

**Mandates of the Special Rapporteur on the right to food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the human rights to safe drinking water and sanitation**

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17 May 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 49/13, 51/21 and 51/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **reported inadequate access to food, nutrition, safe drinking water and water rationing in prisons in Brazil, including but not limited to prison facilities in the state of São Paulo.**

According to the information received:

The Brazilian prison population has grown considerably in recent years. According to data from 2022 the number of people who were deprived of liberty had nearly reached 832,300. Of the total number of prisoners, 621,608 had been convicted, while 210,687 were in provisional detention awaiting trial.<sup>1</sup> Within the prison demographic, many belong to groups of population living in conditions of poverty and extreme poverty, Brazilians of African descent make up a disproportionate high percentage of the prison population. Some studies suggest that around 60-70% of Brazil's prison population is of African descent or of multiethnic descent.

Outbreaks of deadly violent incidents and precarious living conditions, including lack of or limited access to adequate food and safe drinking water are some of the serious factors contributing to the increasingly worsening physical and mental well-being of persons deprived of liberty. In a large number of prisons, the state does not provide the minimum essential provisions for the adequate subsistence of persons deprived of liberty. Historically, it has fallen upon women in the families of persons deprived of liberty to provide a significant portion of basic necessities items through the provision of food packages. At times, these women have been the main sources of support for their incarcerated family members. Persons deprived of liberty are subjected to the harsh reality of malnutrition, enduring what the Public Defender's office of the State of São Paulo has labelled as "starvation sentence."<sup>2</sup> According to reports, this deprivation often extends to persons detained by the police in situations of arrest. The reported widespread situation of hunger, forced fasting, and lack of water affecting the prison population

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<sup>1</sup> <https://forumseguranca.org.br/publicacoes/anuario-brasileiro-de-seguranca-publica/>

<sup>2</sup> [https://www.mpsp.mp.br/portal/page/portal/documentacao\\_e\\_divulgacao/doc\\_biblioteca/bibli\\_servicos\\_produtos/BibliotecaDigital/artigos\\_juridicos/Estado%20de%20SP%20aplica%20pena%20de%20fome%20em%20seus%20pres%C3%ADdios.pdf](https://www.mpsp.mp.br/portal/page/portal/documentacao_e_divulgacao/doc_biblioteca/bibli_servicos_produtos/BibliotecaDigital/artigos_juridicos/Estado%20de%20SP%20aplica%20pena%20de%20fome%20em%20seus%20pres%C3%ADdios.pdf)

nationwide has been deteriorating sharply over the past years.

The outbreak of the COVID-19 pandemic, its aftermath and the ongoing global food crisis have worsened the “starvation sentence” in prisons in Brazil, worsening the situation with regards to the supply of water and sufficient food.

During the pandemic, for example, in person delivery of food packages was suspended by the state of São Paulo Secretariat of Prison Administration. According to the National Prison Pastoral, in April 2020, 65.9% of the relatives of incarcerated individuals were unable to send hygiene or food items into prisons.<sup>3</sup> It was only in October 2020 that visits and food deliveries in São Paulo were allowed to resume.

In-person delivery of food packages was also suspended in the state of Minas Gerais in March 2020, and only resumed in 2023. In the state of Santa Catarina in-person delivery of food packages was suspended in March 2020, the suspension was renewed in July 2020 and has allegedly not been revoked to date. Further, there are also other states in which family members are still prohibited from taking food to persons detained.

In 2020, in the state of Piauí, six persons deprived of liberty detained at Altos Prison died after an outbreak of beriberi, a disease caused by vitamin B1 deficiency and associated with inadequate, nutrient-poor diets consisting mostly of white rice or highly refined carbohydrates.<sup>4</sup> During the same year, according to information passed on, the Intercept Brasil exposed the “quentinhas” (hot meals) scandal in the state of Ceará. This report revealed compelling evidence suggesting that the company tasked with supplying food to 14 prisons in the state, received payments for duplicate meals within the same prisons and for meals intended for prisons still under construction or which had been deactivated. Similarly, in the state of Goiás, the State Audit Court uncovered indications that the company responsible for supplying food at the Aparecida de Goiânia Prison Complex received preferential treatment in the bidding process. During the same period, according to an Inspection Report from the Brazilian Bar Association, persons deprived of liberty reported poor quality of food.

Despite the National Criminal and Penitentiary Policy Council’s resolution 3/2017 which mandates five daily meals for persons deprived of liberty, most prison facilities in the state of São Paulo offer only three meals per day. According to a 2022 report by the Specialized Centre for Prison Situations (NESC) of the Public Defender’s Office of the State of São Paulo, based on inspections conducted in 27 prisons during the COVID-19 pandemic,<sup>5</sup> 26 out of 27 prisons provide only three meals per day. Additionally, the report revealed that the quantity of food offered is inadequate in 85.2% of the prisons inspected, with low nutritional content and complete lack of fruits, vegetables, and legumes. In 68% of the prisons inspected, the food contained impurities such as insects and hairs. Furthermore, 30.79% of

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<sup>3</sup> <https://carceraria.org.br/combate-e-prevencao-a-tortura/pastoral-carceraria-divulga-dados-de-questionario-sobre-coronavirus-nas-prisoas>

<sup>4</sup> <https://www.tephinet.org/learning/fead/beriberi-thiamine-hypovitaminosis-outbreak-investigation-among-male-prisoners-state>

<sup>5</sup> [https://ponte.org/wp-content/uploads/2022/04/Relatorio-Pandemia-\\_-FINAL4.pdf](https://ponte.org/wp-content/uploads/2022/04/Relatorio-Pandemia-_-FINAL4.pdf)

the inspected prisons provided meals which lacked protein, over 19 million meals lacked sufficient vegetables, and more than 1 million meals lacked adequate quantity of fruit.

Forced fasting was detected in all 27 prisons inspected, between dinner and breakfast of the following day. In over 14 units, fasting lasted around 14 and 15 hours, while in some instances it lasted up to 16 hours. The report also revealed that 70.4% of the inspected prison units experienced water rationing, with 21.4% of prisons having water supply for less than an hour a day. Almost none of the prisons provided heated showers for detainees, and in the rare instances where heated water was available, it often contained impurities such as pigeon feathers and maggots.

In the state of Alagoas, persons deprived of liberty receive three meals a day, with a 16-hour interval between the last meal of the day and the first meal of the following day. In the state of Bahia, the compulsory fasting averages 16 hours.

In August 2023, the National Mechanism to Prevent and Combat Torture (MNPCT) released its annual report, revealing alarming human rights violations within the prison system.<sup>6</sup> These violations include instances of torture, prisoners subjected to unsanitary food conditions, and physical and psychological abuse suffered by individuals deprived of liberty. The report outlined 53 recommendations directed towards various branches of government.

One of the recommendations is the establishment of a comprehensive National Policy to Combat Food Insecurity and Ensure Access to Water in Prisons. This policy should be developed through extensive social engagement and inter-institutional collaboration. Key aspects of this policy include:

- Transitioning away from outsourcing food supply towards promoting food production within prison facilities by detainees themselves, with fair compensation.
- Ensuring a minimum provision of four meals per day, prohibition of forced fasting.
- Providing nutritional variety to ensure adequate nutrition.
- Guaranteeing special diets for individuals with specific dietary needs, whether for health, religious, or personal reasons.
- Implementing strict contracting rules for outsourced food supply, focusing on quality rather than solely on price, and establishing effective mechanisms for monitoring contract compliance and food quality.
- Continuous monitoring of the nutritional status of detainees to prevent health issues associated with malnutrition.

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<sup>6</sup> [https://mnpctbrasil.files.wordpress.com/2023/08/relatorio\\_anual\\_2022\\_mnpct.pdf](https://mnpctbrasil.files.wordpress.com/2023/08/relatorio_anual_2022_mnpct.pdf)

- Ensuring uninterrupted access to safe drinking water and prohibiting water deprivation within prisons.
- Allowing families to bring meals and food, recognizing the importance of food in maintaining emotional and cultural connections.

These recommendations underscore the urgent need for systemic reforms within Brazil's prison system to safeguard the fundamental rights and dignity of individuals in detention.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our serious concern about the allegations of the reported dire living conditions of persons deprived of liberty in Brazil, including but not limited to the state of São Paulo. The allegations refer to inadequate access to food, nutrition, safe drinking water and water rationing for sanitary purposes. In view of the total reliance of persons deprived of liberty on prison authorities for their basic needs, the provision of good quality and adequate food as well as safe water at all times is essential to safeguard their physical as well as mental health and wellbeing. Failure to meet these basic requirements can constitute a form of cruel, inhuman or degrading treatment, which could amount to torture, thus failing to comply with the obligations of the Government of Brazil under international law including the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Of particular concern are the allegations suggesting that these already distressing conditions have been further exacerbated during and after the COVID-19 pandemic outbreak, a period when persons deprived of liberty, were particularly vulnerable.

Food and its availability often play a crucial role in daily life in prisons, triggering conflicts and frustrations due to factors like quantity, quality, delivery schedules, temperature, and variety in diets. Eating habits, being highly personal and culture-specific, necessitate consideration of cultural, religious, and medical criteria. Irrespective of external factors, such as COVID-19 restrictions and regulations, we wish to recall that the responsibility for providing food, nutrition and sustenance should not fall on the families of persons deprived of liberty. The state must provide food of sufficient quantity and quality, and persons deprived of liberty should not have to rely on their families or on the prison shop for food sustenance.

When the food served is not sufficient and/or is substituted by food products obtained from outside or from the prison shop, the phenomenon of food becoming a commodity to be traded increases. Persons deprived of liberty are then compelled to find alternatives to ensure that they get their daily portion of sustenance, which reinforces a system of privilege and corruption within the prison and can be directly linked to an increase in violence, threatening the right to life of detainees.

The human rights to food and water are indispensable for leading a life of dignity. They fall within the fundamental rights essential for securing an adequate standard of living and are critical underlying determinants of the right to the highest attainable standard of health. We would like to highlight the State's "heightened duty of care" to protect the lives of persons deprived of liberty, since they cannot rely on

other financial or logistical means to guarantee their own rights.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** 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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information regarding how the Government of Brazil ensures access to sufficient and quality food to persons deprived of liberty, particularly in light of reported shortages and instances of reliance on family members for basic sustenance.
3. Please provide details on specific measures implemented by your Excellency's Government to address challenges associated with the provision of adequate and nutritious meals to persons deprived of liberty, also considering the constant increase of overcrowding in prisons.
4. Please provide information regarding whether the Brazilian Prison Service, at both federal and regional (state) level, has adequate financial resources to fulfil the mandated minimum food provisions outlined in the Prisons Act and by international human rights standards throughout the current fiscal year.
5. Please provide any update regarding measures undertaken by the different branches of the Government to implement the recommendations of the MNPCT contained in its annual report of 2023, as well as any follow-up action on the proposal to develop a national policy to combat food insecurity and access to safe water in prisons.
6. Please also provide information on any measures undertaken by your Excellency's Government to strengthen the MNPCT and ensure its full operationalization nationwide, including development of policies or allocation of funds to support and enhance the mandate and activities of the MNPCT.
7. Please share information on whether independent auditing of the Brazilian Prison Service's finances and food supplies has been carried out, at both federal and state level.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human

Rights Council.

While awaiting a reply, we urge your Excellency's Government to redress the above described situation and provide additional resources and strengthen the operational capacity of the National Mechanism to Prevent and Combat Torture, as it plays an essential role for upholding human rights standards and preventing torture and ill-treatment in places of detention.

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

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

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Special Rapporteur on the human rights to safe drinking water and sanitation

## Annex

### Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

Article 25 of the Universal Declaration of Human Rights (UDHR) recognizes the right of everyone "to a standard of living adequate for the health and well-being of himself and of his family, including food."

Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR / Covenant) – to which the Federative Republic of Brazil (Brazil) acceded on 24 January 1992 – recognizes "the right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions." Article 11(2) provides "the fundamental right to freedom from hunger and malnutrition", which is of immediate application. Article 11(1) of the ICESCR further requires States to "take appropriate steps to ensure the realization of this right". The Committee on Economic Social and Cultural Rights (Committee) stressed in its general comment No. 12 that the core content of the right to adequate food refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems (para. 12). According to the Committee, the obligation to respect existing access to adequate food requires State parties to refrain from taking any pressures that result in preventing such access. The obligation to protect requires the State to take measures to ensure that enterprises or individuals do not deprive other individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including their access to land to ensure their food security (para. 15). The right to be free from hunger and malnutrition is not subjected to progressive realization as it must be fulfilled in a more urgent manner (para. 1).

As stated by the Committee in its general comment No. 12, States are required to respect existing access to adequate food and to take no action to prevent such access. The Committee also recalled that the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to food may constitute a violation of this right. The formulation and implementation of national strategies, mandatory for the progressive realization of the right to food, require full compliance with the principles of transparency, accountability and participation of the people. Paragraph 54 of general comment No. 12 also emphasizes that "[t]he denial of access to food to particular individuals or groups . . ." constitutes a violation of the right to food.

We would like to refer your Excellency's Government to article 2(2) of the ICESCR, which states that the States Parties to the Covenant undertake to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind as to ethnicity, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

We would like to draw the attention of your Excellency's Government to general comment No. 36 on the right to life adopted by the Human Rights Committee, which states that measures called for addressing adequate conditions for protecting the right to life include, where necessary, measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health-care, electricity and sanitation. The Human Rights Committee recognized that the right to life should not be interpreted narrowly, noting that it places not only negative obligations on States (e.g. to not kill), but also positive obligations (e.g. to protect life), to ensure access to the basic conditions necessary to sustain life. It has affirmed that measures that restrict access to basic and life-saving services, such as food, health, electricity and water and sanitation are contrary to article 6 of the ICCPR that protects the right to life.

We would like to draw the attention of your Excellency's Government to article 10 of the International Convention on Civil and Political Rights (ICCPR), ratified by Brazil on 24 January 1992, which provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. We would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Brazil ratified on 28 September 1989.

In addition to recognizing the right to an adequate standard of living, article 12 of the ICESCR provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The Committee on Economic, Social and Cultural Rights' general comment No. 14 states that, this is "an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information" (para. 11). It further indicates that States are under the obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services. (General comment 14, para.34)

In its general comment No. 15, article 11.1 of the ICESCR highlights that "the right to water is also inextricably related to the right to the highest attainable standard of health". The United Nations General Assembly in its resolution 70/169 of 2015 recognized that "the human right to safe drinking water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use", and that "the human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity, while reaffirming that both rights are components of the right to an adequate standard of living". We would like to emphasize that the human rights to water and sanitation require that water is continuously available, in sufficient quantity for drinking, personal hygiene and domestic uses.

In this connection, we would like to refer your Excellency's Government to The Basic Principles for the Treatment of Prisoners, adopted and proclaimed by

General Assembly resolution 45/111, according to which “Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation” (principle 9).

We would also like to remind your Excellency’s Government of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) established by the UNGA resolution 70/175 of 2015, particularly of rules 1, 2, 3, 15, 18, 22 and 43. Rule 1 states that “all prisoners shall be treated with respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification”. Rule 2 specifies that the Nelson Mandela Rules shall apply to all prisoners impartially and without any type of discrimination, at the same time, to respect the principle of non-discrimination, prison administration “shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings”. Rule 3 emphasizes that prison systems should not inflict additional suffering to the total deprivation of liberty that is inherent to incarcerations, adding in rule 43 that under no circumstances may disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment, including the prohibition of corporal punishment or the reduction of a prisoner’s diet or drinking water. Rules 15 and 18 establish that prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness. Furthermore, rule 22(1) states “every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.”, while rule 22(2) states that drinking water shall be available to every prisoner whenever they need it.