviction from 5 to 30 years, beginning with a closed regime. There is no specific provision in the legislation for the application of penalties in differentiated regimes for those convicted or accused of the crime in question, except if there is evidence, by means of a judicial decision, of the concurrence of crimes or the need for special protection of the convicted person that justifies the transfer to a prison establishment of the Federal Penitentiary System, as provided for in Law No. 11,671 of May 8, 2008.

(2) In accordance to Law No. 11,671, The inclusion criteria applicable for convicted or provisional prisoners are the interest of public security or of the prisoner himself. The regulation of said law (Decree No. 6,877 of June 18, 2009) provides for the following hypotheses as possible justifications for the transfer:

I - having played a leading role or participated in a relevant manner in a criminal organization;

II - having committed a crime that endangers his physical integrity in the prison environment of origin;

III – being subject to the Differentiated Disciplinary Regime - RDD;

IV - being a member of a gang or criminal group, involved in the repeated practice of crimes with violence or serious threat;

V – being a collaborating defendant or whistleblower, provided that this condition represents a risk to their physical integrity in the prison environment of origin; or

VI - being involved in incidents of escape, violence or serious indiscipline in the prison system of origin.

(3) The Federal Penitentiary System is a system of exceptional sentence enforcement, with a maximum duration, as a rule, of 3 years, extendable for equal periods. It is organized with strict control of prison routines, such as prolonged cell confinement, restriction of visits and access to the facility, daily inspections of interns, cells and visitors, among others. The National Penitentiary Department of the Ministry of Justice and Public Security is responsible for the system management.

(4) Concerning the Prevention and Combat of torture, it is worth noting that the National Penitentiary Department itself is a part of the National System to Prevent and Combat Torture, under Law No. 12,847 of August 2, 2013. Such System is monitored by the General Coordination for the Combat of Torture and Institutional Violence (CGCT) of the Ministry of Women, Family and Human Rights (MMFDH). The competencies of the CGCT are detailed in article 185 of MMFDH Ordinance No. 3,136 of December 26, 2019, and include the following attributions:

“[T]o engage in joint actions with state governments and civil society, as well as articulations with the organs of the justice system and public security system, structured as follows:

- a) The National System for the Prevention and Combat of Torture, especially with the support of the activities of the National Committee to Prevent and Combat Torture (CNPCT);
- b) Political articulation with Federal Government agencies on the subject;
- c) Strengthening of the Federative Pact to Prevent and Combat Torture, with special focus on the creation and promotion of Committees and Mechanisms to Prevent and Combat Torture in the federated units;
- d) Training for members of Committees and Mechanisms to Prevent and Combat Torture, representatives of the justice system and the public security system, and also for civil society.”

NATIONAL SYSTEM TO PREVENT AND COMBAT TORTURE

(5) The National System to Prevent and Combat Torture (SNPCT) was established by Law No. 12,847 of August 2, 2013, which also created the National Committee to Prevent and Combat Torture (CNPCT) and the National Mechanism to Prevent and Combat Torture (MNPCT). In addition to these bodies, the CNPCT also includes the National Council on Criminal and Prison Policy (CNPCP) and the National Penitentiary Department of the Ministry of Justice (DEPEN). Other institutions, such as NGOs, Judiciary bodies, Guardianship Councils, and police ombudsmen may also apply to join the system.

(6) The MMFDH published Ordinance No. 354 of November 22, 2018, which provides for the approval of the Term of Adhesion to the National System to Prevent and Combat Torture. The document was presented during the 2nd Meeting of the National System to Prevent and Combat Torture.

NATIONAL COMMITTEE TO PREVENT AND COMBAT TORTURE

(7) The CNPCT is a collegiate body composed of representatives of the Federal Executive and civil society, with the objective of preventing and combating torture and other cruel, inhuman or degrading treatment or punishment. It was established in July 2014 and, in its first semester of operation, approved of the Internal Regulations and the open call for selection of members to compose the National Mechanism to Prevent and Combat Torture (MNPCT). In addition to collaborating with the MNPCT, the Committee receives the reports of the Mechanism, participates in meetings with local stakeholders during the visits, and acts upon the implementation of the MNPCT recommendations.

(8) The CNPCT holds bi-monthly Ordinary Plenary Meetings (RPOs) and Extraordinary Plenary Meetings (EPRs) whenever necessary. According to the provisions of Decree 8154/2013, which regulates the composition and operation of the CNPCT, "CNPCT meetings will be open to public within the limits established by Law 12,527 of November 18, 2011, regarding the disclosure of information". During 2020, two ordinary meetings were held, which essentially deliberated on the holding of virtual meetings during the circumstances of the Covid-19 pandemic, and on the Call for the Selection of Experts of

the National Mechanism to Prevent and Combat Torture, among other topics. In addition, a joint public note was published by the National Committee to Prevent and Combat Torture (CNPCT), the National Mechanism to Prevent and Combat Torture (MNPCT) and the National Human Rights Council (CNDH) on Covid-19, the disease caused by the new coronavirus.

(9) In the referred joint note, the three bodies expressed concern about the pandemic declared by the World Health Organization, especially about the need to adopt care measures for persons in custody and under the responsibility of the state, such as persons deprived of their liberty, or long-term detention facilities, detention centers, penal institutions, psychiatric hospitals, custody and treatment hospitals, therapeutic communities, custodial homes, social and educational institutions for adolescents in conflict with the law, and military disciplinary detention centers. The issues addressed in the document include: prison overcrowding; the prohibition of contact with family members, disregarding the role of families in ensuring health, resocialization and the eventual provision of food, medicine and cleaning products; the working conditions of professionals who work in areas of deprivation of liberty; and the relevance of inspection activities in institutions of deprivation and restriction of liberty.

NATIONAL MECHANISM TO PREVENT AND COMBAT TORTURE

(10) The work of CGCT and the MNPCT, given their overlapping agendas, include the exchange of information. In 2019, the National Mechanism carried out three inspection missions in the states of Ceará, Pará and Rio Grande do Sul. Furthermore, it launched the report "Psychiatric Hospitals in Brazil: National Inspection Report", whose conclusions and recommendations are the result of joint inspections carried out by the MNPCT, the Federal Council of Psychology, the National Council of Public Prosecutors and the Office of the Public Prosecutor's for Labour issues (*Ministério Público do Trabalho – MPT*) in December 2018, encompassing 40 Psychiatric Hospitals, located in seventeen states, in the five regions of the country.

(11) The Presidency of the Republic published Decree No. 9,831 of June 10, 2019, which changed the structure of the MNPCT. However, the Supreme Federal Court granted an injunction measure under Civil Public Action No. 5039174-92.2019.4.02.5101/RJ to

suspend its effects. In this context, the MNPCT experts are currently administratively bound to the MMFDH. A selection process for MNPCT experts is in progress (public call No. 01/2020 of the National Committee to Prevent and Combat Torture).

FEDERATIVE PACT TO PREVENT AND COMBAT TORTURE

(12) The Federative Pact to Prevent and Combat Torture was signed on September 12, 2017, during the Meeting of State Secretaries for Human Rights and published in the Official Gazette by means of MDH Ordinance No. 346 of September 19, 2017. The Pact was created with the purpose of stimulating the implementation by the federated units of the public policy to prevent and combat torture, through the creation and implementation of State Committees and Mechanisms to Prevent and Combat Torture, as well as the adhesion of such bodies to the SNPCT. Each State should also commit to establish a State-level Plan of Integrated Actions to Prevent and Combat Torture. The MMFDH coordinates, monitors and provides technical support to the federated entities in their efforts on this matter (see table in annex 1).

ONLINE COURSE ON TORTURE PREVENTION AND OTHER ACTIVITIES

(13) The CGCT hired a consultant to elaborate a course on the subject of torture, to be made available on the online platform of the National School of Administration (ENAP), in the form of distance online education. This is a joint initiative between the CGCT and the Directorate for Promotion and Education in Human Rights (DPEDH), which are both part of the MMFDH formal structure.

(14) The course objective is to offer information on the history of torture in Brazil, the conceptualization, the victims - especially with racial and gender perspectives -, the main actors and minimal actions for their confrontation. The course is timely as it can be the basis for the educational training of new members of Committees for the Prevention and Combat of Torture in the federated entities, as well as for other people interested in the topic. The course was expected to be launched in mid-2020.

(15) In December 2019, a Decentralized Execution Term (TED) was celebrated with the Institute of Applied Economic Research (IPEA) with the following main objectives: to characterize the dynamics of the criminal process of accountability for the crime of

torture; to analyze the criminal flow, from investigation to trial, with emphasis on the typification of the crime, characterization of the subjects in the processes, production of evidence, timeframe of the process and performance of investigators, experts, prosecutors and defenders; and to determine the conviction rate. Such data could be useful for an accurate diagnosis of the difficulties of criminal accountability in the country and contribute to the set of actions to combat torture and institutional violence.

(16) The first national report on state committees for the Prevention and Combat of torture has already been launched. It presents a brief diagnosis of the functioning, structure, regularity and composition of state committees and concludes by drawing attention to the fact that there is still little evidence of the concrete results and effective developments in the actions of those committees for the prevention and combat of torture, regarding, for example: (1) approval of state legislation on the matter, (2) effective impact to the creation state mechanisms to prevent torture, (3) monitoring of recommendations from internal and external inspection mechanisms and bodies related to facilities of deprivation of liberty, and (4) mobilization of political and social actors for the construction of action plans (with goals, deadlines, monitoring tools) for the prevention of situations of cruel, inhuman and degrading treatment in spaces of deprivation of liberty.

ANNEX 1

Follow-up on the Federative Pact for the Prevention and Combat of Torture

State	Adhered to the Pact?	Instated a Committee on the Prevention and Combat of Torture by law or other means?	Established a Mechanism to prevent and Combat torture by law?
<i>Acre</i>	Yes	Yes	No
<i>Alagoas</i>	Yes	Yes	Yes
<i>Amapá</i>	No	Yes	Yes
<i>Amazonas</i>	No	Yes	No
<i>Bahia</i>	No	Yes	No
<i>Ceará</i>	Yes	Yes	No
<i>Distrito Federal</i>	Yes	Yes	No
<i>Espírito Santo</i>	Yes	Yes	Yes
<i>Goiás</i>	Yes	Yes	No
<i>Maranhão</i>	No	Yes	Yes
<i>Mato Grosso</i>	Yes	No	No
<i>Mato Grosso do Sul</i>	No	Yes	Yes
<i>Minas Gerais</i>	Yes	Yes	No
<i>Pará</i>	No	Yes	No
<i>Paraíba</i>	No	Yes	Yes
<i>Paraná</i>	No	Yes	No
<i>Pernambuco</i>	No	Yes	Yes
<i>Piauí</i>	No	Yes	No
<i>Rio de Janeiro</i>	Yes	Yes	Yes
<i>Rio Grande do Norte</i>	No	Yes	No
<i>Rio Grande do Sul</i>	No	Yes	No
<i>Rondônia</i>	No	Yes	Yes
<i>Roraima</i>	No	No	No
<i>Santa Catarina</i>	No	Yes	No
<i>São Paulo</i>	No	No	No
<i>Sergipe</i>	No	Yes	Yes
<i>Tocantins</i>	No	No	No
Summary	9 adhesions	23 committees created	10 mechanisms established
Observations		Two committees were created by civil society: Santa Catarina and Rio Grande do Sul.	Four mechanisms are operative: Rio de Janeiro, Rondônia, Pernambuco and Paraíba
