

## I. EXECUTIVE SUMMARY

1. People in places of detention in Brazil are regularly subjected to torture and other forms of ill-treatment. The equipment used to carry out these human rights violations includes kinetic impact projectiles ('rubber bullets'), chemical irritants ('pepper spray' and 'tear gas') and handcuffs. The use of force in places of detention is not adequately regulated. The National Mechanism to Combat and Prevent Torture is under-staffed and its functional independence could be compromised due to concerns over its workspace and a sole source of funding. There have been massive protests in various regions during the current reporting cycle. Many such protests have been met with excessive force, including through the abusive use of tear gas, rubber bullets and stun grenades.

## II. TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN PLACES OF DETENTION

2. During the second cycle of the UPR, both Uzbekistani and Indonesia<sup>ii</sup> recommended that the Brazilian State take measures to prevent and combat torture. While prison overcrowding and the conditions of detention are a major concern, this submission will focus on the **abusive use of equipment**.
3. Human rights organisations that carry out regular visits to the Pedrinhas prison complex in the State of Maranhão report that rubber bullets and pepper spray are used routinely against prisoners confined to their cells.<sup>iii</sup> The National Mechanism to Prevent and Combat Torture (NPM) has also reported on the "systematic and routine use" of **pepper spray, rubber bullets and tear gas grenades** in Maranhão, as well as the use of a particular stress position in Santa Catarina where detainees are hung upside-down with their hands and feet bound.<sup>iv</sup>
4. The Rio de Janeiro State Mechanism to Prevent and Combat Torture has reported that adolescents in places of detention are **handcuffed** behind their back whenever they are moved from their cells and prison staff regularly use pepper spray and electric shock weapons against them.<sup>v</sup> During conversations with Omega in July 2016, members of the Rio de Janeiro State Mechanism also mentioned that detainees are often handcuffed together in chains. The routine use of restraints violates international standards which state that they should only be used in places of detention in very limited circumstances.<sup>vi</sup>
5. The NPM has reported that operations involving special security forces are characterised by grave human rights violations perpetrated against those deprived of their liberty.<sup>vii</sup> In this regard, several videos have emerged of **instances of collective torture** and other forms of ill-treatment perpetrated against detainees since Brazil's review during the second cycle. In one instance captured on closed circuit cameras at the Joinville Regional Prison in Santa Catarina State in 2013, officials, reportedly from the Department of Prison Administration, forced a group of male detainees stripped down to their underwear to line up in tightly-packed rows, crouch down with their hands on their heads and face the wall.<sup>viii</sup> Behind the prisoners, a group of approximately 12 armed officials used kinetic impact projectiles and tear gas on the detainees, as well as spraying what appears to be a chemical irritant directly into their eyes. A 2016 report by human rights organisations on human rights violations in Pedrinhas includes video footage of a group of over 40 male detainees stripped naked and lined up facing the wall in a large area behind bars.<sup>ix</sup> The footage shows two officials aiming shotguns at the detainees through the bars, one of whom fires two shots at the detainees. The Nelson Mandela Rules expressly prohibit collective punishment.<sup>x</sup>

6. In Brazil's review during the second cycle, the Czech Republic recommended that Brazil ensure that all prison and police officers that commit human rights violations are held accountable.<sup>xi</sup> Brazil also received recommendations on improving its police and prison systems in line with international human rights standards,<sup>xii</sup> and ensuring the protection of the human rights of all detainees.<sup>xiii</sup> When the NPM has asked about use of force protocols or rules setting out the circumstances under which special forces can enter places of detention in the states it has visited, prison governors have either said they are unaware of any such protocols or that existing protocols are ineffective due to having been developed by authorities whose work did not focus on the penitentiary system or public security.<sup>xiv</sup> The **absence of use of force protocols** contravenes the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials<sup>xv</sup> and facilitates a climate of impunity for human rights violations perpetrated against detainees.

### III. INDEPENDENCE OF THE NATIONAL MECHANISM TO PREVENT AND COMBAT TORTURE

7. During Brazil's review during the second cycle, Sweden,<sup>xvi</sup> the United Kingdom<sup>xvii</sup> and Denmark<sup>xviii</sup> made recommendations concerning the independence, efficiency and autonomy of the NPM. The NPM is currently made up of 11 experts and two administrative assistants. Given the size of the country and the large number of people in places of detention, it is very difficult to see how such a small number of people can be expected to cover their mandate efficiently. Furthermore, Decree No. 8,154 provides that the Human Rights Ministry will provide the technical, financial and administrative assistance necessary for the functioning of the System to Combat and Prevent Torture.<sup>xix</sup> Under President Temer's administration, this Ministry has been dissolved and the Special Human Rights Secretariat operates within the Ministry of Justice and Citizenship. The fact that the Ministry of Justice is solely responsible for assigning to the NPM the resources it requires to carry out its mandate places the mechanism in a situation of vulnerability and could potentially jeopardise its functional independence. Furthermore, the NPM currently shares an open-plan office with staff from the Special Human Rights Secretariat. Such an arrangement is entirely unsuitable given the sensitive nature of the NPM's work.

### IV. EXCESSIVE USE OF FORCE AGAINST PROTESTERS

8. There have been numerous massive protests in Brazil since its review during the second cycle of the UPR. These have included protests against public transport price increases, high levels of spending ahead of the 2014 World Cup and the 2016 Olympic Games, police violence, the impeachment of President Dilma Rousseff and insufficient investment in public services. Many of these protests have been met by **excessive police violence**, including the abusive use of equipment such as tear gas, rubber bullets and stun grenades.<sup>xx</sup> The numerous instances of excessive use of force by police suggest that Spain's recommendation<sup>xxi</sup> to Brazil to revise the human rights training programmes for the security forces, emphasizing the use of force according to the criteria of necessity and proportionality, has not been implemented.
9. Law enforcement officials in Brazil have used **rubber bullets** to repress peaceful protests when their use was unnecessary, disproportionate and dangerous. Of particular concern in this regard are the instances of rubber bullets being fired at the head or upper-body area, even when those targeted posed no threat and were not engaged in violence. For example, in October 2015 a Military Police Officer in Recife fired his shotgun at a protester from

point-blank range, hitting him in the shoulder, in retaliation after having his hat accidentally knocked off.<sup>xxii</sup> Another video captured in Belém on 4 September 2016 appears to show a police officer firing a shotgun, reportedly loaded with rubber bullets, at a peaceful protester from close range.<sup>xxiii</sup>

10. In Brazil's examination during the second cycle of the UPR, France recommended that Brazil take measures to ensure the physical integrity of **journalists**,<sup>xxiv</sup> while the Czech Republic recommended that Brazil ensure all members of the police responsible for human rights violations and abuses are **held to account**.<sup>xxv</sup> In June 2013, the Inter-American Commission on Human Rights expressed concern over the excessive use of force used against journalists covering protests in São Paulo after journalists Fábio Braga, Giuliana Vallone and Sérgio Silva were reportedly hit in the face with rubber bullets fired by military police officers.<sup>xxvi</sup> On 10 August 2016, a São Paulo court refused Silva's action seeking compensation for the damages incurred, including the loss of sight in one eye.<sup>xxvii</sup> The court held that Silva had to assume responsibility for placing himself 'in the line of fire' between police and protesters.<sup>xxviii</sup> This judgment failed to consider the indiscriminate nature of the use of force and the trajectory of the shot fired, thereby contributing to the climate of impunity prevalent in Brazil for law enforcement officials who use excessive force.
11. During workshops facilitated by the Omega Research Foundation in 2016, participants who monitor the use of force during public gatherings highlighted their concern at the serious injuries being caused by the indiscriminate use of **stun grenades** against protesters. When they explode stun grenades can release shrapnel and fragments with sufficient energy to cause death or serious injury. In 2013, student Vitor Araújo lost sight in one eye after being hit by shrapnel from a stun grenade.<sup>xxix</sup> On 31 August 2016, Deborah Fabri was hit in the eye by shrapnel from a stun grenade and it is unlikely that she will regain sight in the injured eye.<sup>xxx</sup> Both of these instances occurred in São Paulo.
12. There are numerous reports of **tear gas** being used against peaceful protesters in recent years. São Paulo Military Police have used tear gas against peaceful protesters on repeated occasions in the years that have elapsed since Brazil's last review.<sup>xxxi</sup> Amnesty International reported that the Military Police in Rio de Janeiro used tear gas in enclosed places at least three times in June and July 2013. In one instance, the director of a health centre alleged that military police officers 'threw tear gas bombs in the hallway of the hospital emergency room,' causing the gas to 'spread throughout the hospital'.<sup>xxxii</sup> Chemical irritants can cause death through asphyxiation or toxic poisoning, especially in confined spaces. Tear gas grenades and weapon fired tear gas should not be used in confined spaces or in the vicinity of people who face a heightened risk of serious injury if exposed to chemical irritant.
13. The use of rubber bullets, tear gas and other **less lethal weapons is not sufficiently regulated** in Brazil. Furthermore, use of force protocols are often considered confidential. This is a barrier to the independent monitoring of the public use of force.

## **V. RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW**

### **Legal Framework Regulating the Public Use of Force**

14. Ensure that the use of force is strictly regulated in accordance with international human rights standards in all situations, including in places of detention and during public gatherings. Use of force rules and regulations should be made accessible to the public.
15. Invite relevant stakeholders including human rights monitoring bodies and non-governmental organisations to actively participate in the creation of new use of force protocols and the improvement of existing ones.

### **Independence of the National Mechanism to Combat and Prevent Torture**

16. Take further measures to guarantee the functional independence of the NPM, including providing a workspace designated for the exclusive use of the mechanism, ensuring that the mechanism is provided with the human resources required to fulfil its mandate and expressly permitting the NPM to receive funds from sources independent from the Ministry of Justice.

### **Law Enforcement Equipment and Allegations of Misuse**

17. Ensure that all firearms, less lethal weapons, restraints, and other uses of force, are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm.
18. Strictly control the design, transfer, selection and testing of all law enforcement equipment and ensure a thorough, independent review based on international human rights law and standards is carried out by independent medical, legal, police and other experts to ascertain whether the equipment is fit for use in law enforcement.
19. Prohibit the use of stun grenades for crowd control purposes given their indiscriminate nature and the serious injuries that these explosive munitions can cause.
20. Ensure that all law enforcement personnel, including prison staff, has access to regular training on the use of equipment. This training should be human rights- and scenario based, prioritising the use of peaceful means to resolve situations where possible and requiring officials to attain a minimum level of competency before being issued with equipment.
21. Fully investigate all alleged incidents of torture and other cruel, inhuman or degrading treatment or punishment, ensuring all perpetrators including superior officers are held accountable for their actions. In the interest of transparency and accountability, all results of such investigations and any penalties imposed should be made publicly available.

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- i A/HRC/21/11 - Para. 119.63 & A/HRC/21/11/Add.1 - Para. 15.
- ii A/HRC/21/11 - Para. 119.64 & A/HRC/21/11/Add.1 - Para. 15.
- iii Conectas, Sociedade Maranhense de Direitos Humanos, OAB-MA and Justiça Global, *Ongoing violation: two years since the crisis in Pedrinhas*, 16 March 2016, available at <http://www.conectas.org/en/actions/justice/news/42596-ongoing-violation-two-years-since-the-crisis-in-pedrinhas> [accessed 12 September 2016].
- iv National Mechanism to Prevent and Combat Torture, *Annual Report 2015-2016*, Brasília 2016, para. 78.
- v Rio de Janeiro State Mechanism to Prevent and Combat Torture, *Annual Report 2015*, Rio de Janeiro 2016, p. 83.
- vi UN Standard Minimum Rules for the Treatment of Prisoners (the 'Nelson Mandela Rules'), adopted by the UNGA on 17 December 2015, UN Doc. A/Res/70/175, Rule 47.
- vii National Mechanism to Prevent and Combat Torture, *Annual Report 2015-2016*, Brasília 2016, paras. 79-80.
- viii Roelton Maciel, 'Vídeo: tortura é registrada por câmeras de segurança no presídio de Joinville,' *Anotícia*, 02/02/2013, <<http://anoticia.clicrbs.com.br/sc/seguranca/noticia/2013/02/video-tortura-e-registrada-porcameras-de-seguranca-no-presidio-de-joinville-4032160.html>> [accessed 12 September 2016].
- ix Conectas, Sociedade Maranhense de Direitos Humanos, OAB-MA and Justiça Global, *Ongoing violation: two years since the crisis in Pedrinhas*, Chapter Two, see min. 1:30 - 1:40 of video, available at <http://www.conectas.org/en/actions/justice/news/45707-torture-and-mistreatment> [accessed 12 September 2016].
- x Nelson Mandela Rules, Rule 43 (1)(e).
- xi A/HRC/21/11 - Para. 119.122 & A/HRC/21/11/Add.1 - Para. 15.
- xii Holy See, A/HRC/21/11 - Para. 119.110 & A/HRC/21/11/Add.1 - Para. 15.
- xiii Italy, A/HRC/21/11 - Para. 119.78 & A/HRC/21/11/Add.1 - Para. 15; Slovenia, A/HRC/21/11 - Para. 119.68 & A/HRC/21/11/Add.1 - Para. 15.
- xiv National Mechanism to Prevent and Combat Torture, *Annual Report 2015-2016*, Brasília 2016, para. 84.
- xv United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN BPUFF), Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Principle 1.
- xvi A/HRC/21/11 - Para. 119.11 & A/HRC/21/11/Add.1 - Para. 15
- xvii A/HRC/21/11 - Para. 119.12 & A/HRC/21/11/Add.1 - Para. 16
- xviii A/HRC/21/11 - Para. 119.14 & A/HRC/21/11/Add.1 - Para. 15
- xix Article 18 of Decree No. 8,154, of 16 December 2013, regulating the functioning of the National System to Prevent and Combat Torture, the composition and functioning of the National Committee to Prevent and Combat Torture and providing for the National Mechanism to Prevent and Combat Torture.
- xx See, for example, Amnesty International, *'They Use a Strategy of Fear': Protecting the Right to Protest in Brazil*, 2014, available at <https://www.amnesty.org/en/documents/AMR19/005/2014/en/> [accessed 8 September 2016] and Human Rights Watch, "Brazil: Guarantee Protesters' Rights," 7 September 2016, available at <https://www.hrw.org/news/2016/09/07/brazil-guarantee-protesters-rights> [accessed 8 September 2016].
- xxi A/HRC/21/11 - Para. 119.65 & A/HRC/21/11/Add.1 - Para. 15.
- xxii See Robert Mackey, 'Brazilian Protester Shot With Rubber Bullet for Knocking Officer's Cap Off', *New York Times*, 2 October 2015, available at <http://www.nytimes.com/2015/10/03/world/americas/brazilian-protester-shot-with-rubber-bullet-for-knocking-officers-cap-off.html> [accessed 8 September 2016].
- xxiii See 'OAB-PA denuncia violência da PM durante manifestação em Belém', *Globo*, 6 September 2016, available at <http://g1.globo.com/pa/para/noticia/2016/09/oab-pa-denuncia-violencia-da-pm-durante-manifestacao-em-belem.html> [accessed 8 September 2016].
- xxiv A/HRC/21/11 - Para. 119.89 & A/HRC/21/11/Add.1 - Para. 13.
- xxv A/HRC/21/11 - Para. 119.122 & A/HRC/21/11/Add.1 - Para. 15.
- xxvi Inter-American Commission on Human Rights, 'IACHR Expresses Concern over Arrests and Attacks on Demonstrators and Journalists during Protests in Brazil,' 20 June 2013, available at [http://www.oas.org/en/iachr/media\\_center/PReleases/2013/044.asp](http://www.oas.org/en/iachr/media_center/PReleases/2013/044.asp) [accessed 8 September 2016].
- xxvii Article 19, 'Responsabilizar fotógrafo por ferimento é incentivar novas violações,' 19 August 2016, available at <http://artigo19.org/blog/2016/08/19/responsabilizar-fotografo-por-ferimento-e-incentivar-novas-violacoes/> [accessed 8 September 2016].

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<sup>xxviii</sup> See judgment here: <http://s.conjur.com.br/dl/fotografo-culpado-tiro-deixou-cego.pdf> [accessed 8 September 2016].

<sup>xxix</sup> Fabiano Maisonnave, 'Estudante perde visão de um olho após confrontos em SP,' *Folha de S.Paulo*, 9 September 2013, available at < <http://www1.folha.uol.com.br/poder/2013/09/1338985-estudante-perde-visao-de-um-olho-apos-confrontos-em-sp.shtml> > [accessed 8 September 2016].

<sup>xxx</sup> Jefferson Ricardo, 'Estudante tem olho perfurado após protesto contra Temer em SP,' *Folha de S.Paulo*, 31 August 2016, available at <http://www1.folha.uol.com.br/poder/2016/09/1809317-estudante-tem-olho-perfurado-apos-protesto-contratemer-em-sp.shtml> [accessed 8 September 2016].

<sup>xxxi</sup> See, for example, Amnesty International, 'Brazil: Police repression mars peaceful protest in São Paulo', 22 January 2016, available at <https://www.amnesty.org/en/latest/news/2016/01/brazil-police-repression-mars-peaceful-protest-in-sao-paulo/> [accessed 8 September 2016] and Conectas, 'Military police violates rules on the use of the force', 19 May 2014, available at <http://www.conectas.org/en/actions/justice/news/19081-military-police-violates-rules-on-the-use-of-the-force> [accessed 8 September 2016].

<sup>xxxi</sup> Amnesty International, *'They Use a Strategy of Fear': Protecting the Right to Protest in Brazil*, p. 6.