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## Human Rights Council

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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by the Conectas Direitos Humanos, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 February 2017]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.17-02813(E)



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## **Torture in Brazil: the role of the judicial system in perpetuating torture and other cruel, inhuman or degrading treatment or punishment\***

Conectas Direitos Humanos, in partnership with Justiça Global, wishes to draw the attention of the United Nations Human Rights Council to the fact that torture and other cruel, inhuman or degrading treatment or punishment continues to recur widely in Brazil. As acknowledged by the UN special rapporteur on torture, Juan Méndez, at HRC's 31st session, impunity in cases of torture by government agents in Brazil "is still the rule, not the exception", particularly when the target is prisoners and minority groups.

During his visit to Brazil, Méndez stated that torture is entrenched in the country and widespread in Brazilian prisons. Méndez also said that torture is most frequent in the first few hours of detention and that the country has failed to investigate and prosecute these cases (A/HRC/31/57/Add.4).

In a positive attempt to reduce the levels of mass incarceration and tackle the issue of torture in the prison system, the Brazilian government introduced, in 2015, the custody hearings program. The measure complies with requirements of the American Convention on Human Rights, Article 7.5, of which states that "any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power"<sup>1</sup>. Brazil ratified the treaty in 1992, but that determination was ignored for years. According to the National Council of Justice (CNJ), this instrument should ensure that the citizen arrested in the act is brought to the judge within 24 hours. Thus, it can be heard in a hearing in which also speak representatives of the Public Prosecutor's Office and the defense.

At the hearing, the judge does not assess the innocence or guilt of the detainee, only procedural elements about the arrest. The judge also analyses possible incidents of torture and ill-treatment, among other irregularities committed by the police.

The judge may determine the conduct and examination of a forensic examination to ascertain possible abuse committed during the arrest, and institute criminal or administrative investigation against the accused agent.

In a recent study conducted by Conectas, 393 cases held in custody hearings in São Paulo city were analysed. Reports of signs of torture or ill-treatment make it possible to infer that the preferred victims of violence at the time of arrest are black (67%) men (92%) accused of robbery (43%) and that the main perpetrators are Military police officers (75%). Almost all the cases analysed deal with torture and ill-treatment by state agents (92%). According to what was reported during the hearings, the greatest motivation is to obtain confessions from the prisoners - which occurs both on the street and in the vehicles of the police or police stations.

During Conectas' research, it came to our attention the role of the judicial system in perpetuating torture and other cruel, inhuman or degrading treatment or punishment. In only 1 of the 393 reports of violence analysed, the judge ordered the opening of a police investigation, and on 72% of the analysed cases, the judge ordered to open an administrative investigation conducted by the same agents that were accused of practicing torture or other ill treatment.

During the hearing, judges do not act uniformly: questions about torture and ill-treatment appear depending on the magistrate who presides over the custody hearing - which points to a very large margin of discretion, as if combat and prevention of torture depended much more on the personal conviction of the judge than on a protocol for the institutional performance of the magistracy. Of the 11 judges who served in custody hearings monitored by Conectas, only five systematically asked all prisoners whether they had been victims of any kind of violence. In 33% of the

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<sup>1</sup> In Brazil there is no "other officer authorized by law to exercise judicial power".

analysed cases, magistrates did not ask any questions about the occurrence of torture, even when the arrested person had signs of apparent violence.

The Public Prosecutor's Office has the constitutional obligation to control the acts of the police forces. However, the Public Prosecutor's Office of the State of São Paulo did not act in 80% of the cases when the detainee alleged to be victim of violence in the moment of the arrest. Most of the times they spoke about the fact, prosecutors contested the testimony, directly discrediting the arrested person, giving more weight to the police and listing elements of the police report or the arrest warrant filled in the police station to delegitimize the account.

The defense of the arrested person intervened in 49% of the cases when the person detained alleged to be victim of violence in the moment of the arrest. It is in the previous interview with the defense, before the beginning of the hearing, that the testimonies of torture usually appear for the first time, which reinforces the need for this conversation to take place far from prosecutors, judges and, above all, the police.

During the hearings, the public defenders were the only ones who questioned the prisoner about the existence of witnesses and other elements, such as photographs and filming, that could prove the allegations. The Public Defender's Office was also the only institution whose members did not at any time imply that the prisoner would be lying or inventing reports of violence.

The conclusions of the research conducted by Conectas are aligned with SPT's<sup>2</sup> statement made after its visit to Brazil in 2015: "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".

In view of the above, Conectas and Justiça Global request the Human Rights Council to urge the Brazilian government to implement the following recommendations:

- a) Custody hearings must be applied to all persons arrested, irrespective of the crime underlying the detention and the day, time and place where the flagrant occurred.
- b) Custody hearings should be conducted in a safe environment that allows for the collection of reports of torture and ill-treatment without pressure and coercion. The arrested person must be present at the time of the hearing and it should not be done by videoconference. He or she should not be handcuffed. Military police officers may not be present at the hearings or in prior interviews with the public defender. The language used by representatives of the justice system should be simple.
- c) The so-called ghost audience, held when the arrested person is hospitalized, should not happen under any circumstances. The detainee's presentation must be determined at the custody hearing immediately after the discharge from the hospital, as well as the establishment of a procedure to investigate possible police violence. The justification for non-presentation must be supported by a medical report detailing the reasons for the hospitalization, extent of possible physical and psychological injuries, as well as, if possible, what would have caused them.
- d) Judges should question the person arrested on the occurrence of torture and ill-treatment in all hearings, according to resolution 213 of the CNJ.
- e) Reports of police violence presented at custody hearings should be documented and systematized by the Judiciary to support public policies to prevent and combat torture and other cruel, inhuman and degrading treatment.
- f) Prosecutors should ask about the occurrence of torture and ill-treatment and, if so, seek new evidence to establish the crime. They must also initiate a criminal investigation procedure or establish a police investigation, when it is suspected, or report immediately when there is sufficient evidence.

<sup>2</sup> GAT/0P/BRA/R.2 paragraph.29.

- g) Public defenders must have an adequate space for the prior interview, where they must question whether the person has been a victim of torture and ill-treatment. They should also inform the victim about possible referrals for the determination of violence.
- h) The Public Defender's Office should document all the reports reported in the previous interview, even if the person chooses not to mention them at the hearing, in order to produce data to support public policies for the prevention and combat of torture.
- i) When there is grounded suspicion of torture or ill-treatment, physical integrity of the person arrested, their families and any witnesses should be guaranteed. The arrested person must not return to the custody of suspicious public agents.
- j) Faced with an account of police violence, the Judiciary, Public Prosecutor's Office and Public Defender's Office must formulate specific requirements for the preparation of a report of the forensic examination. This document should also inform the type of violence that the person has suffered, in order to contribute to the quality of the examination.
- k) The investigation should be carried out in a venue equipped under the Istanbul Protocol. When necessary, further examination to ascertain the extent of the injuries or the presence of injuries that are difficult to verify should be requested.
- l) Forensic expertise should be integrated with policies to combat and prevent torture and other cruel, inhuman and degrading treatment, and it is fundamental to strengthen the Forensic Medicine Institute as an independent and autonomous institution of the state's Department of Public Security.

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\*Justiça Global, NGO without consultative status, also shares the views expressed in this statement.