Brief report on LGTBI persons deprived of their liberty in Brazil.

To the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Office of the United Nations High Commissioner for Human Rights

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1. Institutional presentation

The Institute for Land Work and Citizenship - ITTC is a human rights organization founded in 1997 and its vision is to eradicate gender inequality, guarantee rights and combat mass incarceration. The search for gender equality is a necessity especially in the prison and justice system that reproduce violence and discrimination, reinforcing gender stereotypes and roles. All forms of deprivation of liberty affect families, communities and societies as a whole, especially women, who, due to a social construct, are held responsible for family bonds. ITTC’s mission is to promote access to justice and the rights of prisoners, and to produce knowledge, through constant and systematic action in the following areas: direct assistance, advocacy and rights education.

2. About the data presented

In this brief report, we first provide data on violence against LGBTI people in Brazil, followed by general information on the Brazilian prison system. We then make a brief explanation on the national rules on the treatment of LGBTI people in prison settings. Finally, we expose situations of violations against LGBTI people in conflict with the law. After a general context, we quote two emblematic cases, followed by questions that we list as relevant in the Brazilian prison context: specific cells and wings, sexuality within the prison visits, physical identity and health.

It is important to point out that there is very little data on LGBTI people in conflict with the law in Brazil. For example, there is no information available about the number of LGTBI people incarcerated nationally and neither in which states they are. It can be said that this is most likely due to the fact that few people declare themselves LGTBI in prison, and the fact that the prison system has little interest in mapping them, mainly because few prisons have been able to implement the current parameters of treatment for LGTBI people in prison.

The Specialized Center for Prison Situation of the Public Defenders of the State of São Paulo conducted a survey between 2010 and 2013 about the LGTBI population in prisons, along with relevant documents on gender identity, in order to verify the need to shift to more appropriate prisons settings. One hearing of transvestites and transsexuals was made to know about imprisonment conditions. The data, however, is not public due to the maintenance of the identity confidentiality of people interviewed.

The main source of information about the population incarcerated in Brazil and the prison conditions is the Infopen, a publication resulting from a national survey data made by the National Penitentiary Department, Ministry of Justice. The Infopen is constructed from data provided by each state, which in turn receive the information of each prison unit. This means that for concrete figures, all states must provide information, which in practice does not necessarily happen. For example, in the last Infopen, 2014, the state of São Paulo, which concentrates alone one third of the prison population in Brazil, did not
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Provide data to the national survey. The information contained in the last Infopen was obtained from the site of the Secretariat of Penitentiary Administration of São Paulo. It is also important to point out that the Infopen gathers data about the prison population in state and federal prisons, but there are no systematic information on the situation in the police stations in Brazil.

In the presented text, much of the information was taken from academic researches and media reports, whose references are indicated.

3. Introduction: Brazilian national context

a. LGTBI population

Brazil leads the ranking of transvestites and transsexuals deaths in the world, according to data of 2013 the NGO International Transgender Europe. Between January 2008 and April 2013, 486 people were killed. The life expectancy of transvestites in Brazil is on average 35 years, (ANTUNES, 2010). For cis population - who identifies with their gender of birth - life expectancy is 74.9 years, according to IBGE.

In 2014, the Grupo Gay da Bahia data report that 326 deaths have been reported due to the LGBTfobia, a 4% increase compared to 2013.

The newspaper Estadão obtained data on denunciation of the Secretariat for Human Rights, registering 1159 complaints of discrimination against LGBT in 2011 and almost 6500 in 2014. Discrimination and psychological violence are the most common incidents recorded by the Secretariat and offices specializing in human rights. About 76% of cases are homosexuals who suffer prejudice, harassment or persecution.

b. Incarceration in Brazil

According to the information provided from the Infopen (Statistical Information of the Brazilian Penitentiary System, from the Ministry of Justice), in 2014 Brazil had the fourth largest prison population in absolute and relative numbers. The occupancy rate of Brazilian prisons is the fifth largest, behind the Philippines, Peru and Pakistan. This means that in a space designed to guard 10 people, live about 16 people.

Brazil has the fifth highest rate of prisoners without conviction, being the fourth largest population of pre-trial detainees. Still, in 2000, 25% of the prison population was held under custody in police stations or similar establishments, run by Public Security organs. In 2014, this percentage dropped to 5%. It is relevant to point out that these establishments are shown not suitable for serving a sentence according to the criminal law as they appear to be spaces violations that remain invisible.

It is also interesting to note the degree of selectivity of the Brazilian prison system. According to the Infopen of 2014, about 67% of the national prison population is black or mulatto, 56% are between 18 and 29 years old and 53% have not completed the elementary school. Still, as far as the growth of the

3 Available on: https://homofobiamaota.files.wordpress.com/2015/01/relatc3b3rio-2014s.pdf
prison population, data from the National Penitentiary Department between 2000 and 2012 show that women’s imprisonment has grown almost 246%, while the male has increased 130%.


At the national level, a Joint Resolution proposed by the National Council for Combating Discrimination and the National Council on Criminal and Penitentiary Policy was published on 17 April 2014\(^5\). This resolution establishes the parameters for hosting LGTBI people in deprivation of liberty in Brazil.

We were taken into account the Universal Declaration of Human Rights, the American Convention on Human Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading and its Optional Protocol, the UN Standard Minimum Rules for the Treatment of Prisoners, the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, as well as the Principles of Yogyakarta.

The Resolution establishes that persons deprived of liberty or visitors of prisoners should have preserved the right to sexual orientation and gender identity, including the right to treatment by social name.

Transvestites and homosexual men in male prisons are entitled to specific wings and cells, for which they can be transferred if they want to, and that by any means can be used as a disciplinary measure or coercive method. Overall, transgender men and women as well as transvestites should be referred to female prisons. Any compulsory transfers are seen as violations, although there are no sanctions foreseen.

LGBT people have the right to conjugal visits, health, education, vocational training and financial assistance for their dependents, under the same criteria used for the general prison population. As well, transgender men and women have the right to wear clothes according to their gender identity.

The resolution aims to promote a condition of material equality, but some issues remain opened regarding the applicability of the resolution. For example, in terms of practical issues, it is not explicit how and by whom the searches of LGBTI people will be held. **There are no sanctions listed to the prison institution that fails to comply with the resolution.** As well, it is up to each institution to implement the resolution, based on the conditions of each. Another issue is that one needs to declare herself or himself LGTBI to access the specific rights established. Although this may sound simple, to be openly gay, lesbian, transexual and/or transvestite in the prison context means to put yourself in vulnerable situations, exposing yourself both to harassment of prison officers as the of the other prisoners.

5. Situations of violations against LGTBI people in conflict with the law in Brazil

In the case of trans population, it is important to consider that the fragile situation regarding the access to goods and services, the poverty and/or socially vulnerability, and the transvestites experiences - taking into account that most Brazilian transvestites comes from the poorest social classes (Pelúcio, 2006) – add up to complement the inherent selectivity of the justice and security systems in Brazil (AGUINSKY, FERREIRA, RODRIGUES, 2013).

The relationship between transgender people and public security policies requires attention to specific social markers of social class, race/ethnicity, gender, sexuality, geographic location, disability, etc. These aspects influence the form in which they access rights, as well as the way in which the security agencies face processes related to the (in)visibility of these people (SILVA e SEFFNER, 2013).

\(^5\) Available on: http://www.mpgo.mp.br/portal/arquivos/2014/04/23/09_49_17_108_resolu%C3%A7%C3%A3o_restri\_%C3%A7%C3%A3o_de_liberdade_LGBT.pdf
In the case of male prisons, it is recurrent that homosexual men, trans women and transvestites are required to carry out the sexual and domestic «tasks» on the prison environment - tasks that are usually designated to women - still suffering harassment with humiliation and physical assaults. They are usually responsible for the cleaning of the cell, they are the ones who need to think about methods to prevent sexually transmitted diseases, etc.

a. Emblematic cases of violations

In the state of São Paulo, on April of 2015, Veronica, who is young, black and who identified herself as a transvestite, was arrested, accused of assaulting her neighbor. After charges of assaulting a police officer, she was a victim of several violations from the police. Veronica had her hair shaved, was beaten until having her face disfigured, stripped, leaving her breasts and buttocks exposed, handcuffed by her hands and feet, sat on the floor of a jail with several other detained men and photographed. Her photos were posted on social networks. The Representative of the Coordination on Sexual Diversity Policies of the State of São Paulo denied that there weren’t irregularities on this case.

The case of Victoria Rios Strong, transvestite detained in a male prison in the state of Minas Gerais was one of the inspirations for the installation of the first wing for LGTBI people in Brazil. In her statement: "I was forced to have sex with all the men of the cells in a sequence. All of them laughing, mocking and beating me. I was threatened with death if I told the jailers. I got to be auctioned among the prisoners. One of them 'sold' me in exchange for 10 packs of cigarettes, a juice and a packet of biscuits.". Victoria then started to mutilate her arms to draw the attention to her situation. "I was quiet until the day I could not stand it anymore. I came to suffer 21 rapes in one day. I got hepatitis and syphilis. I thought I would die. Not to mention that I had to do the cleaning in the cell and wash clothes of all the men. I was the first to wake up and the last to sleep". The Coordination of Sexual Diversity of the state of Minas Gerais government, found that transvestites are used as a bargaining chip between the prisoners and many people avoided declaring their homosexuality within the prison to avoid suffering prejudice.

b. Specific wings or cells for LGTBI

Currently, the only national systematic information about LGTBI population, appearing in 2014 Infopen, is the number of wings and/or cells destined only to this population. In general, there is low availability of vacancies intended exclusively for specific groups such as foreign, indigenous, elderly and LGBT people. The concern to provide specific areas for these public, which is consistent with proper practice sorting and classification of custody, was recorded in some units in the states of Alagoas, Amazonas, Bahia, Goias, Minas Gerais, Mato Grosso do Sul, Paraiba, Pernambuco, Paraná, Piauí, Rio de Janeiro and Rio Grande do Sul. Only about 15% of establishments have special cells for the elderly and for lesbian, gay, bisexual and transgender - LGTBI.
In practice, the way in which the distribution of the LGTBI population operates inside the prison varies greatly according to the architectural layout of the buildings, the alignment of the unit with the claims of the LGTBI population and the relative proportion of the LGTBI people in each unit. Some recurrent practices are: restricting the LGTBI people to a limited number of wings; concentrating them in one or more cells; keeping the transvestites and transsexuals in "safe" cells. The "safe" cell is a space inside the correctional facilities reserved for prisoners who "can not" live peacefully with others without putting their lives at risk, being excluded from the "living". Another practice commonly referred to in various regions is the separation of plates, cups, cutlery and other utensils used by transvestites, transsexuals and homosexuals from those used by other prisoners (ZAMBONI, 2015). It often happens that the cells intended to LGTBI people are overcrowded and restrictive of some benefits such as access to work, education, leisure and sunbathing.

As part of the male units of the São Paulo prison system, it is estimated that there are about 450 transvestites and transsexuals. There are no records of the presence of trans men in male facilities (ZAMBONI, 2015).

In October of the present year (2015), a transgender teenager woman, who serves a socio-educational measure in the institution intended for children under 18 years, has guaranteed the right to be transferred to a women's unit of the institution, following a decision of the São Paulo Court of Justice due to request made by the Public Defenders of São Paulo. The decision also provides that she has the right to be treat by her social name, to keep the long hair, to wear women's clothes and be refered to as a woman.¹⁰


c. **Sexuality inside the prison system**

Prior to the latest regulations, repression of homosexuality was "the most intense possible" (Lemgruber, 1999 in COLARES), serving to determine the institutional evaluation of each woman and to allocate rewards or punishments. Examples of punishment included transferring to other prisons or to the solitary. This repression occurred in view of morality that surrounded the women, who were supposed to be demure.

The idea, commonly expressed by directors, criminologists and prisoners, is that "the homosexual behavior of the prisoners" is an answer to the emotional deprivation - since women are considered to be emotionally dependent and unable to manage their stay in prison, "while homosexuality in men's prisons would be related to" an alternative mean to satisfy sexual instincts "(Ibrahim, 1974 in PADOVANI, 2011). That said, heterosexual conjugal visit meant to be, on the one hand, a prevention policy on homosexuality (PADOVANI, 2011).

Homo-affective relationships are common in the socio-educational institution for minors («Fundação Casa») and, in general, the theme of sexuality is treated in humorous or even negative ways. For employees, the homosexual relationship is seen as transitory, due to the shortage and isolation. They also recognize that the units are not equipped to receive visitors (TEIXEIRA, SOUZA e GONÇALVES, 2014).

d. **Visits**

Regarding receiving visits in prison, is initially important to point out that family abandonment is a constant experience in the lives of women who are in prison, as well as of transvestites women (FERREIRA, 2014). Generally, also in the cases of men who identify themselves homosexual or who start relationships with trans or transvestites women in prison, there is also a family clearance.

In the case of conjugal visits, in June of 2011, after the Supreme Court recognize homosexual stable union in May of 2011, the National Council on Criminal and Penitentiary Policy issued a decree (No. 4/2011) extending the right to conjugal visits to homosexual couples, right already ensured to heterosexual couples since 1999. The decree guarantees the right to conjugal visits for "married people, people in stable relationships or homosexual relationship "(SOUZA, 2013).

In some states, the authorization to conjugal visits for homosexuals happened before the decree, in particular procedures of some prisons. With the decree, the right is guaranteed, but it remains in the hands of the prisons to receive the application and set up an internal procedure for the visits to take place. Overall, there are various policies adopted by the prison regarding the visit in prison.

To have the right to receive conjugal visits at the same time means to be part of a formally married elite (which in turn means maintaining a relationship with someone outside the prison and proving to the State the existence and legitimacy of this relationship) and be under constant judge of officers responsible for the conjugal visit. To be formally married is information that, on the conduct records and evaluations, can be equalized to good behavior and therefore ensure an easier of progression regime (PADOVANI, 2011).

In the case of homosexual conjugal visits, the first obstacle is the formalization of the relationship. Being a very recent conquest the equalization of homosexual stable union to the heterosexual stable union, many

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people still do not possess this formal device. The second obstacle relates to the place of conjugal visits, since sometimes the prison does not have separate places for that. Finally, a third obstacle has a more subjective bias, and concerns discriminatory attitudes to which LGTBI people are subjected. From simply being the target of biased comments, up to facing discrimination in the procedures. It often happens that homosexual couples need more documents to get conjugal visits than heterosexual couples.

In 2012, the G1 news portal found that 196 people arrested in 14 states in Brazil have made applications for homosexual conjugal visits. In São Paulo, 56 have officially requested the right to homosexual conjugal visits, 34 males and 22 females.\textsuperscript{12}

e. Maintenance of the physical identity

In the admission processes in institutions, certain clothes are prohibited. Likewise, shave the hair, trim nails and eliminate ornaments are parts of the entrance ritual, especially of male prisons. Also in cases of inspection, it happens that the prisoners are forced to undress. In these cases, the inspection must be made by officers of the same gender. It also must be respected, the right to trans and transvestites women to keep their shirt on, especially being a public inspection.

\textbf{Whilst it becomes a clear right to dress and behave in accordance with the gender identity, certain tension is created as a result of the visibilization of this identity.} This creates special pressure on the transsexual and transvestite population, both with the institution of the prison and with the prisoners (SILVA, 2013), whilst all of these items became clear markers of their "nonstandard" identity inside the prison. Accordingly, the access to this right is sometimes more in the hands of the prisoner, claiming it, than in the unconditional guarantee, which should be performed automatically by the institution and the prison guards.

f. Health

The health of LGTBI people in the prison system is guaranteed in the parameters of the national public health, and, for transgender men and women and transvestites, the maintenance of the hormonal treatment and the specific health monitoring is guaranteed.

ITTC monitored a recent case in which a person who was in the process of the hormonal treatment had to wait for months to have the treatment reestablished after being arrested. The person experienced a lack of access to special psychological assistance, mandatory for at least two years before reassignment surgery and needed during the hormonal treatment.

Still, as the health care treatments relating to sexual adequacy are considered to be specific treatments, it often happens that the prisoners have to go to specialty hospitals, outside of the prison. This involves being at the mercy of the prison transport availability and the availability of hospital to receive them. This wait can be long and may involve deprivation of prisoner.

\textbf{It can be said that this is due both to a systematic violation of the prison system regarding the right to health of the detainees, than to a specific violation of LGTBI people, who already have little access to health care, inside and outside the prison, as well as have an even more bureaucratic access.}

\textsuperscript{12} Available on: http://g1.globo.com/brasil/noticia/2012/02/196-presos-homossexuais-tem-visita-intima-no-brasil-aponta-levantamento.html
6. Conclusion

When a transvestite is discriminated against, such discrimination is not related only with a violence generated by a gender identity that escapes the binary standards of the sex/gender system, but also, often, by their race/ethnicity (FERREIRA, 2014). Multiple instances of the public power contribute to the reproduction of discriminations against transvestites and transsexuals, contributing to the generalization of the violence. When the violence of gender and sexuality is combined with intersections of social class and race/ethnicity, begin to operate selective mechanisms of those who are preferably captured by systems that aim to reproduce and maintain an “order”. The public security appears as one of these systems. (AGUINSKY, FERREIRA, RODRIGUES, 2013).

This means that in addition to the objective rights that should be guaranteed to LGTBI people, the access to these rights is conditioned by their application by the responsible authorities. For example, in general, permissions and constraints, as well as all types of regulation are circumstantial and contingent to the specific characteristics of each prison unit (PADOVANI, 2011). These circumstances may be, for example, conditional to the “good behavior” of these people, meaning that the respected travesty is that one who is considered well-behaved (AGUINSKY, FERREIRA, RODRIGUES, 2013). It is interesting to note that this “good behavior” is usually translated into submission to the rules of the institution, as well as into characteristics strongly influenced by gender roles.

The conquest of normative that guarantees basic rights to specific groups is certainly essential, however, the actual access to these rights is still conditional to subjective criteria. For example, prisoners who are not LGTBI illustrate certain dissatisfaction with the treatment received by LGTBI prisoners, seen as a privilege: “- You must be kill those bastards!” or “They are worth nothing!” (SILVA e SEFFNER, 2013). This judgment can also be found among the population outside the prison, as well as among prison officers, for example.

It remains a battle to guarantee access to basic rights of specific groups, which, in the case of LGTBI people in conflict with the law in Brazil, is currently hampered by the invisibility of this population on the systems of total institutions.

7. Bibliography


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