

Response of Brazil to the questionnaire sent by the Work Group on Arbitrary Detention based on the resolution 42/22 of the HRC, regarding a report to be submitted to the 47th Session of the Council Human Rights on Arbitrary Detention and drug policies.

There are no mandatory drug treatment centers in Brazil. When necessary, drug treatment clinics deliver treatment to people who are addicted to drugs, upon the request of a Court of Law (Law n. 10216/2001) after it attests the need for inpatient treatment or hospitalization. This decision is based on medical reports as well as on other reports requested by the Court, i.e., a report of a multidisciplinary team. The treatment that follows is based on an "Individual Therapeutic Plan".

Law 13840/2019 provides for the following:

"§ 2 - The hospitalization (inpatient treatment) of drug addicts will only take place in health units or general hospitals general with multidisciplinary teams and must be previously authorized by a doctor duly registered with the Regional Council of Medicine (CRM) of the State where the health unit or general hospital is located.

§ 3 – There are two (2) types of hospitalization:

I - voluntary hospitalization: the one that occurs with the consent of the person who is addicted to drugs;

II - involuntary hospitalization: the one that takes place without the consent of the person who is addicted to drugs, upon the request of a family member or legal guardian or, in the absolute absence thereof, of a health care public servant, a social care public agent or a public servant from other public institutions which comprise the National System of Public Policies on Drugs (SISNAD) - with the exception of those belonging to public security agencies;

§ 4 Voluntary hospitalization:

I - must be preceded by the written request of the person opting for this treatment;

II – will end upon a decision of the doctor following the treatment or a written request of the person under treatment.

§ 5 Involuntary hospitalization:

I - must be carried out after a formal doctor decision;

II - will be recommended after the assessment of the type of drug used, the pattern of use and only in those cases where it is not possible to carry out alternative therapeutic treatment in the healthcare network;

III - will only last for as long as necessary for the detoxification, within a maximum of 90 (ninety) days, having its termination determined by the responsible doctor;

IV - the family or legal representative may, at any time, request the doctor to discontinue the Treatment.

§ 6 - Hospitalization, in any of its modalities, will only be indicated when out-patient options prove insufficient.

§ 7 - All admissions and discharges shall be informed within 72h hours to the Public Prosecutor's Office, the Public Defender's Office and other supervisory bodies, through a unified computerized system, in the form regulated by this Law (LAW No. 13840/2019).

According to Article 67-A managers and entities receiving public resources for the implementation of drug policies must grant access to their facilities, documentation and all other elements necessary to the effective monitoring by the competent bodies.

PREVENTION OF TORTURE

Brazil has five operational preventive mechanisms: the National Mechanism for the Prevention and Combat of Torture (MNPCT); the Prevention Mechanism of the State of Rio de Janeiro, the Prevention Mechanism of the State of Pernambuco, the Prevention Mechanism of the State of Rondonia and the Prevention Mechanism of the State of Paraiba.

The mechanisms have a mandate to carry out inspections of places of deprivation of liberty, which include the prison system, the socio-educational system, therapeutic communities, long-term nursing homes for the elderly, shelters for children and adolescents and psychiatric hospitals.

The routine/schedule of inspections is defined by each mechanism and its evaluations and recommendations must be recorded in public reports, such as the MNPCT document "Psychiatric Hospitals: inspection report national".

Other entities or authorities also have the attribution of carrying out regular visits to detention centers such as judges, public prosecutors, national and state mechanisms of prevention and community councils.

The Public Prosecutor's Office has a broad attribution to inspect all collective hospitalization establishments, detention or not. The other entities carry out occasional ad hoc or thematic visits.

A study on the crime of torture (Law 9455/97), judicial decisions and victims reparation is being carried out by the Research Institute of Applied Economics upon the request of the Ministry of Women, Family and Human Right (National Secretariat for Global Protection - Decentralised Term of Execution n 01/2019).

The research is divided in two stages: i) analysis of judicial decisions of lower Courts of Law - between January 1st 2019 and July 30th 2019; ii) analysis of decisions of military courts and of measures of reparation to victims of torture.

The first stage of the research should be concluded by December 2020 and will allow, to a certain extent, to explore quantitative data on the crime of torture, in particular on its purpose and on the methods used for the practice of torture, in line with the question presented by the Working Group on Arbitrary Detention.

However, despite the new nature of the research, its scope refers only to cases that have come to the attention of the Criminal Justice System, and to how the justice system responds when it is made aware of alleged violations.

In 2009, Decree No. 7053 established the National Council for the Homeless Population and its Intersectoral Monitoring and Monitoring Committee (CIAMP-Rua/Street). This collegiate structuring is an important tool for the federal government's actions to face the complex reality of this population as well as the systemic violation of rights that mark the experience of the street situation – a situation that can last for days or years, exposing children, adolescents, men, women, elderly people and people with disabilities to the most varied types of violence.

This complex context requires urgent and global response from the State. It is a diverse phenomenon of international dimension that affects different groups of people in different ways. There are, however, common characteristics, such as the vulnerability of this population to drug use and to arbitrary detentions.

After 10 years of the publication of Decree No. 7053/2009, there is an understanding that the integrated and stage-level former approach to service provision was not capable of producing a consistent flow of people leaving the street situation.

Upon this conclusion, since 2016 CIAMP-Rua has been developing a proposal to change the design and methodology of policies towards the homeless population. The concept highlights the importance of housing, labor and emancipation. This represents a transition from a social aid model to a model better adapted to the Brazilian reality - referenced in the "Housing First" model (Moradia Primeiro).

The Housing First Program is an example of good practices that have been developed or implemented in the country - even if still in an early stage/pilot projects in some federative states.

The experience of "Housing First" program shows positive worldwide impact on the homeless population, such as the reduction of drug use, violence and detention.

As for the LGBT community, although there is still no study in Brazil on common reasons behind detention, the Ministry of Women, Family and Human rights informs that many are detained for issues related to drug use or trafficking.