

# **REPORT ON TORTURE AND INSTITUTIONAL VIOLENCE FOCUSED ON THE BRAZILIAN PRISON SYSTEM:**

The normative referential, the outlines that guided the Federal Public Defenders' Office (DPU) actions, the public statistical data, the overview of implementation and participation of the DPU in the State Committees for Prevention and Fight Against Violence, as well as other technical contributions.

(Version 1)

**Federal Public Defenders' Office**

Address: Setor Bancário Sul, Quadra 2, Bloco H, Lote 14. 15th andar

ZIP Code: 70.070- 120 - Brasília (DF)

Phone: (61) 3318-4317 / (61) 3318-4317 0270

**GENERAL-SECRETARIAT FOR INSTITUTIONAL ARTICULATION (SGAI)**

*Secretary-General of Institutional Articulation*

Gabriel Saad Travassos

*Acting Secretary-General of Institutional Articulation / Secretary of Strategic Actions*

Roberta Pires Alvim

*Secretariat of Action in the Brazilian Prison System*

Walber Rondon Ribeiro Filho

*Secretary of Access to Justice*

Murillo Ribeiro Martins

*Coordinator of the Working Group for People Experiencing Homelessness*

Nara de Souza Rivitti

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*"XLVII - there shall be no punishment:  
of death, save in case of declared war, under  
the terms of article 84, XIX;  
of life imprisonment;  
of hard labour;  
of banishment;  
  
which is cruel;*

*XLVIII - the sentence shall be served in separate  
establishments, according to the nature of the  
offense, the age and the sex of the convict;*

*XLIX - prisoners are ensured of respect to  
their physical and moral integrity".*

Article 5 of the Constitution of the Federative Republic of  
Brazil 1988

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(VERSION 1)***

## 1. Presentation

*"When you hit the fingers - I say this not because it doesn't leave a mark on the fingers, no... it does leave a mark – in such a way that these same hurt fingers don't have the strength to take a knife and push on an agent, that they don't have the strength to throw some rocks... Just like when we had injured agents, nobody talks about it here [...]"<sup>11</sup>*

*"I also think that with medicines and other stuff... I have an opinion that might seem very evil to some people, that might seem inhumane. In my opinion, I think that there are many people that have done many wrong things... they are paying for their mistakes ad eternum, forever in prison, and they could help in these cases there... for experiments. (...) Some human rights defenders are going to come along and say, 'No, this cannot be done. But what if they are people who have already been confirmed as(sic) well... they will live 60 years in jail, 50 years in jail, and will die there, I think they could use some of their lives at least to help some people, testing new drugs, testing vaccines... we can test everything on these people to see if it works, you know? This is my opinion, since they are going to have to die in jail, let them at least help with something."<sup>2</sup>*

*"Torture is part of a system, not the work of a few 'rotten apples.' To claim that torture is systemic implies saying that this violence is persistent and widespread, supported by legal and ideological benchmarks, embedded by an official agency with its multiple interconnected divisions of labor, nurtured and protected by secrecy, and enabled by the absence of any official action against it."<sup>3</sup>*

Institutional violence and torture are ancient practices of the Brazilian State. Historical references always have much to teach us about the atrocities practiced, be it in colonial times against the indigenous population and the black population, or the abominable practices that occurred during the dictatorships that the country experienced in the 20th century.

This report, however, does not intend to delve into historical, political and/or social debates

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<sup>1</sup> Secretary of Justice Mr. Luís Mauro Albuquerque, when he was Secretary of Justice of the State of Rio Grande do Norte - (video available at [https://www.youtube.com/watch?v=H1e0L\\_B6oC8&feature=youtu.be](https://www.youtube.com/watch?v=H1e0L_B6oC8&feature=youtu.be) - 1h32min).

<sup>2</sup> <https://rollingstone.uol.com.br/noticia/xuxa-sugere-testes-de-remedios-em-presos-e-apos-criticas-pede-desculpa/>.

<sup>3</sup> Torture in the Age of Human Rights / organizers, Nancy Cardia; Roberta Astolfi - São Paulo: University of São Paulo Press, 2014. Page 46.

that were (and have been) responsible for this systematic presence of institutional violence in contemporary Brazilian society. This sort of research outline we should rather leave to the academy and to the specialized doctrine.

The present approach is intended to be merely informative. Thus, in order not to lose its objectivity, some legal, thematic, and temporal clippings were defined to conduct the writing.

The starting point is the normative context inaugurated with the enactment of the Federal Constitution of 1988<sup>4</sup>, in which the right not to be tortured was recognized as a fundamental right, with an express mandate for the criminalization of acts of this nature in the national legislative framework.

The institution of the crime of torture in our legal system, the legislative/normative structuring of the National System for Preventing and Combating Torture (SNPCT), and some of the legal aspects involving criminal forensics will also be briefly outlined.

In a second approach, we will deal with the path followed by the Federal Public Defenders' Office (DPU), which, within its various lines of action in the promotion and protection of human rights, operates also in favor of strengthening the prevention and combat of torture in Brazil.

Next, we present statistical data, from public sources, regarding the numbers involving reports of acts of violence and torture in environments of deprivation of liberty in Brazil, in the second half of 2020. It is necessary to remember, however, that we do not have reliable criminal and judicial statistics in the country that would allow us to present individualized information on judicial proceedings, inquiries and administrative investigations related to the crime of torture<sup>5</sup>.

The reality of the Brazilian prison system is also one of the clippings of this report. This is because, more than five years after the Brazilian Supreme Court (STF), in the context of the Action for breach of fundamental precept (ADPF) n. recognized<sup>347</sup>, unconstitutional state of affairs of our prison system, the overcrowding in prisons is still systematic, which increases the climate of tension, besides making it impossible to guarantee fundamental rights and assistance to the execution and individualization of the sentence. And in this context a scenario of strong restriction of rights is formed, notably conducive to the practice of torture, mistreatment and other violations.

Also based on research from public data sources, we seek to show an updated panorama of the situation of implementation and effectiveness of the State Committees and Mechanisms for the Prevention and Combat of Torture, as they are important instruments in the daily struggle against institutional violence in places of deprivation of liberty.

At the end, a comparative table will be presented for each of the local realities regarding the participation of the Public Defenders' Office (at the State and Federal levels) in the Committees, according to legal provisions.

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<sup>4</sup> Article 5, III of the Federal Constitution states that "*no one shall be subjected to torture or to inhuman or degrading treatment*."

<sup>5</sup> When submitting the second periodic report, by virtue of the provisions of the article of the UN 19 Convention for the Prevention and Combating of Torture, the Brazilian State, when answering the question about the consolidation of detailed statistical data on arrests and charges made based on the torture crime law, explained that: " (...) the culture of generating data on public order and the criminal justice system is a recent practice in Brazil. Although the National Committee for the Prevention and Combat of Torture is responsible for creating and maintaining a registry of complaints, denunciations and court decisions, the only data currently available on the subject is from DEPEN and indicates that in June 2016 there were 174 men and 55 women detained for the practice of torture in the country. With regard to public order, in 2012 the SINESP was created to store, manage and integrate data and information that assist in the formulation, application, enforcement, inspection and evaluation of policies related to public order, the penitentiary system and the execution of penalties, as well as the fight against illicit drug trafficking, but the System still does not include specific data on torture. With regard to information on judicial proceedings, the National Council of Justice has made every effort to collect data from state courts, but beyond the implementation of the electronic registry, which will be an important tool to obtain more information." [free translation - [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fBRA%2f2&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fBRA%2f2&Lang=en) ]

## 2. Normative reference

As clarified, for the purposes of this exposition, we have chosen as a cutout the normative precepts inaugurated by the Federal Constitution of 1988<sup>6</sup>, which considered torture a crime that cannot be punished or amnestied, recognizing as fundamental the right not to be tortured.

Specific mention should be made of the Inter-American Convention to Prevent and Punish Torture (promulgated by Presidential Decree 98.386/1989<sup>7</sup>), which reinforces the need for the Brazilian State to act in this area, and the United Nations (UN) Convention on the Rights of the Child of 1989 (promulgated by Presidential Decree 99.710/1990<sup>8</sup>), which provides for the protection of children from torture<sup>9</sup>.

Domestically, through Decree no. 40 of February 15, 1991, the Brazilian state ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of December 10, 1984. This is a very significant (legal and symbolic) milestone, given that, at that moment, the country had just moved away (in terms of regime) from the long-suffering period of military<sup>10</sup> intervention.

In the six-year gap (between 1991 and 1997), the historical records of the academy, the press and the literature point to the significant struggles of social movements, institutions, civil organizations and other actors in the construction of legal and juridical references that could strengthen the debate on the prevention and combat of torture<sup>11</sup>. So much so that, in 1997, after intense legislative debate, Federal Law No. 9.455 (still in effect) was enacted, in order to regulate the crime of torture in the country<sup>12</sup>.

Another decade passed, until, in 2007, through the publication of Decree No 6.085, Brazil ratified the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), an instrument that reaffirms such practices as grave violations of human rights and imposes the Brazilian state with the obligation to set up a torture<sup>13</sup> preventive mechanism.

It is important to register that this period of 10 years, between the promulgation of Federal Law n. 9.455 and Decree n. 6,085 is also marked by intense mobilization of society and institutional actors who fought against torture. Here are some milestones worth noting:

- 1997 - II National Human Rights Conference - Implementation of the National Human Rights Program<sup>14</sup>.

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<sup>6</sup> Article 5, III of the Federal Constitution states that "*no one shall be subjected to torture or to inhuman or degrading treatment*."

<sup>7</sup> [http://www.planalto.gov.br/ccivil\\_03/decreto/1980-1989/d98386.htm](http://www.planalto.gov.br/ccivil_03/decreto/1980-1989/d98386.htm)

<sup>8</sup> [http://www.planalto.gov.br/ccivil\\_03/decreto/1990-1994/d99710.htm](http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/d99710.htm)

<sup>9</sup> Although they were implemented before the 1988 Federal Constitution, the Mandela Rules (UN minimum precepts for the treatment of prisoners) and the UN Minimum Rules for the protection of juveniles deprived of their liberty, also present parameters for state action in cases of torture.

<sup>10</sup> Brazil is a signatory to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - Decree No. 40, February 15, 1991, which provides, in its article 2, paragraph 1, that "*Each State Party shall take effective legislative, administrative, judicial or other measures to prevent the practice of torture in any territory under its jurisdiction*;

<sup>11</sup> In the 1996 First National Conference on Human Rights, the draft of the National Human Rights Program is presented - [http://www.dhnet.org.br/dados/conferencias/nacionais/relatorio\\_01\\_conf\\_nac\\_dh\\_1996.pdf](http://www.dhnet.org.br/dados/conferencias/nacionais/relatorio_01_conf_nac_dh_1996.pdf)

<sup>12</sup> [http://www.planalto.gov.br/ccivil\\_03/leis/l9455.htm](http://www.planalto.gov.br/ccivil_03/leis/l9455.htm)

<sup>13</sup> [http://www.planalto.gov.br/ccivil\\_03/\\_ato2007-2010/2007/decreto/d6085.htm](http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/decreto/d6085.htm)

<sup>14</sup> <http://www.dhnet.org.br/dados/conferencias/dh/br/2conf/sistemopen.html>

- 1998 - III National Conference on Human Rights - The Fiftieth Anniversary of the Universal Declaration of Human Rights; International Human Rights Systems and PNDH and State Human Rights Programs<sup>15</sup>.
- 1999 - IV National Conference on Human Rights - International Covenant on Economic, Social and Cultural Rights: "Without social rights there are no human rights"<sup>16</sup>.  
2000 - the United Nations Special Rapporteur on Torture and Other Treatment or Cruel Punishment Cruel, Inhuman or Degrading Treatment, Nigel Rodley, made his first visit to the country<sup>17</sup>.
- 2000 - V National Conference on Human Rights - 500 years of the discovery of Brazil and the fight against violence: "Brazil 500 years: discover the human rights"<sup>18</sup>.
- 2001 - VI National Conference on Human Rights: Impunity; National System of Human Rights Protection and Action Plan on Racism and Discrimination<sup>19</sup>.
- 2002 - VII National Conference on Human Rights: Preventing and Combating Violence<sup>20</sup>;
- 2003 - VIII National Human Rights Conference: National Human Rights Protection System<sup>21</sup>,
- 2004 - IX National Human Rights Conference: Building the National Human Rights Protection System;
- 2005 - Between July 13 and 29, 2005, the UN Committee Against Torture visits Brazil in the framework of the article of the 20 Convention Against Torture and Other Cruel and Degrading Treatment;<sup>22</sup>
- 2006 - X National Human Rights Conference: Set of themes with relevance in the fight for human rights in recent years and with transversality among organized segments; National Human Rights Program; National Human Rights System and National Human Rights Council: Path to development;
- 2006 - the federal government creates the Integrated Action Plan for the Prevention and Combat of Torture (PAIPCT), the year in which the 10th National Conference on Human Rights is also held, with a set of themes relevant to the struggle for human rights in recent years and with transversality among organized segments; National Human Rights Program; National Human Rights System and National Council on Human Rights: Path to Development<sup>23</sup>.

During a visit which took place between 19 and 30 September 2011, the Subcommittee on Prevention of Torture (SPT) met with relevant Brazilian authorities and representatives of civil society. It also carried out technical visits to a number of places of deprivation of liberty, including police stations, prisons, juvenile detention centers and psychiatric institutions in the states of Espírito Santo, Goiás, Rio de Janeiro and São Paulo<sup>24</sup>.

<sup>15</sup> <http://www.dhnet.org.br/dados/conferencias/dh/br/iiconferencia.html>

<sup>16</sup> <http://www.dhnet.org.br/dados/conferencias/dh/br/viconferencia.html>

<sup>17</sup> <https://www.al.sp.gov.br/noticia/?id=257986>

<sup>18</sup> [http://www.dhnet.org.br/dados/conferencias/dh/br/relatorio\\_5conf.pdf](http://www.dhnet.org.br/dados/conferencias/dh/br/relatorio_5conf.pdf)

<sup>19</sup> <http://www.dhnet.org.br/4legis/br/cdhcf/vconfnac.html>

<sup>20</sup> [http://www.dhnet.org.br/dados/conferencias/dh/br/vii\\_confindex.html](http://www.dhnet.org.br/dados/conferencias/dh/br/vii_confindex.html)

<sup>21</sup> [http://www.dhnet.org.br/dados/conferencias/nacionais/relatorio\\_08\\_conf\\_nac\\_dh\\_2003.pdf](http://www.dhnet.org.br/dados/conferencias/nacionais/relatorio_08_conf_nac_dh_2003.pdf)

<sup>22</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CAT%2fC%2f39%2f2&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CAT%2fC%2f39%2f2&Lang=en)

<sup>23</sup>

<https://www.gov.br/mdh/pt-br/centrais-de-conteudo/prevencao-e-combate-a-tortura/plano-de-aco-es-integradas-para-a-prevencao-e-o-combate-a-tortura-no-brasil.pdf>

<sup>24</sup> [https://acnudh.org/load/2012/07/relatorio\\_SPT\\_2012.pdf](https://acnudh.org/load/2012/07/relatorio_SPT_2012.pdf)



The SPT experts stressed the importance of establishing the mechanisms to prevent and combat torture, recommending that the relevant federal and state authorities provide the mechanisms with functional independence and sufficient resources, and enable them to carry out their functions effectively, in accordance with the OPCAT<sup>25</sup>.

Another noteworthy point in the report is the recommendation to establish a system of legal medical examinations as defined by the Istanbul Protocol (Manual for the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment):

Medical examinations and proper recording of injuries suffered by persons deprived of their liberty constitute important safeguards for preventing torture and ill-treatment and fighting impunity. They can also protect police and prison staff from false allegations. States should carry out an impartial investigation when there is reasonable ground to believe that an act of torture or ill-treatment has been committed. Such examinations should be carried out, in private, by a health professional trained in diagnosing injuries - including thorough and independent medical and psychological examinations. Confidentiality of the results of these examinations should be maintained, especially with regard to police and prison staff. These results should be shared only with the detainee or his or her lawyer, in accordance with the Istanbul Protocol<sup>26</sup>.

The struggle to build and strengthen our legal-normative system against torture continued with the creation of the National System for Preventing and Combating Torture (SNPCT). The Law No. 12.847 of August 2<sup>nd</sup>, 2013, which established the SNPCT, the National Committee for the Prevention and Combat of Torture (CNPCT) and the National Mechanism for the Prevention and Combat of Torture (MNPCT)<sup>27</sup> was then approved.

Following this, Decree nº 8.154/2013, was enacted to regulate the SNPCT's operation, to regulate the composition and operation of the CNPCT, and also to provide for the composition and work of the MNPCT<sup>28</sup>.

It should be noted that among the provisions of the law is the possibility of creating State Mechanisms for Preventing and Combating Torture (MEPCT), but this issue will be addressed in the next chapter, when we will present an updated overview of the implementation and effectiveness of the State Committees and Mechanisms for Preventing and Combating Torture, as well as the participation of the Public Defenders in these institutional spaces.

Two years later, the Special Rapporteur of the Human Rights Council of the United Nations (UN), Juan Méndez, visited prison institutions in São Paulo, Sergipe, Alagoas, Maranhão, and the Federal District, at the invitation of the Brazilian government, between 14 August and 3 August<sup>29</sup>

Also, on 30 October, 2015, 19 SPT experts visited Brazil again. They inspected 22 places of detention in Rio de Janeiro, Manaus, Recife, and Brasília. The report delivered to the Brazilian authorities on 25 November 2016 presents a broad-ranging of the conditions of the places of deprivation of liberty and shares recommendations for the Brazilian State to observe the minimum standards established by international protection instruments<sup>30</sup>.

It should be noted that, in 2016, the SPT again specifically recommended that the Brazilian

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<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> [http://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2013/lei/l12847.htm](http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/l12847.htm)

<sup>28</sup> [http://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2013/decreto/d8154.htm](http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/decreto/d8154.htm)

<sup>29</sup> <https://carceropolis.org.br/media/publicacoes/RelatorioTorturaVisitaONUBR2015.pdf>

<sup>30</sup> <https://www.gov.br/mdh/pt-br/sdh/noticias/2017/fevereiro/sdh-divulga-iii-relatorio-brasileiro-ao-mecanismo-de-revisao-periodica-universal-do-conselho-de-direitos-humanos-das-nacoes-unidas>

authorities increase efforts to combat ill-treatment by implementing an investigation system, fighting impunity and promoting ethics in the training of prison staff with an emphasis on human rights. On the other hand, after visits to the IMLs in the states of Amazonas and Rio de Janeiro, SPT specialists report that the examinations to investigate allegations of torture are carried out in a superficial and inefficient manner, and prisoners are not even asked about the cause of their injuries or how they are treated by the arresting<sup>31</sup> officers.

In fact, another pillar of the structure that protects the rights of people who are subject to the state concerns precisely the normative contours of the official investigations, which also directly impact the work of the bodies that act to combat institutional violence, also because we have no national legislation that establishes the minimum and mandatory standards for questions to be asked in cases of acts of this nature.

Currently, the legislative discipline of official expert evidence is governed by the parameters of the Code of Criminal Procedure (CPP), after the reform of 1994<sup>32</sup>, and Law No. 12.030/2009<sup>33</sup>, which establishes general rules for official criminal expert examinations.

In the instrumental scope, there is the Standard Operating Procedure (SOP) for Crime Analysis, of the National Secretariat of Public Security of the Ministry of Justice and Public Security (SENASP/ MJSP), from 2013, although not of obligatory application, is a kind of technical reference study that seeks to describe the requirements and activities necessary to guide the medical examiner in performing examinations of bodily injury with quality and in a standardized manner<sup>34</sup>.

The Brazilian Protocol on Forensic Expertise in the Crime of Torture, elaborated by the Working Group "Torture and Forensic Expertise", established in 2003, of the Special Secretariat on Human Rights of the Presidency of the Republic, is another important instrument that provides orientation rules to expert bodies, experts and professionals of forensic expertise. It is an adaptation of the Istanbul Protocol to the Brazilian reality, indicating norms, rules and guidelines to forensic experts, police officers, police ombudspersons, lawyers and members of the Public Ministry, the Public Defenders' Office and the Judiciary, among others, on how to proceed to identify and produce forensic evidence in cases of crimes of torture<sup>35</sup>.

The Istanbul Protocol, produced within the UN framework, is regarded as a manual for the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment. Approaching torture as a separate category of violence, the document outlines the applicable international standards and ethical codes. It presents information regarding legal investigations into the practice of torture and makes general considerations for interviewing and recording physical and psychological evidence of torture<sup>36</sup>.

The international obligations assumed by the country after the ratification of the UN Convention against Torture require that the Brazilian expert reports be made in accordance with the parameters of the Istanbul Protocol and/or the Brazilian Protocol on Forensic Expertise in the Crime of Torture. It is in this sense that several actors of the Brazilian Justice System have built their normative instruments. We list some of them for illustrative purposes:

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<sup>31</sup> Id.

<sup>32</sup> [http://www.planalto.gov.br/ccivil\\_03/decreto-lei/del3689compilado.htm](http://www.planalto.gov.br/ccivil_03/decreto-lei/del3689compilado.htm)

<sup>33</sup> [http://www.planalto.gov.br/ccivil\\_03/\\_ato2007-2010/2009/lei/l12030.htm](http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/lei/l12030.htm)

<sup>34</sup> <https://www.novo.justica.gov.br/sua-seguranca-2/seguranca-publica/analise-e-pesquisa/pop/procedimento-operacional-padrao>

<sup>35</sup> [http://www.dhnet.org.br/denunciar/tortura/a\\_pdf/protocolo\\_br\\_tortura.pdf](http://www.dhnet.org.br/denunciar/tortura/a_pdf/protocolo_br_tortura.pdf)

<sup>36</sup> [http://www.dhnet.org.br/dados/manuais/a\\_pdf/manual\\_protocolo\\_istambul.pdf](http://www.dhnet.org.br/dados/manuais/a_pdf/manual_protocolo_istambul.pdf)

- RECOMMENDATION No. 49, of 04/01/2014, of the CNJ, which addresses the need for Brazilian judges to comply with the standards - principles and rules - of the so-called Istanbul Protocol, of the United Nations (UN), as well as with the Brazilian Forensic Expertise Protocol, in cases of crimes of torture, and makes other provisions<sup>37</sup>.
- RESOLUTION No. of 213,12/15/2015, of the CNJ, which provides for the presentation of all persons under arrest to a judicial authority within 24 hours<sup>38</sup>.
- RECOMMENDATION No. of 31,01/27/2016, of the CNMP, which provides for the need for members of the Public Prosecutor's Office to comply with the standards - principles and rules - of the so-called Istanbul Protocol, of the United Nations (UN), as well as with the Brazilian Forensic Expertise Protocol, in cases of crimes of torture and other provisions", and the need to harmonize the provisions described in the aforementioned Protocol with the duties of the enforcement body of the Public Prosecutor's Office that operates in the detention hearing<sup>39</sup>;
- CSDPES RESOLUTION No. 043, of 04/01/2017, which Establishes the flow of procedures to be adopted in the case of communication narrating a fact characterizable as torture, when such pain or suffering is inflicted by a person in the exercise of public functions<sup>40</sup>.
- DPGE RESOLUTION No. of 932,06/26/2018, which creates, within the scope of the Public Defenders' Office of the State of Rio de Janeiro, the protocol for preventing and combating torture and other cruel, inhuman or degrading treatment or punishment.<sup>41</sup>
- RESOLUTION No. 011/2020/DPE-AC, which creates, within the scope of the Public Defenders' Office of the State of Acre, the Protocol to Prevent and Combat Torture and Other Cruel, Inhuman or Degrading<sup>42</sup> Treatment or Punishment.
- Manual to prevent and combat torture and ill-treatment for custody hearings / National Council of Justice, United Nations Development Programme, United Nations Office on Drugs and Crime; coordinated by Luís Geraldo Sant'Ana Lanfredi ... [et al.]. Brasília: National Council of Justice,2020<sup>43</sup>.
- CNMP RESOLUTION No. of November 221,1, 2020, on the performance of the Public Prosecutor's Office in the custody hearing, incorporating the investigation provisions of the United Nations Istanbul Protocol, and other provisions<sup>44</sup>.
- NORMATIVE INSTRUCTION No. 98/2021, which provides for the Protocol to Prevent and Combat Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment within the scope of the State Public Defenders' Office of Ceará<sup>45</sup>.

Still along this line of good practices that need to be systematized and institutionalized, it is worth mentioning that the General Assembly of the Organization of American States (OAS), in issuing acts dealing with official defense bodies in the region, issued Resolution 2,887/2016<sup>46</sup>, which

<sup>37</sup> <https://atos.cnj.jus.br/atos/detalhar/1983>

<sup>38</sup> <https://atos.cnj.jus.br/atos/detalhar/2234>

<sup>39</sup> <https://www.cnmp.mp.br/portal/images/Recomendacoes/Recomenda%C3%A7%C3%A3o-031.pdf>

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<http://www.defensoria.es.def.br/site/wp-content/uploads/2016/10/Resolu%C3%A7%C3%A3o-n%C2%BA.-043-2017-Estabelece-o-fluxo-de-procedimentos-a-serem-adotados-no-caso-de-communic%C3%A7%C3%A3o-narrando-fato-caracteriz%C3%A1vel-como-tortura-Ato-normativo-conjunto-n%C2%BA.-001-2017-SITE.pdf>

<sup>41</sup> <https://defensoria.rj.def.br/legislacao/detalhes/6321-RESOLUCAO-DPGE-N%C2%BA-932-DE-26-DE-JUNHO-DE-2018->

<sup>42</sup> <https://defensoria.ac.def.br/back-end/img/d4e3bc5316c39e575b4f35603828c253.pdf>

<sup>43</sup> [https://www.cnj.jus.br/wp-content/uploads/2020/11/manual\\_de\\_tortura-web.pdf](https://www.cnj.jus.br/wp-content/uploads/2020/11/manual_de_tortura-web.pdf)

<sup>44</sup> <https://www.cnmp.mp.br/portal/images/Resolucoes/Resolucao-n-221.pdf>

<sup>45</sup> <https://www.defensoria.ce.def.br/wp-content/uploads/2021/04/IN-98.2021.pdf>

<sup>46</sup> [http://scm.oas.org/doc\\_public/PORTUGUESE/HIST\\_17/AG07239P03.doc](http://scm.oas.org/doc_public/PORTUGUESE/HIST_17/AG07239P03.doc)

encourages the Public Defenders' Offices to develop instruments to systematize and register cases of denunciation of torture, cruel, inhuman or degrading treatment. In the same sense, Resolution 2.928/2018<sup>47</sup> indicated measures to be adopted by the Public Defenders' Offices in the region, with emphasis on the creation of mechanisms for monitoring places of detention, in order to prevent and report cruel, inhuman and degrading treatment.

Therefore, it is recognized that public defenders are key players in the prevention, reporting and monitoring of victims of torture and other inhuman, cruel and degrading treatment. It is worth mentioning some of the tools, established in the framework of the Inter- American Association of Public Defenders (AIDEF), which serve as effective instruments for strategies and policies to prevent torture in the prison environment:

- Regional Guide for the Public Defenders' Office and the Integral Protection of Persons Deprived of Liberty<sup>48</sup>;
- Handbook for Human Rights Monitoring in Centers of Deprivation of Liberty, General Visits and Individual Interviews by the Public Defenders' Office<sup>49</sup>;
- Regional Manual of Good Prison Practices<sup>50</sup>; and
- Regional Handbook: The Bangkok Rules of Public Defenders' Offices<sup>51</sup>.

In conclusion, there are many other legal-normative parameters spread throughout the Brazilian legal system that regulate the theme. In truth, the depth of this debate needs to be investigated through academic studies, specialized doctrine, and especially the jurisprudence of the International Human Rights Systems<sup>52</sup>. The points made here, therefore, should be understood as starting points, and are by no means exhaustive of the debates on the subject.

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<sup>47</sup> [http://scm.oas.org/doc\\_public/PORTUGUESE/HIST\\_18/AG07745P03.doc](http://scm.oas.org/doc_public/PORTUGUESE/HIST_18/AG07745P03.doc)

<sup>48</sup> <https://aidef.org/guia-regional-la-defensa-publica-la-proteccion-integral-las-personas-privadas-libertad/>

<sup>49</sup> <https://aidef.org/manual-monitoreo-derechos-humanos-los-centros-privacion-libertad-parte-las-defensorias-publicas/>

<sup>50</sup> <https://aidef.org/manual-regional-buenas-practicas-penitenciarias/>

<sup>51</sup> <https://aidef.org/manual-regional-las-reglas-bangkok-clave-defensa-publica/>

<sup>52</sup> For example, the decisions of the Inter-American Court of Human Rights condemning Brazil in the Gomes Lund et al. case ("Guerrilha do Araguaia"), of 24 November, and 2010, in the Herzog et al. case, of 15 March, 2018, established the obligation of the Brazilian State to observe that torture is a crime against humanity and therefore imprescriptible;

### 3. The actions of the Federal Public Defenders' Office (DPU) in defense of the fight against torture and other types of institutional violence

First of all, it is important to point out that the Federal Constitution of 1988 granted the Federal Public Defenders' Offices a fundamental role in the promotion of human rights and in the defense of individual and collective rights of people in vulnerable situations, as expressly stated in article 134 of the *Magna Carta*.

Based on this Constitutional precept, Supplementary Law nº de 80 of 1994 established a range of institutional functions for the Public Defenders' Office, *and it is important to highlight its function in performing within "police, prison and juvenile detention facilities, aiming to assure to people, under any circumstances, the full exercise of their fundamental rights and guarantees"* (art. 4, XVII); and in the "preservation and reparation of rights of people who are victims of torture, sexual abuse, discrimination or any other form of oppression or violence, providing monitoring and interdisciplinary care. (art. 4º, XVII); and in the *"preservation and reparation of the rights of people who are victims of torture, sexual abuse, discrimination or any other form of oppression or violence, providing monitoring and interdisciplinary care to victims"* (art. 4º, XVIII)<sup>53</sup>.

It is worth mentioning that since 2019, the DPU became part of the SNPCT, in accordance with art. 22, V, of Law No. 12.847/2013, in order to strengthen, through articulation and cooperative action, the prevention and combat of torture and other cruel, inhuman or degrading treatment or punishment, especially those of people deprived of their freedom.

The SNPCT also has the CNPCT, which is responsible for monitoring, evaluating and improving actions, programs, projects and plans to prevent and combat torture and other cruel, inhuman or degrading treatment or punishment nationwide. And in this collegiate body, according to the provisions of Article 7, paragraph 4, of Law No. 12,847/2013, the DPU is part of and participates in the deliberations and debates with the legal status of permanent invitee and with the right to speak.

As for the MNPCT, which is made up of 11 independent experts who have the right to access places of deprivation of liberty<sup>54</sup>, if violations are discovered, the experts prepare information with recommendations to other competent authorities, who can use them to take appropriate measures. In these cases, which involve illegal acts or omissions by agents of the Federal Public Level (the so called 'Union'), the DPU also has the duty to promote the reparation of the rights of persons who are victims of torture or other types of institutional violence.

In terms of the full and free legal assistance provided by its units throughout the federation, the DPU's participation in first appearance hearings is noteworthy, as it allows a concrete diagnosis to be made of cases of alleged acts of torture and institutional violence during the arrest in *flagrante delicto*. At this point, however, it is important to recognize that the DPU still lacks more specific protocols and flows to assist victims of torture, inhuman or degrading treatment.

For the exercise of this and other institutional functions, the DPU has also structured

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<sup>53</sup> [http://www.planalto.gov.br/ccivil\\_03/leis/lcp/lcp80.htm](http://www.planalto.gov.br/ccivil_03/leis/lcp/lcp80.htm)

<sup>54</sup> Examples of detention environments are: detention centers, penal establishments, psychiatric hospitals, shelters for the elderly, social-educational facilities, or military disciplinary detention centers.

specific bodies to work on human rights issues and, particularly, on the prevention and combating of torture.

It is important to note that the DPU's Higher Council (CSDPU), through its Resolution No. 127 of 6 April 2016, created the Office of the Regional Human Rights Defender (DRDH), which are distributed throughout the states of Brazil and are occupied by federal public defenders, whose role is to promote the collective protection of rights and, in the individual sphere, to provide legal assistance in cases of severe violations of human rights. These agents also work in the promotion of measures for the protection of victims of crimes, and in assisting the prosecution throughout their region of operation<sup>55</sup>.

As an example of the scope of the work in the field of preventing and combating torture, the DRDH/RJ created the group "DPU Mais Rio" to monitor the activities and actions related to the federal intervention in the state's public security. In addition to the monitoring function, the group had the purpose of receiving and investigating complaints of violations of rights as a result of the activities<sup>56</sup>.

In this line of action, the DPU/RJ also joined and provided extensive support to the Program 'Slum Circuit for Rights', an initiative of the Representative of CSOs Office of the Public Defenders' Office of the State of Rio de Janeiro, with the participation of several public agencies and institutions related to the promotion of Human Rights. The 'circuit' operated in order to get close to the territories most affected by violence, seeking to create a trend for the promotion of Human Rights. A schedule of visits and meetings was made in order to listen directly to the population in their own environment, which, besides creating more trust among the residents, made it possible for the participants to have more empathy in the stories they told. Getting to know people, victims, family members, their homes, and all the conditions to which they are subjected, led the Circuit to humanize the statistics and numbers, which now have names and families. Several visits were made to communities in Rio de Janeiro between April and December of 2018<sup>57</sup>.

Another important institutional action that concretely demonstrates how the DPU contributes to strengthening and preserving the prerogatives of the MNCPT is materialized in Public Civil Action No. 5039174-92.2019.4.02.5101/RJ, also promoted by the DRDH/RJ. For making it possible, it was necessary, as a precautionary measure of immediate injunction, the retrieve of the (11 eleven) DAS positions 102.4 referred to in Article 1 of Decree 9.831/19 to the structure of the MNPCT. The government act had the potential to lead to the emptying of the body created not only to comply with international obligations, but also as a means to safeguard the fundamental right that no one shall be subjected to torture or to inhuman or degrading treatment. As a result, under the decision granting the injunction, the federal judge stated that

"...it is not difficult to conclude the manifest unlawfulness of said Decree, since the dismissal of the experts could only occur in cases of final criminal conviction, or disciplinary proceedings, in accordance with the Laws Nos. 8.112, of 11 December 1990, and 8.429, of 2 June 1992, which already legitimize the request for reinstatement of the experts in the positions previously occupied, until the respective mandate is completed by the elapse of the remaining time.

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<https://www.dpu.def.br/conselho-superior/resolucoes/30844-resolucao-n-127-de-06-de-abril-2016-regulamenta-a-tutela-coletiva-de-direitos-e-interesses-pela-defensoria-publica-da-uniao>

<sup>56</sup> <https://oglobo.globo.com/rio/violacoes-de-direitos-durante-intervencao-no-rio-poderao-ser-denunciadas-em-site-22442722>

<sup>57</sup> <https://dpu.jusbrasil.com.br/noticias/661583499/relatorio-do-circuito-favelas-por-direitos-traz-retrato-de-violacoes-no-rj>

In addition to specialized territorial human rights work, the Federal Public Defenders' Office has regulated, through Ordinance No. 200,12/03/2018, the creation of Working Groups at the national level, with the aim of promoting priority legal assistance to social groups in vulnerable situations. Among the various groups created in the aforementioned ordinance, the existence of the **Working Group for the Assistance of Prison Populations and Fight against Torture**

stands out. The mentioned WG is composed of five federal public defenders from the five Brazilian macro-regions, with the mission, among others, to *"carry out the integration of the Federal Public Defenders' Office with the other bodies that make up the national system for preventing and combating torture, within the limits of its legal and constitutional competence"*.<sup>58</sup>

This Working Group also promotes periodic inspections in the units of the Federal Prison System (SPF). In 2018, the inspection of the WG led to the expedition of a letter to the National Penitentiary Department (DEPEN) questioning the deprivation of sunbathing imposed on inmates placed in Special Disciplinary Regime or isolation in federal prisons. In 2019, these requests gave rise to a new provocation to the administration of the System, in view of the worrying finding of the high rate of use of psychiatric drugs by inmates of federal prisons, and the possible correlations of this phenomenon with prison conditions. Considering, the occurrence in 2020 of an alleged suicide of an inmate in the Federal Prison of Catanduvas, as well as the history of complaints and records on the excessive rigidity of prison conditions in the FPS, inspections in Brazilian prisons were conducted in partnership between the DPU and the MNPCT, and the reports and results of this joint work will still be disclosed.

The DPU's regimental structure also includes the Secretariat for Action in the National Prison System and Prison Councils (SASP). Among the attributions of this secretariat, provided for in art. 77 of the DPGU's internal regulations (Resolution No. 154 of October 4, 2019<sup>59</sup>), is to coordinate participation in prison mutual-aid groups conducted in partnership with other bodies of the justice system. This has been done systematically in the "'Defensoria' Without Borders" project, which is showing good results in the reduction of prison overcrowding.

From the technical performance of the SASP, which found a high risk of new rebellions and new deaths in prisons in Roraima from the abrupt withdrawal of the Task Force of Penitentiary Intervention (FTIP), the DNDH issued a recommendation to the State of Roraima and the Ministry of Justice and Public Safety requesting that the departure of the agents of the FTIP was carried out in a planned manner and combined with the expansion and consolidation of the security system of Roraima<sup>60</sup>.

The SASP also coordinates the participation of members of the DPU in state Prison Systems Councils. Currently there are federal public defenders in 24 (twenty-four) of them, a number which enables our institution to participate in the inspection of places of deprivation of liberty under the administration of the states and the supervision of local public policies funded by FUNPEN.

The DPU is also a member of the Permanent Commission on the Rights of People Deprived of their Freedom, of the National Human Rights Council (CNDH). It is worth mentioning that, in 2020, the SASP produced a study and technical subsidies for the proposal, approved by the National Council of Human Rights, of Recommendation No. 12,16/10/2020, which deals with the adoption of

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<sup>58</sup> <https://www.dpu.def.br/legislacao/portarias>

<sup>59</sup> <https://www.dpu.def.br/conselho-superior/resolucoes/53844-resolucao-n-154-de-4-de-outubro-de-2019-dispoe-sobre-o-regimento-interno-da-dpgu>

<sup>60</sup> <https://www.dpu.def.br/noticias-roraima/61552-roraima-dpu-recomenda-retirada-planejada-de-forca-tarefa-penitenciaria>

measures to regulate the use of less lethal weapons in the national<sup>61</sup> prison system.

As a result of an agreement signed between the two institutions, the STF regularly sends the DPU a significant number of letters sent by prisoners from all over the country. The DPU works on the qualified treatment of the prisoners' demands, forwarding them to the responsible bodies (including the DPU's own Offices), which also includes contacting the bodies responsible for preventing and combating torture, when events of this nature are reported in the correspondence.

Another aspect of the DPU's active work in the fight against torture is materialized in the actions developed by the Network for Action in the Inter-American System of Human Rights, which is responsible for providing technical and administrative cooperation to the DPU's organs of execution engaged in the promotion and enforcement of human rights, within a workflow for the presentation of cases and petitions to its bodies. As part of this area of activity, the DPU has effectively submitted *amicus curiae* briefs and written opinions in cases and requests for advisory opinions before the Inter-American Court and requests for precautionary measures to the IACHR:

- **Amicus Curiae -DPU - in the Case of Favela Nova Brasília Vs. Brasil.** The case refers to a range of extrajudicial executions, torture and acts of sexual violence perpetrated by civilian police officers during two raids carried out in the so-called Favela Nova *Brasília*, in Rio de Janeiro, between 1994 and 1995. 2016.
- **Amicus Curiae - DPU - in the Case of the 'Complexo Penitenciário de Curado' - Corte IDH.** The Curado Prison Complex represents well the logic of the Brazilian penal system, being a typical example of institutional violence and over-incarceration in the country. The case has been before the IASHR since 2014 and was initiated by civil society organizations. The DPU filed an *amicus curiae* brief on 03 December 2020<sup>62</sup>.
- **Case of Youths and Adolescents held in the Provisional Detention Center (CIP-Goiânia).** On 15 July 2019, the DPU submitted to the IACHR, in partnership with the State Public Defenders' Office of the State of Goiás, a complaint with a request for precautionary measures against the Federative Republic of Brazil for human rights violations resulting from a fire that resulted in the death of youths and adolescents pre-trial detention at the Provisional Detention Center (CIP - Goiânia).
- **Amicus Curiae - DPU - in request for an Advisory Opinion - Inter-American Court of Human Rights:** the request was formulated by the Inter-American Commission on Human Rights (IACHR) on the scope of the inter-American standards on the differentiated obligations that the principle of equality and non-discrimination imposes on States in the context of deprivation of liberty, especially for the real and special situation faced by vulnerable groups, specifically: (i) pregnant, postpartum and lactating women, (ii) LGBT persons; (iii) indigenous persons; (iv) elderly persons and (v) children living with their mothers in prison. The DPU presented an *amicus curiae* brief in 18 December 2020, and participated in a public hearing convened by the Inter-American Court on 12 April<sup>63</sup>.

Therefore, it is irrefutable that even with all the difficulties of implementation, structuring

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<sup>61</sup> <https://www.gov.br/mdh/pt-br/acao-a-informacao/participacao-social/conselho-nacional-de-direitos-humanos-cndh/Recomendacao12.pdf>

<sup>62</sup> <https://www.dpu.def.br/noticias-pernambuco/157-noticias-pe-slideshow/50374-drdh-pe-participa-de-debate-sobre-situacao-do-complexo-prisional-do-curado>

<https://www.dpu.def.br/noticias-pernambuco/157-noticias-pe-slideshow/31338-dpu-no-recife-participa-de-reuniao-sobre-o-complexo-prisional-do-curado>  
<https://www.dpu.def.br/noticias-institucional/25884-forca-tarefa-da-dpu-participa-de-mutirao-no-complexo-prisional-do-curado-no-recife>

<sup>63</sup> <https://www.dpu.def.br/component/content/article/89-internacional/61945-dpu-participa-do-141-periodo-ordinario-de-sesoes-da-corte-idh?Itemid=108>



and expansion<sup>64</sup>, the DPU has a solid and significant insertion in the combat and prevention of torture in our country.

## **4. Public data on reports of torture and other types of institutional violence in Brazil, which occurred in the second semester of 2020**

### **4.1. Sources: Groups for Monitoring and Supervision of the Prison System before the States (GMF's), the State Public Defenders' Offices, the DEPEN Ombudsperson's Office and the Pastoral Carcerária<sup>65</sup>.**

The present data has recently been produced as part of a project of the Specialized Meeting of Official Public Defenders (REDPO), of which the DPU is a full member.

This is the "Project to create databases for the registration and systematization of acts of torture and other forms of institutional violence in public defenders offices members of REDPO" proposed by the National Coordination of Argentina in the XIV Ordinary Meeting of REDPO, based on the successful internal experience, in order to promote the project at the regional level.

The system allows the filing, reporting and systematization of data relating to acts of violence perpetrated by agents of the State in cases of operations by MERCOSUR Public Defenders, as well as the generation of unified and reliable statistics, in order to demonstrate the severity of such acts in the region.

The data collection was proposed as follows: (i) Number of cases registered in the semester, according to the different categories; (ii) Place where said events occurred; (iii) Number of lawsuits filed by the public defense; and (iv) Best practices of public defense in this period (favorable judgment, successful out-of-court procedure, etc.).

From this context, therefore, the SASP took steps to gather, as much as possible, public records on reports and investigations of acts of torture and other forms of institutional violence that occurred in Brazil between July 1 and 31 December 2020.

With regard to the compilation of data stipulated by the REDPO meeting, the sharing of information from the databases of the specialized offices of the 35 State Public Defender Offices was requested by letter. For some, the emails were directed to the office of the State General Defender.

Letters were also sent to the Prison System Monitoring and Supervision Groups (GMF) of the State Courts of Justice, with requests being sent to a total of 25 courts. Besides the GMF's of the TJ's, e-mails were sent to the GMF's of the TRF's, which made such a communication channel available. In addition, requests for pre-filling out the questionnaire and sending information were sent to the Human Rights Hotline of the MMFDH, the Prison Pastoral Care and the National Depen.

19 replies were received from a total of 69 requests sent. Among the received replies, only 8

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<sup>64</sup> The DPU is currently present in less than 30% (thirty percent) of the places where the Federal Courts are installed, does not have its own staff for support activities and is unable to expand its activities, mainly due to the budget squeeze imposed by the PEC of the spending cap in the Brazilian public sector.

<sup>65</sup> <https://documentos.mercosur.int/public/reuniones/doc/8403>

places sent the answered questionnaires with the data referring to the requests (Depen, Pastoral Carcerária, GMF TJ/GO, GMF TJ/SP, GMF TJ/MS, GMF TJ/AL, DPE/AC and DPE/AL), while other 2 nuclei informed that they had data referring to the request, however, they needed more time to consolidate them and send the reply. The others responded that they either did not have the data, because they had not received any complaints, or that they did not have any consolidation of the data they had received.

It is also necessary to note that the DPE/AC presented information for the entire year and 2020 not only for the period from July 1st to 31 December 1st, thus it is not 2020, possible to accurately define which cases only occurred in the second semester of 2020.

We compiled the responses from the data that was answered. From this information, it was observed that a total of complaints 9234 were received, from different locations 276. Regarding the question "The number of judicial reports filed by the public defenders' office", we did not get any objective and direct answers, since many people answered that the cases were still being investigated by the Public Prosecutor's Office, the police stations, or the internal affairs services, or that they were having difficulties getting the IML reports because of too many delays or incomplete reports that did not comply with the Istanbul Protocol.

Note that within the item "others" in the spreadsheet, the answers referred to complaints about request for re-arrest (2), release of the arrest warrant in the BNMP system (6), slowness in the analysis of regime progression (2), lack of opportunity to take courses (2), lack of judicial information about the execution process (1), delay in the criminological exam (1), complaint of threat against physical integrity (1), difficulty in delivery of material (Sedex) (1), surgical interventions (8), overcrowding (7), police violence during flagrant arrest (32), mistreatment, torture or threats (22). In turn, the item "others" in the table refers to 4 Temporary Detention Centers for adults (2).

With regard to the last question concerning the "Good practices of the Public Defenders' Office in the period (favorable ruling, successful out-of-court solutions, etc.)", there was also no systematic record of the information sought, which was answered by only three institutions (DPE/AC, TJ/SP and DPE/AL), namely:

- The Protocol for the Prevention and Combat of Torture was created in the Public Defenders' Office of the State of Acre, through Resolution 011/2020;
- All the complaints received by the GMF of the TJ/SP were duly followed up by the respective judge responsible for the prison unit, who, after being informed by this sector, informs the director of the prison unit (in the case of the prison system, and Fundação Casa, in the case of the juvenile system) in order to obtain specific feedback on the complaint. Not to mention the monthly correctional visit to the prison unit, when the inspector has the opportunity to personally check the conditions of the facility (even if virtually, during the pandemic). None of these visits resulted in legal action, as the irregularities pointed out were not confirmed after the diligence was completed.
- As a successful practice, the "Defensoria no Cárcere Program" ('The Defenders' Office in the Prison System') was presented. Said Program was created by the Public Defenders' Office of the State of Alagoas on August 18, 2015 by Ordinance DPE No. 412/2015 and developed in partnership with the Department of Resocialization and Social Inclusion of the State of Alagoas, which seeks to intensify the performance of the institution within the prison system, offering full and free of charge legal assistance to convicted and

provisional prisoners, promoting effective access to justice and dignity to incarcerated citizens, in addition to monitoring prison conditions on an ongoing basis. Due to the COVID-19 pandemic, this program has suspended its activities since March/2020.

So let's look at the numbers revealed:

**Number of registered cases in the period July 1 to December 31, 2020:**

Category	Quantity
Insulation	7
Physical aggression	102
Verbal aggression / insults	73
Threats	8204
Abuse of authority	44
Violent home invasion	261
Armed causes (armed situations)	10
Triggering (squeezing the trigger of weapons)	24
Sexual Violence	0
Numerous transfers / constant / bypassing laws	0
Medical inattention	178
Poor material conditions of detention	63
Poor nutrition	83
Impediments to family and social ties	20
Shaming search in public premises	1
Intrusive Inspection in Detention Centers	4
Intrusive inspection during visits	3
Obstetric Violence	0
Other cases	157
<b>Total</b>	<b>9234</b>

#### Location where the institutional violence act took place.

	Category	Quantity
1	Prisons	271
2	Juvenile Detention Center	3
3	Police Station	0
4	Public streets or roads	0
5	Camburões ou carros/caminhões de traslado	1
6	Hospitals	0
7	Private Domicile	0
8	Barracks or locations under military control	0
9	Other	1
	<b>Total</b>	<b>276</b>

One of the difficulties reported by the agencies that did not fill out the questionnaire was the lack of consolidated data in the site, according to the indexers and the time frame defined by REDPO.

It is interesting to note that the agency with the highest number of complaints was the GMF of the TJ/MS (8575). With regard to the data collected, the items with the highest number of complaints were: threats (8204), violent home invasions (261), medical neglect (178), physical aggression (102), poor conditions of detention (63), abuse of authority (44), poor nutrition (83), and verbal aggression/insults (73).

Having presented the methodology for data collection and consolidation, it is important to consider that the numbers presented here, even coming from few sources and with some parameters not entirely compatible with those defined by REDPO, confirm the already known worrying (not to say trivialized) reality of institutional violence, mainly in the Brazilian prison system.

## 4.2. Source: Office of the National Human Rights Ombudsperson.

The second survey of public data on reports of torture (physical and/or psychological) and other sorts of institutional violence against the integrity of people deprived of liberty, in the period of the 2nd semester of 2020, was carried out based on figures available on the Interactive Dashboard of the Office of the National Human Rights Ombudsperson under the MMFDH<sup>66</sup>:

Currently, the National Secretariat for Global Protection (SNPG) of the Ministry of Women, Family and Human Rights (MMFDH) is responsible for coordinating the SNPCT, through the General Coordination to Combat Torture and Institutional Violence (CGCT).

According to the information obtained from the SNPG, the SNPCT did not have a database

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<sup>66</sup> <https://www.gov.br/mdh/pt-br/ondh/paineldedadosdaondh/2020sm02>.

on governmental or non-governmental actions and did not have a register of allegations, complaints or court rulings on torture, and the Office of the National Human Rights Ombudsperson under the MMFDH (known as ‘Dial 100’) is the entry channel for allegations and complaints of torture, under the Ministry of Women, Family and Human Rights.

The SNPG also clarifies that, in view of the regulatory provisions of the MMFDH, set forth in Ordinance No. of 313626 26 December 2019 (art. 24), the Office itself forwards the allegations to the competent bodies and monitors the progress made on them. It is up to the CGCT to monitor the evolution of cases based on the large numbers, seeking to identify patterns or indicative figures for the improvement of the policy of prevention and combat of violations.

In this context, therefore, it is necessary to consider the limitation as to the entry point of the complaints, since these are registered exclusively through telephone calls (Dial 100 or Dial 180) or cell phone applications. A citizen who is digitally excluded, for example, would find it difficult to formalize a report in such conditions.

Another fact that cannot be ignored in the impact of the numbers of eventual denunciations is that, due to the containment measures imposed to try to contain the effects of the Coronavirus pandemic, most of the prison units in the country, in almost the entire year of 2020, have restricted the visits of family members to citizens under detention. The practical experience of the public defenders’ office shows that a significant number of persons under detention can only rely on visiting family members as a contact for the outside world to formalize eventual complaints and reports.

Using the tools made available by the mentioned interactive panel, the research was focused on reports of violations against the physical and mental integrity of the victim. Filters were applied regarding the type of violation, the vulnerable group affected by the violence, and the legal nature of the person suspected of committing the act of violence.

From the conjugation of these markers/filters, here are the results found:

**(i) Reports of physical and/or psychological torture against several vulnerable groups, where the suspected perpetrator is related to a public agency.**



*Filters applied: (i) Species of violation: physical and psychological torture; (ii) Vulnerable Group: All (iii) Legal Nature of Suspect: Public Body*

- (ii) Reports of physical and/or psychological torture against detained persons, where the suspected perpetrator is associated with a public agency.



Filters applied: (i) Species of violation: physical and psychological torture; (ii) Vulnerable Group: 07. Violence against a person in restraint of liberty. (iii) Legal Nature of the Suspect: Public Body

- (iii) Reports of other types of physical and/or psychological violence (excluding cases of torture) against vulnerable groups whose suspected perpetrators are from a public agency.



Filters applied: (i) Species of violation: physical and psychological integrity (excluding cases of physical and psychological torture); (ii) vulnerable group: All; (iii) Legal Nature of Suspect: Public Body

(iv) Reports of other types of physical and/or psychological violence (excluding cases of torture) against a person in restraints of freedom, where the suspect of the violence is linked to a public agency.



Filters applied: (i) Violation Sortss: Psychic and psychological integrity (physical or psychological torture cases excluded); (ii) Vulnerable group: Violence against detained persons. (ii) Legal Nature of Suspect: Public Agency

Although it is still far from representing the real numbers of cases of institutional violence in prisons, it is possible to extract from the data presented indications that confirm what is no longer new and has been measured in the data consolidated under the REDPO project.

Of the total number of 642 (six hundred and forty-two) reports of **acts of physical or psychological torture** in the second semester of 2007, 2020, perpetrated by agents related to the public power, approximately **56%** (361 violations) were committed against detained persons..

Moreover, from the total of 7,457 (seven thousand, four hundred and fifty-seven) complaints of **acts of violence against physical or psychological integrity** in the second semester of 2020, excluding the records of torture, committed by agents related to the public power, approximately **47.63%** of them (3552 violations) were committed against detained persons.

In summary, what can be verified is that the acts of institutional violence to the physical and/or psychological integrity of persons in Brazil, including torture, are still very present in our reality and have more incidence in places of deprivation of liberty than in other places and vulnerable groups.

## 5. Overview of the implementation and participation of the Public Defenders' Office in preventive mechanisms to combat torture at the state/district level

Since the 1990s, almost all countries in the world have experienced an exponential increase in their prison populations. In Brazil, since this "punitivist turn" caused mainly by the war on drugs policy, the prison population of approximately 90000 (ninety thousand) people in the year 1990 jumped to approximately 700.000 (seven hundred thousand) in 2020.

Along with this growth in the number of people under detention, we have also experienced the emergence and engagement of new actors (public and private institutions) dedicated to the control and transparency of what occurs inside Brazilian prisons. An example of this is the inclusion of the Public Defenders' Office, by means of Law n. of in 12.313/2010, the list of agencies of penal execution disciplined by LEP, and the very emergence of the other agencies which are part of the SNPCT.

As outlined in the previous topic, the construction and emergence of the SNPCT in Brazil is the result of a prolonged political debate and intense social engagement, which lasted for more than a decade after the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

When the Brazilian State ratified the UN Convention Against Torture, it assumed the responsibility to articulate itself internally and implement measures to combat and prevent torture. This means that the Union, the States and the Federal District, as well as the Municipalities, under the three branches at all federal levels and the Public Defenders' and Public Prosecutors' Offices, must, in harmony with civil society, strive for the eradication of torture in prison environments.

Since the execution of this policy has this decentralized character, the other fundamental pillar of this fight is the creation and strengthening of preventive mechanisms to combat torture at the Federal, State and Federal District levels, as provided in item VII, of article 6, §5, of article 8 and of article 13, Law No. 12,847/2013, which are also bodies to inspect places of deprivation of liberty in order to identify routines and patterns that facilitate the occurrence of torture and other violence.

In order to give feasibility to this public policy, the Federal Government, according to Ordinance MDH 346/2017<sup>67</sup>, established the Federative Covenant for the Prevention and Combat of Torture. Among the objectives related to accession to the Covenant,, the federal entities should set up and give full functioning to the State and District Committees and Mechanisms to Prevent and Combat Torture<sup>68</sup>.

It is important to register that, still in the Ministry of Human Rights, a practical guide was launched in 2017 with subsidies for the implementation of the Federative Covenant for the Prevention and Fight against Torture, which includes guidelines for the creation, at state level, of the respective Committees and Mechanisms<sup>69</sup>.

Furthermore, in 2018, the CNPCT issued Recommendation n. 5, which approves guidelines for the creation and strengthening of Committees and Mechanisms to Prevent and Combat Torture in the Units of the Federation<sup>70</sup>.

MDH Ordinance 354/2018 was also issued, providing for the approval of the Accession Term and the Declaration of Membership the National System to Prevent and Combat Torture<sup>71</sup>. It is worth

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[https://www.in.gov.br/materia/-/asset\\_publisher/Kujrw0TZC2Mb/content/id/19308635/do1-2017-09-22-portaria-n-346-de-19-de-setembro-de-2017-19308563](https://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/19308635/do1-2017-09-22-portaria-n-346-de-19-de-setembro-de-2017-19308563)

68 **Art. 4 The objectives of the federal entities that adhere to the Pact are** I - institutionalize and give full operation to the State and District Committees for the Prevention and Combat of Torture - CEPCT, within (12)twelve months from the conclusion of the act of accession (Annex I); II - institutionalize and give full operation to the State and/or District Mechanisms for the Prevention and Combat of Torture, within (12)months months from the conclusion of the act of accession(Annex I); III - establish a State Plan of Integrated Actions to Prevent and Combat Torture by December in the 2018,light of the Plan of Integrated Actions to Prevent and Combat Torture; IV - cooperate with civil society actions to prevent and combat torture; V - encourage the committees and mechanisms to sign the adhesion to the National System for Prevention and Combat Torture (Ordinance SDH/PR 324/2015).

69 <https://www.gov.br/mdh/pt-br/centrais-de-conteudo/prevencao-e-combate-a-tortura/guia-criacao-de-comites-e-mecanismos-de-combate-a-tortura.pdf>

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[https://www.in.gov.br/materia/-/asset\\_publisher/Kujrw0TZC2Mb/content/id/54294658/do1-2018-12-10-recomendacao-n-5-de-29-de-novembro-de-2018-54294513](https://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/54294658/do1-2018-12-10-recomendacao-n-5-de-29-de-novembro-de-2018-54294513)

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noting that, according to the provisions of §3, art. 2, of Law n. 12.847/2013, combined with the articles 4 and 5 of the Decree n. 8.154/2013, the SNPCT is currently composed of the CNPCT, the MNPCT, the National Council of Criminal and Prison Policy (CNPCCP) and the National Prison Department of the Ministry of Justice (DEPEN) and the following entities that have joined the System: a) National Council of the Public Prosecutor's Office (CNMP); b) Federal Public Defenders' Office (DPU); c) National Council of Human Rights (CNDH); d) National Association of Public Defenders (ANADEP)<sup>72</sup>.

After this contextualization, we will now present the data collected about the current state of the legislation and functioning of the Committees and Mechanisms for the Prevention and Fight against Torture. The participation of the Public Defenders' Office, especially in the composition of the Committees, will be highlighted in the data presented.

Let's see:

UF	CEPCT <sup>73</sup> (State/District Legislation)	MEPCT <sup>74</sup> (State/District Legislation)	Participation of the Public Defenders' Office in the composition of the CEPCT	News about the CEPCT and/or MEPCT operation <sup>75</sup>
AC	Decree No. 7.034 of November 19th, 2020 <sup>76</sup> .	It was not located normative in this regard <sup>77</sup> .	1 (one) representative from DPE/AC  1 (one) representative of the Ombudsperson of the DPE/AC, both as natural members and with the right to speak and vote.	Recent news indicates that the CEPCT/AC had its activities restarted at the end of 2020, after 7 years of inactivity <sup>78</sup> .
AL	State Law No. 7141, of December 23rd, 2009 <sup>79</sup> .		1 (one) representative of the DPE/AL as a natural member with the right to speak and vote.	Official reports indicate that the CEPCT/ AL was reactivated in 2016 <sup>80</sup> . It was not possible, however, to obtain more up-to-date information about the actual functioning of the collegiate <sup>81</sup> .

[https://www.in.gov.br/materia/-/asset\\_publisher/Kujrw0TZC2Mb/content/id/52001913/do1-2018-11-27-portaria-n-354-de-22-de-novembro-de-2018-52001632](https://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/52001913/do1-2018-11-27-portaria-n-354-de-22-de-novembro-de-2018-52001632)

<sup>72</sup> LETTER NO. 1334/2021/GAB.SNPG/SNPG/MMFDH

<sup>73</sup> State Committee for the Prevention and Combating of Torture or other similar body

<sup>74</sup> State Mechanism for the Prevention and Combat of Torture or other similar body.

<sup>75</sup> Based on the Access to Information Law, the following information was requested from the States (i) indication of and access to the State legislation that has as its object the establishment of a mechanism and/or committee to prevent and combat torture; (ii) access to the administrative/normative acts in force at the State level that provide on the updated composition of the local mechanism and/or committee to prevent and combat torture; (iii) Access to the administrative/normative acts in effect at the State level that regulate the functioning of the local mechanism and/or committee for the prevention and combat of torture; and iv) Access to the administrative/normative acts in effect at the State level that regulate the carrying out of medico-legal exams related to possible victims of a crime of torture (corpus delicti exam). Only Maranhão, Goiás and Distrito Federal, so far, have sent answers to our demand. Because of this, we tried to complement the information through research on the world wide web.

<sup>76</sup> <http://www.legis.ac.gov.br/detalhar/4144>

<sup>77</sup> In 2020, the MPF also recommended the Acre State Government to implement the MEPCT, <https://acreagora.com/2020/07/29/mpf-recomenda-governo-por-prevencao-a-tortura-no-acre/>

<sup>78</sup> <https://agencia.ac.gov.br/governo-institui-comite-de-prevencao-e-combate-a-tortura/>

<sup>79</sup> <http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/brazilalagoaslaw.pdf>

<sup>80</sup> <http://agenciaalagoas.al.gov.br/noticia/item/8230-comite-de-prevencao-e-combate-a-tortura-e-reativado>

<sup>81</sup> <https://www.gazetaweb.com/noticias/geral/defensoria-publica-debate-medidas-de-combate-a-tortura-em-alagoas/>

<b>AP</b>	State Law No. de 2.226, of September 20th, 2017 <sup>82</sup> .		1 (one) representative of the DPE/AP as a natural member with the right to speak and vote.	Official reports indicate that the CEPCT/AP had its composition formed in 2018 <sup>83</sup> . Recently, a member was appointed to occupy the seat representing the MPF <sup>84</sup> .
<b>AM</b>	Decree No. 37.178, of August 12th, 2016 <sup>85</sup> .	No regulations were found on this subject <sup>86</sup> .	1 (one) representative of the DPE/AM as a natural member with the right to voice and vote.	Official reports indicate that CEPCT/AM is in full operation <sup>87</sup> .
<b>BA</b>	Decree No. 10.652, of December 10th, 2007 <sup>88</sup> .	No regulations were found on this subject <sup>89</sup> .	1 (one) representative of the DPE/BA as a natural member with the right to speak and vote.	Official reports indicate that the CEPCT/BA is working effectively <sup>90</sup> .
<b>CE</b>	Decree No. 30.573 of June 7th, 2011 <sup>91</sup> .	No regulations were found on this subject <sup>92</sup> .	1 (one) representative of the DPE/CE as a natural member with the right to voice and vote.	Official reports indicate that the ECCPT/CE is in effective operation <sup>93</sup> .
<b>DF</b>	Decree No. 40.869 of June 5th, 2020 <sup>94</sup> .	Bill No. 1666, from 2921.	1 (one) representative of the DP/DF as a natural member with the right to speak and vote.	There is no news about its functioning, but, still in 2020, the Secretary of State for Justice and Citizenship of the Federal District launched an edict for the selection of CDPCT <sup>95</sup> members.
<b>ES</b>	State Law No. 10.006 of April 26th, 2013 <sup>96</sup> .		1 (one) representative of the DPE/ES as a natural member with the right to speak and vote.	Official reports indicate that CEPCT/ES is working effectively <sup>97</sup> .  Local news reports say that civil society has mobilized for the implementation of MEPCT/ES <sup>98</sup> .

<sup>82</sup> [http://www.al.ap.gov.br/ver\\_texto\\_lei.php?iddocumento=79462](http://www.al.ap.gov.br/ver_texto_lei.php?iddocumento=79462)

<sup>83</sup> <https://www.portal.ap.gov.br/noticia/0606/government-empowers-members-of-the-state-prevention-and-torture-fighting-committee-in-amapa>

<sup>84</sup> <https://leisestaduais.com.br/ap/decreto-n-1388-2021-amapa->

<sup>85</sup> <https://www.escavador.com/diarios/428196/DOEAM/executivo/2016-08-12>

<sup>86</sup> The MPF recently recommended the Amazonas State Government to implement MEPCT, <https://g1.globo.com/am/amazonas/noticia/2021/05/11/mpf-recomenda-que-governo-implante-em-90-dias-mecanismo-de-prevencao-a-tortura-em-presidios-do-amazonas.ghtml>

<sup>87</sup> <http://www.sejusc.am.gov.br/seminario-de-combate-e-prevencao-tortura-no-amazonas-acontece-nesta-quarta-feira-26-6/>

<sup>88</sup> <https://governo.ba.jusbrasil.com.br/legislacao/75944/decreto-10652-07>

<sup>89</sup> The Legislative 2019, Assembly of Bahia held an extended meeting to debate the issue: <https://www.al.ba.gov.br/midia-center/noticias/39422>

<sup>90</sup> <http://www.justicasocial.ba.gov.br/2019/08/3042/Comite-Estadual-de-Prevencao-e-Enfrentamento-a-Tortura-realiza-visita-tecnica-a-presidio-da-Bahia.html>

<sup>91</sup> <https://www.jusbrasil.com.br/diarios/27587419/pg-3-caderno-1-diario-oficial-do-estado-do-ceara-doece-de-09-06-2011>

<sup>92</sup> In 2019, the Legislative Assembly of Ceará held a public hearing to debate the issue: <https://www.al.ce.gov.br/index.php/ultimas-noticias/item/83021-24062019audienciartortura>

<sup>93</sup> <https://www.sps.ce.gov.br/localizacao-das-unidades-sps/>

<sup>94</sup> [http://www.sinj.df.gov.br/sinj/Norma/7f7547c7387b4d12a39edc57fe86e44c/exec\\_dec\\_40869\\_2020.html](http://www.sinj.df.gov.br/sinj/Norma/7f7547c7387b4d12a39edc57fe86e44c/exec_dec_40869_2020.html)

<sup>95</sup> <http://www.sejus.df.gov.br/sejus-publica-edital-para-compor-comite-distrital-de-prevencao-e-combate-a-tortura/>

<sup>96</sup> <https://sedh.es.gov.br/Media/sedh/DOCUMENTOS%202017/Lei%2010.006.pdf>

<sup>97</sup> <https://sedh.es.gov.br/Media/sedh/DOCUMENTOS%202018/Posse%20membros%202018%20a%202020.pdf>

<sup>98</sup> <https://www.seculodiario.com.br/direitos/entidades-pedem-implementacao-do-mecanismo-de-prevencao-e-erradicacao-a-tortura-no-estado>

<b>GO</b>	State Law No. 19.684 of June 21st, 2017 <sup>99</sup>	No regulations were found on this subject <sup>100</sup> .	1 (one) representative of the DPE/GO as a natural member with the right to voice and vote.  1 (one) representative of DPU/GO as a natural member with the right to voice and vote.	More recent news indicates that the CEPCT/GO is working effectively <sup>101</sup> .
<b>MA</b>	State Law No. 10.334 of October 20th, 2015 <sup>102</sup> .		The DPE/MA participates in the CEPCT/MA as a guest, with the right to voice.	Official news indicates that the CEPCT/MA, at the end of 2008, was still 2019, in the public call for professional class councils to form its composition <sup>103</sup> . The MEPCT/MA had its last formation approved on 06/19/2018 <sup>104</sup> . On May 18th, 2021, we formally received the information that the new composition of the Committee and the Mechanisms are in the process of being appointed by the State <sup>105</sup> Governor.
<b>MT</b>	Decree No. 645, of September 16 <sup>th</sup> , 2020 <sup>106</sup> .	No regulations were found on this subject <sup>107</sup> .	1 (one) representative of the DPE/MT as a natural member with the right to speak and vote.	Recent news indicate that CEPET/MT is in effective operation <sup>108</sup>
<b>MS</b>	State Law No. 5.314 of December 28 <sup>th</sup> , 2018 <sup>109</sup> .		The DPE/MS participates in the CEPCT/MS as a guest, with the right to voice.	Official news indicate that CEPCT/MS is working, including on the agenda of choosing the members to integrate MEPCT/MS <sup>110</sup> .

<sup>99</sup> [https://legisla.casacivil.go.gov.br/pesquisa\\_legislacao/99001/lei-19684](https://legisla.casacivil.go.gov.br/pesquisa_legislacao/99001/lei-19684)

<sup>100</sup> In 2020, the CEPCT/GO presented to the State Secretariat for Social Development (Seds) a proposed bill for the creation of the State Mechanism for the Prevention and Combat of Torture (MEPCT) in Goiás - [http://www.defensoriapublica.go.gov.br/depego/index.php?option=com\\_content&view=article&id=2081:com-a-participação-da-dpe-go-cepct-apresenta-a-o-governo-do-estado-proposta-de-criacao-do-mecanismo-estadual-deprevencao-e-combate-a-tortura&catid=8&Itemid=180](http://www.defensoriapublica.go.gov.br/depego/index.php?option=com_content&view=article&id=2081:com-a-participação-da-dpe-go-cepct-apresenta-a-o-governo-do-estado-proposta-de-criacao-do-mecanismo-estadual-deprevencao-e-combate-a-tortura&catid=8&Itemid=180)

<sup>101</sup> <https://www.jornalopcao.com.br/ultimas-noticias/comite-apresenta-proposta-de-mecanismo-estadual-de-prevencao-e-combate-a-tortura-271047/>

<sup>102</sup> [http://stc.ma.gov.br/legisla\\_documento/?id=3955](http://stc.ma.gov.br/legisla_documento/?id=3955)

<sup>103</sup> <https://sedihipop.ma.gov.br/consulta-publica/edital-no-04-comite-estadual-de-combate-a-tortura/>

<sup>104</sup> <https://sedihipop.ma.gov.br/consulta-publica/termo-de-homologacao-do-cept-ma-sobre-res-do-mepct/>

<sup>105</sup> LETTER NO. -526 GAB/SEDIHPOP.

<sup>106</sup> <https://www.jusbrasil.com.br/diarios/317324606/doemt-17-09-2020-pg-2>

<sup>107</sup> PL 208/2013, which sought to establish the State System for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - SEPT-MT, creating the State Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Inhuman or Degrading Treatment or Punishment - CEPT-MT, and the State Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - MEPT-MT was rejected by the State Legislative Assembly in Extraordinary Session on 17/01/2018 - <https://www.al.mt.gov.br/proposicao/cpd/doc/15447/visualizar>

<sup>108</sup> <https://www.estadaomatogrosso.com.br/cidades/movimentos-lgbtqi-exigem-retratacao-de-deputado-homofobico/32686>

<sup>109</sup> [https://www.spdo.ms.gov.br/diariodoe/Index/Download/DO9809\\_28\\_12\\_2018](https://www.spdo.ms.gov.br/diariodoe/Index/Download/DO9809_28_12_2018)

<sup>110</sup> <https://www.sejusp.ms.gov.br/comite-de-combate-a-tortura-me-meets-to-choose-executive-directorate-and-create-internal-regiment/>

<b>MG</b>	<p>Delegated Law No. 180,2011<sup>111</sup>, with amendments promoted by Law No. 21.164, of January 17<sup>th</sup>, 2014<sup>112</sup>. PL 1419/2015, which establishes the State System for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - SEPT-MG - and creates the State Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is pending in the State Assembly.- CEPT-MG - and the State Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - MEPT-MG.</p>		<p>The DPE/MG is not a permanent member or guest of the Committee, but makes up the Minas Gerais State System for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - Sisprev-MG.</p>	<p>Recent news reports inform that entities that work in the human rights area defend changes in the Minas Gerais legislation on the subject<sup>113</sup>.</p>
<b>PA</b>	<p>Decrees No. 2.085<sup>114</sup> and 2.086<sup>115</sup>, both dated May 28<sup>th</sup> 2018<sup>116</sup>.</p>	<p>PL n. 44/2020, which aims to establish the State Committee for the Prevention and Combat of Torture of Pará - CEPCT/PA and the creation of the State Mechanism for the Prevention and Combat of Torture of Pará - MEPCT/PA.</p>	<p>In the current legislation, there is no express mention of the participation of the Public Defenders' Office. In the PL in reference, it is noted, however, that the Public Defenders' Office may participate in the ECTC's actions as a permanent invited member with the right to speak.</p>	<p>It was not possible to obtain updated information about the effective functioning of CEPCT/PA. The creation of MEPCT is still the object of a legislative proposal.</p>
<b>PB</b>	<p>State Law No. of 9.413, July 12<sup>th</sup>, 2011<sup>117</sup>.</p>		<p>1 (one) representative of the DPE/PB as a natural member with the right to speak and vote.</p>	<p>More recent news indicates that CEPCT/PB and MEPCT/PB are up and running<sup>118</sup>.</p>

<sup>111</sup> <https://www.almg.gov.br/consult/legislacao/completa/completa.html?num=180&ano=2011&tipo=LDL>

<sup>112</sup> <https://www.almg.gov.br/consult/legislacao/completa/completa.html?tipo=LEI&num=21164&comp=&ano=2014>

<sup>113</sup> [https://www.almg.gov.br/accompany/news/news/archives/2020/11/12\\_human\\_rights\\_mechanism\\_combating\\_torture.html](https://www.almg.gov.br/accompany/news/news/archives/2020/11/12_human_rights_mechanism_combating_torture.html)

<sup>114</sup> Approves Resolution No. 159/2010-CONSEP, of 18 November of the State Public Safety 2010, Council (CONSEP), which creates, under the Public Safety System of Pará (SSP/PA), the State Managing Committee of the Permanent Campaign to Prevent and Combat Torture (CEPCT/PA). DOE, no. 33629, p. 5. 04 Jun. 2018.

<sup>115</sup> Homologates Resolution No. 296/2016 - CONSEP, of 11 August of the State 2016, Council of Public Security (CONSEP), which approved the constitution of a provisional structure for the operation of the State Steering Committee of the Permanent Campaign to Prevent and Combat Torture in the State of Pará (CEPCT/PA). DOE, nº p33629, 5- jun6.04. 2018.

<sup>116</sup> [http://www.ioepa.com.br/pages/2018/06/04/2018.06.04.DOE\\_5.pdf](http://www.ioepa.com.br/pages/2018/06/04/2018.06.04.DOE_5.pdf)

<sup>117</sup> [http://sapl.al.pb.leg.br/sapl/sapl\\_documentos/norma\\_juridica/10005\\_texto\\_integral](http://sapl.al.pb.leg.br/sapl/sapl_documentos/norma_juridica/10005_texto_integral)

<sup>118</sup> <https://www.brasildefato.com.br/2019/02/06/peritos-do-mecanismo-antitortura-da-paraiba-sao-apresentados-a-sociedade>

<b>PR</b>	Decree No. 6.331/2010 <sup>119</sup> . Decree No. 8.972/2013 <sup>120</sup> .	No regulations were found on this subject.	1 (one) representative of the DPE/PR as a natural member with the right to speak and vote.	The Paraná Committee works as a deliberative <sup>121</sup> instance.
<b>PE</b>	State Law No. 14.863 of December 7 <sup>th</sup> , 2012 <sup>122</sup> .		1 (one) representative of the DPE/PE as a natural member with the right to speak and vote.	Recent news indicates that CEPCT/PE and MEPCT/PE are up and running <sup>123</sup> .
<b>PI</b>	Decree No. 14.233 of June 11 <sup>th</sup> , 2010 <sup>124</sup> .	No regulations were found on this subject.	1 (one) representative of the DPE/PI as a natural member with the right to speak and vote. 1 (one) representative of DPU/PI as a permanent guest.	News reports indicate 2019 that the CEPCT/PI is in activity <sup>125</sup> .
<b>RJ</b>	State Law No. 5.778 of June 30 <sup>th</sup> , 2010 <sup>126</sup> .		1 (one) representative of the DPE/RJ as a natural member with the right to speak and vote.	The CEPCT/RJ and the MEPCT/RJ are in full and efficient operation <sup>127</sup> .
<b>RN</b>	Decree No. 29.268, of October 31 <sup>st</sup> , 2019 <sup>128</sup> .	No regulations were found on this subject.	1 (one) representative of the DPE/RN as a natural member with the right to speak and vote.	News from 2019 indicates that the CEPCT/RN is up and running <sup>129</sup> .
<b>RS</b>	Formed in 2001 by inter-institutional effort, it is not institutionalized by law or decree <sup>130</sup> .	No regulations were found on this subject.	DPE/RS and DPU/RS are part of the State Committee against Torture <sup>131</sup> .	News from 2020 indicates that the RS State Committee is up and running <sup>132</sup> .
<b>RO</b>	State Law No. 3.262 of December 5 <sup>th</sup> , 2013 <sup>133</sup> .		1 (one) representative of the DPE/RO as a natural member with the right to speak and vote.	Recent news indicates that CEPCT/RO and MEPCT/RO are up and running <sup>134</sup> .

<sup>119</sup> Creates the State Management Committee that has the objective of implementing and monitoring the execution of the Integrated Action Plan for the Prevention and Combat of Torture in the State of Paraná.

<sup>120</sup> Appoints representatives to make up the State Managing Committee of the Integrated Action Plan for the Prevention and Combat of Torture in the State of Paraná.

<sup>121</sup> <https://www.justica.pr.gov.br/Pagina/Combate-Tortura>

<sup>122</sup> <https://legis.alepe.pe.gov.br/texto.aspx?tiponorma=1&numero=14863&complemento=0&ano=2012&tipo=&url=>

<sup>123</sup> <https://www.cnj.jus.br/pe-comite-discute-enfrentamento-ao-coronavirus-nos-sistemas-prisional-e-socioeducativo/>

<sup>124</sup> <http://legislacao.pi.gov.br/legislacao/default/ato/14689>

<sup>125</sup> <http://www.sasc.pi.gov.br/noticia.php?id=1012>

<sup>126</sup> <http://alerjln1.alerj.rj.gov.br/contlei.nsf/b24a2da5a077847c032564f4005d4bf2/abd38a182e33170383257757005bdb5c?OpenDocument>

<sup>127</sup> <http://mecanismo.rj.com.br/>

<sup>128</sup> [http://diariooficial.rn.gov.br/dei/dorn3/docview.aspx?id\\_jor=00000001&data=20191101&id\\_doc=664074](http://diariooficial.rn.gov.br/dei/dorn3/docview.aspx?id_jor=00000001&data=20191101&id_doc=664074)

<sup>129</sup> <https://www.brasildefato.com.br/2019/11/28/comite-de-prevencao-e-combate-a-tortura-do-rn-lanca-edital-para-eleger-representantes>

<sup>130</sup> The PL n. 10/2015, which sought to create the CEPCT/RS-<http://www.al.rs.gov.br/legislativo/ExibeProposicao.aspx?SiglaTipo=PL&NroProposicao=85&AnoProposicao=2015&Origem=Dx>

<sup>131</sup> <https://forumjustica.com.br/comite-estadual-contra-a-tortura-do-rs-realiza-a-ultima-reuniao-do-ano/>

<sup>132</sup> <https://forumjustica.com.br/forum-justica-rs-segundo-semester/>

<sup>133</sup> <http://ditel.casacivil.ro.gov.br/COTEL/Livros/Files/L3262.pdf>

<sup>134</sup>

<https://g1.globo.com/ro/rondonia/noticia/2021/02/17/23-candidatos-tem-inscricoes-aprovadas-no-seletivo-do-mecanismo-de-prevencao-e-combate-a-tortura-em-ro.ghml>

RR	No regulations were found on the subject. The theme has already been debated in the State Assembly, but so far no legislative proposal has been initiated. <sup>135</sup>		
SC	<p>The state has only one Commission for the Implementation of the State System to Prevent and Combat Torture in the state of Santa Catarina.</p> <p>PL 0209.5/2018, which aims to establish the State Committee for the Prevention and Combat of Torture<sup>136</sup>, is in the Legislative Assembly of Santa Catarina.</p>	The Commission is functioning <sup>137</sup>	
SP	The São Paulo government vetoed in 2019, PL 1257/2014, which established the State Committee and Mechanism to Prevent and Combat Torture <sup>138</sup> .		
SE	State Law No. 8.135 of July 13 <sup>th</sup> , 2016 <sup>139</sup>	The DPE/SE and DPU/SE participate in the CEPCT/SE as guests, with the right to speak.	Recent official news indicates that the MPF, together with civil society, has been promoting public debates with a view to implementing the CEPCT <sup>140</sup> .
TO	<p>No normative proposal was found in this respect. It is verified that the theme has already been the object of negotiations between Federal and State Governments, but, until now, no concrete<sup>141</sup> normative proposal has been made.</p> <p>It is important to register that the OAB/TO has in its structure an active Commission to Combat and Prevent Torture<sup>142</sup>.</p>		

<sup>135</sup> <https://al.rr.leg.br/2017/05/29/lenir-acredita-em-processo-de-humanizacao-com-criacao-de-comite-de-combate-a-tortura/>

<sup>136</sup> <http://www.alesc.sc.gov.br/legislativo/tramitacao-de-materia/PL./0209.5/2018>

<sup>137</sup> [https://crpsc.org.br/ckfinder/userfiles/files/Of%3%adcio%20n%2%ba%20002-2019%20-%20SEPCT\\_SC%202019%20-%20Nota%20Rep%3%badio.pdf](https://crpsc.org.br/ckfinder/userfiles/files/Of%3%adcio%20n%2%ba%20002-2019%20-%20SEPCT_SC%202019%20-%20Nota%20Rep%3%badio.pdf)

<sup>138</sup> <https://www.al.sp.gov.br/propositura/acessorio/?idDocument=1000328870&tpDocument=19>

<sup>139</sup> <https://al.se.leg.br/Legislacao/Ordinaria/2016/O81352016.pdf>

<sup>140</sup> [http://www.mpf.mp.br/se/sala-de-imprensa/docs/Ata\\_Reuniao\\_CPCTortura.PDF](http://www.mpf.mp.br/se/sala-de-imprensa/docs/Ata_Reuniao_CPCTortura.PDF)

<sup>141</sup>

<https://www.to.gov.br/cidadaniaejustica/noticias/governo-do-tocantins-recebe-representante-da-coordenacao-geral-de-combate-a-tortura-e-a-violencia-institucional/73k78br70u2u>

<sup>142</sup> <https://www2.oabto.org.br/noticia/oabto-denuncia-violacao-de-direitos-humanos-na-cpp-de-palmas>

From the information gathered<sup>143</sup>, it can be seen that there are **22 (twenty-two)** institutionally established Committees in the states of the federation. The exceptions are Santa Catarina, Rio Grande do Sul, São Paulo, Roraima and Tocantins.

In the state of Santa Catarina it was verified that a collective action to promote the creation of the Committee has already been the object of a legislative initiative. In Rio Grande do Sul, besides a committee formed from the efforts of actors from several public institutions and the civil society, a legislative initiative to formalize the Committee was also verified. In São Paulo, after a specific legislative process, the government decided to veto the bill that established the Committee and the State Mechanism for the Prevention and Combat of Torture. In Roraima and Tocantins, our research did not reveal the existence of a legislative process or more fruitful debates about the effective establishment of the Committee through an act of the local Government.

Regarding the State Mechanisms, the research presented reveals the existence of **10 (ten)** states that have formally regulated the creation of these committees (Alagoas, Amapá, Espírito Santo, Maranhão, Mato Grosso do Sul, Paraíba, Pernambuco, Rio de Janeiro, Rondônia, and Sergipe). As shown, only the Mechanisms of the states of Paraíba, Pernambuco, Rio de Janeiro, and Rondônia function under minimal conditions. The Maranhão Mechanism is waiting, according to the latest data gathered, for the appointment of experts by the State Government.

About the participation of the Public Defenders' Offices in the composition of the Committees, the most relevant information follows:

- The DPU, besides participating in the CNPCT as a permanent guest with the right to speak, also has a guaranteed seat on the Committees in the states of Sergipe, Rio Grande do Sul, Piauí and Goiás, and only in the state of Goiás was the DPU accepted as a full member with the right to vote.
- The DPEs participate as full members in the Committees in the states of Acre, Alagoas, Amazonas, Bahia, Ceará, Distrito Federal, Espírito Santo, Goiás, Mato Grosso, Paraíba, Paraná, Pernambuco, Piauí, Rio de Janeiro, Rio Grande do Norte, and Rondônia.
- The DPEs participate as permanent guests with the right to speak, in the Committees of the States of Maranhão, Mato Grosso do Sul and Sergipe.
- DPE/MG does not make up the state committee, but participates as a member of the State System for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Minas Gerais - Sisprev-MG.
- The DPE/PA is not formally a member of the collegiate currently established, and the PL currently under discussion in the state foresees the participation of the body in the actions of the ECCPT as a permanent invited member with the right to voice.

It should be noted, therefore, that the Federal Public Defender's Office

has some important challenges: (i) in the States in which a minimum structure for the combat and prevention of torture was established, it is necessary to channel efforts so that there is effective implementation and operation of these bodies, and not allow room for retrogression; (ii) in the others, it is fundamental to open articulation fronts, especially with the organized civil society, to foster the creation of committees and mechanisms.

Finally, within the scope of the DPU, efficient strategies and debates are necessary in order

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<sup>143</sup> We used as a source of information the report produced by the Federal Government (<https://www.gov.br/mdh/pt-br/prevencao-e-combate-a-tortura/IRelatriodeComitêsEstaduaisPrevenvenoeCombateTortura2019.pdf>), as well as others gathered directly from the States through the access to information law.



to expand our participation in the State Committees, especially because the implementation of these instruments for preventing and fighting torture is linked to the commitments that the Brazilian State has assumed in the international order, and the Federal Government has a direct interest in their fulfillment.

## 6. Final considerations

Although this report is not intended to unveil ways to prevent and combat torture in Brazil, it can contribute to the public debates that revolve around the theme.

Therefore, considering the information produced, we present some final considerations as suggestions for reflection to the institutions and public authorities in their daily confrontation with the issue:

1. The **government**, especially the authorities responsible for implementing policies to combat and prevent torture in prisons, can improve the instruments and means that effectively increase the contact of the person deprived of liberty with the outside world, so that cases of institutional violence occurring in the prison environment are properly filed, documented and reported, in order to reduce cases of impunity, retaliation or unfounded complaints;
2. The **Public Defenders' Offices** may develop (or improve) specific protocols of programs for situations of complaints and reports about institutional violence, ensuring to the complaining party, by means of an informed consent form of the risks and consequences, to participate in any and all decisions involving the forwarding of demands and measures resulting from a report of this nature;
3. The **Public Authorities**, especially the administrative authorities that exercise the regulatory and normative power of the institutions that deal with the official activity of the criminal investigation, can improve the standard questions on torture in the reports of the corpus delicti, in order to better meet the international parameters established on the subject (Istanbul Protocol);
4. The **government**, especially the authorities that manage places of deprivation of liberty, can develop more efficient protocols that allow for a faster response time between the report of institutional violence, the necessary legal advice, and the medical/forensic evaluation of the person who reported the aggression;
5. **The Justice System actors** can develop and share procedural standards for documenting cases of reported institutional violence, in order to allow for a more reliable, expeditious, and efficient assessment of reports, as well as for possible accountability at the criminal, civil, and/or administrative levels;
6. The **Public Power and the stakeholders of the Justice System** need to develop constant policies of improvement, training and guidance for public agents who deal, in the daily life of institutional responsibilities, with cases of reports of institutional violence in detention facilities;
7. The **Public Defenders' Offices**, in coordinated and joint action, can establish a consolidated database that allows the systematization and registration of the institutional



action in cases of reports and complaints related to torture and other inhuman, cruel and degrading treatment, generating unified and reliable statistics, in order to reveal the severity of such acts in the national prison system;

8. The **Public Defenders' Offices**, by means of specific agreements and/or memoranda of understanding, can seek to align institutional actions with the involvement of the Mechanisms and Committees for the prevention and fight against torture, in order to strategically foster the sharing of data, prioritize actions through networks, select strategic cases for joint efforts, and actively promote the public debates that guide the directions of public policy in the area;
9. The **Public Defenders' Offices**, based on their institutional functions and networks, can promote the necessary efforts so that the bodies for the combat and prevention of torture are created and/or have the effective implementation and operation without bureaucratic hindrances; and
10. The **Public Power**, especially the Ministry of Women, Family and Human Rights (MMF-HD), can resume and/or expand the efforts necessary for the full and effective implementation of the Federative Covenant for the Prevention and Combat of Torture, in accordance with Ordinance No. of September 346,19, 2008. 2017.

Brasília, June 21st, 2021.

**Walber Rondon Ribeiro Filho**  
Secretary of Action in the Prison System (SASP)  
Federal Public Defender

