



Alternative report to the second review of Brazil by the United Nations Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Protection of children and adolescents from torture in detention

Presented by the World Organisation Against Torture (OMCT), The Office of Legal Counsel to Popular Organizations (GAJOP), The Coalition for Socioeducation, and Cedeca Ceara

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About the authors

The **Office of Legal Counsel to Popular Organizations - GAJOP** is a civil society organization, created in 1981, with Special Consultative Status in the Economic and Social Council (ECOSOC) of the UN. Its institutional mission is to defend and promote Human Rights, focusing on Access to Justice and Security, especially for socially vulnerable segments, through Human Rights Education, Social Control and Monitoring of Public Policy, aiming at building a decent, fair and democratic society.

The **World Organisation Against Torture (OMCT)** works together with the 200 organisations that make up the SOS-Torture Network to end torture, fight impunity and protect human rights defenders around the world. Together, we are the largest collective mobilised globally in opposition to the practice of torture in over 90 countries. As a loudspeaker for local voices, we support our allies on the ground and provide direct assistance to victims. Our International Secretariat is based in Geneva and has offices in Brussels and Tunis.

The **Coalition for Socioeducation (Coalizão)** is an articulation formed in March 2020 by 53 Non-Governmental Organisations, Collectives, State Fronts for Decarceration, Public Defenders, State and National Mechanisms for the Prevention and Combating of Torture, Researchers and Specialists with the purpose of defending in an unrestricted manner the human rights of adolescents and youths, inserted in the socio-educational system.

Cedeca Ceara is a non-governmental entity that defends the rights of children and adolescents, especially when violated by the public authorities. It has been active since 1994 in the State of Ceara, intervening through three main strategies. Defence of rights, social mobilization, and production and dissemination of critical knowledge. Along the way, it has acted on issues such as the right to health, control and monitoring of the public budget, the right to participation, the fight against child labour, the fight against institutional violence, and the right to education.

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Introduction

The forementioned organisations submit this civil society alternative report to the Committee Against Torture ahead of the second periodic review of Brazil, regarding the situation of children victims of torture in detention.

OMCT and GAJOP collaborate since 2018 in the framework of a project aimed at protecting children in detention from torture. This project has enabled our organisations to regularly monitor detention centres where children are detained, especially in the State of Pernambuco; to interview children on their detention conditions and treatment; to document cases of torture and other ill-treatments; to provide legal assistance to children; and to report and advocate towards local and national authorities so that they put an end to the torture of children in detention. The information included in this report are based in a large extent on the monitoring and documentation conducted by the co-signing organisations, as well as on advocacy activities conducted towards authorities.

Background

Torture is criminalized in Brazil by law 9455\97¹, with harsher penalties if children are the victim. The National Preventive Mechanism (MNPCT, Mecanismo Nacional de Prevenção e Combate à Tortura) was created by law 12847\2013², and it has a full mandate to inspect all places where children are detained, including socio-educational centres (juvenile detention centres), foster homes, psychiatric hospitals. In some states, a local preventive mechanism have been established, but they do not exist in the majority of states.

The Brazilian State has established specific laws and regulations to protect the rights of children and adolescents, most notably the Statute of the Child and Adolescent (ECA), which was enacted in 1990. This law is based on the principle of full protection, recognizing the unique needs and circumstances of young people as they develop.

Under these laws and regulations, children and adolescents are not held criminally responsible for their actions. Instead, the law prescribes that children may receive protective measures if they are in conflict with the law, while adolescents may receive accountability measures, also known as socio-educational measures. Examples of these measures include detention in open conditions, such as a warning, community service, probation, or

¹ https://www.planalto.gov.br/ccivil_03/leis/19455.htm

² https://www.planalto.gov.br/ccivil_03/ato2011-2014/2013/lei/112847.htm

compensation for damages, or in more severe cases, measures that restrict their freedom, such as semi-confinement or arrest.

The system put in place for adolescents sentenced to deprivation of liberty is called the “socio-educative system” and children can be sent to socio-educative centres from the age of 12 years old. Even though the age limit is 17 years old, ECA also provides that adults between 18 and 21 years old may continue fulfilling socio-educational measures if they derive from an offense committed until 17 years of age. In socio-educative centres, boys are separated from girls. However, there is also no separation in detention of adolescents based on the severity of the offence committed.

However, under the name of socio-educative measures and centres, what our organisations witness is that these centres are actual prisons, in terms of infrastructures and functioning, very far from a socio-educative environment, in which children are subjected daily to torture and cruel, inhuman and degrading treatment. The aim of providing socio-educational education often gives way to a punitive treatment model, in which the imposition of torture and cruel, inhuman and degrading treatment and punishments becomes part of the routine of the units.

In addition to torture being inflicted on children, issues such as inadequate hygiene conditions, lack of water, precarious food and the scarcity of educational activities contributing to long periods of confinement in the lodgings, are prevalent. Moreover, repeated events of arson, death, suicide attempts and self-mutilation among adolescents while serving time in detention are of great concern. The issue of overcrowding remains in some places that host adolescents above their capacity.

An additional issue is the overcriminalisation and overrepresentation in socio-educative centres of the black and poor Brazilian youth, and the violation of rights of specifically vulnerable groups within the socio-educative system, such as girls.

Continuous threats to lower the current standards toward the lowering of the minimum age of criminal responsibility, from the Brazilian Legislative and Executive branches, are finally particularly worrying.

The treatment and conditions of detention of children clearly violates the UN Convention against Torture, as well as other instruments, including the UN Convention on the Rights of the Child, and the UN Rules for the Protection of Juveniles Deprived of Their Liberty.

The socio-educative system – a legal framework not respected in practice

The National System of Socioeducational Care was established 22 years after the Statute of the Child and Adolescent, through Law No. 12.594 of 2012. This law regulates the implementation of socio-educational measures for adolescents who have committed infractions. Article 35 of this law outlines the principles that govern the execution of these measures, including:

- I - legality, in that adolescents may not receive more severe treatment than that conferred upon adults;
- II - exceptionality of judicial intervention and of the imposition of measures, favouring means for the self-composition of conflicts;
- III - priority to practices or measures that are restorative and, whenever possible, attend to the needs of the victims
- IV - proportionality in relation to the offence committed;
- V - brevity of the measure in response to the act committed, in special respect for what is provided in art. 122 of Law No. 8.069, of 13 July 1990 (Statute of the Child and Adolescent)
- VI - individualization, considering the age, capabilities and personal circumstances of the adolescent;
- VII - minimum intervention, restricted to what is necessary for the accomplishment of the measure's objectives
- VIII - no discrimination of the adolescent, notably due to ethnicity, gender, nationality, social class, religious, political or sexual orientation, or association or belonging to any minority or status
- IX - strengthening of family and community bonds in the socio-educational process.

These are guidelines that do not materialize in the reality of the country, as these guarantees are extensively violated. This is so true that, in 2017, a hearing was granted by the Inter-American Commission on Human Rights (IACHR) on the rights of children and youth in conflict with the law in Brazil, due to the violations of fundamental rights, especially the excessive use of custodial measures, the illegal extension of provisional detention, torture in detention facilities, the militarization of social and educational agents and the practice of humiliating searches of family members and adolescents.

In its most comprehensive report on the situation of human rights in Brazil, the Interamerican Commission on Human Rights found that the socio-educational services for children in contact with the law 'shows disregard of the principle of exceptionality required under Article 40.4 of the Convention on the Rights of the Child', as more than 70% of adolescents that go through the judicial system experience some form of deprivation of

liberty, with small scale drug offenses having a disproportionate effect on this number, while only 17% respond for violent crimes³.

The Commission, having dealt with multiple cases of violations happening in juvenile detention centres, had already conducted a visit specifically targeted at this topic in 2017, and observed the structurally embedded and widespread context of acts of violence in detention centres for adolescents, such as: alleged abuse and cruelty committed by other inmates and by, or with the acquiescence of, staff, homicides, torture, revolts, escapes, overcrowding, unhygienic installations, and the dearth of programs effectively pursuing socio-educational purposes and the social reintegration of adolescents at odds with the law, along with other human rights violations⁴.

Lack of data and of oversight of the socio-educative system

There is a clear absence of sufficient and adequate data and assessments of the juvenile justice in Brazil. Until 2017, used the Annual Survey by the National System of Socio-Educational Attendance (SINASE) as the instrument for collecting data on the country's socio-educational system. However, after the 2017 Survey, published in 2019, we did not have access to current data on the socio-educational system, with a total data blackout on the real quantity of units and the execution of these measures. The 2017 SINASE Annual Survey displays a total of 484 facilities in Brazil, from which 33 are for girls, 35 are mixed and 416 are for boys. It also points out that these facilities exist in every state.

The lack of comprehensive data poses a challenge to analysing juvenile justice as a public policy. The current legislation acknowledges that the effectiveness and adequacy of the socio-educational system to the reality and needs of adolescents depend on the production and critical analysis of data.

The SINASE is not regularly subjected to external evaluation, despite the fact Law 12.594 of 2012 prescribes for a periodic evaluation of SINASE since 2013. The evaluation should take place maximum every three years and should aim at verifying the achievement of established goals, develop recommendations for system managers and operators, and rely on the coordination among the Union, States, Federal District, and Municipalities.

³ Situation of Human Rights in Brazil, 2021. IAHR. Available at: https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/050.asp

⁴ Press Release no. 209\17. IAHR. Rapporteurs Wrap up visit to Brazil. 2017

Despite such recognition, the first ever evaluation of the functioning of the SINASE was conducted in 2021 (with the legal obligation existing since 2013). The absence of reliable data and evaluative facts contributes significantly to the failure to observe the rights of adolescents in detention. From a structural perspective, although the Annual Survey of SINASE is produced annually to provide information on this public policy, there are problems to be addressed, including the lack of specification and disaggregation of the collected information. These gaps are evident in the absence of systematic data collection on race, LGBT adolescents, and the categorization of deaths and the purposes of each of the socio-educational assistance units.

Widespread torture and other ill-treatment inflicted on children detained in socio-educative centres

In 2017, when visiting Brazil, the Inter-American Commission on Human Rights found⁵ that there was a structural and generalized context of violence in juvenile detention centres, such as allegations of abuse, torture, ill-treatment committed by the staff of these centres or by other inmates with the knowledge of the staff and administration, homicides, rebellions, escapes, overcrowding, unhealthy facilities and lack of programs that effectively serve the purpose of social and educational integration of adolescents in contact with the criminal law, among other situations that violate human rights. The Subcommittee on the Prevention of Torture (SPT) indicated after its visit to the country in 2015 that children were exposed to consistent physical abuse and denied legal safeguards in detention⁶.

This has been confirmed by the Inter-American Commission in a report released in 2021⁷, indicating that the Commission has received a large number of reports of violence committed by State agents against children. According to the information received, under the pretext of maintaining "order" and discipline, the Commission observed that in the detention units and police officers have used force with batons, pepper sprays, as well as punches, kicks and the indiscriminate use of shock equipment (taser), with no defined protocols to regulate this type of action.

Our organizations have directly witnessed that many of the children detained in several states of Brazil, including in the State of Pernambuco, both boys and girls, present torture marks on their bodies. Some report beatings from the centre's guards ("socio-educative agents"), and during their arrest by the police. Other marks are the result of self-harm, caused by the high psychological impact of detention and ill-treatment inflicted on them.

⁵ https://www.oas.org/en/iachr/media_center/preleases/2018/238.asp

⁶ CAT/OP/BRA/3, para 67

⁷ https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/preleases/2021/050.asp

Most children shared feelings of fear and helplessness. Body searches and the use of handcuffed during transfers is common, both for boys and girls. Boys are commonly kept in their cells for 22 to 23 hours a day, only being allowed out of their cells for one hour per day.

This IAHRIC also recognized widespread torture and violations in the centres of the state of Ceara, granting precautionary measures requested by CEDECA CEARA and partners⁸. While these measures are in place since 2016 and the number of deaths has fallen, the IAHRIC keeps monitoring the situation as no state in Brazil has managed to fulfil Brazil's international obligations relating to the special nature of children in contact with the justice system⁹.

In 2016, in less than one week, eleven children died in two socio-educative units in Pernambuco after violent riots. From 2013 to 2018, a series of riots and institutionalized practice of torture have cost the lives of 40 children placed under the responsibility of the state. Most of these deaths were brutal, through decapitation, dismemberment, children being burnt alive¹⁰.

In 2019, during a visit of the OMCT and GAJOP to the centre of Caruaru in the state of Pernambuco, our organisation also found that some children, placed in an isolated building, are subjected to even worse treatment, bearing more marks of beatings on their bodies, being allowed out of their cell only 30 minutes per day, have less food and no access to any classrooms or books.

In 2022, the visit of the OMCT and GAJOP to the Vitoria de Santo Antao and Garanhuns centres, also showed that children spent 23 hours per day locked in their cells, with some children going for weeks without being allowed to be out¹¹. The use of handcuff is widespread, in uncomfortable positive, which, especially for children, can amount to torture. Experts also found during the visit thick wood sticks in the staff quarters, consistent with the reports by some of the children that the staff were beating them with such sticks.

Our organisations concluded that the Garanhuns socio-educative centre, where cells lack proper ventilation and are covered in mould, is not fit to house human beings, let alone children, and is calling for its closure. The State Council for the Protection of Children had already

⁸ <https://cedecaceara.org.br/index.php/tag/cidh/page/2/>

⁹ Conselho Nacional dos Direitos Humanos afirma em relatório sobre Sistema Socioeducativo do Ceará que Medidas Cautelares outorgadas pela CIDH não foram implementadas. Conselho Nacional de Direitos Humanos. 2017. <https://www.gov.br/mdh/pt-br/aceso-a-informacao/participacao-social/old/cndh/noticias/conselho-nacional-dos-direitos-humanos-afirma-em-relatorio-sobre-sistema-socioeducativo-do-ceara-que-medidas-cautelares-outorgadas-pela-cidh-nao-foram-implementadas-1>

¹⁰ <https://carceraria.org.br/combate-e-prevencao-a-tortura/em-5-anos-49-adolescentes-morreram-em-centros-socioeducativos-de-pe>

¹¹ <https://www.omct.org/en/resources/statements/brazil-persistent-violations-in-the-detention-of-children>

recommended, in 2021 the centre be closed, but the Socio-educative institution in the state of Pernambuco (FUNASE), responsible for the facilities, did not follow-up.

GAJOP has also called for the urgent closure of socio-educative centres Cabo. Following visits conducted in 2021, it denounced, in a report sent to authorities, serious violations and crime committed against children in the centres. While this is usually not the case in other socio-educative centres, it reported that adolescents in Case Cabo "are recruited by the management" to take on the role of "representative" with the participation of the other "socioeducados" from each pavilion, which are reputed to be the most dangerous ones, and exercise the "function of control, punishment, abuses" and "deliberate torture practices" as a "daily methodological proposal within the unit. The adolescent seemed to have "the full consent of the Administration. GAJOP's document pointed out that "the torture practices inside the unit are part of the experience of hundreds of adolescents and youths who are or were serving a sentence". In March 2021, two children detained in the State of Pernambuco had to be taken to the hospital after being tortured, one of them had his spleen removed¹².

This happened during the pandemic of Covid-19, during which civil society, families, and National or Local Preventive Mechanisms, did not have access to the centres, organizations leaving children at the mercy of prison staff, out of any external eye. The pandemic of Covid-19 has thus further increased the exposure of children detained to torture and other ill-treatment. In the second semester of 2021, three more cases of torture of adolescents in other centres were documented by our organisations, including on one adolescent who had to undergo surgery and lost an organ as a result of the beatings.

GAJOP has also called for the immediate closure of the centres of and Arcoverde.

In 2021, at a girls' socio-educational institution in the state of Rio de Janeiro (PACGC), our organisations received a complaint for rape by male socio-educational agents inside the units.

There have also been cases of murders of adolescents inside the socio-educational facilities, such as the case of an adolescent who was killed inside his dormitory in Fortaleza⁵ in 2022.

The use of handcuffs, including in uncomfortable positions and for prolonged periods of time, is a usual practice. This is also the case for invasive body searches, each time the adolescents leave and come back to the centres, as well as for families coming to visit their children.

Other complaints about disrespect towards gender identity and sexual orientation of the adolescents inside the facilities frequently appear on the Reports of the Mechanism of

¹² <https://www.omct.org/en/resources/statements/2030-agenda-its-urgent-to-end-the-torture-of-children-in-detention>

Prevention and Fight Against Torture across the country. Furthermore, they show issues that involve the inappropriate infrastructure of the units.

Detention conditions that amount to torture and other ill-treatment in socio-educative centres

In 2015, the Subcommittee on the Prevention of Torture observed during its visit to the country, that the juvenile detention system does not respect the minimum conditions necessary to respect the rights of children and adolescents, and that black and poor young people are disproportionately targeted for criminalization and summary executions¹³.

The monitoring by our organisations of the detention conditions in socio-educative centres in Brazil show that they indeed do not comply with international standards. In the Provisional Internment Centre of Recife (CENIP), Pernambuco, to which GAJOP conducted an unannounced visit in May 2021, children have to sleep on the floor without mattresses or sheets, infrastructures are invaded by rats, garbage scattered all over the place, and children lack medical attention¹⁴. In some quarters, there is limited to no electricity, and no ventilation. The visit had taken place in partnership with the Public Ministry of Pernambuco (MPPE) and the Public Defender's Office of Pernambuco (DPPE).

In the centre of the city of Caruaru, in Pernambuco, boys are locked in cells, behind bars, for more than 22 hours a day. “Casas” where boys are kept in the centre of Caruaru are real prison cells, the socio-educative agents that are dressed as police officers. Even as overcrowding is controlled, this daily routine has barely changed. If there is no specific activity taking place, the rule is that children are locked in their cells in most of the places monitored.

At an inspection in 2019, in the centre of Caruaru, in Pernambuco, boys did not have cutlery to eat. They eat with the lid of the bowl in which the food is served, that they fold to be able to eat. In 2021 and 2022, in the Centre for Socio-Educational Care (Case) of Garanhuns, GAJOP found inadequate capacity per room, insalubrity, little ventilation and natural lighting, need for maintenance in bathrooms and living quarters. The units lack hygiene and cleaning products.

¹³ CAT/OP/BRA/3, para 67

¹⁴ <http://www.impreso.diariodepernambuco.com.br/noticia/cadernos/vidaurbana/2021/05/precariedade-em-unidade-socioeducativa.html>

The situation of girls detained in socio-educative unit is extremely concerning. In the State of Rio, in July 2021, the director and agent of the socio-educative unit were dismissed for being suspected sexual abuse of adolescent inmates.¹⁵ In the only detention centre for girls of the State of Pernambuco, the centre of Santa Lucia, girls are locked in their rooms from 5pm to 7am, having to negotiate with the staff to go to the toilet during that time. Body searches are common, and girls have a scarce access to health care (at the time, a pregnant adolescent detained in the centre had not received any medical attention, and had not been provided with any anti-repulsive product for mosquitos, during the epidemic of Zika).

In 2022, during a visit by the OMCT and GAJOP to the Vitória de Santo Antão facility, they observed that children did not have access to running water (staff quarters, however, do)¹⁶. Children have to use water from an untreated reservoir and store it in buckets for their basic needs. Cells have no proper ventilation and are covered in mould. The infrastructure was completely taken by overgrown vegetation. These conditions, unfit to be used by human beings, let alone children, have been reported to the authorities. In 2021, the State Council for the Protection of Children had recommended to the authorities the closure of the facility. However, the FUNASE, responsible for the centres, did not follow through.

It is important to mention that in all states where our organisations have members and partners, disciplinary measures applied to children and adolescents consist in being taken to dormitories known as “trancas” (“lockups”), specifically unhealthy spaces in which intimidation, aggression, and other violations and deprivations of rights are common. While in isolation, kids don’t have access to education activities or even daily time outside. The existence of “trancas”, although officially denied by most of the socio-educational facilities, is a reality in the adolescents’ testimonials. Such spaces are irregular, not finding any support by national and international regulations on the subject.

Overcrowding in socio-educative centres has decreased since 2018, following a decision by the Federal Supreme Court¹⁷ establishing that no centre of detention could operate above capacity. The decision led to a public policy in which judges cannot send children to detention if the facility is full, forcing the judge to reevaluate the necessity of deprivation of liberty in this case, but also in others already sentenced. Since 2018, the number of children in closed institutions fell from 25.084 to 13.684¹⁸. However, the eradication of overcrowding has not meant that conditions of life behind bars have improved accordingly, as the above

¹⁵ <https://www.meiahora.com.br/geral/2021/07/6180815-justica-do-rio-determina-afastamento-de-agentes-e-diretor-do-degase-por-suspeita-de-abuso-sexual.html>

¹⁶ <https://www.omct.org/en/resources/statements/brazil-persistent-violations-in-the-detention-of-children>

¹⁷ <https://www.conectas.org/en/noticias/in-statement-institutions-reinforce-support-for-collective-habeas-corpus-in-youth-detention-centers/>

¹⁸ <https://fontesegura.forumseguranca.org.br/a-queda-das-internacoes-de-adolescentes-a-quem-se-atribui-ato-infracional/>

description of the treatment and conditions of children in the socio-educative centres demonstrates.

Non fulfilment of socio-educational character of socio-educative system in Brazil

Although it is the stated purpose of the socio-educative system, most of the socio-educational institutions, as they currently are, do not display sufficient conditions for the educational or professional follow-up of adolescents aiming at their social reintegration.

This has for instance been observed during inspection visits carried out at institutionalization units by MNPCT¹⁹ and CNDH (National Council on Human Rights) ²⁰, in 2017 and 2018, that documented the underutilization of spaces for pedagogical activities; the restriction of access to formal educational workshops, since adolescents are in “lockups (trancas)” and kept in dormitories for long periods of time; the limitation in the options of activities and courses available; the small quantity of adolescents that could benefit from the offer of courses and workshops; and the non-existence of a regular offer of formal education.

The insufficiency or even denial of access to teaching, professionalization, leisure, and recreation activities, and prevents them from needed social interaction, and development also constitutes a form of torture, especially because it is usually employed as a form of punishment or discipline and, thus, causes the imposition of intense suffering to adolescents and has considerable impact on their mental health.

Lack of accountability for torture and ill-treatment

The treatment of children and their detention conditions are in clear violations of international human rights standards, including the Convention against torture, the Convention on the rights of the child, as well as juvenile justice and detention international standards. It also violates national law, including the prohibition of torture, as well as the human rights of adolescents guaranteed by the Statute of the Child and Adolescent (ECA) and the law itself - n° 12.318/2010 - of the SINASE.

In Pernambuco, several reports and recommendations, by different institutions or civil society organisations, have alerted the FUNASE of the situation and violations occurring in socio-educative centres. Judicial orders have also been issued. Authorities, however, have failed to act.

¹⁹ <https://mnpctbrasil.files.wordpress.com/2020/03/relatc393rio-adolescentes-privadas-de-liberdade.pdf>

²⁰ <https://www.gov.br/mdh/pt-br/acao-a-informacao/participacao-social/old/cndh/relatorios/RelatrioCNDHPFDCeCONANDAsobremedidascautelaressocioeducativoGear.pdf>

At the time of the visit to the provisional centre (CENIP) of Recife in May 2021, the FUNASE, responsible for the centre, had issued a statement saying that the allegations were unfounded and that the spaces were cleaned. There is a current a public civil action (NPU 0013815-86.2018.8.17.0001), filed in 2018, requiring improvements in the structuring of CENIP, with a request for an injunction.

This, which is only one of the long lists of reports by various organisations, civil society, national preventive mechanisms, shows that repeated reports over the years and advocacy towards national authorities are not heard, and the situation unchanged.

The State Council for the Protection of Children, in which civil society can participate on discussions of public policies relating to the rights of children, has also recommended the closure of several socio-educative centres. This is the case for the centre of Vitória de Santo Antão, mentioned above. The FUNASE denies and stalls judicial orders with makeshift renovations.

In the case of the Case Cabo, described above, a police investigation was triggered after receiving a report from the Public Ministry of Pernambuco (MPPE). The FUNASE, although saying that it opened an investigation by its Internal Affairs Office, [indicated that](#) that complaints about "the existence of commands exercised by inmates on other socio-educational students of the Social and Educational Care Center (Case) Cabo de Santo Agostinho and an alleged connivance of the management with these facts has already proven unfounded in several investigations of the Internal Affairs of the institution". It also said that "the injuries, reported by the youth at the time, as resulting from a fall during a soccer match, motivated his referral to Hospital Dom Helder, and that "it has specific protocols for prevention and communication of episodes of torture or aggression to the authorities that supervise the execution of the socio-educational measures".

Lack of oversight monitoring of socio-educative centres

In most of the federation units, there are courts and district attorney's offices with specific attributions to deal with children in conflict with the law. However, the periodic inspections of the socio-educative centres are often lacking or are quick and superficial. Their results are not discussed or shared with civil society. Often, official inspections disregard findings and complaints made by civil society organisation that have access to centres and monitor child detention.

Reports of the National Preventive Mechanism of Brazil (MNPCT) to the girls' correctional facilities in the Federal District of Rio²¹, in Ceara²², in Paraiba, and in Pernambuco, raise these failures. The following situation observed by the MNCPT in one unit visited in the socio-educative centre Aldaci Barbosa in the state of Ceara, reflects the situation of other facilities across the country. The report indicates that "regarding the supervision by other agencies and institutions in the context of an external control dynamic, it was reported that the Public Prosecution visits every two months. The visit was described by adolescents as: "she [the Prosecutor] always comes. But she does not talk to the girls. She only looks at a few reports there and goes away." The Judge responsible for implementing the measures should also come every six months, but was not recognized by the adolescents, who reported never having spoken with the judge after the court hearing. The Public Defender(s) went to the Unit monthly, but they focus on monitoring the cases that they are assigned and analysing the possibility of release, not on the conditions of custody and care."

In the context of the lack of monitoring of the detention of children, there is also a specific lack of monitoring of the use and lawfulness of disciplinary measures imposed on children within detention. In 2017, the National Council of Human Rights²³ highlighted that there was no exercise of any defence for adolescents undergoing disciplinary procedures in any of the three units that was visited.

While there is already a lack of oversight of the centre, and of the institutions in charge of facilities, in one worrisome initiative, the government of the state of Minas Gerais has announced undertaking studies regarding the financial feasibility of having socio-educational centres comanaged with for-profit private entities. This project has been denounced²⁴ by civil society, for involving private profit with the punishment of children and abdicating the power of the state to create viable alternatives to harsh incarceration.

²¹ Report available at: <https://mnpctbrasil.files.wordpress.com/2020/03/relatc393rio-adolescentes-privadas-de-liberdade.pdf>

²² Report available at: <https://www.gov.br/mdh/pt-br/aceso-a-informacao/participacao-social/old/cndh/relatorios/RelatrioCNDHPFDCECONANDAsobremedidascautelaressocioeducativoCear.pdf>

²³ <https://www.gov.br/mdh/pt-br/aceso-a-informacao/participacao-social/old/cndh/relatorios/RelatrioCNDHPFDCECONANDAsobremedidascautelaressocioeducativoCear.pdf>

²⁴ YOUTH ARE NOT MERCHANDISE! - AGAINST THE PPPs OF THE "NEW SOCIOEDUCATIONAL" PROJECT. Open letter. Coalizao pela Socioeducação. 2022. <https://www.brasildefato.com.br/2022/12/01/repudio-a-privatizacao-do-sistema-socioeducativo-de-mg-ganha-forca-e-entidades-lancam-carta>

Access to Justice : Limited access to justice or complaint mechanisms leading to impunity for torture

The Statute of the Child and Adolescent²⁵ requires that each Federal state and the Federal District establish specialised and exclusive juvenile courts. The Judicial Branch is responsible for determining the number of courts based on the amount of population, providing them with infrastructure, and defining their operations.

Limited number of specialized courts for children's cases

A survey conducted by the National Council of Justice (CNJ) in 2022 found that there are at least 3,148 justice units in Brazil that have juvenile competence. However, the majority of these units are single-judge courts, which means that cases involving children and adolescents are processed together with general adult cases that deal with different matters in the respective district courts.

Only 142 courts in the MPM/CNJ (4.51% of the courts that handle cases involving children and adolescents) have exclusive competence in this matter. This reflects the small number of specific and specialised childhood and juvenile courts established in the country, which goes against the recommendation of Resolution 113/2006 of the National Council for the Rights of Children and Adolescents (CONANDA), and the UN Convention on the Rights of the Child.

The absence of specialised courts to handle issues related to the rights of children and adolescents means that professionals may not fully understand the functioning and logic of the juvenile system, including with the objective of reintegration that should prevail when dealing with cases of children. This lack of understanding can lead, among others, to higher rates of incarceration in socio-educative centres and longer detention' duration, since the principle of deprivation of liberty of children as a last resort and for the shortest time possible is disregarded.

Lack of access to legal assistance and representation or complaints mechanisms

Access to legal assistance and representation is extremely limited. Public Defender's offices have been created to support to adolescents serving socio-educational measures. However, these offices only exist in bigger cities, and have extremely limited capacity. It is necessary to expand these specialized centres to the rural areas, where it is more difficult to have access to justice and where many detention centres are located. Most states have established, within Public Defenders offices, specialised centers for children and youth which should

²⁵ https://www.planalto.gov.br/ccivil_03/leis/l8069.htm

provide legal assistance. However, many are only located in the capitals or metropolitan regions. Some states have mixed specialized centers, where the juvenile area is combined with other areas such as the rights of the elderly or people with disabilities. States such as Rondonia and Roraima do not have specialized centers, and only one state public defender responsible for children and youth. In the state of Amapa, it was not possible to confirm the existence of specialized centers. In Rio Grande do Sul, there is a specialized center, but without comprehensive assistance to be provided to children. As a result, most children lack specialized legal assistance to claim their rights, particularly those relating to the redress of torture.

The lack of legal assistance has damaging consequences on the prevention of torture, as well as fighting impunity. Without access to legal assistance during interrogations in police custody, children are at higher risk of being subjected to torture and ill-treatment that would go unnoticed. If not properly assisted, children risk being sent to socio-educative centres for prolonged period of time, even for petty offences, or miss possibilities of release, or alternatives to detention. When victims of torture or other ill-treatment, legal assistance would not be available to bring the case to justice, and ensure accountability of perpetrators, reparation or redress.

This is added to the fact that children deprived of liberty in socio-educative centres, who are victims of torture or other ill-treatment in detention, including through the imposition of disciplinary measures, solitary confinement, or prolonged time locked in cells, have little to no access to any complaint mechanisms, or contact with independent mechanisms to whom they could report these violations. There are no official and legitimate mechanisms that children could trust to report abuse inflicted on them, which also hinders any process towards accountability, and addressing the widespread impunity that prevails in the centres.

In addition, despite being enacted almost six years ago, Law 13,431/17, which establishes the system guaranteeing the rights of child and adolescent victims or witnesses of violence, is still poorly implemented in the country. The courts specialized in crimes against children and adolescents have not been created, and the professionals who work in the system have not been adequately trained. The integration of the protection and promotion of rights network is also insufficient.

This lack of access to reporting or complain mechanisms and to legal representation in general fuels the lack of accountability for torture and other ill-treatment inflicted on them. For cases of torture and cruel, inhuman or degrading treatments or punishment, impunity remains the rule.

While there have been a few investigations on violations of rights in detention, even fewer cases are investigated for the crime of torture. Our organisations have no knowledge of any prison staff, for instance prison guards, that would have been convicted of torture.

Lack of alternatives to detention and detention as a first resort

The Essential Child and Adolescent Statute (ECA) enacted in 1990 and Law 12,594 establishing the National System of Socio-Educational Care in 2012 emphasize the importance of integrating the efforts of various entities such as the Public Prosecution, Public Defender's Office, Judiciary, and Social Assistance, Health and Public Safety Policies to ensure initial care for adolescents, some federal states do not yet have this system integrated into their social and educational services. Recommendation No. 87/2021 of the National Council of Justice (CNJ) complements the aforementioned norms by establishing parameters for the consolidation and strengthening of a qualified, interdisciplinary assistance based on the needs of the arrested adolescent, in equipments called Nucleos de Atendimento Integrado – NAI (Integrated Attention Cells)²⁶.

Despite international standards calling for detention to be the last resort solution for children, in Brazil, in practice, deprivation of liberty of children is widely used as a last resort. Children can be sentenced up to three years in detention, with an average of 18 months in detention, exposed to torture and cruel, inhuman and degrading treatment and punishment, and in detention conditions amounting to those. Overuse of detention in socio-educative units leads to overcrowding, and further degrading detention conditions.

While there are procedures in the law aimed at reducing the duration spent in detention, such as the existence of Comprehensive Care Centres Unites (NAI), which attempt to examine the possibility for children to be sent home, or in a more open facility, the absence of these in several states of Brazil together with the lack of integration of the juvenile justice system, leads to an overuse of detention of children. The approach of the system aimed at guaranteeing a swift access to justice and medical examination (especially in situations where they were victims of police violence), as well as access to basic public policies, related to medical assistance, similarly lacks implementation.

More generally, the very punitive approach of the system applying to children in conflict with the law makes deprivation of liberty a first resort throughout the system.

In 2017, the Interamerican Commission on Human Rights in a comprehensive report on the situation of human rights in Brazil found that the socio-educational services for children in

²⁶ <https://atos.cnj.jus.br/atos/detalhar/3682>

contact with the law 'shows disregard of the principle of exceptionality required under Article 40.4 of the Convention on the Rights of the Child', as more than 70% of adolescents that go through the judicial system experience some form of deprivation of liberty, with small scale drug offenses having a disproportionate effect on this number, while only 17% respond for violent crimes²⁷.

The lack of implementation of alternatives to detention can also be noted with regards to pregnant or lactating adolescents or women. The Federal Supreme Court, on a Collective Habeas Corpus²⁸, determined the substitution of preventive custody with home arrest for pregnant women or girls, mothers, adult or girls, of children with up to 12 years old, in cases of crimes committed without violence or serious threat, if not for exceptional, duly justified situations. Such decision is also applicable to girls who are serving socio-educational measures in juvenile correctional institutions. Despite the existence of this decision, inspection reports of correction units document regularly the presence of pregnant adolescents and mothers, in inadequate facilities and without the appropriate care.

Recommendations:

- Immediately end the practice of torture and cruel, inhuman and degrading treatment of children detained in socio-educational units, in compliance with the absolute prohibition of torture and ill-treatment enshrined in the UN Convention on the Rights of the Child, article 37.
- Improve detention conditions in juvenile detention centres urgently to comply with international standards, including the definitive end to "lockups" and unhealthy spaces used to commit torture under the pretext of imposing a disciplinary measure.
- Close the socio-educational units that are in violation of the architectural parameters of SINASE, according to Resolution 119/2006 of the National Council for the Rights of Children and Adolescents (CONANDA). In the state of Pernambuco, this as the socio-educational unit CASE Cabo, Garanhuns and Arcoverde ;
- Stop the practice of using handcuffs during the transfer of adolescents; The practice of handcuffing adolescents should be prohibited in observance of what is established

²⁷ Situation of Human Rights in Brazil, 2021. IAHR. Available at:

https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/050.asp

²⁸ For more information:

<https://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/HC143641final3pdfVoto.pdf>

in Article 18 of the Statute of the Child and Adolescent and the Binding Precedent no. 11 of the Supreme Court. These legal provisions establish that the use of handcuffs is an exceptional measure that should only be used when absolutely necessary and as a last resort.

- Stop the practice of invasive body searches for detainees and during family visits
- Put an end to the use of all corporal punishment, abuse, violence, ill-treatment and torture, in detention or during arrests.
- Develop and build a progressive protocol on the use of force in socio-educative centres, according to national and international parameters, to be applied by all professionals who work in the units of the Socio-Educational System. Protocols, ordinances, and/or effective resolutions should be created to regulate the use of force and the use of means of contention in socioeducational centers. These protocols should be designed to ensure that force is only used as a last resort, and that any use of force is proportional to the situation at hand. The entry of security forces into socioeducational centers should also be regulated to ensure that the safety and well-being of inmates is not compromised. These protocols, ordinances, and/or effective resolutions should be regularly reviewed and updated to ensure that they remain effective and relevant.
- Implement Training and accountability measures for security agents to ensure that they are properly equipped to handle situations without resorting to violence, and to hold them accountable when abuses occur.

Detention conditions

- Ensure that the food provided to adolescents and young people deprived of liberty is adequate to their development condition and the specificities of each adolescent;
- Guarantee unrestricted access to drinking water for adolescents and young people deprived of liberty;
- Ensure that all adolescents and young people deprived of their liberty sleep in beds, with mattresses and sheets suitable for sleeping;
- Ensure that every adolescent and young person deprived of liberty has access to personal hygiene products;
- Ensure that all adolescents and young people deprived of liberty have privacy when using bathrooms;
- Ensure that every adolescent and young person deprived of liberty has access to light and sun at least one shift per day;
- Ensure access to full health care assistance and that every adolescent and young person deprived of liberty who present urgent medical demands are immediately referred to emergency services outside of the socio-educative centres;

- Ensure the right to family coexistence for all adolescents in social-educational units, including privacy guarantees and in-person visit conditions, as a means of preventing and combating torture.
- Ensure that social-educative units for girls have exclusively women in their directive, technical and social-educative agents;
- Creation and/or strengthening of measures to prevent and combat gender violence and sexual violence in socio-educational units;
- Guidelines and practices should be established to ensure the fair and humane treatment of gender and sexual minorities in all places of detention.
- Ensure regular provision of education, leisure, and vocational training in social-educational units with equal opportunities;

Monitoring and oversight

- Ensure the access of civil society organisations and local and national preventive mechanisms to socio-educative units, in order, among others, to protect children from torture and other ill-treatment. Develop a clear policy on the visit of National Preventive Mechanisms (NPMs) to places of detention of children.
- Oblige the judiciary to fulfil the duty of periodic and systematic inspection of socio-educational units, with the due adoption of the appropriate measures for the prompt and independent investigation of allegations of torture and ill-treatment, as well as the guarantee of the protection of adolescents who report situations of torture and ill-treatment, such as the immediate removal of adolescents in deprivation of liberty from the establishments where torture practices take place;
- Carry out the external evaluation of the National Socio-Educational Service System (SINASE), as determined in articles 19 to 27 of Federal Law 12.594 of January 18, 2012, but has never been done;

Investigation of torture

- Conduct effective investigation into all allegations of torture and ill-treatment of children in socio-educational units and provide adequate reparation and recovery to victims. Ensure that investigations into allegations of death, torture, or violence by security agents are conducted by an independent body separate from the public force involved in the case.
- Rapid mechanisms should be created for receiving and investigating complaints about any type of violence committed in the development of socio-educational assistance.

- Children should be encouraged and enabled to report their situations through credible channels to ensure that complaints are properly documented and investigated.
- Create external, autonomous, and independent ombudsmen, within the scope of state socio-educational systems with the participation of civil society, the State Council for Children and Adolescents, the Public Prosecutor's Office, the Public Defender's Office, the Judiciary and other relevant institutions
- Guarantee policies for healthcare and mental health, including specialized care for victims of torture and their families, with trained professionals for psychological and psychiatric treatment.

Administration of juvenile justice

- Refrain from lowering the age of minimum age of criminal responsibility or increasing the penalties children can receive.
- Ensure access to legal assistance for all juveniles in detention, with due technical defence for responding to socio-educational measures, both in the processes of investigation and monitoring disciplinary procedures.
- Ensure that Nucleos de Atendimento Integrado – NAI (Integrated Attention Cells) are accessible to all children in contact with the justice system, including through federal funding.
- Accelerate the processing of court cases and strictly comply with the regulations regarding the maximum period of pre-trial detention, while ensuring, at the same time, the provision of free, qualified and independent legal assistance for all adolescents and young people in conflict with the law, from the initial phase of the proceeding, including pre-trial, and throughout court proceedings.
- Provide alternatives to the detention of adolescents, prioritizing non-custodial practices, and adopt measures such as community policing and restorative justice
- Ensure the re-evaluation of socio-educational measures of internment of pregnant or lactating adolescents, mothers or those responsible for children up to 12 years of age, for the purpose of eventual substitution by a measure in open environment, suspension or remission.
- Ensuring that detention practices are non-discriminatory and uphold the presumption of innocence.
- Providing cultural sensitivity training to personnel can also promote awareness and respect for diverse backgrounds
- Put an end to arbitrary arrests

- Guaranteeing initial hearings and hearings in person to verify the occurrence of torture and ill-treatment. Hearings should be conducted independently without the presence of security officers who carried out the seizure.
- Establish automatic psychological, medical, and legal support to all children and adolescents in the first hours of detention, regardless of if pretrial detention will be imposed.
- Ensure that the justice system should have structures, protocols, and flows in accordance with the Istanbul Protocol and other international treaties related to the prevention and combat of torture. Update the national database on children in detention annually.
- Ensure the periodic updating of national and state databases on the situation of children in detention.

Prevention

- Create programs and actions to address the underlying causes of violence, including poverty, inequality, and social exclusion.
- Targeted outreach programs can help to provide support and opportunities for at-risk youth, helping to prevent involvement in criminal activities and reducing the risk of violence.