

Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE: AL
BRA 5/2014:

17 July 2014

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 24/6, 25/13, and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of cruel, inhuman or degrading treatment or punishment which men, women and juveniles are subject to **in holding cells of police stations in the State of Mato Grosso do Sul due to the overall conditions of detention and, in particular, overcrowding, limited access to medical care and poor hygiene.**

According to information received:

The Labor Union of Policemen of Mato Grosso do Sul recently denounced the conditions of detention in the holding cells of 28 police stations in the State of Mato Grosso do Sul. The Union affirms that most of the holding cells are heavily overcrowded and in poor a condition, which creates security risks for both inmates and police officers, and hampers access to adequate health care for persons in detention. Those cells are reportedly constructed to hold people in custody for up to a maximum of 5 days. In reality, inmates remain in those cells for much longer. There are around 700 persons held in police custody in the state, and an estimated 20% of them are serving their final prison sentence in these facilities.

None of the 28 police stations are adequately equipped to hold people in custody, even for short periods of time. Besides the issue of overcrowding, the holding cells generally lack adequate toilets, ventilation and light. The level of hygiene is generally very poor. The lack of light and ventilation and the heat exacerbate the

oppressive condition of the cells. Electrical wires are exposed and can cause fire and the cells are generally polluted with mold, rust and waste.

Inmates do not have access to recreational activities, daylight and fresh air. Furthermore, they have no access to training, education or work opportunities.

Access to medical care is also limited. In case of emergency, inmates are transferred to hospitals by the fire fighters. However, in general the police is not able to guarantee access to adequate health services in those police stations, also given that at times, only one police officer is on duty at the police station, and is responsible for all inmates. In addition, female inmates do not have access to pre-natal care or specialized medical assistance. Inmates with mental disabilities are held together with other inmates and do not receive any treatment. In some cases men, women and juveniles are held in the same cell.

Juveniles in Alvorada do Sul, Bonito, Jardim, Paranaíba are held in those cells for prolonged periods of time, which seems to be current practice at police stations in the entire state.

Inmates are granted access to their lawyers, but they cannot communicate with them in private. The communication usually takes place in the cell of the inmate in the presence of other cell-mates.

There are no procedures regarding family visits, and inmates are not allowed to receive visits at all. As a consequence, inmates receive no additional food other than the two meals a day provided by the police.

According to the law, a holding cell with a capacity for 8 inmates would need to measure at least 13,85 square meters. Some police stations hold up to 30 inmates in cells of this size. At one point the police station of Anastácio had its only cell shared by 25 female inmates. At the police station in Miranda, there is only a thin grid to separate between male and female cells. In the 4 available cells (one of which for females inmates), 32 inmates are held in closed regime and 10 in open regime. An open space in front of the cells is also used to confine people. At times, when there is no space available for new inmates or women, inmates remain in this open space called “corró” – where they have to use bottles as toilets. The same situation can be found in Sete Quedas and in Campo Grande. In Sete Quedas the capacity of the two available cells is estimated for 4 inmates, but they hold up to 13 inmates each. In Sidrolândia, cells with the capacity for 4 inmates are shared by more than 15 inmates. Similarly, in Glória de Dourados, cells for 4 inmates hold at times more than 12 inmates each. In Campo Grande, the police station with capacity for 16 inmates, held up to 80 people.

Similar conditions are reported in police stations in Aquidauana (2 cells, 20 inmates); Bodoquena (2 cells, 12 inmates); Caarapó (6 cells, 102 inmates (87 male, 15 female)); Deodápolis (2 cells, 14 inmates (12 male, 2 juveniles));

Bonito (6 cells, 50 inmates, including 4 women and 1 juvenile); Três Lagoas (4 cells, 30 inmates); Eldorado (6 cells, 33 inmates (28 male, 5 female)); Itaquiraí (2 cells for closed regime, 2 cells for semi-open regime, 25 inmates (24 male, 1 female)); Alvorada do Sul (3 cells, 34 inmates, including one adolescent); Dourados (3 cells, 49 inmates (17 female, 32 male)); Brasilândia (2 cells with capacity for up to 8 inmates, 15 inmates,); Mundo Novo (6 cells with capacity for up to 4 inmates each, 46 inmates (42 male, 4 female)); and Iguatemi (4 cells, 20 inmates (18 male, 2 female)).

In almost all 28 police stations, inmates are sleeping on the floor, without adequate space and bedding. In addition and due to the lack of ventilation, they are continuously exposed to a terrible smell caused by improvised toilets, poor hygiene, and waste. The Municipality of Campo Grande issued a report acknowledging the poor conditions in police holding cells and the danger for public health and the physical integrity of inmates.

Serious concern is expressed that the overall conditions of detention, and in particular the overcrowding of holding cells in police stations in the state of Mato Grosso do Sul, amount to cruel, inhuman or degrading treatment or punishment of men, women and juveniles held in custody in those cells. Concern is also expressed that, given the situation described, the competent authorities are not able to guarantee access to adequate health care and other services in the mentioned police stations. Further concern is expressed that this situation may pose security risks for both inmates and police officers.

In connection to the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to the conditions of detention of persons in police stations in the State of Mato Grosso. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide detailed information regarding access to medical care in the police stations mentioned above, in particular medical care in emergency situation, access to pre-natal care, or specialized medical treatment, such as mental health care.

4. Please provide information on steps taken to address the concerns raised by the Labor Union of Policemen of Mato Grosso do Sul and to improve the conditions of detention of persons in police custody in that State, including the security risks faced by inmates and police officers due to the overcrowding and overall situation at police stations there. What measures have been taken to reduce the level of overcrowding in those holding cells?

5. Please explain how many persons are currently serving their prison terms in police holding cells in the state of Mato Grosso do Sul, what is the average length of their detention there, and why are they not transferred to the proper places of deprivation of liberty.

We would appreciate a response within 60 days. While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Anand Grover
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Rashida Manjoo
Special Rapporteur on violence against women, its causes and consequences

Annex

Reference to international human rights law

Prohibition of torture and other cruel, inhuman or degrading treatment or punishment: the prohibition of torture and other ill-treatment is absolute and non-derogable. This is codified in article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Brazil ratified on 28 September 1989.

Conditions of detention: The Standard Minimum Rules for the Treatment of Prisoners (approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977) provide inter alia for a separation of prisoners taking into account their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment (article 8). Articles 9 to 16 provide inter alia for appropriate accommodation, minimum cubic content of air and floor space, lightning and ventilation as well as requirements to be met regarding the personal hygiene of prisoners. In this context, we would also like to refer to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988. The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

Right to health: With regard to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by your country on 24 January 1992 provides for an obligation on the part of all States parties to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially the most vulnerable or marginalised sections of the population, without discrimination. More specifically, General Comment 14 of the Committee on Economic, Social and Cultural Rights indicates that States have immediate obligations in relation to the right to health, such as to guarantee that the right will be exercised without discrimination of any kind and the obligation to take steps towards the full realization of article 12. Such steps must be deliberate, concrete and targeted towards the full realization of the right to health. (GC 14, Para.30)

The Standard Minimum Rules for the Treatment of Prisoners in Rule 22(2) provides that, “(s)ick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Rule 25(1) provides that, “(t)he medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.”

Protection of women’s rights: The Special Rapporteur on violence against women noted in her 2013 report to the United Nations General Assembly on “Pathways to, conditions and consequences of incarceration for women” (A/68/340) that evidence from different

countries show that incarcerated women have been victims of violence at a much higher rate prior to entering prison than is acknowledged by the legal system generally (para- 4); and that the female prisoners throughout the world are vulnerable to numerous manifestations of violence including rape by both male inmates and guards. She further noted in paragraph 33 that “gender-neutral policies can have serious negative consequences for women prisoners” and reiterated States’ obligation to act with due diligence to prevent, respond to, protect against, and provide redress for all forms of gender-based violence while addressing the structural causes that contribute to women’s incarceration, as well as the root causes and risk factors related to crime and victimization and the need to address these issues in a holistic manner, including through the development of social, economic, health, educational and justice policies.

In 2011, the General Assembly, by its resolution 65/229, adopted the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), which established for the first time standards that relate specifically to women prisoners, offenders and accused persons. These Rules recognize that the international law principle of non-discrimination requires States to address the particular challenges that women confront in the criminal justice and penitentiary systems (rule 1). They provide comprehensive standards for the treatment of women prisoners and offenders, addressing issues such as prior victimization and its links with incarceration; alternatives to incarceration; mental and physical health care; safety and security; contact with family members; staff training; pregnant women and mothers with children in prison; and prisoner rehabilitation and reintegration, among other things. Finally, the Special Rapporteur on violence against women encourages the Government of Brazil to develop gender-specific sentencing alternatives and to recognize women’s histories of victimization when making decisions about incarceration, and also consider integrating the Bangkok Rules into national legislation to guide its reform efforts to improve the treatment of women prisoners.