DEFENSORIA PÚBLICA DO ESTADO DE SÃO PAULO

NESC | NÚCLEO ESPECIALIZADO DE SITUAÇÃO CARCERÁRIA

Núcleo Especializado de Cidadania e Direitos Humanos

ANALYSIS OF BRAZIL'S COMPLIANCE WITH THE RULES SET FORTH IN THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT AND ITS OPTIONAL PROTOCOL

PUBLIC DEFENDER'S OFFICE OF THE STATE OF SÃO PAULO: SPECIALIZED CENTER FOR CITIZENSHIP AND HUMAN RIGHTS (NCDH) AND SPECIALIZED CENTER FOR PRISON SITUATION (NESC)

PREPARED AND SIGNED BY

Public defenders: Fernanda Penteado Balera; Cecilia Nascimento Ferreira; Surrailly Fernandes Youssef; Mariana Borgheresi Duarte; Diego Resende Polachini; Camila Galvão Tourinho; Postgraduate interns: Gustavo Carneiro da Silva; Bruna Sueko Higa de Almeida.

LAYOUT BY

Law interns: Letícia Lopes Aguiar; Camila Santos Ezequiel da Costa.

SUMMARY

INTRODUCTION

COMMITTEE AGAINST TORTURE
Human Rights Council and Treaty Mechanisms Division (CTMD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva (Switzerland)

THE PUBLIC DEFENDER'S OFFICE OF THE STATE OF SÃO PAULO is a permanent institution, essential to the State's jurisdictional function. Article 134 of the Constitution provides, amongst the Office of the Public Defender's duties, as an expression and instrument of democracy, fundamentally, the legal guidance, the promotion of human rights and the defense of individual and collective rights of those in need, in all judicial and extrajudicial instances. As an autonomous institution, the Office of the Public Defender is not part of the government, but a body composed by legal professionals selected through a rigorous public process, to whom it is also granted functional independency. The Constitution ensures functional and administrative autonomy to the Office of the Public Defender (paragraphs 2 and 3 of the above-mentioned article), making it, therefore, an independent (public) human rights monitoring body[1]. In accordance with this essential role, federal legislation (Complementary Law n. 80/1994) enables the Office of the Public Defender to act before international human rights mechanisms. In that sense, Article 4, VI, of the mentioned federal law states, as one of its institutional functions, to access the international systems of human rights protection, postulating before their bodies.

Taking into to account, the proximity to the sessions in which Brazil's report will be analyzed and the increase of the complaints regarding the practice of torture in Brazil[2], THE PUBLIC DEFENDER'S OFFICE OF THE STATE OF SÃO PAULO respectfully come to the UN COMMITTEE AGAINST TORTURE, to present this brief document, hoping to contribute with the review of Brazil's report under LoIPR ("List of Issues Prior to Reporting") during the 76ª CAT Session.

[1] Notwithstanding not being a National Human Rights Institution under the definition of the Paris Principles.1168484565.1678732074. (Acessado em 20.03.2023)
[2] According to the Conselho Nacional de Justiça ("National Justice Council"), between 2019 and 2022, 44,2 complaints of torture were made to judges during the custody hearings. Available at: <https://www.conjur.com.br/2022-ago-03/34-anos-depois-aprovacao-fim-tortura-casos-dobram-pais>. (Accessed: 20 march 2023)

RESEARCH REPORT FROM PUBLIC DEFENDER'S OFFICE OF THE STATE OF SÃO PAULO: SPECIALIZED CENTER FOR CITIZENSHIP AND HUMAN RIGHTS (NCDH) AND SPECIALIZED CENTER FOR PRISON SITUATION (NESC)

1. THE VETO TO THE DRAFT LAW TO COMBAT TORTURE IN PRISON AND OTHER DEPRIVATION OF LIBERTY FACILITIES (ARTICLES 2 AND 16 OF UNCAT AND ARTICLES 17 AND 19 OF OPCAT)

The state of São Paulo is the most populous in Brazil, home to a third of the entire prison and socio-educational population in the country. It is the state with the largest number of people deprived of liberty in Brazil - 195,537 persons[3].

On January 2019, the governor of the state of São Paulo completely vetoed a Draft Law that proposed the creation of a project aiming to combating the practice of torture in São Paulo prisons and other deprivation of liberty facilities (Draft Law No 1557/2014)[4].

The Draft Law established a Mechanism and a Committee for the Prevention and Combat of Torture in the State of São Paulo. The draft was approved by the State Legislative Assembly at the end of 2018. After the approval of the State Legislative Assembly, it was only pending the Executive's sanction[5] to the enactment of the law. However, the governor João Doria vetoed it.

As stated by the approximately 50 organizations that signed the "Joint Note against the veto of Draft Law No. 1257/2014", of January 17, 2019:

> "The perpetration of torture and ill-treatment (physical and psychological), in spaces where there are people deprived of liberty, is a systemic practice, constantly denounced nationally and internationally by victims and their families and by human rights organizations; however, there are no effective policies to reverse this situation. In this sense, the approval of the law by the State Legislative Assembly represented a valuable advance towards the protection of human rights in the state of São Paulo"[6].

Furthermore, as the same organizations highlight, by vetoing the Draft Law, the governor of the state of São Paulo adopted "a mistaken interpretation of the role of the Legislative Power, in addition to neglecting the long and broad public debate that involved the presentation of the project and its approval". According to the organizations, the governor also restricted the attributions of the

[3] Number of prisoners indicated by "Secretaria de Administração Penitenciária - SAP" (Penitentiary Administration Secretariat) of the State of São Paulo on January 31, 2023.
[4] CONECTAS. Organizações repudiam veto de Dória a projeto de combate à tortura em prisões de SP ("Organizations repudiate Dória's veto of a project to combat torture in prisons in São Paulo"), Conectas Notícia, 21.01.2019. Available at: https://www.conectas.org/noticias/organizacoes-repudiam-veto-de-doria-a-projeto-de-combate-a-tortura-em-prisoes-de-sp/. (Accessed: 20 march 2023)
[5] CONECTAS. Organizações repudiam veto de Dória a projeto de combate à tortura em prisões de SP ("Organizations repudiate Dória's veto of a project to combat torture in prisons in São Paulo"), Conectas Notícia, 21.01.2019. Available at: https://www.conectas.org/noticias/organizacoes-repudiam-veto-de-doria-a-projeto-de-combate-a-tortura-em-prisoes-de-sp/. (Accessed: 20 march 2023)
[6] CONECTAS et al. Joint note against the veto of the Draft Law nº 1257/2014 (Nota conjunta contra o veto ao projeto de lei nº 1257/2014). 17.01.2019. Available at: https://conectas.org/wp-content/uploads/2019/01/2019.01.28-Nota-publica-Veto-Ao-PL-1257-14-Atualizada.pdf?_ga=2.266557518.1179025687.1678732074-1168484565.1678732074. (Accessed: 20 march 2023)

Legislative Power, by "imposing limits and beacons not foreseen constitutionally on how such a function should be exercised".

On 5 February 2019, the United Nations human rights experts published a Press Release declaring that they were "deeply concerned over the recent veto by the Governor of São Paulo of law N° 1257/2014[7], which would have established an anti-torture mechanism in the State"[8].

The experts mentioned that "the establishment of independent torture prevention mechanisms is one of the most effective means of protecting those in detention throughout Brazil from ill-treatment, and it is a way towards guaranteeing them their right to a fair trial and the rule of law in the country. Brazil's federal government is under an international legal obligation to ensure that this happens"[9].

Finally, the experts remind that "Brazil has an international legal obligation to establish a system of National Prevention Mechanisms for tackling torture and ill-treatment because the country ratified in 2007 the Optional Protocol to the Convention against Torture (OPCAT)"[10].

Considering that national mechanisms already exist in other states of Brazil, such as Rio de Janeiro, Espírito Santos, Rondônia, Maranhão, Paraíba, Alagoas, Sergipe, and Pernambuco[11], there is no reasonable justification for the veto.

In conclusion, the lack of the Committee for the Prevention and Combat of Torture in the State of São Paulo undermine the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment.

2. ACCOUNTABILITY MECHANISMS AND THE NECESSITY OF A PROMPT AND IMPARTIAL INVESTIGATION – THE IMPORTANCE OF THE CUSTODY HEARINGS (UNCAT – ARTICLES 12, 13 AND 16).

The police lethality in Brazil is considered one of the most intense in the world when compared to other countries. In the last 4 years, the number of deaths has always been above 6,000 occurrences. Specifically in the state of São Paulo, police have killed 7,310 persons in the last ten years[12]. Human rights bodies[13] consistently condemn police brutality and excessive use of force by law enforcement officials. Due to the historical structural discrimination in the country, institutional violence affects mostly people of African descent and those

[7] Available at: <https://www.al.sp.gov.br/propositura/?id=1223577 >. Accessed on: 08/03/2023.
[8] UNHR Office of the High Commissioner. Torture prevention: UN human rights experts urge Brazil to abide by its international legal obligations, OHCHR, 05.02.2019. Available at: https://www.ohchr.org/en/press-releases/2019/02/torture-prevention-un-human-rights-experts-urge-brazil-abide-its?LangID=E&NewsID=24138 >. (Accessed: 20 march 2023)
[9] Idem.
[10] Idem.
[11] Available at: <https://www.gov.br/mdh/pt-br/prevencao-e-combate-a-tortura/comites-e-mecanismos-estaduais-de-prevencao-e-combate-a-tortura#:~:text=Os%20Comit%C3%AAs%20Estaduais%20de%20Preven%C3%A7%C3%A3o,rotinas%20que%20levam%20%C3%A0%20tortura>. (Accessed: 20 march 2023).
[12] Data from the Brazilian Yearbook of Public Security - Fórum Brasileiro de Segurança Pública. Available at: <https://forumseguranca.org.br/anuario-brasileiro-seguranca-publica/>. (Accessed: 20 march 2023).
[13]Available at: <https://www.oas.org/pt/cidh/relatorios/pdfs/brasil2021-pt.pdf> and <https://www.oas.org/en/iachr/media_center/PReleases/2020/187.asp>. (Accessed: 20 march 2023).

exposed to poverty and extreme poverty.

The lack of accountability mechanisms is considered one of the obstacles in the fight against torture. Although torture is considered a crime in Brazil (Law n. 9.455/97), the criminal judicial system rarely holds accountable public agents for its practice.

Maria Gorete Marques de Jesus, on the article "*The trials of the crime of torture: A procedural study in the city of São Paulo*"[14], analyzed 181 criminal cases in which public agents were accused of practicing torture. In approximately 70% of the cases the public officer involved was acquitted.

The introduction of the custody hearings in Brazil aimed at reducing the use of pretrial detention, but also to prevent the practice of torture. The custody hearings consist of presenting the person arrested in flagrante delicto to a judge within 24 hours of arrest, with the aim of ascertaining the need to maintain the prison. Pursuant to Resolution 213/2015 adopted by the Brazil's Conselho Nacional de Justiça (National Justice Council), these hearings require the judicial control of the legality of the arrest, but also of the conduct of the police officer responsible for the arrestment. So, the main purpose of the hearings is to ensure the rights of the detainees. In addition, any individual detained in flagrant delicto within 24 (twenty-four) hours of their arrest will have a first contact not only with judges, but also with prosecutors and defenders (public or lawyers).

Since 2015, according to the Brazil's National Justice Council, 85.886 complaints of torture or inhuman or Degrading Treatment or Punishment were made by detainees in these hearings[15].

However, a study published by the civil society organization before the pandemics, "Conectas", analyzing the performance of the institutions that make up the criminal justice system in custody hearings in cases of torture, shows that, within the 393 cases analyzed, in only 1 of them did the judge determine the opening of a police inquiry to investigate the incident[16].

During the pandemic period the potential of the custody hearings to prevent torture and degrading treatment or punishment were impaired.

Firstly, the custody hearings in São Paulo were suspended. Appraisal of arrest records in flagrante delicto began to be carried out remotely, as was the case before the implementation of hearings.

Thus, the evaluation of the case went back to being "on paper", without seeing and hearing the detainees

[14] Available at: < https://revistas.ufrj.br/index.php/dilemas/article/view/7180>. Access on: 20/03/2023.
[15] Available at: < https://paineisanalytics.cnj.jus.br/single/?appid=be50c488-e480-40ef-af6a-46a7a89074bd&sheet=ed897a66-bae0-4183-bf52-571e7de97ac1&lang=pt-BR&opt=currsel > . (Accessed: 20 march 2023)
[16] CONECTAS DIREITOS HUMANOS. Tortura blindada: como as instituições do sistema de Justiça perpetuam a violência nas audiências de custódia ("Shielded torture: how institutions of the justice system perpetuate violence in custody hearings"). Available at: https://www.conectas.org/publicacao/tortura-blindada/

about the circumstances of their arrest and, consequently, about any kind of police violence.

Secondly, the Brazil's National Justice Council, on the Resolution 357/2020, on exceptional basis, decided that custody hearings could be held by video conference. Although several organizations staged the campaign *#TorturaNãoSeVêpelaTV* (#YouCantSeeTortureOnTV) against remote hearings[17], the decision still stands and many district judicial courts adopted the remote custody hearing. In the State of São Paulo, for example, on 156 district courts the detained persons are not physically present during the custody hearings (78,8%)[18]. This means that in only 42 district courts (21,2%) the individual accused appear physically before the judge or other officer authorized by law to exercise judicial power, which contradicts the recommendation of the UN Human Rights Committee[19].

The Association for the Prevention of Torture (APT) stated that: "Since the beginning of the pandemic, with the suspension of face-to-face hearings, there has been an 83% decrease in the percentage of reports of torture and ill-treatment during arrest, compared to pre-pandemic data. This marked drop shows how the presence of the person in custody before the judicial authority is essential to bring police violence to light and confirm that the effectiveness of custody hearings depends on this physical appearance, on direct contact, which allows visual inspection for any evidence that indicates the occurrence of torture practices"[20].

On March 2021, the Human Rights and Citizenship Specialized Center ("*Núcleo Especializado de Cidadania e Direitos Humanos*") and the Office of the Public Defender's Division on Penitentiary Situation ("*Núcleo Especializado de Situação Carcerária*") analyzed 602 cases of flagrante delicto during the pandemics in two regions of the State of São Paulo (in the so-called "Baixada Santista" and in the state capital). At the period, the judicial control of the case went back to being "on paper", without any contact with the individual detained. After the analysis, the report "Torture Blind Spots: the suspension of custody hearings in the pandemic in São Paulo" concluded that in less than 2% of the cases: the corpus delicti examination was carried out, the report was attached and/or a photographic record of the individual detained in flagrante delicto was made, or essential documents were attached to investigate the practice of violence or torture or ill-treatment during the arrest.

The need to prove violence based on the presence of body marks is one of the central subjects under discussion in the investigation and judgment of cases of torture involving public agents. In many cases, the report is carried out days after the victim has been tortured, which substantially impairs the reliable production of the investigation, since many of the marks of the violence may have disappeared.

Another problem is that no forensic carries out a psychological examination of the victim. The psychological

[17] Available at: < https://www.conectas.org/en/noticias/justice-council-mulls-holding-custody-hearings-by-video-conference/>. (Accessed: 20 march 2023)
[18] Available at: <https://www.tjsp.jus.br/CanaisComunicacao/AudienciasDeCustodia>. (Accessed: 20 march 2023)
[19] UN Human Rights Committee. General Comment n. 35 – Article 9 (Liberty and security of person), paragraph 34. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/244/51/PDF/G1424451.pdf?OpenElement . Accessed on: 20/03/2023.
[20] PUBLIC DEFENDER OFFICE OF THE STATE OF SÃO PAULO. Blind points of Torture: The suspension of Custody Hearings During the Pandemic in São Paulo. Available at: https://www.defensoria.sp.def.br/documents/20122/d8922f3b-006e-da64-327a-01cc1fa67019. (Accessed: 20 march 2023)

marks are not visible. Torturers can inflict psychological trauma as well as police officer can inflict pain without leaving physical traces[21]. According to researchers on this subject:

> Psychic disorders present a series of symptoms, such as: psychosomatic disorders, affective disorders, behavioral disorders, anxiety, depression, irritability, paranoia, feelings of guilt, distrust, sexual dysfunction, loss of concentration, confusion, insomnia, nightmares, disillusionment, weakness and memory loss. Post-torture syndrome can also be identified by the permanent memory of torture, nightmares and the development of fears and phobias of things or places that may bring back memories of the abuse suffered[22].

In this way, a report would need to assess the psychological conditions of the person who were approached by the police. Research shows that psychological forensic in Brazil is extremely fragile. Practically none of the flagrante delicto detention records that have a corpus delicti examination include a psychological report. Then, the identification of torture is always related to the arms detected on the body of the victim. Therefore, the psychological impacts of torture are always disregard during custody hearings[23].

Another situation that occurs very frequently is the torturer himself accompanying the victim at the time of the forensic exam. The victim, in order not to suffer reprisals from his tormentor, usually says to the forensics that he/she fell or that he/she was injured by accident at the time of the arrest. In most cases, the victim is threatened by the torturer in order to not denouncing him.

In the research, already mentioned, carried out by the Public Defender's Office on March 2021, it was highlighted that the texts of the expert reports of 318 cases analyzed differed substantially from the national and international regulations adopted for recording violence. Starting with the Istanbul Protocol, in which there are at least four essential elements that must be included in the Report on the Practice of Torture: i) Circumstances of the interview; ii) History of possible torture; III) Physical and psychological examination, with photographs of the injuries and IV) Legal opinion (the interpretative part about the collected records and the possibility of torture having occurred)[24].

The forensic reports also do not follow the guidelines of the Brazilian Protocol of Forensic Expertise in the Crime of Torture, nor of Resolution 14 of the National Council of Justice, which establishes guidelines and expert requirements for carrying out forensic examinations in cases where there is evidence of torture and other cruel,

[21] GOULART, Valéria D. S. Fernandes. Tortura e prova no processo penal jurídico ('Torture and evidence in legal criminal proceedings"). São Paulo: ATRAS/Coleção Jurídicos, 2002, p.87.
[22] FRANÇA, Genival Veloso de. A perícia em casos de tortura. Seminário Nacional Sobre a eficácia da lei da tortura ("Expertise in cases of torture. National Seminar on the Effectiveness of the Torture Law") [s.n.t].
[23] JESUS, Maria Gorete Marques de. O crime de tortura e a justiça criminal: um estudo dos processos de tortura na cidade de São Paulo ("The crime of torture and criminal justice: a study of torture processes in the city of São Paulo"), São Paulo: IBCCRIM, 2010; IZUMINO, Wania P.; LOCHE, Adriana A.; SOUZA, Luiz A. Francisco de. Violência policial e o papel da perícia médica ("Police violence and the role of medical expertise"). Revista Brasileira de Ciências Criminais, São Paulo, n. 33, p. 253-260, jan/mar. 2001.
[24] PUBLIC DEFENDER OFFICE OF THE STATE OF SÃO PAULO. Blind points of Torture: The suspension of Custody Hearings During the Pandemic in São Paulo. Available at: <https://www.defensoria.sp.def.br/documents/20122/d8922f3b-006e-da64-327a-01cc1fa67019>. (Accessed: 20 march 2023)

inhuman, or degrading treatment, in accordance with the parameters of the Istanbul Protocol. Such documents indicate that the clinical condition regarding the suffering caused by torture is much more complex than the sum of the harm marks visible to the naked eye, and there must be both a physical and a psychological assessment to understand the phenomenon.

Research carried out by civil society organizations and research groups revealed that the lack of evidence is the most used basis by the judiciary to acquit public agents of the crime of torture. Discrediting the victim's word is one of the common elements, especially when the victim is a person arrested or suspected of having committed a crime[25].

The lack of an effective system for carrying out the corpus delicti exam at the time of arrest in flagrante delicto is an "endorsement" for police torture, for illicitly obtaining evidence and forging fraud. Brazil already has specific and detailed national norms. The public security agencies and the criminal justice system of the State of São Paulo are jointly responsible for the systematic violations of human rights of prisoners.

Therefore, if before the pandemic custody hearings already presented some obstacles to prevent torture and hold accountable police officers responsible for the violence, the institutional changes made in recent years directly impact the possibilities of individuals to report violence practice during arrest. It is essential that the detained persons are physically present during custody hearings to comply with its main purpose of investigate high-handedness committed by agents of the State during arrests.

3. SERIOUS EPISODES OF TORTURE PRACTICED BY PRISON TACTICAL GROUPS AGAINST PRISONERS (UNCAT – ARTICLES 2, 10.1, 11 AND 12)

One of the factors that significantly contribute to the repeated occurrence of episodes of torture in São Paulo prison system and in other States of Brazil is the mode of operation and routine use of "Grupo de Intervenção Rápida – GIR" (Rapid Intervention Group). It is a prison tactical group directly subordinated to the "Secretaria de Administração Penitenciária – SAP" (Penitentiary Administration Secretariat), regulated in an infra-legal way by resolutions issued by this folder (SAP Resolutions nº 69/2004 and 223/2010), whose objective should be the punctual intervention to quell riots and disorders similar in prisons. However, the group became a constant, habitual and ostensive presence in prisons, being the protagonist of constant episodes of violence and torture against prisoners.

On December 2018, the Public Attorney's Office filed a public civil action aimed at ensuring minimum measures of control of the group's actions, classifying GIR as "*a body of public agents transformed into a militia with a markedly military action and focused on confrontation and*

[25] CONECTAS et al. Julgando a Tortura: análise de jurisprudência nos Tribunais de Justiça, 2006-2010. Available at: https://www.conectas.org/publicacao/julgando-tortura/. (Acessado em 20.03.2023)

destruction (if not physical, certainly moral) of people arrested under state responsibility"[26]. As part of this process, the Public Defender's Office presented data from interviews with prisoners carried out during 95 (ninety-five) inspections carried out by the institution in prisons of São Paulo, which demonstrate the routine occurrence of physical aggression, destruction and confiscation of assets held by those in custody, cursing, use of dogs for threats and aggression, throwing gas bombs in closed environments and torture by such agents.

Photo 1: Person arrested showing a fractured finger on the right hand, reporting that the fracture is the result of physical aggression by prison officers.

In 2022, this public civil action was judged by the court of first instance, with the magistrate determining that the State has to fulfill basic obligations related to the control of GIR actions, such as provide the proper identification of the agents during the operations, attaching cameras to the uniforms for recording the incursions and the establishment of a specific selection process for GIR agents, who are currently recruited from among the staff of the Penitentiary Administration Secretariat without clear criteria. It also determined that disciplines on human rights and the fundamental rights of prisoners must be incorporated into the training courses for GIR agents, something also required by article 10 (1) of the UNCAT[27].

As can be seen, the fact that a court decision established these basic control parameters of GIR after more than 15 (fifteen) years of its creation demonstrates that the group acts occur in defiance of any democratic control. It also demonstrates the inertia of the public power to guarantee preventive measures against violence and acts of torture committed by agents of such groupings, in clear violation of articles 2 (1)[28] and 11[29] of the UNCAT. The public civil action cited is still ongoing, and the state of São Paulo has not yet demonstrated the implementation of any of the measures determined by the court.

[26] Court of Justice of the State of São Paulo. Public Civil Action n. 1063655-37.2018.8.26.0053.
[27] UNCAT. Article 10 (1). "Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment."
[28] UNCAT. Article 2 (1). "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction."
[29] UNCAT. Article 11. "Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture."

Henceforth, we present short summaries of two examples of disastrous actions by GIR, which culminated in barbaric episodes of torture against prisoners. The first of these was an incursion into Penitentiary II of "Presidente Venceslau" in São Paulo city, on April 12, 2008. On that occasion, after apprehending illicit objects in a cell, six inmates refused to leave the place to be transferred to the Disciplinary Pavilion, for expressly disagreeing with the collective sanction that had been imposed by the management of the establishment due to the lack of information about the possessor of those goods. It should be noted that collective sanction is expressly prohibited by the Brazilian Penal Execution Law[30], what shows that those in custody resisted complying with a manifestly illegal order.

Because of this episode, the GIR agents were called in by the prison management. Before the cell was opened, they fired rubber bullets and jets of pepper spray (the latter, liquid, through the prison's ventilation opening) and, after the cell door had already been duly broken into and opened, a pepper gas bomb was thrown inside the confinement place. Filming taken during the events demonstrates that, after the burst resulting from the explosion of this bomb, there was an immediate spread of flames, which spread quickly inside the cell, causing a fire.

Because these events occurred in a small place, without ventilation and with only one exit that was obstructed by the flames, the convicts were victimized with respiratory intoxication and body burns, being saved and attended only after the flames were controlled, with great difficulty, by the body functionality of the establishment. Even after being subjected to this, the arrested population were still subjected to numerous blows with truncheons and threats by the GIR agents, who did not have any identification, being dragged in handcuffs through the corridors and not being getting immediate medical attention.

These facts were attested many years later, through footage produced during the incursion and published in the press[31], that were not disclosed at the time of the events[32]. The investigations were closed without any action being taken, and the footage was hidden by the public agents involved, being, years later, disclosed through an unofficial leak. Even after the emergence of such images, no measure of reparation was taken by the State, with a recurrent attempt to blame those in custody for the episodes of torture that themselves suffered.

Another episode that demonstrates the brutality of this prison tactical group occurred on September 2015, at

[30] Law n. 7.210/1984 (Penal Execution Law). Article. 44, Paragraph 3rd. "Collective sanctions are forbidden".
[31] It is possible to check the repercussion of the episode in the press through the following journalistic article, published by a vehicle of great circulation in Brazil: https://noticias.uol.com.br/cotidiano/ultimas-noticias/2014/10/29/agentes-penitenciarios-provocam-incendio-em-cela-e-espancam-detentos-em-sp.htm.
[32] The images were taken from a report published in the television press ("Canal do SBT - Sistema Brasileiro de Televisão") and on the World Wide Web (UOL website), whose sequence is in the document attached to the present report.

the Penitentiary of Presidente Prudente, in São Paulo city. In a raid carried out with the objective of apprehending any illicit objects in the cells, approximately 240 (two hundred and forty) prisoners suffered physical and psychological violence, constituting true acts of torture over two and a half hours. Even without facing any resistance from those in custody, the GIR agents cursed and physically attacked the prison population with punches, kicks and blows with their truncheons.

Furthermore, they shot rubber bullets at the prison population, in a closed environment and at a much shorter distance than that determined by the ammunition's manufacturer as safe.

Photo 2: Photographic record of fire inside the prision cell (place of confinement of people) during a incursion by the "Rapid Intervention Group - GIR" at Penitentiary II of Presidente Venceslau-SP held on April 12, 2018, as narrated above.

Several prisoners suffered bodily injuries, mostly on the back and buttocks, demonstrating that they were in a defenseless position. As if that were not enough, among the injured were an elderly person and a wheelchair user, which demonstrates the level of brutality of the attacks.

In addition to the seriousness of the violence, several elements of this case demonstrate the absence of supervision over the events that occurred. It remains proven that there was no preparation of an official report regarding the GIR's incursion into the penitentiary on the day of the facts, as well as there was no immediate initiation of an internal investigation to determine what happened in the prison unit. All internal channels for investigating the incident were terminated by the State without success, and the police investigation, opened after the Public Defender's Office acted, lasted more than six years before being definitively archived without giving rise to a lawsuit, in flagrant disregard of Article 12 of the UNCAT[33].

Such episodes illustrate facts that have become commonplace in the penitentiary system of the state of São Paulo. GIR incursions took place constantly, as the use of the group has become something completely trivial, and its action is always synonymous with the disproportionate use of violence and the violation of rights that should be guaranteed to the prison population. In summary, the role played by the GIR has deepened the scenario of disrespect for the fundamental rights of prisoners that was attested by the UN Committee Against Torture in its report produced on Brazil in 2009[34].

[33] UNCAT. Article 12. "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."
[34] UN. Committee Against Torture. Report on Brazil Produced by the Committee Under Article 30 of the Convention and Reply from the Government of Brazil. 2009, §178.

4. PERSONAL BODY CAVITY SEARCH OF PRISONERS AND VISITORS AND OTHER PRACTICES OF TORTURE IN THE PRISON SYSTEM (UNCAT – ARTICLES 1 AND 16)

In the report entitled "Diagnosis of Inspections by the Specialized Nucleus for Prison Situation of the Public Defender's Office of the State of Sao Paulo (2014-2019)"[35], this institution, through the analysis of the results of 130 inspections carried out in prison units in Sao Paulo during this period, found that there was a predominance of searches of prisoners by invasive means, involving practices such as stripping, squatting and other humiliating procedures. Although the installation of body scanners in prisons of this state took place in mid-2017, it is important to highlight that complaints of body cavity searches were found even in prison units that had such equipment, demonstrating how it was not able to inhibit such practices. In addition to the vexatious searching procedures, various forms of rights violations were found based on the statements of the prisoners, such as name callings, humiliations and the arbitrary exercise of power by penitentiary agents.

This violation persists to the present day. At the public hearing "Violations of rights against visitors of prisoners in prison units", held by the Public Defender's Office on July 27th, 2022, several complaints were collected about the carrying out of harassing and invasive searching procedures of visitors. Such practices constitute physical and psychological torture, directly violating Article 1 of the UNCAT, given that it is an illegitimate and disproportionate intimidation and coercion procedure committed by public agents against a specific group of people, for the simple reason that they are prisoners. In addition, they are an example of the degrading treatment given to the prison population of Sao Paulo, in violation of article 16 of the UNCAT.

To illustrate this situation, it is worth pointing out a recent case involving the Women's Penitentiary of the city of Guariba, in the state of Sao Paulo. The Public Defender's Office has constantly received anonymous complaints forwarded by the Federal Government, related to the treatment given by the disciplinary sector of this prison unit to female prisoners. In an inspection carried out by the Public Defender's Office at that location on January 27th, 2023, several reports were collected pointing to the submission of the prisoners to the vexatious search when they entered the establishment and when they are taken to the disciplinary sector.

The reports point out that part of the personal belongings is retained by the prison units when women are sent to the disciplinary sector, and many of them have to be naked in the place, in an illegal procedure called by them as "Peladão", being subjected to an extremely invasive search through the obligation to perform squats, leaving the vagina and anus on display for the penitentiary agents. In addition, several prisoners reported that this procedure also occurs in the living cells, although less frequently.

In addition to the institutional violence, other systematic violations that constitute acts of torture in the São Paulo prison system are prison overcrowding, lack of adequate ventilation and lighting, insufficient minimum

[35] Available at: <https://www.defensoria.sp.def.br/documents/20122/72cf0e2e-6095-b092-e804-a0b3c9cf3e31>. (Accessed: 20 march 2023)

health teams, lack of medication, poor quality of the physical structure of buildings , water rationing, lack of drinking water, lack of hot showers, limitation and absence of sunbathing, lack of personal hygiene items and clothing and lack of adequate food and in sufficient quantity. Many of these issues have already been pointed out in a report prepared by the CAT on the situation of Brazilian prisons, which demonstrates the state's inertia in solving them[36].

We highlight here the CAT statement indicating that "States parties are under a special obligation to take effective measures to prevent torture and ensure that persons deprived of their liberty can exercise the rights enshrined in the Convention, since they bear a special responsibility owing to the extent of the control that prison authorities exercise over such persons[37]". As was briefly demonstrated, the Brazilian State, and the state of Sao Paulo in particular, has failed miserably to fulfill this duty.

Photo 3 : two prisoners inside one of the disciplinary sector's prision cells, who complained about the lack of hygiene in the place. (photographic record of the inspection carried out on 05.27.2022 at Mirandópolis II Penitentiary).

[36] UN. Committee Against Torture. Report on Brazil Produced by the Committee Under Article 30 of the Convention and Reply from the Government of Brazil. 2009, §178.
[37] UN. Committee Against Torture. Guerrero Larez vs. Venezuela. CAT/C/54/D/456/2011, 2015, §6.4.

CONCLUSION: SUGGESTED RECOMMENDATIONS

In conclusion, taking under consideration the information and arguments above, The Public Defender Office of the State of São Paulo respectfully urges the UN Committee against Torture to adopt the following recommendations:

In relation to Article 2 (1) and Article 11:

- That the State party guarantee the immediate and urgent creation of State Committees and Mechanisms for the Prevention and Combat of Torture in all federative units where they do not yet exist, especially in the State of São Paulo, guaranteeing them independence and adequate structure for its operation, with the purpose of identifying practices of torture or risk of torture by security public officers and others public agents;

- That the State Party implement the necessary measures to comply with the obligations assumed by Brazil in the international system in relation to the prevention and fight against torture and ill-treatment, like the Istanbul Protocol and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;

- That the State Party carry out the identification of any security public officer with their full name, in a visible place and on an indelible surface, as well as use a mask or other device to protect the face that is transparent or translucent, allowing the prisoners and any other citizen to see the face and identify the agent;

- That the State party determines the mandatory uninterrupted use of portable operational cameras in the uniforms of criminal police officers and penitentiary agents, as well as encrypting the recording of images, preventing any type of editing;

- That the State Party communicate the incursions and operations of the penitentiary tactical groups, at least 24 hours in advance or in a shorter period if there is a duly justified reason for doing so, to the Criminal Execution Court, the Public Prosecutor's Office, the Public Defender's Office and the Council of Community. If it is not possible, for justifiable reasons, prior communication, that at least the bodies be notified of the operations carried out within a maximum of 24 hours, with detailed reports of the occurrences being sent;

- That the State party prevent the criminal police officers and penitentiary agents from carrying out a personal body cavity search of prisoners and visitors of the prisoners;

- That the State party publish an annual official report with data relating to the incursions of prison tactical groups in the country, at the federal and state levels. This report should also contain updated information on allegations, investigations and administrative, civil and criminal punishments resulting from acts of torture committed by police and public officers.

In relation to Article 10:

- That the State Party establish a specific selection process for police officers and penitentiary agents, identifying those who have the most adequate psychological profile for the situations of stress and tension inherent to the functions of that force, so that they know how to avoid violent and criminal reactions against the person they have to protect;

- That the State party carry out continuous and adequate training of members of the Public Ministry, Public Defender and Judiciary, penitentiary agents, prison tactical groups, police authorities and servants who work with penitentiary administration, according to the best modern practices of security with citizenship, based on data empirical and penal sciences, including the incorporation of the absolute prohibition of torture and other cruel, inhuman or degrading treatments in the teaching curriculum, including in its programs discipline that values anti-racist practices and other practices aimed at preventing and combating torture based on discrimination against any nature;

- That the State party carry out entry and continuing education courses aimed at teaching human rights for police agents and prison security agents, members of the Public·Ministry, Public Defender's Office and Judiciary, with the requirement of such discipline in the competitions for entry into such careers;

In relation to Article 12:

- That the State party ensure that the detained persons be physically present in face to face on custody hearings;
- That the State party adopt measures that guarantee the precautionary removal of public officers suspected of involvement in crimes of torture and ill-treatment;
- That the State party carry out a swift, impartial, effective investigation, and within a reasonable time, by the competent authorities when there are reasonable grounds for the practice of torture and ill-treatment by public officers, ensuring full access to victims and their families on the formalities and procedures adopted;

In relation to Article 14:

- That the State party implement a program of psychosocial care on a permanent basis, aimed at victims and their families directly or indirectly affected by the torture and ill treatment;
- The State party should guarantee free, comprehensive and specialized legal assistance to victims of torture, through the creation of institutional policies within the scope of the State and Federal Public Defenders' Offices;
- That the State party presents a Plan to Combat Torture creating, for that purpose, a reparation fund destined to new cases of torture and inhuman, cruel and degrading treatment.