Human Rights and Criminal Justice in Brazil

Joint Submission

Rede Justiça Criminal (Criminal Justice Network)

3rd Cycle of the Universal Periodic Review

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Created in 2010, the Rede Justiça Criminal (Criminal Justice Network) is a collective of seven civil society organizations that seeks to contribute to the transformation of the current criminal justice system into a more just and efficient system that respects the fundamental guarantees of citizens by engaging in strategic actions targeting the executive, legislative and judiciary branches of government.

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I. The situation of imprisonment in Brazil in numbers

The most recent official survey conducted by the National Penitentiary Department reveals that in December 2014, there were 622,202 people in prison in Brazil. That makes it the fourth largest prison population in the world, which is being held in a system working over its maximum capacity.

In general, in Brazil, 306 of every 100,000 inhabitants are in prison, which is one of the highest incarceration rates in the world. The numbers indicates a growth of 167.32% of the prison population since the 2000s, more than ten times greater than the growth rate of the country's total population[i]. However, 40% of the prison population - that is, 249,668 individuals – is deprived of liberty without even having been convicted[ii].

However, an official study conducted by the Institute for Applied Economic Research (IPEA), demonstrated that 1 in every 3 people in pretrial detention will not be convicted. Similarly, the study demonstrated that 37.2% of defendants in pretrial detention were not sentenced to prison at the end of the trial process[iii].

The data also shows that the number of pretrial detainees is very close to the number of spaces lacking in the system. The latest information indicates that the penitentiary system has a shortage of 250,318 places. In other words, if alternatives measures to incarceration were applied, as national and international legislation clearly provides for, Brazil's position, as one of the countries that imprisons the most people in the world, could be different. Yet, the country currently favours a criminal policy where incarceration is the rule and liberty is only an exception.

In this regard, UN Special Rapporteur on Torture, Juan Méndez, expressed concern with the fact that Brazil is experiencing an endemic and structural problem of overcrowding in the places of detention. Part of this alarming situation derives from the high number of pretrail detainees, according to the Special Rapporteur.

Overcrowding contributes significantly to the deterioration of the precarious conditions in which persons are deprived of liberty in Brazil. According to the Rapporteur:

"*Conditions of detention amount to cruel, inhuman or degrading treatment. Severe overcrowding leads to chaotic conditions inside the facilities, and greatly impacts the living conditions of inmates and their access to food, water, legal defense, health care, psychosocial support, and work and educational opportunities, as well as sun, fresh air and recreation*"[iv].

For the Rapporteur, the best policy for improving the Brazilian prison system is the one whose goal is to adopt alternatives to incarceration and whose focus is to decrease the prison population.[v]

Finally, one can also argue that in Brazil, there is no policy to ensure the consistent production of data on criminal justice. When data are available, they are scarce, incomplete, incongruent and collected while using different methodologies - facts that invariably limit the possibility of using the

data in a consistent manner. The absence of information also hinders the elaboration and monitoring of efficient public policies that are attentive to the needs of vulnerable groups.

A clear example of the invisibility affecting the prison population is the absence of data on the LBGTI population deprived of liberty, as the Rapporteur on Torture rightly observed:

The Special Rapporteur notes with concern that little data exist on lesbian, bisexual, transgender and intersex people in conflict with the law in Brazil. Few people declare themselves as such in prison, the great majority of incidents are not reported due to fear of retaliation from the perpetrator(s), and there is little interest in mapping such incidents.[vi]

Furthermore, it is not clear, for example, how many indigenous people are currently deprived of liberty in the country, or how many pregnant women are in prison. A large proportion of the prison population is thus invisible, which leaves them even more vulnerable and unassisted.

For the past years, the National Penitentiary Department (DEPEN), within the Ministry of Justice, has been raising efforts on producing a national report on the situation of the prison system in Brazil: Infopen (the National Prison Information Survey), is the only official national report on the prison system in the country.

There are numerous criticisms of Infopen, such as the time lag or the lack of a uniform methodology for collecting data. Nonetheless, this is an important national diagnosis of the situation of deprivation of liberty in Brazil. Its flaws aside, Infopen has served to guide assessments and to help both civil society and the government to better understand the prison system.

It is, however, worrisome that the recent change of government in Brazil is putting the incipient policy on the production of data on incarceration in the country at risk. It is highly necessary to not only improve the production and quality of the data in Infopen, but also guarantee government commitment to ensuring its continuity.

The recommendation of the Special Rapporteur on Torture on this is clear:

It is of crucial importance to strengthen the country's capacity to produce and publicize clear and relevant data, including the incidence of torture, ill-treatment and death in custody among various vulnerable groups, including racial, sexual, gender and other minority groups[vii]

Recommendations from the Criminal Justice Network:

- Guarantee the continuity of the National Prison Information Survey (Infopen), improve the methods used to collect and systematize data, and establish a national standard for data collection with predefined criteria, periodicity and methodology.

- Maintain an open database on criminal justice with the following characteristics: current, public, national in coverage and attentive to diversity.

II. From the deprivation of rights to deprivation of liberty

Even though the demographic data on the profile of the prison population are scarce and inaccurate, one can affirm, based on Infopen, that young, black persons in situations of high social vulnerability are overrepresented in the Brazilian penitentiary system.

Although the general population between 18 and 24 years of age corresponds to 11.16% of the country's total population, youth in this age group represent 30.12%, or approximately one third, of the prison population.[viii] Today, 55.07% of the people deprived of liberty are 29 or younger.

Furthermore, black youth are the main victims of imprisonment in Brazil. Infopen demonstrates that 61.67% of such population black. It is possible that these numbers are likely even higher, as the chosen method for data collection is registration by third parties and not self-declaration.

In 2013, the UN Working Group of Experts on People of African Descent revealed that in Brazil:

The Ministry of Justice was unable to provide the Group with the exact numbers of Afro-Brazilian prisoners due to the varied systems for data collection in each State, but it estimates that 75% of the prison population is Afro-Brazilians[ix].

If we look specifically at states, we notice an even greater discrepancy between the numbers of black and white people in prisons. In the country's capital Brasília, for example, even though black people make up 57.3% of the population, 81.69% of people deprived of liberty are black. In the state of Rio de Janeiro, this population represents 52.29% of the total population and 72.57% of people in detention.

Thus, it is clear that racism in Brazil has been institutionalized and it manifests itself in an even more perverse way since black youth are at the same time, the most incarcerated profile and the majority of the victims of violence in the country. According to the same UN Group, discriminatory practices against the black population date back to the period of slavery and contributed to the establishment of a culture of racial profiling:

The Working Group notes that people of African descent with whom they met shared experiences of serious racism and discrimination based on their skin colour. Based on information received from civil society, the experts expressed concern about the practice of racial profiling by the police; which reportedly results in disproportionately high rates of harassment, arrests and imprisonment of people of African descent[x].

Similarly, the UN Rapporteur on Torture noted that:

Afro-Brazilians are at a significantly higher risk of mass incarceration, police abuse, torture and ill-treatment, medical neglect, being killed by the police, receiving higher sentences than their white counterparts for the same crime and suffering discrimination in prison — suggesting a high degree of institutional racism[xi].

In addition to racial discrimination, the criminal justice system also disproportionally affects individuals in situations of social vulnerability. People who are illiterate, who learned to read and write informally or who only have concluded elementary school education represent 75.08% of the prison population. Only 9.54% of this population declares having finished high school and a mere 0.46% have completed some form of higher education[xii].

Based on the data presented, one can affirm that Brazil maintains a mass incarceration policy that disproportionately and systematically affects black, low-income youth with low levels of education. In the country, the criminal justice system continues to aggravate vulnerabilities, reinforce stigmas and reproduces the inequalities that devastate Brazilian society.

Recommendations received during the first and second cycles of the UPR

The prison situation in Brazil has already been the target of numerous recommendations during the previous cycles of the Universal Periodic Review. Brazil accepted all of the recommendations related to the conditions in the criminal justice system and prisons in both 2008 and 2012. Yet, with the approach of the third Universal Periodic Review, one can affirm that little progress has been made to implement and consolidate the recommendations:

- Accelerate the improvement of the judicial, police and prison systems in line with international human rights standards (Uruguay)

- Prioritize the reform of the prison system and ensure respect for and protection of the human rights of all detainees (Italy)

- Make sure prisoners and detainees have access at all times to their rights and descriptions of proper treatment, including those laid down in the Standard Minimum Rules and the Body of Principles for the Protection of Detainees and make sure that they have access to effective procedures to realize these rights (Netherlands)

- Reform the penitentiary system to reduce the level of overcrowding and to improve the living conditions of persons deprived of their liberty (Spain)

Recommendations from the Criminal Justice Network:

- Promote the implementation of state systems for the prevention and combat of torture in accordance with OPCAT III.

- Note the failure of experiences with private prisons in relation to guaranteeing prisoners' rights and avoid repeating models that increase rights violations in prisons.

III. Gender discrimination in the Criminal Justice System

Brazil participated actively in the elaboration of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, the Bangkok Rules, approved by the international community in 2010. However, up until now, these rules, which recognize the specificities of imprisonment of women, have not been incorporated into public policies in the country.

Women represent 5.8% of the total prison population, whereas men represent 94.2% of individuals in prison. Even so, the growth rate of the number of women in jail is alarming. According to

Infopen[xiii], between 2005 and 2014, the incarceration rate for women increased 10.7% per year. In absolute terms, the female population jumped from 12,925 female prisoners in 2005 to 33,793 in 2014.

State repression is concentrated mainly in the area of offences related to drug trafficking, which represent 64% of the crimes for which women are detained. Even when carrying small amounts of drugs, women are often accused of trafficking, which makes it difficult to release them on temporary bail. Women are submitted to severe penalties and their constitutional rights - such as processual freedom, possibility of presidential pardon and alternative sentences - are significantly limited.

According to a study carried out by ITTC, "women detained on a temporary basis are commonly accused of non-violent drug-related crimes. The consequences of detention are more serious for them then they are for men, as in addition to losing their jobs, homes and access to health programmes, when they are mothers, the custody of their children is defined by the decisions of the justice system"[xiv].

As for the prison environment, it is not at all adapted to the needs of the female prison population. In Brazilian prisons, women suffer violations related to their right to health, access to education, their sexual and reproductive rights, labour rights, and the preservation of the family unit.

For pregnant women, the situation is even harsher. A study conducted in the state of Rio de Janeiro[xv] demonstrated that there is a large number of pregnant women in temporary detention, who could be waiting for trial and /or under criminal proceedings without been deprived of liberty. The study shows that 78% of the pregnant women in prison are young (between 18 and 22 years of age), black (77%) and have low levels of education (75.6% did not finish elementary school). Of them, 9.8% declare not knowing how to read or write. The majority of these women bear the responsibility of sustaining their families and households alone[xvi].

Another clear example of the violation of the rights and the dignity of pregnant women are the reports from women who were forced to give birth while handcuffed, as it has been observed in São Paulo[xvii]. This practice is considered a form of torture and clearly violates the Bangkok Rules, which explicitly prohibit the use of instruments of restraint in women before and during labour, and immediately after childbirth (Rule 24.c).

With the goal of banning this practice, a bill that explicitly prohibits the use of handcuffs in this situation has been waiting for Congress' approval since 2012. The urgent approval of the bill will serve, above all to protect the physical and moral integrity of women inmates and to translate Brazil's obligation to implement the international regulations into the domestic legislation. It therefore represents a small, but necessary step for guaranteeing that women are given humane treatment free from constraints and violence.

Even so, it is crucial to highlight that article 318, IV of the National Criminal Procedure Code and the Bangkok Rules stipulate that judges must give priority to alternative measures to incarceration for pregnant women. Giving birth in prison should, therefore only take place in absolute exceptional situations.

Yet, even when women are not directly criminalized, they are subjected to control and repression by the penal system. Invasive body searches, which are still part of the daily routine of Brazilian prison establishments, subjects mainly women - mothers, spouses, partners and daughters - to

humiliating practices as a precondition for prison visits to the person with whom they maintain emotional or family ties.

The practice of invasive searches consists of subjecting visitors to procedures that include being forced to remove their clothing, squat over a mirror, the inspection of body cavities and even violating intimate body parts, all conducted by prison guards. These procedures violate the dignity of visitors with the alleged purpose of guaranteeing security within the prisons and preventing drugs, weapons and telephones from entering the establishments.

It should be highlighted, that invasive searches are only used for those visiting prisoners. All other people who enter the prison establishments - such as prison employees, health professionals, public defenders, lawyers and judges - are not put through this humiliating procedure, which reveals its discriminatory nature and its total inadequacy as a tool for promoting security in prisons.

As an example, data from a study conducted by the Public Defender's Office of São Paulo showed that in 2012[xviii] approximately 3.5 million invasive searches were carried out in the State. Drugs and cellular phones were found on only 0.02% of the cases.

In 2016, Special Rapporteur Juan Méndez indicated that:

Invasive body searches can never be justified on the grounds of aiming to prevent the smuggling of illegal objects, a purpose for which there are less intrusive alternatives. Several international and regional bodies have emphatically rejected their use [...] The Special Rapporteur stresses the responsibility of the State to protect the physical and psychological integrity of inmates and relatives, and strongly urges the immediate abolition of these methods.[xix]

Visits to prisoners is a right that must be guaranteed in line with human rights principles. Invasive searches extend the penalty beyond the convicted individuals and by making it difficult to maintain emotional and family ties, they also hinder the social integration of prisoners after their release.

With the goal of explicitly banning the practice of invasive body searches in the entire country, both in the adult and the juvenile justice systems, bills nº 7764/14 and Senate bill nº 404/2015, currently under examination in the National Congress must urgently be approved. The state laws that have already passed in Rio de Janeiro (Law 7010/2015 and Law 7011/2015) and in São Paulo (Law 15.552/2014) must also be effectively implemented.

Recommendations received during the first and second cycles of the UPR

- Pay extra attention to the special needs of women prisoners by considering implementing the Bangkok rules (Thailand).

- Make more efforts to improve the situation in detention facilities especially in women's prisons (Greece).

- Make further efforts to improve conditions in detention facilities according to international standards, especially including developing gender-sensitive policies and programmes for women (Republic of Korea).

Recommendations from the Criminal Justice Network:

- Urgently approve bill 5654/2016 that prohibits the use of handcuffs before, during and after childbirth on women deprived of liberty;

- Urgently pass bill nº 7764/14 and Senate bill nº 404/2015 that prohibit the use of invasive body searches in both the adult and socio-educational system and guarantee its effective implementation;

- Include provisions related to the Bangkok Rules in training programmes for criminal justice professionals, such as prosecutors, defenders, judges and police officers.

IV. Custody Hearings

Any individual who is arrested, detained or restrained has the right to be brought promptly before a judge, as stipulated by the American Convention on Human rights ratified by Brazil in 1992 (art. 7, para. 5). Even so, currently, Brazilian law only establishes that "the judge must be informed of the arrest of any person and the arrest report must be sent to the judge" (art. 306, §1 of the Criminal Procedure Code).

A mere report, however, does not satisfy the need for direct contact between the detainee and the judge, once procedure is conducted in a merely bureaucratic manner, without the judge even hearing the person in custody.

This is why the introduction of custody hearings in Brazil is extremely important for the protection of the rights of people in pretrial detention. With the adoption of this mechanism, it is mandatory to bring the detainee before a judge up to a maximum of 24 hours after the arrest, ensuring an effective control of the legal basis of the detention and evaluating the need for the pretrial detention.

Guaranteeing that the detainee appears promptly before a judge can guarantee that a citizen will spend the least amount of time possible in prison unnecessarily, even when an attorney has not yet been appointed to his or her case, which is the case of the large majority of the prison population. It is also an effective way of tackling the issue of prison overcrowding. This is especially true when one takes into account that the abusive mass incarceration policy affects the poorest and most marginalized classes of the Brazilian population.

Furthermore, for the State, custody hearings represent an efficient and flexible tool for obtaining and verifying precise information on police procedures. The hearings can help investigate mistreatment, torture and extortion by the police officials at the time of the arrest and prevent them from happening.

In this regard, the Special Rapporteur on Torture has stated that the implementation of custody hearings is one of the most important initiatives for addressing the problem of arbitrary arrest and torture[xx]. For the Rapporteur, the procedure has proven to be an essential tool for reversing the logic of mass incarceration and effectively guaranteeing the principles of presumption of innocence and due process of law[xxi]. He explicitly recommended on his latest visit to Brazil the following:

By law, immediately expand the application of custody hearings to the entire country, and ensure complete geographic coverage within each state.

Widen custody hearings to cover all categories of crime.

It is important to highlight that since 2015, the National Council of Justice (CNJ), the body responsible for monitoring the country's judicial system, has been carrying out specific projects that aim to implement custody hearings throughout the entire country. According to data provided by the state courts to the CNJ, today, custody hearings are held in all Brazilian capitals.

There are, however, major differences in the status of implementation of the procedures within the Brazilian territory. In São Paulo, for example, since the project was introduced in February 2015 up until August 2016, 28,431 custody hearings had been held. On the other hand, in the state of Alagoas, from October 2015 to August 2016, only 99 custody hearings were conducted[xxii].

In addition to the disparities in material and physical resources that could compromise the implementation of the hearings in different states, a recent study by IDDD[xxiii] on the custody hearings in the city of São Paulo, revealed a series of challenges that must still be overcome. They include, but are not limited to:

a) Respecting the 24-hour time period;
b) Respecting the ban on the use of handcuffs during hearings;
c) Excessive use of technical language, which hinders the understanding of the procedures;
d) Lack of an adequate space for the contact between the defence and the detainee;
e) Lack of commitment to produce data; and
f) Lack of transparency in the assessment of the outcome of the custody hearings.

Similarly, the Special Rapporteur on torture identified challenges for the effective implementation of custody hearings that persist: often, the hearings are not held for cases involving serious crimes, such as murder. They are also restricted to state capitals with different degrees of incidence and the efforts to expand them to the interior of the states have been limited, which leads to disparities in the treatment of defendants. Moreover, often defendants do not have a public defender or lawyer at the time of the hearing, which may weaken their defense during the procedure[xxiv].

In this regard, on September 10th, 2105 the Supreme Court ruled that the custody hearings must be established in all the national territory within the next 90 days, as a structural measure to curb the unconstitutional state of affairs in which the Brazilian prison system is currently immersed, the decision remains unobserved (Complaint of Unfulfillment of Fundamental Norm nº 347).

In fact, one of the main obstacles for the effective implementation of custody hearings is the absence of a federal law to regulate the procedure in a uniform manner throughout the entire country. Since 2011, a draft bill elaborated in partnership with civil society on the matter has been going through Congress, pending its approval. The absence of a law that consolidates the process on the national level weakens the existence of the institution and puts its future at risk.

Recommendations from the Criminal Justice Network:

- Abide by the Federal Supreme Court ruling on the Complaint of Unfulfillment of Fundamental Norm nº347, that determines the immediate observance of custody hearings on all districts of the country;

- Urgently pass bill no. 554/2011, preserving its original text elaborated in partnership with civil society, in order to guarantee that the detainee be brought in person before a judge within 24 hours of the arrest;

- Guarantee that the Brazilian states have the human and financial resources they need to fully implement custody hearings in all districts and to train the professionals of the justice system;

- In order to guarantee full transparency, create protocols for collection and publication of data on custody hearings, focusing specifically on the right to a legal defence and the fight to end police brutality, while protecting the defendants' personal privacy.

V. Alternatives to incarceration

Article 5, LXVI of the Federal Constitution establishes that "no one shall be taken to prison or held therein when the law allows for temporary release, with or without bail". Combined with the principles of due process and presumption of innocence, the Brazilian legal framework thus determines that freedom should be the rule and prison, only the exception.

As indicated earlier, prison overcrowding is one of the serious problems that must be addressed in order to improve the criminal justice system in the country. However, caution is required when proposing solutions, as prison overcrowding is not the cause of the collapse of the current penitentiary system, it is only a symptom, of irrational way through which Brazil has been responding to criminality.

For Criminal Justice System in Brazil to be effective, a series of measures that address the culture of incarceration are required. These measures must meet the population's desire for better ways to hold offenders responsible for their acts and, at the same time, be more efficient in increasing the chances of rehabilitation. They must also respect the principles provided for in the Constitution and observe human rights norms.

The adoption of Law 12.403/2011 was an important step in this direction. The law broadened the range of choices for judges beyond only imprisonment and liberty, as it makes available a series of alternative measures, such as the presentation of oneself in in front of a judge periodically and the prohibition to travel outside of the court's jurisdiction, which have replaced pretrial detention as the only option. Furthermore, the law attempted to establish a new mind-set, determining that judges observe the necessity of pretrial detention, *vis-à-vis* the inequality and insufficiency of alternative measures.

Beyond such alternatives to pretrial detention, the law further instituted alternatives to prosecution *per se*, such criminal transaction and conditional suspension of the criminal procedure, as well as alternative sentencing. Nevertheless, these are only possible for a limited number of minor offenses. Therefore, despite the efforts that have been put in place since 2000 to broaden the application of alternative measures and alternative sentencing, their use is still insufficient, in quantity and quality. This expansion has not led to the transformation of the logic of the criminal system, which still functions according to the culture of incarceration.

In this regard, a study[xxv] carried out in the cities of São Paulo and Rio de Janeiro on the effectiveness of Law 12.403/2011 demonstrates that advances have been made in both cities. Its application has led to an increase in the number of releases and less people being deprived of liberty before their trial. Nonetheless, it also demonstrated that "both in Rio e Janeiro and São Paulo, the majority of

people let out on conditional pretrial release were in cases of non-violent property crimes, such as theft and possession of stolen goods. There were virtually no cases of crimes such as robbery, drug-trafficking and homicide where alternatives to prison were used" [xxvi].

The same patterns can be observed in the application of alternative sentencing: drug trafficking and theft, which are two of the three crimes that most imprison individuals are rarely punished sentences that are alternative to deprivation of liberty. Consequently, alternative measures and sentencing have been used for crimes of little or no impact on the prison-overcrowding scenario, such as drug use - that may not even be punished with imprisonment - traffic offenses and exploitation of gambling.

Thus, a recent study by the Ministry of Justice revealed that alternative sentences have only served as "a way to complement the criminal system by extending control beyond the prison walls through alternative sentences" [xxvii]. Furthermore, the study identified that there is still resistance among the Judiciary in adopting alternatives to incarceration.

In its visit to Brazil in 2004, the United Nations Working Group on Arbitrary Detention pointed out with concern:

The Working Group observed that judges routinely imprison large numbers of people who have been accused of minor offences, such as petty theft. More than one third of all persons detained on this charge spend more than 100 days in custody, and many spend more time on remand than serving the term to which they are actually sentenced. One worrying trend observed by the Working Group was that deprivation of liberty is being used as the first resort rather than the last, as required by international human rights standards. The excessive use of pretrial detention contributes to overcrowding, the lack of effective separation between convicted prisoners and pretrial detainees, and excessive resort to condemnatory sentences [xxviii].

Particularly, the female prison population is notoriously marked by convictions for drug-related crimes. The most recent data demonstrates that 64% of women are imprisoned for this kind of offence, as it has been indicated already in this report. There is an urgent need for Brazil to prioritize alternatives to deprivation of liberty for all women, as provided for both by the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), and the Bangkok Rules.

Moreover, Brazil needs to give priority to the implementation of a national data system on prisons and alternative sentences. The production of data and information by federal bodies is crucial for the development of national policies that are universal in nature and which respect the specificities of each locality.

For this purpose, it fundamental to implement a unified data system that allows one to assess the operations of government bodies responsible for public security and justice, coordination between them and the results they obtain. It is also vital that the National Information System on Public Safety and Criminal Justice (SINESP for its acronym in Portuguese) and the National Prison Information Survey (Infopen) be strengthened and improved, as indicated in the previous section of this report.

There is still a long way to go in order for liberty to effectively become the rule in Brazil. The misuse of the law on precautionary measures and the abusive use of pre-trial detention represent serious violations of constitutional guarantees and human rights treaties. The culture of incarceration in Brazil has a direct impact on the disquieting situation in the national penitentiary system and clearly contributes to the precariousness of prison conditions countrywide.

Recommendations received during the first and second cycles of the UPR

- Reduce prison overcrowding and pre-trial detention periods by enforcing the 2011 Law on Precautionary Measures (United States)

- Closely monitor the effectiveness of, and review if necessary, the National Programme to Support the Prison System and the Law on Precautionary Measures (Japan)

Recommendations from the Criminal Justice Network:

- Guarantee the continuity of the alternative sentencing policy by giving autonomy to its governing body and guaranteeing the resources necessary for its operations;

- Design a national data system on the application and serving of alternative measures, which uses the same variables as the ones used for the prison system.

- Incorporate into the national legislation the latest recommendations accepted at the UNGASS 2016, particularly concerning the prioritization of alternative sentences to non-violent drug offenders.

Recomendação recebida pelo Br no 1º ou 2º ciclo da RPU	País que recomendou	Posição do Brasil	Temas abordados	Avaliação de implementação	Grau de implementação	Sugestão novas recomendações
• Prioritize the reform of the prison system and ensure respect for and protection of the human rights of all detainees. 119.78 • Undertake effective measures to improve prison conditions	Italy Uruguay Hungary	Accepted	Detention	The Supreme Court recently recognized a state of chronic denial of fundamental rights in Brazilian prisons.	Not implemented. Aggravated.	Note the failure of experiences with private prisons in relation to guaranteeing prisoners' rights and avoid repeating models that increase rights violations in prisons.
• Make sure prisoners and detainees have access at all times to their rights and descriptions of proper treatment, including those laid down in the Standard Minimum Rules and the Body of Principles for the Protection of Detainees and make sure that they have access to effective procedures to realize these rights. 119.66	Netherlands	Accepted	Detention	The Supreme Court recently recognized a state of chronic denial of fundamental rights in Brazilian prisons.	Not implemented. Aggravated. Prison Population keeps rising.	Guarantee the continuity of the National Prison Information Survey (Infopen), improve the methods used to collect and systematize data, and establish a national standard for data collection with predefined criteria, periodicity and methodology.

• Reform the penitentiary system to reduce the level of overcrowding and to improve the living conditions of persons deprived of their liberty	Spain	Accepted	Detention	The latest information indicates that the penitentiary system has a shortage of 250,318 places A judicial order to prioritize basic rights in the prison system was issued in 2015, but not fulfilled.	Not implemented. Aggravated. Prison	Abide by the Federal Supreme Court ruling on the Complaint of Unfulfillment of Fundamental Norm nº347, that determines the immediate observance of custody hearings on all districts of the country;
Reduce prison overcrowding and pre-trial detention periods by enforcing the 2011 Law on Precautionary Measures. 119.71	United States	Accepted	Detention	40% of prison population has not been tried.	Aggravated by omission.	• Guarantee the continuity of the alternative sentencing policy by giving autonomy to its governing body and guaranteeing the resources necessary for its operations; • Design a national data system on the application and serving of alternative

						measures, which uses the same variables as the ones used for the prison system. • Incorporate into the national legislation the latest recommendations accepted at the UNGASS 2016, particularly concerning the prioritization of alternative sentences to non-violent drug offenders.
Pay extra attention to the special needs of women prisoners by considering implementing the Bangkok rules.119.76	Thailand	Accepted	Women's Rights		Scarcely Implemented.	• Urgently approve bill 5654/2016 that prohibits the use of handcuffs before, during and after childbirth on

						women deprived of liberty; • Urgently pass bill nº 7764/14 and Senate bill nº 404/2015 that prohibit the use of invasive body searches in both the adult and socio-educational system and guarantee its effective implementation; • Include provisions related to the Bangkok Rules in training programmes for criminal justice professionals, such as prosecutors, defenders, judges and police officers.

	Make more efforts to improve the situation in detention facilities especially in women's prisons.119.132	Greece	Accepted	Women's Rights			
	Make further efforts to improve conditions in detention facilities according to international standards, especially including developing gender-sensitive policies and programmes for women. 2	Republic of Korea	Accepted	Women's Rights			

[i] National Prison Information Survey: Infopen, December 2014.
[ii] National Prison Information Survey: Infopen, December 2014.
[iii] Information available at: http://apublica.org/wp-content/uploads/2015/02/pesquisa-ipea-provisorios.pdf
[iv] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment - mission to Brazil A/HRC/31/57/Add.4
[v] "The Special Rapporteur strongly encourages the government to focus on decreasing the prison population instead of increasing prison facilities. He strongly supports alternatives to incarceration". Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment - mission to Brazil A/HRC/31/57/Add.4.
[vi] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment- mission to Brazil A/HRC/31/57/Add.4
[vii] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment- mission to Brazil A/HRC/31/57/Add.4
[viii] National Prison Information Survey: Infopen, December 2014.
[ix] Report of the Working Group of Experts on People of African Descent - visit to Brazil A/HRC/27/68/Add.1
x Report of the Working Group of Experts on People of African Descent - visit to Brazil A/HRC/27/68/Add.1
[xi] National Prison Information Survey: Infopen, December 2014
[xii] National Prison Information Survey: Infopen, December 2014
[xiii] National Prison Information Survey: Infopen, December 2014
[xiv] Available at: http://ittc.org.br/wp-content/uploads/2016/04/orientacoes.pdf
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