

THE UPR PROJECT AT BCU



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About the UPR Project at BCU:

Birmingham City University's **Centre for Human Rights** established the **UPR Project** in 2018 as part of our consultancy service. We engage with the Human Rights Council's review process in offering support to the UPR Pre-sessions, providing capacity building for UPR stakeholders and NHRIs, and the filing of stakeholder reports in selected sessions. The UPR Project is designed to help meet the challenges facing the safeguarding of human rights around the world, and to help ensure that UPR recommendations are translated into domestic legal change in member state parliaments. We fully support the UPR ethos of encouraging the sharing of best practice globally to protect everyone's human rights. You can read more about the UPR Project here: www.bcu.ac.uk/law/research/centre-for-human-rights/projects-and-consultancy/upr-project-at-bcu.

Our Partners:

For this submission the UPR Project at BCU partners with Universidade Federal Fluminense & Universidade Estácio De Sá in Brazil. Founded in 1960, the **Universidade Federal Fluminense (UFF)** is a public institution, part of the Brazilian federal higher education system. UFF is the largest federal university in Brazil with respect to number of students enrolled, and has nationally and internationally been ranked among the best Brazilian universities. **The Universidade Estácio de Sá** was founded in 1970 and is part of one of Brazil's largest private-sector Higher Education groups. Its Law Graduation Program in Law is ranked amongst the best in Brazil and is known for qualifying Master's and PhD candidates for academic research in the different fields of Law and fostering interdisciplinary critical reflection, stimulating the qualified scientific production focused on the area of concentration and its lines of research.

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INTRODUCTION

1. Internationally, the incarceration of women increased by 50% between 2000 and 2017.¹ In Brazil, which has the fourth largest population of women deprived of their liberty, this increase was even sharper, reaching 60%.² The rise in overincarceration has had a profound impact on women's rights, particularly for women of colour who make up almost 70% of Brazil's female prison population. There are also concerning implications for the rights of the child, as seven in ten women deprived from liberty in Brazil in 2016 were mothers.³
2. This report evaluates the extent to which Brazil has implemented recommendations from cycle three which, directly or indirectly, concern the rights of pregnant women and mothers deprived of liberty. It discusses and proposes recommendations across four main topics:
 - (1) female overincarceration,
 - (2) implementation of detention alternatives,
 - (3) prison conditions and healthcare,
 - (4) violence, cruel, inhuman or degrading treatment, and accountability.
3. In this submission, we encourage Brazil to commit to improving its human rights protection and promotion by engaging meaningfully with the fourth cycle of the UPR in 2022. This includes giving full and practical consideration to all recommendations made by Member States, effectively implementing the recommendations Brazil accepts, and actively engaging with civil society throughout the process.

A. International Protections

4. In December 2010, the United Nations Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders, known as the 'Bangkok Rules', were adopted by the UN General Assembly.⁴ The Bangkok Rules provide global standards regarding women in prison and are intended to complement and supplement, as appropriate, the Standard Minimum Rules for the Treatment of Prisoners ('Mandela Rules') and the United Nations Standard Minimum Rules for Non-custodial Measures ('Tokyo Rules').

B. Implementation of Recommendations from Cycle Three in 2017

Transparency Deficiencies in Incarceration Statistics

5. In the last cycle, **Angola** (para 136.82) and **Turkey** (para 136.79) encouraged Brazil to address prison overcrowding.⁵ Several other States recommended specific measures to that aim. **Spain**, for instance, suggested that Brazil take measures to reduce incarceration, including by encouraging the use of alternative sentencing (para. 136.78).⁶ The use of detention alternatives was also recommended by the **United States of America** (para 136.107).⁷

6. Severe data inconsistencies make it impossible to assess the exact extent to which Brazil has reduced incarceration. While federal evidence gathered from state governments identified around 731,000 inmates in June 2019, the court system indicates that the prison population was almost 20% larger in February 2020.⁸ When questioned by journalists, officials in Rio de Janeiro admitted to having misreported numbers to the Ministry of Justice.⁹
7. Rather than an isolated incident, this misreporting exemplifies overarching deficiencies in the availability and reliability of official statistics. For example, Goiás has recently refused a freedom of information request for statistics regarding the gender and pre-trial detention status of inmates based on public security.¹⁰ Considering the importance of reliable evidence to the formulation and improvement of public policy, the lack of accurate information indicates fundamental deficiencies in Brazil's cooperation with federal states to improve detention conditions as recommended by **Algeria** (para. 136.81).¹¹
8. The federal administration has also neglected transparency. There was an unjustified two-year gap in national prison statistics between 2017 and 2018.¹² When the administration resumed its updates, it nevertheless failed to publish its general report¹³ and specialist report on women in prison.¹⁴ While we welcome the biannual updates of the new reporting system (SISDEPEN), its interactive webpages, which have replaced the written reports, contain a limited amount of information and are frequently offline.¹⁵ The system ignores and perpetuates inequalities in statistical and digital literacy and access, rendering data even more inaccessible for civil society.¹⁶ Additionally, open data and some sections of SISDEPEN website have not been updated since 2019.¹⁷
9. The new system also provides inconsistent information. While the interactive webpage for the first part of 2021 indicates that there were 673,614 persons in prison facilities,¹⁸ a statistical compilation hosted in the government's website, but unavailable on the SISDEPEN webpage, states that there were 815,165 persons in the prison system in the same period.¹⁹

Female Overincarceration Trends

10. According to federal data, the number of women in prison increased 660% between 2000 and 2019, when the female prison population surpassed 37,000.²⁰ This has been a direct result of legislative changes to drugs policy, which increased the likelihood that those carrying small amounts of an illegal substance will be classified as drug dealers rather than users for criminal law purposes, due to a lack of an objective criteria.²¹ This has led to a rise in overincarceration, with 58% of drug trafficking cases in São Paulo concerning possession of small quantities of substances (<100g).²²

11. Such changes to drugs policy disproportionately impact women in poverty, who are often compelled, either by violence or circumstance, to engage in such activities and act as ‘drugs mules.’²³ Mothers are particularly affected, since handling the transportation or sale of small drugs quantities is often necessary to cope with the demands of unpaid care work. However, such women are more vulnerable to law enforcement involvement,²⁴ leading to a comparatively high increase in female imprisonment rate.²⁵ In 2021, 57.2% of women deprived of their liberty had been charged with a drugs-related crime. Furthermore, this number may be even higher, since only 46% of prisons provided comprehensive data on the offenses committed by people in prison.²⁶
12. Since the lack of objective criteria also allows for racial bias,²⁷ women of colour are the main victims of overincarceration, amounting to nearly 70% of the female population deprived of liberty.²⁸ In São Paulo, for example, black people are nearly 50% more likely than white people to be charged with drug trafficking as opposed to the lesser offence of possession for personal use. They are also more likely to be prosecuted for carrying lower amounts of illegal substance.²⁹
13. Brazil has neglected to make any substantial changes to its drugs policy in order to tackle the root causes of female overincarceration and its disproportionate impact on black women. Although the female prison population reduced in 2020, dropping to around 29,000, it increased again to over 30,000 in 2021 according to the SISDEPEN website.³⁰ While there is no updated information on how many mothers are deprived of their liberty, over 70% of women deprived of liberty were mothers in 2016.³¹ Up to June 2021 there were at least 189 pregnant women, 86 breastfeeding women, and 1,043 children in female prisons.³² These numbers, however, do not provide a complete picture due to missing data.
14. The SISDEPEN website indicates that 30,199 women were imprisoned in the first semester of 2021,³³ which is inconsistent with additional official information during the same period (45,218).³⁴ Although the first report does not include those in house arrest, excluding such population from the second, as well as inmates in other types of alternative detention, this still leaves a 25% discrepancy unaccounted for.³⁵

Detention Alternatives for Pregnant Women and Mothers

15. Brazil received recommendations to improve the judicial process in order to minimise the length of pre-trial detention and reduce the overall number of prisoners awaiting trial (**United States of America**, para 136.107; **Slovenia**, para 136.108).³⁶ It has made some effort to implement these recommendations by considering pre-trial detention alternatives for pregnant women and mothers. Brazil has also taken steps towards **Denmark’s** (para 136.94)³⁷ recommendation to incorporate the Bangkok Rules into public policies by making legal adjustments to implement Rule 64, according to which “non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate.”³⁸

16. Nevertheless, overall, implementation has been poor. Auditors found that Brazil has not taken steps to nationalise the “Mulheres Livres” Project, which aims to reduce incarceration of pregnant women and mothers through the identification of alternative detention beneficiaries, legal support, social assistance, and training. In 2020, it had only been implemented in one state, while negotiations were underway with two others.³⁹
17. The implementation of detention alternatives has also encountered judicial resistance. While Law 13.257/2016⁴⁰ allowed courts to determine pre-trial house arrest for pregnant women, women with children under twelve, or children with disabilities, judges have been reluctant to exercise such power. Courts often impose undue conditions not established by statute – requiring, for example, that they demonstrate their indispensability for childcare.⁴¹
18. Given persistent pushback, in 2018, the Supreme Court⁴² determined that courts must convert pre-trial detention into house arrest for all pregnant and postpartum women, as well as mothers of children or persons with disabilities, unless they committed a crime of violence, severe threat, or against their descendants. A discretionary ground also allowed judges to refuse requests in other ‘highly exceptional’ cases. While the ruling gave state courts 60 days to actively implement these parameters, research suggests that they have failed to do so. In São Paulo, the high court refused to monitor compliance. It merely communicated the ruling and initiated data collection.⁴³
19. Law 13.769/2018⁴⁴ made changes to post-trial detention, establishing conditions under which mothers of children and persons with disabilities who did not commit a crime with violence, severe threat, or against their child and are first offenders may progress to a regime with partial deprivation of liberty after a detention period.⁴⁵ The Law also reiterated the Supreme Court ruling by establishing that the pre-trial detention of pregnant women, mothers of children under twelve and of persons with disabilities *will be* converted into house arrest.⁴⁶ The legislature refrained from including an unspecified ground for exceptions which would allow for increased judicial discretion. Nevertheless, the prevailing understanding is that courts may still refuse to enforce such right in ‘highly exceptional cases’ even though this restriction to women’s rights is not provided by statute.⁴⁷
20. Wide judicial discretion has made the enforcement of a woman’s right to house arrest the exception rather than the rule in several states. Up to January 2019, São Paulo Courts had denied 60% of requests.⁴⁸ This percentage remained unaltered according to a 2020 journalistic investigation, which demonstrated that other states had similarly high denial rates.⁴⁹ NGO data estimates that up to December 2019, 43.8% of women entitled to house arrest remained in prison. In two states, no women had afforded the right to house arrest at all.⁵⁰
21. The full extent of the implementation of house arrest is unknown due to data deficiencies. While the 2020 investigation found that 3,527 women had been granted house arrest

nationally, some states informed solely the number of successful requests while omitting denials, and several rejected freedom of information requests, denying that they have access to these statistics.⁵¹

22. Research indicates that 17.6% of female prisons have no knowledge of whether inmates are mothers.⁵² Such lack of information indicates a failure by law enforcement and judges to observe their statutory duty to gather information about the existence and age of children, whether they have disability, and their alternative caretaker at the time of arrest and interrogation.⁵³
23. The legal changes to the right to pre-trial house arrest has had limited impact. Between 2016 and 2019, the rate of female pre-trial detention decrease was nearly equal to that of overall female detention decrease.⁵⁴ Statistics of female pre-trial arrest remained consistent between 2016⁵⁵ and 2021.⁵⁶
24. In 2020, the National Council of Justice⁵⁷ issued recommendations for courts to improve the enforcement of the right to house arrest and extend detention alternatives to other beneficiaries due to COVID-19. Nevertheless, research suggests that problems relating to access to justice have been exacerbated during the pandemic. Outcomes of appeals made by pregnant women and mothers to the second highest national court ('STJ') show that the denial rate increased from 43% before March 2020 to 55% thereafter.⁵⁸ Since official statistics reflect an increase in the prison population between 2020 and 2021,⁵⁹ the Court's shift could indicate a larger trend: that Brazil could be moving away from, instead of towards, detention alternatives.

Discrimination in Access to Detention Alternatives

25. Courts often refuse to enforce women's rights to detention alternatives on the basis of unlawful exceptions. Research investigating the grounds for unsuccessful house arrest requests found in São Paulo that 35% of decisions argued that mothers had failed to prove their indispensability, establishing an unlawful condition which has been precluded by higher courts, while 22% justified the denial on the basis of vague objectives to 'protect the public order' or 'enforce criminal law.'⁶⁰
26. Judicial decisions are often discriminatory and enforce harmful gender stereotypes, suggesting that Brazil has neglected to fully implement the **Islamic Republic of Iran's** (para 136.86)⁶¹ and **Thailand's** (para 136.189)⁶² recommendations to strengthen measures to eliminate discrimination against women and girls and its capacity-building programmes for judges and legal personnel on women's rights. House arrest requests are often denied because women have deviated from societal expectations of motherhood by, e.g., leaving their children under someone else's care⁶³ or leaving during a particular time of the day⁶⁴.

27. Discriminatory refusals suggest that Brazil has not complied with **Denmark's** (para.136.94)⁶⁵ recommendation to incorporate the Bangkok Rules into public policies. Several courts have failed to observe Bangkok Rule 61, by considering women's caretaking responsibilities and backgrounds as a detrimental rather than a mitigating factor while disregarding their lack of criminal history and the relative non-severity and nature of the criminal conduct.⁶⁶ Rulings often deem mothers unfit for having committed an offense,⁶⁷ even for minor infractions such as shoplifting due to hunger.⁶⁸ Others have directly discriminated against poor women by, e.g., denying house arrest based on their reliance on state benefits.⁶⁹
28. Many refusals have been justified by the existence of other female family members, forcing caring responsibilities upon other women based on their gender and often without prior consent.⁷⁰ In addition to violating women's freedom of choice, such decisions fail to appropriately ensure that appropriate provision has been made for the care of children in accordance with Bangkok Rule 64.⁷¹
29. This has also led to discrimination against women from the LGBTQ+ community. A recent ruling denied a request for house arrest on the basis of the petitioner's same-sex marriage and the existence of a second mother – disregarding the petitioner's rights and the fact that the spouse was unable to care for all children.⁷² This suggests that Brazil has failed to take sufficient steps to comply with **Ireland's** (para 136.90)⁷³ recommendation to give particular attention to LGBTQ+ prisoners and **Mexico's** (para 136.196)⁷⁴ recommendation to ensure the effective implementation of measures to prevent, punish and eradicate all forms of violence and discrimination against women and the LGBTQ+ community .
30. Women who are denied their right are forced to appeal, which is time-consuming and costly. It is also unclear whether higher courts are sufficiently receptive to requests. STJ has denied appeals with reference to conditions not prescribed by law, such as not having previously enjoyed the right to house arrest.⁷⁵
31. These constraints on access to justice further entrench intersectional inequalities on the basis of socioeconomic status and race. A 2019 study of rulings in indicated that 74% of women who appeal to higher federal courts had a private lawyer, while only 26% relied on public defenders.⁷⁶ These inequalities in access to justice disproportionately impact black women. In São Paulo, 57% of mothers in prison assisted by public defenders are women of colour.⁷⁷ In this regard, Brazil has failed to strengthen measures to prevent and punish discrimination against people of African descent and women and girls as recommended by **Rwanda** (para. 136.36).⁷⁸

Prison Conditions and Healthcare for Women

32. In 2017, **Ireland** (para 136.90)⁷⁹ recommended that Brazil ensure conditions at detention centres comply with international and Brazilian law with particular attention to pregnant

women and children. Brazil also received recommendations to improve prison conditions from **Angola** (para 136.82)⁸⁰, **Algeria** (para 136.81), **Namibia** (para 136.75), **Japan** (para 136.92), **Australia** (para 136.95), **Cabo Verde** (para 136.84).⁸¹ The **Republic of Korea** (para 136.76),⁸² specifically recommended the improvement of access to water, food, and medical care whilst in detention. Similarly, **South Africa** prompted Brazil to address overcrowding, sanitation, violence, and medical and psychological care in prisons (para 136.77).⁸³

33. Whilst these recommendations were supported, Brazil has not taken sufficient steps to fulfil these commitments. Many prisons lack access to water and proper ventilation⁸⁴ and neglect nutrition. Rio de Janeiro inspectors reported that caterers in the state's only prison for pregnant women had never considered catering for their specific nutrition needs.⁸⁵
34. Brazil has also neglected the implementation of the National Policy for Women Deprived of Liberty and Former Inmates.⁸⁶ The programme's inter-ministerial committee has failed to meet as often as required; present a working plan with specific goals, timelines, and monitoring indicators; and implement required mechanisms of planning and evaluation.⁸⁷ Auditors also found that the Secretariat for Women's Policies, which co-ordinates the committee, did not allocate any funds to such policies between 2016 and 2018.⁸⁸
35. The lack of investment in policies for women deprived of liberty has also led Brazil to neglect recommendations made in the last UPR cycle. **Sweden** (para 136.93)⁸⁹, for example, encouraged Brazil to take the necessary measures to increase the number of gynaecologists in the prison system, which the government accepted. However, from 2016 to 2021, the number of prisons with gynaecologists only increased from six to seven – an unacceptable number in the fifth largest country in the world.⁹⁰
36. Inspectors and researchers have reported that female prisons have extremely poor STI and prenatal healthcare.⁹¹ Syphilis and HIV transmission rates are almost seven times higher among women deprived of liberty, while the mother-to-child transmission rate is 66.7% in prisons, nearly twice the general 36.6% rate.⁹² There are reports that mother-to-child transmission is aggravated by prison healthcare neglecting to perform essential tests.⁹³
37. Brazil has systematically neglected the healthcare of pregnant women and mothers in prison. 68% of them considered their care inadequate in 2016,⁹⁴ an issue which continues to be reflected in recent reports. In 2019, researchers found that many lacked basic knowledge about childbirth.⁹⁵ Women in Rio have reported unavailability of ambulances⁹⁶ and the severing of outside communications during evenings and weekends, which eliminates all means of contact during health emergencies and has forced a woman into unassisted childbirth in unsafe conditions in her cell.⁹⁷ Another mother reported being harassed to reduce the frequency of use of asthma medication to reduce costs.⁹⁸

38. By neglecting women deprived of liberty, Brazil has neglected recommendations by **Switzerland** (para. 136.158)⁹⁹ and **Uruguay** (para. 136.159)¹⁰⁰ to ensure access to reproductive healthcare, including high-quality prenatal care without discrimination, as well as **Iceland's** recommendation to promote effective assistance measures during pregnancy and birth (para. 136.162).¹⁰¹ No substantive steps have been taken to ensure continued effectiveness of strategies to combat HIV-AIDS among such specifically affected group in line with **Bahamas'** recommendation (para. 136.157).¹⁰²

Impact of COVID-19 on Pregnant Women and Mothers in Prison

39. The pandemic has had a disproportionate impact on persons deprived of liberty. While official statistics indicate that infection rates in prison were only 3.3% higher than that of the general population, they also suggest that cases were severely underreported. In 2020, infection rates of prison employees were 147.8% higher than the general population.¹⁰³ The number of deaths in prison due to unknown causes rose by 227.7%, while those due to natural causes increased from 88.3 to 99.7 for each 100,000 habitants.¹⁰⁴

40. Civil society has expressed concerns that COVID-19 deaths in prisons may have been intentionally concealed. The State of Rio de Janeiro ceased autopsies of prisoners who died due to natural causes, while a São Paulo prison reportedly registered at least two deaths under such general category despite strong suspicions of COVID-19 infection.¹⁰⁵ Organisations have also condemned a national decree¹⁰⁶ which authorised the burial and cremation of people without formal registration of the death, in cases where family members or people known to the deceased are absent. Given the existing constraints on communications with prisoners' next-of-kin, concerns have been raised that this has led to COVID-19 victims in the prison system turning into "disappeared persons."¹⁰⁷

41. Transparency deficiencies strengthen underreporting suspicions. According to a 2020 report, 32% of states lacked publicly available information about COVID-19 in prisons.¹⁰⁸ Available data was severely inconsistent. For example, in April, the Minas Gerais State reported 50 suspected cases of COVID-19, while this number was 32% lower than national statistics.¹⁰⁹ Up to May 2020, only 0.09% of prisoners had been tested.¹¹⁰

42. Inmates and their families have reported that management has hindered their communication to conceal the severity of health conditions and infection rates. Visitations were banned nationally,¹¹¹ and many facilities restricted phone calls.¹¹² Others refused to isolate those infected, shut down calls to help those who were unwell with physical violence, and forbid communication with family members entirely,¹¹³ leading to several riots in 2020.¹¹⁴

43. The complete extent to which female prisons for pregnant women and mothers were particularly affected is unknown. In 2020, 96% of states refused to provide disaggregated data on COVID-19 in prisons by gender and age.¹¹⁵

44. Nevertheless, evidence indicates that pregnant women have been disproportionately impacted by the pandemic. In 2020, the number of deaths of pregnant and postpartum women due to COVID-19 in Brazil was 3.4 times higher than the number of reported deaths for the rest of the world.¹¹⁶ Brazilian rates represented 77.5% of all COVID-related maternal deaths internationally, of which 28% of fatal cases had not been admitted to ICU and 15% received no ventilatory support.¹¹⁷ Intersectional inequalities aggravated these shortcomings, with the mortality rate due to COVID-19-related respiratory conditions for Black pregnant and postpartum women reaching a level almost twice as high as that of white women in the same group.¹¹⁸
45. At least one prison interrupted paediatric care during the pandemic, leading to a child falling ill because of a missed vaccination, while a woman gave birth in her prison cell with improvised health from enforcement staff due to a lack of medical help.¹¹⁹ In Minas Gerais, a prison which recorded twenty COVID-19 cases among women and children had no doctors on site.¹²⁰
46. Brazil has therefore neglected its commitments to combat high maternal mortality rate in compliance with the Convention on the Elimination of All Forms of Discrimination Against Women ('CEDAW'), as recommended by **Estonia** (para 136.185).¹²¹ It has also failed to comply with **Colombia's** (para 136.54)¹²² recommendation to continue reinforcing the policy on effective and qualitative access to health services for women of African descent. Both recommendations were supported but have not been implemented.

Childcare and Breastfeeding Restrictions in Prison

47. Brazil has not taken sufficient steps to implement **Thailand's** (para 136.96)¹²³ recommendation to improve facilities dedicated to pregnancy and maternity in prisons in line with the Bangkok Rules or continue efforts towards the promotion of the rights of the child as recommended by **Armenia** (para. 136.201).¹²⁴ While Law 7210/1984 establishes that all female prisons must have nursery and day-care facilities for children under six months and seven years old respectively,¹²⁵ their capacity was limited to 758 children in 2021,¹²⁶ when at least 1,043 children were living with their mothers in prison.¹²⁷ Between 2016 and 2021, capacity remained nearly unaltered, and the number of prisons with paediatric care dropped from six to two.¹²⁸
48. Brazilian prisons also lack appropriate conditions under which women can enjoy, for a suitable period, their constitutional right to remain with their child while breastfeeding.¹²⁹ While WHO and UNICEF recommend breastfeeding for two years to protect women and children from life-threatening and chronic diseases, statutory protection only covers six months,¹³⁰ after which babies are often separated from their mothers.¹³¹

49. We welcome a recent decree issued by the State of Pará to improve the psychological, medical, and social care of breastfeeding mothers deprived of liberty and enable cohabitation for breastfeeding for up to two years. Nevertheless, policy still compels women to begin the cessation of breastfeeding at the six-month mark, which unduly restricts their bodily autonomy and their freedom to make decisions concerning their health and their children's.¹³² Since prisons have a statutory obligation to provide facilities to welcome children under seven, we see no reasonable justification for restricting mother-child cohabitation or breastfeeding at an earlier age.

Violence and Cruel, Inhuman or Degrading Treatment

50. Pregnant women and mothers are often victims of various forms of violence and cruel, inhuman or degrading treatment in prison, contrary to Article 7 of the International Covenant on Civil and Political Rights. In this regard, Brazil has failed to take sufficient steps to ensure respect for and protection of human rights for all detainees in compliance with domestic and international laws and standards (**Austria**, para. 136.83; **Bolivarian Republic of Venezuela**, para. 136.80).¹³³

51. Reports of psychological violence are frequent in female prisons. Mothers have described prisons as 'hell' or a 'purgatory.'¹³⁴ Torture prevention inspectors have reported the isolation of a pregnant woman in unhealthy conditions¹³⁵ as a form of punishment in violation of Bangkok Rule 22,¹³⁶ as well as cases of mothers who were threatened with separation from their child to enforce unreasonable childcare rules.¹³⁷

52. Pregnant women deprived of liberty are often victims of obstetric violence. In 2016, nearly 90% of women deprived of liberty stated that their 'intimacy' had been disrespected during birth,¹³⁸ suggesting that they may have experienced sexual violence. 16% and 14% of women specifically reported physical violence perpetrated by healthcare professionals and enforcement officers respectively.¹³⁹ There is no evidence of improvement, since a 2021 study found an identical obstetric violence rate of 14% by both perpetrator groups.¹⁴⁰ Within the prison system, Brazil has therefore neglected to implement supported recommendations from **Iraq** (para 136.187)¹⁴¹ and **Egypt** (para 136.184)¹⁴² to take measures to combat violence against women and children.

53. Obstetric violence is often associated with prisons' lack of compliance with legal obligations. In 2016, only 3% of women deprived of liberty enjoyed their right to a companion during childbirth,¹⁴³ while 89% reported that the prison had neglected its duty¹⁴⁴ to inform their families that they were in labour.¹⁴⁵ The 2021 study found that 73% of families had not been contacted about the birth, suggesting that there has been little improvement.¹⁴⁶ In 2020, Rio de Janeiro inspectors also found that the use of handcuffs including before, during, and after birth remained frequent.¹⁴⁷ While Brazil has not followed **Denmark's** (para 136.94)¹⁴⁸ recommendation to adopt Bill 5654/2016, which

reaffirms the right to freedom from violence during childbirth and prohibits the use of handcuffs, such practice was banned by statute in 2017.¹⁴⁹

Lack of Accountability for Human Rights Violations in the Judiciary

54. While statutory guarantees are indispensable for the fulfilment of the rights of women deprived of liberty, judicial enforcement deficiencies often hinder their enjoyment of such protections. In some cases, courts have actively violated women's rights to be free from cruel, inhuman or degrading treatment and their sexual and reproductive health rights. In 2017, a judge granted an urgent injunction requested by the prosecution to compel the State of São Paulo to carry out a forced sterilisation procedure of a woman deprived of liberty during childbirth on the basis of her socioeconomic status and drug addiction. While the prosecution presented a signature as indication of consent, it also stated that the woman was reluctant to proceed.¹⁵⁰
55. The Court did not hear the woman or assign her any legal representation, and no informed consent procedures were followed. When an appeal was granted, the procedure had already been performed. The victim had also been immediately separated from her child at birth, as the same judge had stripped her of parental rights.¹⁵¹ This was not an isolated case. In 2019, another ruling reportedly stripped a child from a mother deprived of liberty at the time of birth and placed them for adoption without parental consent.¹⁵²
56. While the prosecutor and judge who ordered the forced sterilisation procedure were investigated by their respective institutions, neither was held accountable for the human rights violation nor were they removed from office. The first was suspended for 15 days,¹⁵³ while the second's investigation was archived.¹⁵⁴
57. Such case exemplifies Brazil's failure in strengthening mechanisms of prosecution of all perpetrators of sexual and gender-based violence in accordance with **Slovakia's** recommendation (para 136.191),¹⁵⁵ bringing the perpetrators of violence against women to justice, as advised by **Togo** (para 136.192),¹⁵⁶ and taking further efforts in combating violence against women, including by enhancing trust in the judicial system, as recommended by **Spain** (para 136.119).¹⁵⁷ It also suggests that not enough has been done to provide human rights training to officials in the legal and judicial system, as recommended by **Ireland** (para 136.90)¹⁵⁸ or to implement **Thailand's** (para 136.189)¹⁵⁹ recommendation to strengthen capacity-building programmes for judges and legal personnel on women's rights and violence against women.
58. Illustrating the severe deficiencies in judicial accountability in Brazil, this case also strengthens the case for stronger reliance on additional extrajudicial alternatives for human rights enforcement. Judiciable guarantees, while indispensable, are insufficient for the enjoyment of the rights of women deprived of liberty.

C. Recommendations

We recommend that the Government of Brazil should:

- i. Create a statutory duty for all detention facilities to gather and publish data disaggregated by gender, age, race, ethnicity, migratory status, disability, geographic location and income, as well as pre- or post-trial detention status, type of offense, number and age of children, according to United Nations guidance on Human Rights-Based Approach to Data (HRBAD).¹⁶⁰
- ii. Collaborate with the court system to gather custody hearing data and compare its incarceration data with numbers provided by prisons' self-reporting system, as well as investigate any discrepancies.
- iii. Consolidate all existing and new prison-related data, including open data, reports, and webpages from all existing sources, into a single system with biannual updates and no interruptions to reporting and website operation.
- iv. Ensure that data is equally available to persons in poverty, and particularly those with low digital literacy and access, by resuming the publication of written statistical reports, including the specialist report on women in prison, in accordance with the Special Rapporteur on extreme poverty and human rights' recommendations for the digital welfare state.¹²⁵
- v. Amend Law 11.343/2006 to include objective criteria according to which law enforcement and courts must identify the threshold between drug possession and drug trafficking to address the root causes of female overincarceration and prevent discriminatory outcomes derived from bias.
- vi. Implement and monitor the execution of "Mulheres Livres" project in all states.
- vii. Order the direct and automatic enforcement of the pregnant women's and mothers' rights to pre-trial detention alternatives for those who fulfil statutory criteria. This would place the burden of appeal in highly exceptional cases with the prosecution and ensure that women presumably entitled to house arrest are not unlawfully imprisoned while a judicial decision is pending.
- viii. Strengthen equality legislation by introducing new statutory protections against all direct or indirect discrimination, including intersectional discrimination, on the basis of grounds established by international human rights law, including gender, race, sexual orientation, gender identity, and socioeconomic status, with specific reference to discrimination against persons deprived of liberty.
- ix. Amend legislation to reiterate that pregnant women and mothers shall not be required to offer proof of indispensability for childcare to enjoy the right to a detention alternative, and that their request must not be denied solely due to the existence of other family members.
- x. Amend legislation to extend the right to house arrest to all pregnant women and mothers of children and persons with disabilities regardless of pre- or post-trial detention status to increase compliance with Bangkok Rule 64, according to which custodial sentences must only be considered when the offence is serious or violent or the woman represents a continuing danger.¹⁶¹

- xi. Implement mandatory human rights and gender sensitivity training for all members of the Judiciary and prison employees.
- xii. Amend the National Policy for Women Deprived of Liberty and Former Inmates to specify procedures for annual planning, monitoring, implementation, and evaluation with reference to measurable goals, timelines, monitoring indicators, and stakeholder engagement.
- xiii. Ensure that pregnant women and mothers deprived of liberty with children under their care are placed in suitable detention facilities, preferably separate from other prisons to best tailor the environment to pregnancy and motherhood.
- xiv. Ensure that all female prisons have safe conditions and appropriate access to healthcare through permanent medical personnel before the next UPR cycle, including through urgent funding allocation.
- xv. Implement a comprehensive policy to improve sexual and reproductive healthcare of women deprived of liberty, including by taking measures to reduce the transmission of STIs in prisons and providing gender-sensitive training to prison staff and healthcare providers with particular attention to obstetric and other forms of gender-based violence.
- xvi. Grant immediate access to detention alternatives to all pregnant women and mothers of children and persons with disabilities who have not committed a crime of violence, serious threat, or against their dependents and who are imprisoned in facilities without obstetric and paediatric care.
- xvii. Ensure the respect for women's bodily autonomy by enabling mothers to breastfeed their children for as long as they choose and providing them with appropriate facilities for mother-child cohabitation in detention or, in case such facilities are unavailable or unsuitable, house arrest.
- xviii. Ensure the independence of investigation and adjudication of claims concerning human rights violations in the judiciary and consider establishing a stronger accountability mechanism to include external experts and civil society representatives in decision-making processes and implement special procedures which are compatible with the gravity of such infractions.

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