



**Optional Protocol to the
Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.: Restricted
24 November 2016

Original: English
English, French and Spanish only

**Subcommittee on Prevention of Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment**

**Visit to Brazil undertaken from 19 to 30 October:
observations and recommendations addressed to
the State party**

Report of the Subcommittee* ** ***

* In accordance with article 16 (1) of the Optional Protocol, the present report was transmitted confidentially to the State party on 24 November 2016.

** The present document is being issued without formal editing.

*** The annexes to the report are circulated in the language of submission only.

Contents

	<i>Page</i>
I. Introduction.....	3
II. Facilitation of the visit and cooperation.....	4
III. Reprisals	4
IV. Overarching issues	5
A. Treatment and torture by police.....	5
B. Treatment and torture in detention facilities.....	9
C. Self-governance and delegation in places of detention.....	10
D. Material conditions of detention.....	11
V. OPCAT implementation: the National System to Prevent and Combat Torture.....	16
A. Institutional framework for the prevention of torture at federal level.....	16
B. Institutional framework for the prevention of torture at state level.....	18
Annexes	
I. List of places of deprivation of liberty visited by the SPT.....	21
II. Officials and other persons with whom the delegation met.....	22

I. Introduction

1. In accordance with its mandate under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), the Subcommittee on Prevention of Torture (SPT), carried out its second visit to Brazil from 19 to 30 October 2015.
2. The SPT members conducting the visit were: Víctor Madrigal-Borloz (Head of Delegation), Marija Definis-Gojanovic, Enrique Andrés Font, Nora Sveaass and Victor Zaharia. The SPT was assisted by three Human Rights Officers from the Office of the United Nations High Commissioner for Human Rights (OHCHR), United Nations security officers and interpreters.
3. The first regular visit to Brazil by the SPT took place from 11 to 30 September 2011, and the visit report¹ was transmitted confidentially to the State party on 8 February 2012. On 15 October 2012, the Government submitted an extensive commentary on the SPT report. On 30 May 2013, the SPT replied to the State and on 28 February 2014, the Government of Brazil transmitted its second response to the first reply of the SPT, providing additional information about the further steps undertaken to implement the recommendations of the SPT, including the establishment of a National Preventive Mechanism (NPM). In the spirit of constructive dialogue and cooperation with the SPT, the State made public the SPT visit report as well as the subsequent responses and replies.
4. Against this backdrop, the SPT designed its 2015 visit with the objective of providing advice to the State from four different perspectives: the measures taken by the State to implement the 2011 SPT recommendations; the design, implementation and furtherance of the National System to Prevent and Combat Torture; the public policy measures adopted to prevent torture; and unannounced visits to places of detention not formerly visited.
5. The SPT visited four states: the Federal District of Brasília, Amazonas, Pernambuco and Rio de Janeiro, and conducted more than 20 visits to places of deprivation of liberty, including prisons, pre-trial detention centres, police stations, correctional institutions for women, juvenile facilities, penitentiary hospitals and forensic institutions (Annex I) in which it carried out observations as well as group and individual interviews with persons deprived of their liberty. The SPT held a series of meetings with the relevant authorities, including with the federal Government, state governments, prison authorities and police. The SPT met with the representatives of the recently established National Preventive Mechanism (NPM), as well as with the preventive mechanisms of Pernambuco and Rio de Janeiro. The Subcommittee observed the work of the NPM and the local mechanism of Pernambuco during visits to places of deprivation of liberty. The SPT met also with several dozen civil society representatives as well as the United Nations representatives (Annex II).
6. At the conclusion of the visit, the SPT presented orally its confidential preliminary observations to the federal authorities and to the NPM. In the present report, the SPT presents its findings and recommendations on implementation of the SPT's previous recommendations and new recommendations stemming from the visit. This report uses the generic term "ill-treatment" to refer to any form of cruel, inhuman or degrading treatment or punishment.²

¹ CAT/OP/BRA/1

² In accordance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment article 16.

7. **The SPT requests the State to provide it with a reply within six months from the date of transmission of this report, giving full account the actions taken to implement the recommendations, and a roadmap and a timeline for those that remain pending.**

8. The present report will remain confidential until such time as the State decides to make it public, as stipulated in OPCAT article 16(2). The SPT draws the State's attention to the Special Fund established in accordance with article 26 of the OPCAT, as recommendations contained in public SPT visit reports can form the basis of an application to that mechanism for funding of specific projects.

9. **The SPT recommends that the State request the publication of the present report in accordance with OPCAT article 16(2). In addition, the SPT recommends that the State distribute this report to all the relevant Government departments and institutions.**

II. Facilitation of the visit and cooperation

10. The SPT expresses its gratitude to the federal authorities for their cooperation. In particular, the SPT would like to thank the State for the information received prior to the visit, issuing credentials for unrestricted access to places of detention and for the designation of Pedro Saldanha, Head of Division of Human Rights of the Ministry of External Affairs, as focal point for the visit. The SPT would like to thank also Renato Vitto, Director General, National Penitentiary Department, for facilitating the coordination of the SPT visit on the ground.

11. The SPT acknowledges the cooperation lent by the Government during the mission design, the transparency in the dialogue with SPT during the mission, and the level of access provided by Federal and state institutions through meetings and visits. Nevertheless, serious difficulties of access presented themselves in the state of Amazonas, due to lack of thorough knowledge of the OPCAT. Some of these difficulties, attributable to high-level state authorities in Amazonas, were partially solved after the intervention of the federal authorities. The SPT wishes to underline the constructive role played by the Permanent Mission in Geneva during the preparatory stage of the visit.

III. Reprisals

12. The Subcommittee is concerned about possible reprisals against persons interviewed during the visit, and wishes to emphasise that any reprisal constitutes a violation of the State's obligation to cooperate with the SPT under the Optional Protocol. The SPT hence urges the State to ensure that there are no reprisals following the visit. In this connection the SPT wishes to draw the attention of the authorities of Brazil to the SPT's Policy on reprisals in relation to its visiting mandate (CAT/OP/6).

13. **The Subcommittee condemns any act of reprisal. It reiterates the recommendations made in connection with its preliminary observations and stresses that persons who provide information to or cooperate with national or international agencies or institutions should not suffer adverse consequences for having done so. The Subcommittee requests the State party to include in its reply information on the steps taken to prevent and investigate possible acts of reprisal.**

IV. Overarching issues

14. The State understands the urgent need to improve the situation of persons deprived of their liberty, and has taken some concrete steps in this regard. However, the ambitious policies that have been articulated must be enhanced and promptly implemented in order to address systemic issues that present serious risks of torture and ill-treatment for persons deprived of their liberty. These issues are detailed below in sections A-D.

A. Treatment and torture by police

a) Need for prevention, investigation and sanctions

15. Police in Brazil are deployed primarily at the state level, where they are separated into civil and military police operating independently of one another. The Subcommittee is deeply concerned by numerous allegations concerning violent acts by the military police, which conducts patrols to maintain public order and arrests suspects. Specifically, the SPT interviewed several detainees who claimed that officers of the military police, including officers of the specialized unit ROCAM (Ronda Ostensiva Com Apoio de Motocicletas), used disproportionate force when conducting arrests: pepper spray, rubber bullets, sticks, tasers delivering electric shocks, and plastic bags placed over detainees' heads, sometimes for prolonged periods. The Subcommittee notes that these methods may constitute torture or cruel, inhuman or degrading treatment, and recalls the State's obligation under article 11 of CAT to keep under systematic review methods of interrogation and arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment, with a view to preventing torture.

16. In its 2012 report, the Subcommittee expressed concern regarding allegations of severe ill-treatment of detainees and inhumane conditions of transportation by vehicle. The Subcommittee had received allegations that detainees were overcrowded in vehicles with little or no ventilation and were handcuffed in uncomfortable positions. These conditions persist.

17. The Subcommittee also received several allegations concerning the use of force by specialized units of the military police conducting raids inside prisons and pre-trial detention facilities. In one facility, it heard allegations of police officers threatening inmates, assaulting them with pepper spray, brandishing guns, beating them and destroying their personal belongings. The Subcommittee was informed that such raids were outsourced to a private company, highlighting the need for proper oversight over subcontractors who are assigned police-type duties while in contact with persons deprived of their liberty.

18. The Subcommittee further received information concerning a steady increase in the number of deaths inflicted by police officers that are improperly classified as lawful "resistance killings." The Subcommittee is also very concerned by reports that black individuals represent a highly disproportionate proportion of those killed by on-duty police officers.

19. **Urging the State party to take action to prevent, investigate and prosecute acts of torture and killings by police officers, the Subcommittee recommends:**

i) Mandatory comprehensive training for police officers before deployment, familiarizing them with the prohibition on torture and ill-treatment, as well as ongoing training and evaluation. The training should include instruction on the use of non-lethal methods in apprehending suspects, techniques on modern forensic investigation, and sensitization on racial

discrimination. A culture of racial tolerance should be promoted throughout the police force.

ii) **Implementation of Bill No. 4472/12, if approved. This pending bill requires a prompt and documented investigation whenever an individual is violently killed by a State agent. In any case, the Subcommittee strongly recommends immediate implementation of internal review procedures aiming to ensure consistent investigation of allegations of ill-treatment and torture by police officers, appropriate disciplinary measures or criminal prosecution when investigations reveal such acts, and redress for victims.**

iii) **Distribution of sufficient funds to ensure that the police force is adequately staffed by well-motivated individuals who receive appropriate salaries (as recommended in the Subcommittee's 2012 report).**

iv) **Implementation of a rigorous oversight and accountability procedure for private companies involved in administration of police duties.**

b) **Detection of torture by forensic medical staff**

20. The Subcommittee considers that torture and ill-treatment by police are not detected by employees of Forensic Medical Institutes (IMLs), where detainees are examined for signs of torture. Upon visiting IMLs in the states of Amazonas and Rio de Janeiro, the Subcommittee observed that these examinations were performed in a perfunctory and ineffective way, and detainees were not questioned about the cause of their injuries or the way in which they were treated by the police officers who had arrested them. Despite the State party's effort to implement a training program on the Istanbul Protocol³, staff at the IML had not heard of this instrument. Disregard of obvious signs of abuse as well as fear of reprisals discourages reporting by victims. The absence of an effort to identify and investigate torture by police authorities amounts to impunity, and perpetuates a cycle of torture and ill-treatment.

21. The Subcommittee remains seriously concerned by the lack of independence of IMLs, which in many states are subordinated to the administrative authority of the police or public security secretariats. This relationship not only compromises the autonomy of forensic physicians but may also deter victims of torture by police officers from filing complaints. Despite the recommendations made on this issue by the SPT in its 2012 report, there have been no major efforts to change this administrative structure. In response to its queries, the Subcommittee was not informed of any cases that had been initiated by a forensic physician regarding ill-treatment by police officers. On the contrary, the Subcommittee observed that the methodology of IML practitioners in the facility it visited avoided any technical observations that could indicate a need to investigate potential torture or ill-treatment. Moreover, the Subcommittee witnessed forensic examinations accompanied by aggressive police-style interrogation and intimidation. These observations confirm to the Subcommittee the importance of ensuring the institutional independence of IMLs.

22. The Subcommittee recalls the State party's obligations under articles 12 and 13 of CAT, which require a prompt, impartial and thorough investigation by competent authorities when there is reasonable ground to believe that an act of torture has been committed. The Subcommittee recommends that:

³ Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

- i) All IML staff in contact with detainees should undergo training on the Istanbul Protocol.
- ii) IMLs must keep thorough records detailing allegations of torture and ill-treatment and the steps taken to investigate such abuse. These records should be cross-checked with police records, and inconsistencies clarified during investigation.
- iii) IMLs become structurally and operationally independent of the police and public security authorities.
- iv) The Subcommittee emphasizes that the Istanbul Protocol is an indispensable tool in detecting, documenting, and deterring torture and ill-treatment. It requests that the State party provide detailed information concerning its efforts to disseminate information about the Istanbul Protocol and train relevant state agents (including forensic practitioners, police officers, judges, public prosecutors and public defenders) in its implementation. The Subcommittee requests to be informed about the recipients, methodology and results of the training.

c) Data-gathering methods

23. The Subcommittee welcomes the detailed 2014 joint report by the Ministry of Justice and the National Penitentiary Department providing statistical analysis of numerous aspects of the Brazilian penitentiary population and system.⁴ However, the report does not include information on the incidence of torture or ill-treatment of persons deprived of their liberty, essential information for an understanding of State compliance of obligations under CAT and OPCAT.

24. The Subcommittee requests that the State party routinely collect and analyze information on the incidence of torture and ill-treatment of persons deprived of their liberty. The Subcommittee recommends improvement of data-gathering methods relating to such incidents. A database of these incidents should include the following basic features: (1) an indication of not only the number of cases but also a precise description of the details of each incident, the investigation and follow-up provided by the state, and the stage of proceedings; (2) security features and a system of control designed to ensure that the data cannot be accessed by persons who might seek retribution against those reporting ill-treatment; (3) an interface that allows for identification and analysis of trends; and (4) a system of confidentiality and anonymity allowing for protection of the identities of those providing and analyzing data.

d) Custody hearings

25. The Subcommittee received information from the State that in 2015, over 40% of the prison population was being held in pre-trial detention. In order to reduce pre-trial detention, the Subcommittee encourages the adoption of Senate Bill No. 554/2011, which modifies the Criminal Procedure Code to establish the formal right of detainees to a custody hearing. Under this bill, which was adopted by the Senate in September 2015 and is pending consideration by the Chamber of Deputies, every individual caught in the act of committing a crime must be brought before a judge within 24 hours of arrest, which will allow for a decision on whether the suspect is to be detained and for the immediate identification of potential signs of torture and ill-treatment by police forces during arrest

⁴ See Departamento Penitenciário Nacional and Ministério da Justiça, "Levantamento Nacional De Informações Penitenciárias Infopen – Junho de 2014," <http://www.cnj.jus.br/files/conteudo/arquivo/2015/11/080f04f01d5b0efebfbef06d050dca34.pdf>

and interrogation. The Subcommittee considers that custody hearings have significant potential to detect and prevent torture and other forms of violence by police officers. It welcomes the August 2015 decision of the Supreme Federal Court on *Ação Direta de Inconstitucionalidade* 5240, rejecting a challenge to the constitutionality of mandatory custody hearings in the State of São Paulo.

26. The Subcommittee also welcomes a separate decision by the Supreme Federal Court (on *Arguição de Descumprimento de Preceito Fundamental* 347) in September 2015, finding that the Brazilian prison system represents an unconstitutional state of affairs due to serious chronic and structural dysfunctions threatening prisoners' fundamental rights. The Court recognized the need for urgent reform and ordered the implementation (within 90 days) of custody hearings administered no more than 24 hours after arrest, as well as the release of necessary budgetary resources from the National Penitentiary Fund.

27. The Subcommittee is pleased to note the government's deployment of a pilot program for custody hearings. According to figures provided by the National Justice Council, by mid-October 2015, over 20,000 such hearings had been held, having a significant impact on reduction of pre-trial detention. For example, in the state of Rio de Janeiro, almost 43% of the 194 detainees appearing for custody hearings between 18 September and 13 October 2015 were released. Overall, approximately 47% of detainees presented for custody hearings in Brazil by mid-October 2015 had been released. The immediate decrease in the number of detainees alleviates pressure on the overcrowded penitentiary system, and generates significant collateral benefits to the State, including projected financial savings of approximately R\$ 4.3 billion by December 2016.⁵ The Subcommittee welcomes this ambitious program designed to ensure that all persons deprived of liberty receive a prompt custody hearing.

28. The Subcommittee commends the State party on the legal steps it has taken to establish a system of custody hearings, and urges it to fully implement them throughout the country.

29. While appreciating the potential of custody hearings to improve the criminal justice system, the Subcommittee observes that custody hearings in Brazil are not designed to prevent torture and ill-treatment. Statistics provided by the government indicate that in approximately 6% of the custody hearings held throughout Brazil by mid-October 2015, detainees complained about violent acts in detention facilities. Government statistics further indicate, worryingly, that nearly 20% of detainees involved in a study of 186 custody hearings in the state of Rio de Janeiro between 18 September and 14 October 2015 stated that they had been subjected to torture or ill-treatment by police officers upon arrest. However, the Subcommittee did not receive concrete information in response to its queries concerning specific cases where such allegations have been investigated through an impartial process conducive to remedial action.

30. Moreover, based on the information it received, the Subcommittee is not persuaded that judges are likely to observe and take action in response to signs of physical or mental ill-treatment by police agents, or that judges and public defenders routinely inquire as to how a detainee was treated upon arrest, transport and pre-hearing detention. The Subcommittee recognizes the challenges in implementing due process safeguards throughout the vast geographic territory of Brazil, where there are approximately 16,500 judges. However, in order for custody hearings to realize their potential as tools for detection of torture, victims must be given the opportunity to report abuse without fear of

⁵ See Supremo Tribunal Federal, "Plenário confirma validade de normas do TJ-SP sobre audiências de custódia," 20 August 2015, <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=298112>

reprisals, and relevant public officials must be properly trained to exercise vigilance for signs of torture and follow up appropriately.

31. The Subcommittee requests the State party to provide information concerning the procedural safeguards designed to encourage victims of violence to report abuse during custody hearings. The Subcommittee recalls the fundamental rights of all persons deprived of their liberty to promptly receive independent legal and medical assistance, to contact relatives, and to be informed of their rights.⁶ The Subcommittee recommends that the State party implement procedural requirements protecting detainees' right to speak privately and confidentially with counsel, in the absence of police agents. It further recommends that all state actors involved in custody hearings (judges, public prosecutors, public defenders, police officers, and officers of the court) receive training enabling them to identify signs of torture and ill-treatment and conduct relevant follow up. Such training should emphasize the duty of judges to be vigilant for signs of torture and ill-treatment, and to ask questions regarding the treatment detainees received when apprehended and while in police custody.

32. The Subcommittee also recommends that the public authorities involved in custody hearings (courts, public defenders' office, IMLs) be given sufficient resources, so as staff to allow each case to be handled with due diligence.

B. Treatment and torture in detention facilities

33. The Subcommittee observed that detainees are often deterred from complaining about torture and ill-treatment due to a fear of reprisals. The Subcommittee found that there was a general atmosphere of intimidation and repression in the places of detention it visited. In several prisons, the Subcommittee received allegations that inmates are routinely taken by other inmates to designated cells and areas where they are subjected to torture. In a number of facilities, inmates had been transferred to isolation areas due to threats they received from other inmates, including members of criminal gangs openly exerting significant control within the prisons.

34. In some facilities in the State of Rio de Janeiro, the Subcommittee received compelling accounts of physical violence (kicks and punches in the face, hitting) and serious verbal threats by officials responsible for maintaining security. Detainees in that facility expressed a strong fear that they would be further attacked for reporting ill-treatment. The Subcommittee also received recent information that several inmates had been taken hostage in a prison in the state of Paraná. The Subcommittee is also concerned by documented instances of violent acts by inmates directed at visiting family members and prison staff, including medical personnel and wardens. The Subcommittee also notes with concern that in several facilities it visited, pre-trial detainees were housed in the same cells as convicted offenders.

35. Having examined relevant records in most of the detention facilities that it visited, the Subcommittee is deeply concerned at the lack of a consistent effort to document and investigate allegations of torture and deaths occurring in prisons. The Subcommittee welcomes the State party's efforts to collect and publish detailed statistics concerning violent deaths in places of deprivation of liberty. However, these alarming statistics indicate a strong need for rigorous investigation procedures in compliance with articles 12 and 13 of CAT. According to the report of the National Penitentiary Department and the Ministry of Justice, the rate of intentional killings in Brazil was six times greater in 2014 than in 2013,

⁶ See CAT general comment No. 2, para. 13.

and about half of the 565 individuals who died while deprived of liberty in 2014 were intentionally killed.⁷ Accountability for these acts requires thorough collection of information and a diligent and documented follow-up procedure. The absence of prompt, impartial and thorough investigations and prosecution for violent acts in facilities where individuals are deprived of their liberty can encourage a culture of violence and impunity, erode confidence in the rule of law, and diminish detainees' chances for rehabilitation and reintegration into society.

36. The Subcommittee stresses that historical and material challenges do not diminish the urgency of changing attitudes regarding the use of torture by state agents, such that individuals in the custody of the State are protected from mental and physical torture. The Subcommittee further stresses that the threshold for what constitutes torture is lower when individuals are deprived of their liberty.

37. Accordingly, the Subcommittee recommends that the State party's authorities redouble their efforts to combat ill-treatment by fully implementing the system for investigation of allegations of ill-treatment and torture; by combatting impunity; by promoting professional ethics through ongoing training of staff at detention facilities and by regularly reminding staff that detainees must be treated equally and respectfully, and that deviation from these principles compromises the main duty of correctional officers, which is to correct behaviour and not to exact punishment.

38. The Subcommittee also wishes to stress that separation of pre-trial detainees from convicted individuals is required under international law.⁸ Accordingly, it urges the State party to ensure this separation in detention facilities throughout the country.

39. The Subcommittee received reports that individuals visiting inmates are subjected to invasive body cavity searches that, despite being banned in several states, continue to occur despite studies indicating that contraband is found in only a very small number of searches, and despite the availability of alternatives such as electronic scanning devices. A bill banning abusive searches in all prison facilities across the country was approved unanimously in the Senate and in the Commission on Human Rights and Minorities of the Lower House of Congress.

40. The Subcommittee recommends that this bill, now numbered 7764/2014 before the Chamber of Deputies, be approved, signed into law, and implemented throughout the country.

C. Self-governance and delegation in places of detention

41. The Subcommittee is deeply concerned by the lack of control the State has over penitentiary conditions. The Subcommittee observed strong structures of self-governance, with public authorities delegating tasks to inmates. In certain states, inmates known as key-holders (chaveiros) had the ability to open and close the entrance gates to separate pavilions (wings) of the prison and the doors to individual cells, monitored and maintained de facto

⁷ Departamento Penitenciário Nacional and Ministério da Justiça, "Levantamento Nacional De Informações Penitenciárias Infopen – Junho de 2014," p. 115, <http://www.cnj.jus.br/files/conteudo/arquivo/2015/11/080f04f01d5b0efebfbcf06d050dca34.pdf>

⁸ See International Covenant on Civil and Political Rights, article 10 (2)(a); United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules, A/C.3/70/L.3) Rule 8; Inter-American Commission on Human Rights, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas; United Nations Body of Principles for the Protection of All Persons under Any Form of Detention Principle 8.

control over their pavilions, tasking other inmates with the responsibility of cleaning, and preparing and distributing food. Disturbingly, this devolution of authority also enabled inmates including key-holders to discipline and punish less powerful inmates.

42. The Subcommittee received claims that some inmates in power are assigned to more desirable areas of detention and have access to other benefits, whereas inmates lacking authority are deprived of benefits, such as access to visitors, and experience harsher conditions of detention. Self-governance appeared to be most prevalent in places of detention where criminal gangs assumed responsibility for delegating authority. These unlawful structures of control increase the likelihood that individuals deprived of their liberty will be subjected to systemic ill-treatment and torture, or even killed, and that the perpetrators of such acts will benefit from impunity.

43. The Subcommittee observed that a more pervasive atmosphere of fear and repression was present in places of detention where self-governance was more pronounced, and that key-holders controlled pavilions with the knowledge of the prison authorities. Key-holders attempted to obstruct the delegation's interviews of detainees whenever possible, attempting to intimidate interviewees through their nearby presence. Self-governing regimes established with the tacit permission of the State foment terror among inmates, who become particularly vulnerable to ill-treatment by other inmates and have no recourse.

44. The Subcommittee recommends that:

- i) Penitentiary authorities ensure adequate staffing in prisons and hire sufficient security guards who receive appropriate salaries to ensure that inmates are supervised by state personnel, not by other inmates; and**
- ii) Clear administrative measures are taken to stop delegation of authorities to inmates, and to discipline those attempting to control other inmates or assign tasks that are typically carried out by prison staff.**
- iii) Plans to privatize prisons be carefully weighed, and, if implemented, should include vigorous training programs and safeguards such as adequate supervision and monitoring (?) to prevent self-governance among inmates.**

D. Material conditions of detention

a) Overcrowding

45. As during its previous visit, the Subcommittee observed that in nearly all of the male detention facilities it visited, occupancy far exceeded intended capacity. According to the government's 2014 report, the average rate of occupancy in Brazilian prisons was 161%. Although the report noted that almost one-third of facilities in Brazil had not reached full occupancy, 24% of facilities were reported as having an occupancy rate of over 200%. The Subcommittee visited Cadeia Pública Desembargador Raimundo Vidal Pessoa, a pre-trial detention center in Manaus that housed 691 individuals, well beyond its capacity of 250. The Subcommittee was informed by a government representative in one state that severe overcrowding in cadeias públicas is typical. A juvenile detention facility the Subcommittee visited housed almost twice the number of detainees it was designed to accommodate. Similarly, the Centro de Observação Criminológica e Triagem Professor Everardo Luna (COTEL) in Recife held 2,473 individuals, more than twice its intended capacity of 952. The Presídio Ary Franco has an intended capacity of 958 but housed 1,731 individuals at the time of the Subcommittee's visit. Although in its prior report, the Subcommittee drew attention to the urgent need to take action at Ary Franco, this facility has not been renovated or refurbished since then. One of the female detention facilities visited (Cadeia Pública Joaquim Ferreira de Souza, in the Complexo Penitenciário de Gericinó) was also

overpopulated, with 546 inmates for an intended capacity of 400. According to figures provided by the government, between 2011 and 2015, the number of inmates in the state of Rio de Janeiro increased by 53%, and was not met with a corresponding increase in the number of vacancies.

46. In some facilities, the Subcommittee observed inhuman and degrading treatment in the form of severe overcrowding combined with extremely poor material conditions, a lack of clean water and ventilation, an atmosphere of fear of violence, and a lack of access to daily activities. In the Presídio do Santa Cruz do Caparibe, a new prison in the state of Pernambuco, the Subcommittee observed that certain cells built to house nine inmates each appeared to have fewer than six square meters of open space, not including the area occupied by the shower, toilet and beds. In many prisons and pre-trial detention facilities in various states, detainees in cells slept in hammocks affixed to the ceiling due to the insufficient number of beds or mattresses.

47. The Subcommittee considers that such overcrowding compromises the physical and mental health and dignity of detainees, subjecting them to an increased risk of infectious diseases and stress, and reducing their access to overstretched medical services. The Subcommittee encourages the State party to continue to implement programs such as custody hearings that can effectively reduce the prison population. The Subcommittee also notes that the Supreme Federal Tribunal is currently considering measures that would, if implemented, reduce overcrowding, namely: the decriminalization of drugs through a declaration that article 28 of the Anti-Drug Law is unconstitutional; and the possibility for certain detainees at overpopulated facilities to benefit from alternative arrangements such as house arrest. However, it appears that much more needs to be done.

48. The Subcommittee urges the State party to redouble its efforts to reduce overcrowding in detention facilities⁹ and would like to be informed of specific measures taken and of progress made in this area.

49. The Subcommittee recommends that the State party ensure that all cells, whether occupied by pre-trial detainees, juveniles, inmates, or patients of psychiatric institutions, comply with international standards (including those regulating minimum cell size for intended occupancy.)

50. The Subcommittee is deeply concerned about incidents of extreme violence, including homicide, occurring among detainees in overcrowded detention facilities. The Subcommittee notes that overcrowding exacerbates detainees' stress levels, forcing them to compete for limited space and resources, which in turn results in aggressive behaviour and an increased risk of violence towards not only detainees but staff as well. Despite the recommendations made in its 2012 report, overcrowding in Brazilian detention facilities remains problematic. For example, the Complexo Penitenciário Regime Fechado Anísio Jobim in Manaus, whose intended capacity is 450, held 1,203 inmates at the time of the Subcommittee's visit. At this prison, 12 inmates were killed inside the prison in 2002. The current overcrowding increases the risk that a similar incident could occur at any time. Indeed, in July 2015, one inmate was decapitated by other inmates shortly after arriving at the prison. At one of the prisons it visited, the Subcommittee received repeated allegations regarding the existence of designated cells and other areas where inmates are regularly taken to be beaten and tortured by other inmates. At a female prison, the Subcommittee interviewed an inmate who had been moved to an isolation unit after having killed another inmate. In the state of Bahia in May 2015, 9 inmates were killed in prison housing over 1,000 inmates, well in excess of its intended capacity of 644.

⁹ The Mandela Rules, Rule 10.

51. The Subcommittee recommends that the State party increase staffing levels in detention facilities so that there are an adequate number of trained wardens, guards and medical and professional staff to ensure the safety of both staff and detainees, and to reduce the influence of organized crime.

b) Basic necessities

52. The Subcommittee remains seriously concerned by the material conditions of detention in Brazil, especially concerning access to basic necessities. In several facilities visited, the Subcommittee observed that the cells were in such a state of insalubrity as to be unfit for use. A number of inmates reported that they did not have sufficient toilet paper, detergent, soap or toothpaste, and had to request that visitors provide such supplies to them. In most facilities, the Subcommittee also observed a lack of clean bedding and beds, which were often shared by inmates due to overcrowding. The Subcommittee further noted a lack of proper ventilation in most prisons and pre-trial detention facilities. Where present, fans were insufficient to allow for adequate circulation of air in hot, humid and overcrowded cells.

53. The Subcommittee requests that the State party provide to detainees sufficient hygiene products to satisfy generic and specific needs, as well as towels, sheets and clothes to ensure a basic level of health. It further requests that the State party remove from service, as soon as possible, cells that do not meet international occupancy standards.

c) Health care

54. Regarding preventive and curative health care, the Subcommittee notes with serious concern that according to 2014 statistics provided by the government, at least 768 out of 1258 prison units in Brazil lack a medical office or clinic.¹⁰ In a number of detention facilities, the Subcommittee observed that existing health units lacked adequate financial, material and human resources.

55. The Subcommittee also observed that in several facilities in Pernambuco, medical assistance, including emergency assistance and dental care, was not consistently and was administered by insufficiently qualified staff or by unqualified inmates who, in some instances, were serving as pharmacists and even prescribed medication to other inmates. In addition, in some of the facilities visited, detainees were not given medical examinations upon arrival or screened for infectious diseases. In contrast, the Subcommittee was pleased to note that in April 2015, a nurse had been hired in the COTEL facility to screen the entire prison population for tuberculosis and to provide medical care for those affected with tuberculosis. However, the Subcommittee notes that such measures must be widely implemented throughout Pernambuco, a state where the prevalence of tuberculosis is reportedly almost 100 times greater than that of the general population.

56. The Subcommittee reiterates its recommendations that all detainees be offered a free medical examination as soon as possible after their initial detention, and after they are moved to prisons. Physicians' comprehensive findings should be recorded in a register established for that purpose, and in the case of allegations or signs of torture or ill-treatment, further assessments should be conducted. Medical examinations should always be carried out in conformity with the principle of medical confidentiality: no person other than medical personnel should be present during the examination.

¹⁰ See Departamento Penitenciário Nacional and Ministério da Justiça, "Levantamento Nacional De Informações Penitenciárias Infopen – Junho de 2014," p. 108
<http://www.cnj.jus.br/files/conteudo/arquivo/2015/11/080f04f01d5b0efebfbcf06d050dca34.pdf>

57. The Subcommittee received credible reports that in some areas, inmates give birth in handcuffs. The Subcommittee was particularly alarmed by reports that pregnant inmates do not receive proper obstetrical care, and that in October 2015, an inmate in the Penitenciária Talavera Bruce (Complexo de Gericinó in Bangú) gave birth in an isolation cell. The Subcommittee received conflicting information from the government and other sources as to whether this inmate received medical assistance during the birth.

58. **The Subcommittee requests a copy of the report on the investigation of this incident, and also requests information as to procedures observed for detainees giving birth in places of deprivation of liberty. The Subcommittee notes that at least some states, including São Paulo and Rio de Janeiro, appear to have banned the practice of handcuffing inmates while they give birth, and requests the State party to ensure that this prohibition is extended, and implemented, throughout the country.**

59. **The Subcommittee further recommends that the State party take concrete measures to ensure that persons deprived of their liberty have access to prompt, free and adequate medical care and treatment. Such care must include routine pre-natal and obstetrical care for pregnant women. The Subcommittee emphasizes the urgent need to strength the role of health professionals in the prevention of ill treatment and to increase the involvement of the Ministry of Health in the provision of health-care services in prisons.**

d) Activities and contact with the outside world

60. In addition to invasive body searches administered to visitors, the Subcommittee received reports of several other obstacles faced by those wishing to visit detainees. The Subcommittee was informed that access to visitors was arbitrarily restricted in some facilities, with visitors' cards delayed for family members and denied to non-relatives. The Subcommittee also heard allegations that in certain prisons in the Federal District, conjugal visits took place in unsanitary conditions, with several couples sharing one mattress on any given day, sometimes without sheets. The Subcommittee was informed that during a strike of prison staff that had lasted for several weeks, inmates in the Federal District were unable to receive visitors or consult with their legal counsel.

61. **The Subcommittee reiterates its recommendation that all inmates be allowed under necessary supervision to communicate regularly, by letter, telephone and visits with their families, lawyers and other persons, and further recommends that detention facility authorities ensure humane material conditions for conjugal visits.**

62. The Subcommittee was informed that inmates do not have equal access to work opportunities, and that the lack of work opportunities and meaningful activities contributes to inmates' feelings of anxiety, restlessness and aggression. The Subcommittee received information that in the state of Rio de Janeiro, only 2% of detainees were employed.

63. **The Subcommittee reiterates its recommendation that the relevant authorities increase their efforts to provide all inmates with purposeful activities and work opportunities that may enable them to find gainful employment once released.**

e) Women

64. The Subcommittee received an allegation that at a female prison in the Federal District, no food is provided to inmates. Confirming reports it had received, the Subcommittee observed that in the facilities it visited, female inmates often do not have access to feminine hygiene products, which they need in order to maintain a minimum level of health and well-being. The Subcommittee also observed that in Cadeia Pública Joaquim Ferreira de Souza, the inmates were not given a change of clothes, such that when their only set of clothes was being washed, they had nothing to wear. The inmates there informed the Subcommittee that they were not allowed to receive clothes from visitors, whereas the

Subcommittee observed that in the male prison facility within the same penitentiary complex, male inmates were allowed to receive them.

65. The Subcommittee urges the State party to immediately take action to ensure that food and basic hygiene products are provided in sufficient quantities to female occupants of detention facilities.¹¹

f) Juveniles

66. The Subcommittee is dismayed by the approval of a Constitutional amendment reducing from 18 to 16 years the age at which an adolescent may be tried as an adult for heinous crimes, bodily injury resulting in death and murder through to Constitutional amendment no. 115/2015, to which the SPT manifests its opposition.

67. At a juvenile detention facility it visited, the Subcommittee found that the conditions of detention did not accommodate juvenile-specific needs. Although it seemed that positive steps had been taken in order to change from a punitive to a preventive approach, the Subcommittee nevertheless found, based on several interviews, that children and adolescents were not given the special protection they needed from the moment of apprehension and they were exposed to consistent practices of physical abuse as well as a lack of legal safeguards.

68. The Subcommittee also received several reports of arbitrary detention of juveniles linked to “Operation Summer” (*Operação Verão*), a security operation intended to prevent beachfront crime during tourist season in Rio de Janeiro. The Subcommittee was informed that numerous poor juveniles who frequented beaches were detained for no reason, and that the local preventive mechanism was repeatedly denied access when attempting to visit the shelters in which they were located.

69. The Subcommittee is highly alarmed by the information provided by sources including the government itself that poor black youth are at greatly increased risk of arrest and summary execution by the police. The Subcommittee also received numerous reports from members of civil society that in some states, poor black youth are targeted by the military police for arrests, excessive use of force, and extrajudicial killings. In the juvenile facility it visited in the state of Rio de Janeiro, the Subcommittee observed that a conspicuously disproportionate number of detainees were black.

70. The Subcommittee requests the State party to review its juvenile detention practices and align them with international standards, especially those concerning non-discrimination, the presumption of innocence, access to legal aid, the prohibition on corporal punishment, and the use of deprivation of liberty only as a measure of last resort.¹²

g) Gender and sexual minorities

71. The Subcommittee is also concerned about the lack of visibility and protection in detention facilities for gender and sexual minorities, such as lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals. According to figures provided by the government, 86% of detention facilities do not maintain separate accommodation for LGBTI individuals.

¹¹ See Mandela Rules, Rules 15 and 20 (1).

¹² Convention on the Rights of the Child (esp. arts. 2 (1), 37, 39 and 40); the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) adopted by General Assembly resolution 40/33 (esp. Rules 7.1, 15, 17.1 (b) and (c), and 17.3); and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by General Assembly resolution 45/113 (esp. Rules 1, 4, 63 and 67.)

72. The Subcommittee recommends that the State party ensure that separate accommodation is provided for gender and sexual minorities in all places of deprivation of liberty. The Subcommittee also refers the State party to its recent report entitled "Prevention of torture and cruel, inhuman and degrading treatment or punishment of lesbian, gay, bisexual, transgender and intersex persons."¹³

h) Foreign nationals

73. In prisons in the state of Rio de Janeiro, the Subcommittee observed that foreign detainees were not given consistent access to interpretation services, and had limited access to counsel and health care.

74. The Subcommittee recommends that the State party ensure that foreign detainees have access to interpretation services and are able to consult with counsel and health care personnel as needed.

V. OPCAT implementation: the National System to Prevent and Combat Torture

75. Brazil should have established or designated a National Preventive Mechanism at the latest one year after the ratification of the OPCAT in 2007.¹⁴ Since the ratification of the Optional Protocol, the State has conducted internal reviews and public consultations on an appropriate NPM model. The NPM bill was presented to the SPT during its first visit to Brazil in 2011. In its first visit report the SPT had recommended that the State party introduce the necessary changes, so as to guarantee an open, transparent and inclusive process, in particular of civil society, for the selection and appointment of NPM members. The SPT had further recommended that provision be made for gender balance and ethnic and minority representation in the NPM composition. The SPT commends the changes introduced to the draft law following its first visit that allowed improving the level of transparency of the new bodies created by the Federal Law. The SPT, nevertheless, emphasises the importance of gender balance in the NPM composition.

A. Institutional framework for the prevention of torture at federal level

76. The SPT welcomes the adoption of the Federal Law 12.847/15 of 2 August 2013 establishing the National System to Prevent Torture, and of Federal Decree 8.154 of 16 December 2013¹⁶ regulating the functioning of the National System to Prevent and Combat Torture, the composition and functioning of the National Prevention and Combating Torture Committee and the National Mechanism for Prevention and Fight against Torture.

77. The Subcommittee observes with great interest the composite structure created by the State, which demonstrates that the prevention and combat of torture is seen and acknowledged as a systemic task that depends on a multiplicity of institutions and State organs.

78. The Subcommittee acknowledges the complexity of the federal State and it took note that the National System to Prevent Torture was comprised of a variety of institutions and bodies, including the National Committee for the Prevention of Torture, National

¹³ CAT/OP/27/R.6.

¹⁴ In accordance with article 17 of OPCAT.

¹⁵ http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2013/Lei/L12847.htm

¹⁶ http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2013/Decreto/D8154.htm

Preventive Mechanism, and National Penitentiary Department, the National Council of Criminal and Prison Policies and the local committees to prevent and combat torture at state level.¹⁷ The role of the System is to integrate all these bodies and institutions and to hold an annual meeting.¹⁸

79. The SPT learned that since its establishment in August 2014, one of the main initial priorities the National Committee has been the selection of NPM members that were officially appointed in March 2015. The SPT was informed that the NPM became operational in April 2015 with 9 members. The Federal Law stipulates¹⁹, however, that the NPM will be composed of 11 experts selected by Committee and appointed by the President for a three-year term, allowing for one renewal for the same period. The President of the Committee appoints a new expert each year in charge of coordinating the NPM.

80. Both the National Committee and the Mechanism are newly established institutions and are both administratively linked to the Federal Human Rights Secretariat. They are physically located within the premises of the Human Rights Secretariat and their structure is integrated within the Secretariat. It was brought to the Subcommittee's attention that the resources for the functioning of these institutions derive from the budget of the Secretariat. The Subcommittee took note with regret that the NPM is not provided with necessary resources that would permit to carry out its functions effectively and independently.

81. The SPT observed that at the initial phase of its establishment, the NPM has mainly focused on drafting its internal procedures and protocols and establishing a monitoring plan, as well as carrying out few monitoring visits to detention sites. The SPT acknowledges the solid and technical qualifications of the members of NPM whose wide range of knowledge allows developing a multidisciplinary approach in their torture prevention work.

82. Furthermore, the SPT observed that the NPM was still little known among the general public and the detention population. The Subcommittee believes that the status and visibility of the NPM should be enhanced. Moreover, the NPM itself does not engage sufficiently in legislative processes, advocacy which NPMs are encouraged to undertake according to OPCAT Article 19, and which increases their overall visibility.

83. The Subcommittee has received information from civil society about the lack of transparency in the working methods of the National Committee that in turn may have an impact on the perceived legitimacy and effectiveness of this new institution, and decrease the potential for cooperation with other institutions or organizations, which is one of the cornerstones of the National System to Prevent and Combat Torture. The civil society has also raised concerns regarding the level of autonomy of the National Committee vis-à-vis the Government.

84. The Subcommittee welcomes the completion of the lengthy legislative process involved in creating the Mechanism in 2015. The SPT reminds the State Party that the provision of adequate financial and human resources constitutes a legal obligation under Article 18, paragraph 3, of the Optional Protocol and wishes to be informed, as a matter of priority, about the steps the State party intends to take to provide the NPM with adequate financial and human resources that will ensure it has complete financial and operational autonomy.

85. The Subcommittee recalls that, in accordance with its Guidelines on national preventive mechanisms, the State party should ensure that the Mechanism enjoys

¹⁷ Article 2 of the Federal Law

¹⁸ Article 4 of the Decree

¹⁹ Article 10 of the Federal Law

operational autonomy and independence, and that it should refrain from appointing members to that mechanism who hold positions that could raise questions of conflicts of interest.²⁰

86. The SPT recommends that the Federal Government of Brazil provide both the necessary human resources and adequate funding for the effective functioning of the NPM through a specific budget line, in addition to granting the NPM the institutional autonomy to use its resources. The necessary resources should be provided to permit the effective operation of the mechanism that should enjoy complete financial and operational autonomy when carrying out its functions under the Optional Protocol. Resources should be assured through a separate line in the annual budget and should be predictable to allow the NPM to develop its annual work plan and visits and to plan its cooperation with other partners.

87. The SPT emphasises that the NPM should complement rather than replace existing systems of oversight in Brazil, and its functioning should take into account effective cooperation and coordination between preventive mechanisms in the country. The SPT recommends that the budgets of the Committee and the Mechanism be separated. The NPM, in cooperation with the Committee, should clearly separate their respective mandates so that they can carry out all aspects of their respective mandates in a manner that avoids actual or perceived conflicts of interest.

88. The Subcommittee further recommends that the State party build the capacity of newly appointed NPM staff members and intensify training of all participants in NPM work. The Subcommittee also recommends that the NPM continue to develop its capacity through increasing cooperation with the Subcommittee, as well as through engagement with other NPMs and state preventive mechanisms.

89. The Subcommittee also recommends that the State party encourages that the National System to Prevent and Combat Torture in general, and NPM in particular, engage more directly with civil society organizations, including, at a minimum, through their increased participation in NPM visits and in dialogue with the authorities.

90. The Subcommittee also recommends that the State party increase the visibility of the NPM, including through activities that raise awareness of the OPCAT and of the NPM mandate. NPM recommendations should be prominently discussed and addressed. To this end, the Subcommittee recommends that the NPM enhance its advocacy with institutions where persons are deprived of their liberty, with relevant ministries and with legislators. The Subcommittee also recommends that the State party support such exchanges.

91. Finally, the State authorities and the NPM should enter into a meaningful process of continuous dialogue, with a view to the implementation of the recommendations which the NPM may make, with the aim of improving the treatment and the conditions of the persons deprived of their liberty, and to prevent torture and other ill-treatment or punishment. The State party should publish and widely disseminate the annual reports of the NPM, including transmitting them to the SPT, in accordance with Article 23 of the Optional Protocol. The SPT urges the State party to introduce an institutional forum for the discussion and follow up to such reports.

B. Institutional framework for the prevention of torture at state level

92. The impact and effectiveness of the System to Prevent and Combat Torture envisioned by the Federal Law relies significantly on the establishment of a network of

²⁰ Guidelines on national preventive mechanisms (CAT/OP/12/5), paras. 12 and 18.

preventive mechanisms at the state level²¹, which will function in collaboration with each other and with the NPM as the central body. The Human Rights Secretariat will promote the creation of such local mechanisms.²² Furthermore, the Decree 8.154 regulating the implementation of the NPM legislation provides that there will be a voluntary transfer of funds by the Human Rights Secretariat to the states with the objective of supporting their investment in torture prevention.²³ Nevertheless, no such transfers have come to SPT's attention at the time of the visit. The civil society organisations raised concerns regarding the genuine priority given by the Federal Government to this issue given the fact that the enactment of the National System was to be accompanied by adequate funding to enable proper implementation of the policy. The SPT observed that despite the large network of actors, including civil society organizations and public institutions that have been promoting the OPCAT implementation in different states of Brazil, the number of states that have actually set-up a local preventive mechanism remains very low. The adoption of the Federal Law did not have the expected impact: since August 2013, only 2 states have enacted respective legislation.²⁴

93. The SPT welcomes the fact that the Human Rights Secretariat, through its Department against Torture²⁵ has undertaken some initiatives to promote the creation and functioning of preventive mechanisms at the state level, engaging in dialogue with state governments in order to encourage them to fulfill their OPCAT obligation. However, these efforts have not been systematic, and have not produced substantial results.

94. The Subcommittee regrets the lack of political will to create local preventive mechanisms, which is also linked to the lack of ensuring adequate financial resources to the NPMs. The SPT was informed that although some states had enacted specific legislation creating local preventive mechanism²⁶, these mechanisms have not been provided with necessary financial resources to establish these mechanisms. The Subcommittee greatly respects the efforts of the Federal Government to further a system of state preventive mechanisms and clearly avails itself of this opportunity to reiterate its willingness to accompany it as actively as the resources will permit.

95. In this connection, the SPT draws to the State party's attention that according to article 29 of the OPCAT, the provisions of the Optional Protocol shall extend to all parts of federal States without any limitations or exceptions. The Subcommittee, therefore, recommends the authorities to take all appropriate measures to ensure the establishment and effective functioning of preventive mechanisms in all states of the country.

96. The SPT calls all state governments that have not done so to take action and to establish preventive mechanisms at state level, in compliance with OPCAT requirements, with functional independence and sufficient resources to allow these bodies to carry out their functions effectively, as foreseen by the Federal Law 12.847.

97. The SPT recommends that the Federal Government, through the federal Human Rights Secretariat, take a more proactive approach as part of an established national public programme, in coordination with state-level authorities, to foster the creation of local mechanisms. This may include meetings with high-level state

²¹ Article 8§5 of Federal Law 12.847 of 2 August 2013

²² Article 13 of Federal Law 12.847

²³ Article 20, Decree 8.154 of 16 December 2013, available at http://www.planalto.gov.br/ccivil_03/_Ato2011_2014/2013/Decreto/D8154.htm#art26

²⁴ Rondônia and Minas Gerais.

²⁵ Coordenação Geral de Combate à Tortura

²⁶ Such as Alagoas in 2009 and Paraíba in 2011

authorities, regular advocacy visits to the states, technical support to the drafting of legislation and economic incentives through allocation of funds.

98. According to the information available to the SPT during the visit only 5 states had legislation on creation of preventive mechanism but these laws had not yet come into effect. The SPT remains concerned that only in 2 states there were functional preventive mechanisms in place. In these two states the Subcommittee observed a lack of political will to strengthen these mechanisms and provide the resources and conditions these mechanisms need to function effectively. In both Rio de Janeiro and Pernambuco, the mechanisms have been functioning with scarce resources. The SPT commends, however, that the mechanism in Rio de Janeiro, after almost 4 years of effective operation was finally provided with financial resources and own office space in 2015. Nevertheless, the mechanism remains without any personnel for administrative support and allocated resources do not seem to be sufficient to fully discharge their mandate under the Optional Protocol.

99. The SPT is greatly concerned by the incident that took place with the Mechanism of Pernambuco, when the NPM members while carrying out a visit suffered harassment, received threats and was repeatedly held at gunpoint by an officer in the prison of Santa Cruz de Capibaribe. The members of the mechanism suffered greatly out of that incident, and the system for preventing and combatting torture also suffered greatly from such a blatant impediment of their mandate. In addition to the fact that the members of the NPM were obstructed in the execution of their duties, one of their members, a trans woman, suffered insults and humiliation and continues presently to be the object of threats. According to the information received by the SPT the investigation was not progressing.

100. The SPT calls on the Government to promptly carry out a full, impartial and detailed investigation into the circumstances surrounding this incident, bring those responsible to justice and take all necessary measures to prevent such incidents to happen in the future.

101. The Subcommittee is equally concerned by the recent refusal of access to the Rio de Janeiro, as well as the federal NPM, to places not traditionally understood to be places of deprivation of liberty, such as shelters and psychiatric institutions. This appears to have been the result of a lack of information by the concerned authorities, which belong to the social protection system, on the notion of "person deprived of liberty" under the OPCAT. Access is a basic enabling feature of torture prevention work, and in the absence of access it is important that an investigation for obstruction of public duties, of whatever figure exists in the country to address such a problematic, be carried out efficiently and effectively.

102. The SPT emphasizes that according to the article 4 of the Optional Protocol, the State shall allow visits to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue or with its consent or acquiescence.

Annexes**Annex I***[English only]***List of places of deprivation of liberty visited by the SPT****RIO DE JANEIRO**

Nelson Hungria female detention facility;

Cadeia Publica Joakim Fereira de Souza (No.8 female detention facility);

Emergency care unit (UPA) in Bangu;

Bangu penitentiary hospital and transfer truck (SOE);

Ary Franco prison;

Anti-trafficking police No. 159;

Central Legal Medical Institute (IML);

Social Educational Centre Dom Bosco

Delegacia Antissequestro DAS Policia Civil

MANAUS

Cadela Publica Desdor, Raimundo Vidal Pessoa;

Centro de Detencao Provisoria I, Cadeia Publica;

Penitenciaria Feminana de Manaus;

Medical Legal Institute (IML);

Police station No. 13 (delegacia 13);

Community Integrity Company, Police Station Specialised in Crimes against Women;

Specialized Police Department for Homicide and Kidnapping;

Military police station (two separate buildings)

ROCAM – Ronda Ostensiva Candido Mariano, the headquarters of military police.

RECIFE

Presidio de Santa Cruz de Capibaribe;

Centro de Observação e Triagem Professor Everardo Luna (COTEL);

Central de Flagrantes da Policia Militar (with the state preventive mechanism)

BRASILIA

St. Maria social educational institution for girls (observing the visit of the NPM)

Annex II

[English only]

Officials and other persons with whom the delegation met

Brasilia

Ambassador Sérgio Danese, interim Minister of State, Ministry of Foreign Affairs,

Nilma Gomes, Minister of Women, Racial Equality and Human Rights,

Eleonora Menicucci, Special Secretariat for Women

Paulo Roberto Martins Maldos, National Secretary for the Promotion and Protection of Human Rights;

Alexandre Ghisleni, Director of the Department of Human Rights and Social Issues of the Ministry of Foreign Affairs,

Fernando Antônio dos Santos Matos, Director of the Department of Protection of Human Rights;

Karolina Alves Pereira de Castro, General Coordinator for Combating Torture;

Christiana Lamazière, Deputy Chief, Division of Human Rights of the Ministry of Foreign Affairs,

Rodrigo de Oliveira Morais, International Advisor

Renato Vitto, Director General, National Penitentiary Department,

Maricia Loureiro, Head of International Department, Ministry of Justice,

Ana Janaina Souza, National Secretary for Youth,

Beatriz Cruz, Advisor to the National Secretary of Public Security,

Joao Loureiro, Technical Assistant to the National Penitentiary Department,

Valdirené Daufembach, Director of Penitentiary Policies

Luiz Guilherme Paiva, National Secretariat of Drugs Policies

Fabiana Barrerto, President, National Council on Criminal and Penitentiary Policies

Gabriel Sampaio, Secretary of Legislative Matters

Ministry of Health

Rogério Sotilli, Secretary of Human Rights,

Juliana Bueno, the Special Secretary Adviser,

Paulo Roberto Martins Maldos, National Secretary for the Promotion and Protection of Human Rights,

Fernando Antônio dos Santos Matos, Director of the Department of Protection of Human Rights; Karolina Alves Pereira de Castro, General Coordinator for Combating Torture;

Rodrigo Torres de Araujo and Lima, National Secretary of the Rights of Children and Adolescents; Rodrigo de Oliveira Morais, International Advisor

Fabricio Cruz, General Secretary of the National Council of Justice,

Aurélio Rios, Federal Attorney for Citizens' Rights

Paulo Pimenta, Deputy President of the Commission on Human Rights and Minorities of the House of Deputies,

National Mechanism for Preventing and Combating Torture

National Committee to Prevent and Combat Torture

Civil Society

Center of Defense of the Rights of Children and Teenagers (CEDECA),

Federal District in Movement / Youth of expression (DF Em Movimento / Juventude de expressão),

Commission of Human Rights – Brazilian Bar Association (Comissão de Direitos Humanos/OAB),

Prison Pastoral (Pastoral Carcerária),

Conectas,

Black Youth Forum (FOJUNE),

Movement Ceil Alive (Movimento Ceil Viva),

Artsam Collective (Coletivo Artsam),

City Collective (Coletivo da Cidade),

Institut of Socioeconomic studies (Instituto de Estudos Socioeconômicos, INESC),

Association of Families of Inmates of the Federal District and Surroundings Prison System (Associação de Familiares de Internos no Sistema Prisional do Distrito Federal e Entorno, AFISP DFE)

Human Rights Society of Maranhão (Sociedade Maranhense de Direitos Humanos, SMDH).

Rio de Janeiro

Dr. André Castro, General Public Defender of the State of Rio de Janeiro,

Commission on Human Rights of the Legislative Assembly of the State of Rio de Janeiro,

Colonel ANAGING Ribeiro Costa Filho, Secretary of Penitentiary Administration,

Cristina Cosentino, Secretary of Social Welfare and Human Rights of the State of Rio de Janeiro,

Andrea Sepulveda Brito, Secretary of Protection and Promotion of Human Rights,

State Mechanism to Prevent and Combat Torture,

State Committee for Prevention and Fight against Torture,

Fernando da Silva Veloso, Deputy Chief of Police

Recife

State Mechanism to Prevent and Combat Torture

Civil Society

CENDHEC - Centro Dom Helder Câmara de Estudos e Ação Social

Instituto José Ricardo

Renap PE – Rede Nacional de Advogadas e Advogados Populares em Pernambuco

GAJOP - Gabinete de Assessoria Jurídica às Organizações Populares

GESTOS – HIV, comunicação e Gênero.
