

# Women in Prison: Rio de Janeiro

Analysis from the Local Preventive Mechanism  
(LPM)

| June 2024



# Brazil - State Mechanism for the Prevention of Torture of Rio de Janeiro

<p><b>UNCAT Ratification</b> 28 September 1989</p>	<p><b>OPCAT Ratification</b> 12 January 2007</p>
<p>Local Preventive Mechanism (LPM)</p> <p><b><u>State Mechanism for the Prevention of Torture of Rio de Janeiro (MEPCT/RJ)</u></b></p>	
<p><b>LPM legal framework</b> <u>State Law No. 5.778/2010</u></p>	<p><b>LPM operationalisation</b> From 2011</p>
<p><b>LPM structure</b> A new specialised institution administratively linked to the Legislative Assembly of the State of Rio de Janeiro. The State Mechanism for the Prevention of Torture of Rio de Janeiro is part of the National System to Prevent and Combat Torture established by federal legislation<sup>1</sup>, which provides for the creation of a national mechanism and state mechanisms for each federative unit.</p>	<p><b>LPM composition</b> 4 experts (3 women)<sup>2</sup>. The composition provided for by law consists of 6 members, but there are currently only 4 experts (i.e. there are 2 vacancies to be filled). Of these 4 experts, 2 are black women, 1 is a black man and 1 is a white woman. There are no technical or administrative support staff.</p>

## I. Facts and figures<sup>3</sup>

<p><b>Prison population</b></p> <p>Women in prison (total) <b>1,656</b></p> <p>Women in pre-trial detention <b>762</b></p> <p>Sentenced women <b>983</b></p>	<p><b>Women in prison - Characteristics</b></p> <p>Women with children in prison <b>8</b></p> <p>Foreign women <b>19</b></p> <p>Women with disabilities <b>3</b></p>	<p><b>Prison staff</b></p> <p>Women prison staff <b>148</b></p>	<p><b>Prisons for women</b></p> <p>Women-only prisons <b>5</b></p> <p>Mixed prisons with special unit for women <b>0<sup>4</sup></b></p>
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<sup>1</sup> Law 12.847 of 2 August 2013, which establishes the National System to Prevent and Combat Torture ; creates the National Committee to Prevent and Combat Torture and the Federal National Preventive Mechanism; and makes other provisions.

<sup>2</sup> The composition provided for by law consists of six members. However, there are two vacancies to be filled at the time of writing.

<sup>3</sup> The information contained in this section was officially provided by the State Secretariat for Prison Administration (SEAP) on 1 August 2024 (Of.SEAP/CHEGAB No. 2894/2024).

<sup>4</sup> Officially, there are no mixed facilities according to the documents provided by SEAP. However, according to the report of a visit carried out by MEPCT/RJ and the Federal National Preventive Mechanism on 23 May 2023: "The unit caters for cisgender men, non-binary people, transsexual women and transvestites, and has a neutral profile, so it can be regarded as a secure unit. Accessed at: <https://mnpctbrasil.files.wordpress.com/2023/12/relatorio-de-inspecoes-regulares-no-estado-do-rio-de-janeiro.pdf>

## II. Recommendations

### Prison information

- + Publish official data on Rio de Janeiro's prison and socio-educational system on its website, as well as semi-annual statistical analyses including information on race, education, age, people with disabilities, gender and LGBTQIAP+ people, in compliance with the Access to Information Law.

### Nutrition

- + Set up a committee to draw up a State Policy on Food Security in Prisons, in consultation and jointly with experts, such as the National Council for Food and Nutrition Security, in order to ensure that foods without sufficient nutritional value are no longer provided and to prevent inadequate food preparation and preservation. To this end, there will be a particular emphasis on immediately abolishing prolonged forced fasting.

### Solitary confinement, isolation

- + Amend legislation that permits cellular isolation for more than 30 days, including the end of the Differentiated Disciplinary Regime<sup>5</sup>.

### Contact with the outside world

- + Re-evaluate the ruling that prevents former detainees from visiting prisons, considering the disproportionate impact that this has on women in particular, especially on LGBTQIAP+ women.

### Non-custodial measures

- + Apply alternative sentences to women who have been convicted and forbid pre-trial detention, especially for women belonging to particularly vulnerable groups, such as pregnant women, women who have recently given birth, mothers who are responsible for caring for their children, elderly women, people with disabilities and LGBTQIAP+ women.

### LGBTQIAP+ population

- + Expressly prohibit the practice of separating LGBTQIAP+ couples or punishing them for displays of affection.
- + Authorise the possession of items and clothing that are in keeping with their self-declared gender for transvestites, trans women and trans men.
- + Effectively implement the National Comprehensive Health Policy for Lesbians, Gays, Bisexuals, Transvestites and Transsexuals (Política Nacional de Saúde Integral LGBT)<sup>6</sup> for the LGBTQIAP+ population deprived of their liberty.

<sup>5</sup> The Differentiated Disciplinary Regime (RDD) is provided for in article 52 of the Brazilian Criminal Enforcement Law. In 2019, article 52 underwent amendments that have considerably worsened the conditions of those who end up being targeted by the regime. Under this regime, in addition to the provision for being placed in isolation for up to 360 days in a 6m<sup>2</sup> cell, people may only sunbathe for a maximum of two hours, are entitled to limited visits, and are forbidden from having contact with other people.

<sup>6</sup> Directive No. 2.836 of 1 December 2011.

### III. Detention issues

#### Body searches

All prison units in Rio de Janeiro had long carried out body searches on family members, at least until 2015. During these searches, family members were taken to certain rooms and forced to undress and crouch down over a mirror several times, a ritual that was only made worse by the constant practice of other forms of psychological torture, such as name-calling, humiliation and other extremely serious human rights violations. Following an extensive struggle by civil society and other institutions, state laws no. 7.010 and 7.011 were passed in 2015, preventing the adoption of this practice in the state's penal and socio-educational establishments. This change only came about after the State Legislative Assembly granted funds for the purchase of body scanners, which ensured that the Secretariat for Prison Administration (SEAP) only had to guarantee that such equipment be maintained for unpleasant body searches to be suspended.

However, despite efforts to ensure that the SEAP is solely responsible for keeping the scanners in operation and prison staff trained, unfortunately, MEPCT/RJ still receives complaints about this practice, albeit occasional. Since 2016, there have still been reports of family members being strip-searched in the following units: Evaristo de Moraes Prison, Talavera Bruce Penitentiary, Benjamin de Moraes Penal Institute and Pedro Melo Public Prison.

Nevertheless, detainees continue to be subjected to unpleasant and degrading body searches. During a MEPCT/RJ visit to the Santo Expedito Penal Institute in November 2021, a number of instances of torture were reported, including unpleasant body searches. A few days earlier, inmates had initiated a hunger strike, with general body searches being performed as a repressive response, for which 11 inmates were chosen at random, taken to a room in the unit and beaten by six criminal police officers, one after another, from the Special Operations Service (SOE). Following the violence, the detainees told MEPCT/RJ that they had been handcuffed in a crab position, ready to be escorted, kicked and thrown onto the floor. Of the 11 inmates searched, one had a motor disability, as observed. Meanwhile, the GIT operation report was just as disturbing given the disproportionate use of elastomer bullets and instances of other forms of physical aggression. According to reports, the events that unfolded on that particular day were the culmination of all the violence suffered in the unit since its inauguration, including a lack of access to water; a lack of food; verbal and physical violence on the part of some prison officers; the separation of lesbian couples; the excessive use of punishment in isolation; and reports of unpleasant body searches subjecting detainees to acts comparable to sexual violence, such as requests to pull open their anuses and vaginas.

Prison staff were visibly stressed and overworked, reporting their inadequate working conditions and the constantly tense prison environment themselves, as well as their awareness of the fact that the unit was close to breaking point. On returning to the unit, detainees reported that one of the main problems with visits is that as soon as the visit is over, they are forced to undergo an unpleasant body search in front of each other, which is particularly distressing considering both trans men and women also go through the same procedure together. They also said that if they objected or complained about the procedure, their family visits would be suspended and their family members' visitor permits revoked.

On a visit to the Talavera Bruce women's penitentiary in March 2019, MEPCT/RJ found that unpleasant body searches were still being carried out within the unit. These searches were performed on women detainees on a daily basis, including on sick women inmates, who, according to reports, asked for an exemption from body searches because they could not physically bear the procedure. The women detainees reported that they were still forced to strip naked in front of everyone, describing the deep humiliation that they felt as a result of this practice. MEPCT/RJ believes that according to international standards, this practice is equivalent to

## Access to mental healthcare

MEPCT/RJ recognises the important step taken by the National Council of Justice in adopting Resolution No. 487/2023, which aims to guarantee the effective application of the Psychiatric Reform Law by establishing guidelines to abolish asylums for people deprived of liberty in Brazil.

It is also worth mentioning Interministerial Directive No. 210/2014, which established the National Policy for the Care of Women Deprived of Liberty and Returning from the Prison System (PNAMPE), issued by the Ministry of Justice and the Secretariat for Women's Policies, which addresses core issues related to guaranteeing access to healthcare for women deprived of liberty, such as prevention of all types of violence against women and mandatory full access to the right to healthcare and mental health care, among others.

With regard to mental health and the prevention of suicide and self-harm specifically, women who are particularly vulnerable (separated from their children, suffering from mental health problems, survivors of gender-based violence, etc.) should have access to comprehensive preventive treatment, and it is essential that the team working with women in detention is able to identify these risks, including the periods of greatest psychological stress (e.g. upon separation, the first month of imprisonment, etc.), and seek training so that other people deprived of liberty can support and identify those who are experiencing a period of greater risk.

During a follow-up visit to the Santo Expedito Penal Institute (SEAP-ISE)<sup>7</sup>, MEPCT/RJ found that two women were in a worrying state of mental health. MEPCT/RJ interviewed two women detainees who had recently been transferred from the Maternal and Child Unit (UMI). These women had been held in custody for 15 days, were extremely fragile and severely depressed after being separated from their children, and had not been offered any psychological support during this process. There was a high risk of suicide, with previous suicide attempts and instances of self-harm reported to MEPCT/RJ. The MEPCT/RJ also noted that one of these two women had injury marks all over her body, and during the interview she gave the following statement: "I'm cutting myself to see if I can make it stop hurting". However, despite asking for help, neither of these two women were attended to by the clinic.

MEPCT/RJ took these cases to the unit's management in order to request that these two women be transferred to their destination units as soon as possible, so that they could receive family visits. Since the Maternal and Child Unit is intended exclusively for pregnant women, women who have recently given birth and lactating women, once their child has reached the age of 6 months (as recommended by the Criminal Enforcement Law), these women are transferred to the most suitable unit for their profile. In this particular case, these women were held in custody in this very unit- which is next to the Maternal and Child Unit - awaiting transfer.

This situation also revealed the lack of support and special care for women in prison who find themselves in a state of extreme emotional fragility, given the extremely traumatic experience of being separated from their babies. Since our last visit to the Maternal and Child Unit, we have been emphasising the fact that separating a mother from her child is an extremely painful process. This measure is strictly forbidden by international organisations, as the MEPCT/RJ stated in its 2022 thematic reports "Being put in your place as a detainee: human rights violations of girls and women deprived of liberty in Rio de Janeiro", as well as in the 2023 report on the National Mechanism's mission in the state of Rio de Janeiro<sup>8</sup>. It is therefore essential to extend the Legal Framework for Early Childhood, in order to ensure that this particular form of violence, which dates back to the time of slavery, is no longer carried out today.

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<sup>7</sup> After the follow-up visits that took place in 2023, the Santo Expedito Penal Institute changed its name to the Djanira Dolores de Oliveira Penal Institute.

<sup>8</sup> Both reports are available on the following webpage: <https://www.mecanismojrj.com.br/>

The Legal Framework for Early Childhood is regulated by Law 13.257 of 2016, which establishes principles and guidelines for the formulation and implementation of public policies for early childhood. The framework also amends Article 318 of the Penal Code, providing for cases in which pre-trial detention may be replaced by house arrest for pregnant women, women with children up to 12 years of age, and men who are solely responsible for the care of their children up to 12 (twelve) years of age.

However, beyond the application of this regulatory framework, which requires a joint effort from the justice system and the legislature, MEPCT/RJ recognises the severity of the process of separating women detainees from their children given the intense psychological suffering caused and the potential risk to their physical integrity, unequivocally regarding such practice as a form of torture. As such, the MEPCT/RJ recommends, as a minimum and emergency measure, that the SEAP swiftly transfer these women deprived of liberty from the Maternal and Child Unit to their destination unit, so that they can receive visitors again as soon as possible. The MEPCT/RJ has also recommended that the prison administration make a concerted effort to facilitate social visits during the postpartum period, in addition to greater psychological care, particularly during the initial post-separation period.

### Sexual violence

One weekend in October 2021, MEPCT/RJ witnessed an instance of rape at José Frederico Marques Public Prison, a crime committed by a prison officer against a women inmate who had recently entered prison. At the time, José Frederico Marques Public Prison was a mixed unit, a format that MEPCT/RJ had already pointed out as concerning during other visits. From October 2017 to 2021, MEPCT/RJ visited the unit on five separate occasions, and the respective reports always attested to the illegality and potential impacts of this format. This situation must be mentioned, as it attests to the incessant previous warnings made by MEPCT/RJ to SEAP since the unit changed its gender profile.

The reported rape case above refers to an instance of sexual violence that took place when a woman detainee first entered the unit. According to the reports gathered, the rape victim entered the unit and was greeted in the sorting area by a male professional. The male prison officer chose not to follow the protocol adopted for when a woman inmate first arrives in this area, which is to request that a woman prison officer present in the unit carry out all the sorting procedures, including a body search. Thus, the prison officer who committed the instance of rape took advantage of the fact that only a small number of other officers were on duty that weekend in order to be left alone with the woman inmate. The prison officer was left alone with the inmate and took her to the cell where body searches take place, where he forced her to have oral sex.

According to the information gathered during the investigation, the prison officer lured the inmate into performing oral sex on him by promising her that he would bring forward her custody hearing. Possibly due to the fear of reporting the incident and being punished or shamed, the victim was only able to tell other women inmates what had happened after the incident took place. Physical evidence of sexual violence was also collected, such as evidence of the perpetrator's semen. The reports and evidence collected led to the arrest of the perpetrator, who is currently facing criminal charges.

In response to this instance of sexual violence, the unit's management stated that it was decided, as an emergency measure, and after reporting the incident to the then-Secretary and -Undersecretary of Penitentiary Treatment, that a greater number of women prison officers would be assigned to the unit, in order to guarantee the direct presence of women professionals in the sorting area. At the time of the MEPCT/RJ follow-up visit, there were only two women police officers on duty in the prison, and they were not permanently present in the sorting area.

Until the entry for cisgender women and trans men to the Oscar Stevenson Penal Institute was moved shortly after, new arrivals were still only greeted by male prison

officers and the area of the prison where these women deprived of liberty would be held in custody sector was still staffed by just one women prison officer whenever it was necessary to screen a new arrival. Currently, José Frederico Marques Public Prison only accommodates trans men and women and transvestites.

### Solitary confinement, isolation

According to MEPCT/RJ, which tends to focus initially on this particular population during visits, the cells or lodgings intended for solitary confinement are those with the most structurally precarious conditions; they are smaller spaces and are not as well lit and ventilated as other cells or lodgings. In general, these cells also lack basic hygiene products, bed linen, bath linen and mattresses. In addition, these environments are regarded as a form of punishment for people deprived of their liberty.

These spaces, as provided for in articles 53 and 88 of the Criminal Enforcement Law, are classified as disciplinary sanction areas, namely: an individual cell with a minimum area of 6m<sup>2</sup>, which must have a bedroom, sanitary unit and washbasin, and levels of salubrity, aeration, sunlight exposure and thermal comfort that are suitable for human existence.

During all MEPCT/RJ visits, we ask the units to provide a series of documents, including copies of the disciplinary procedures of the Technical Classification Commission (CTCs). Over the many years that the MEPCT/RJ has been operational, we have seen many generic decisions being made, with a clear disregard for the inmate's at the time of the incident that led them to act in a certain way; without due notification, or due notification within a fair timeframe for the defence; and on sentences that are always unanimous and always condemn the inmate to 15 or 30 days' isolation and 90 or 180 days of *rebaixamento de comportamento*, a practice whereby inmates are deprived of their rights under criminal enforcement law. In this regard, there appears to be a systematic disregard for the minimum procedural rules and a certain ignorance towards the fact that these practices lead to serious consequences for the lives of detainees.

As far as women are concerned, inmates were officially held in isolation in women-only prison units until 2022, with the most severe cases of solitary confinement occurring in the Talavera Bruce Penitentiary (SEAP-TB), from where detainees were also transferred to Nilza da Silva Santos Prison, according to women inmates' reports. However, in January 2023, women detainees from SEAP-TB were transferred to the Laércio da Costa Pellegrino Penitentiary, a maximum security male unit. This move was yet another step towards exacerbating the excessive use of solitary confinement, which in national terms amounts to torture.

While visiting the Talavera Bruce Penitentiary on 15 March 2022, the punishment wing, which is also the home of the prison security team, was found to be completely empty; however, it is still worth discussing its structure. This visit took place following a fire in the wing, which led to the death of a female inmate. This visit also revealed that the architectural structure of the cell was a determining factor in the incident.

"[...] In various reports, we have also pointed out the absolute structural inadequacy of the SEAPT B for the deprivation of liberty, especially the old space which has cells with solid sheet metal doors. The confinement space and lack of ventilation are at odds with prison architecture standards, and are also key to understanding how the situation is potentially exacerbated by the structure of this space." (MEPCT/RJ, 23/10/2019, pp. 6,8,9 and 22)

The cases presented by the unit to MEPCT-RJ revealed the disproportionate severity of the sanctions, which has been highlighted several times by the Public Defender, given that acts such as the possession of a mirror are considered as gross misconduct, despite not even being regarded as disciplinary misconduct.

We also feel that this section highlights one of the most severe solitary confinement cases in recent years. On 2 January 2023, following an alleged escape attempt from

Talavera Bruce Penitentiary, the Tactical Intervention Group carried out a general search of cells and people, including the performance of body searches. Five women detainees were identified during the process, two of which were found to be in possession of a small amount of cannabis, while the other three were identified as those who attempted to escape. Three of these inmates were sent to the Laércio Pelegrino Penitentiary, known for its prolonged isolation procedures and extremely harsh regime, with institutional practices similar to the Differentiated Disciplinary Regime (RDD), but without the same legal guarantees.

One of the women inmates who found herself in this situation told us that she had already been separated from her same-sex partner for four months as part of a disciplinary sanction, and during this time she developed a deeper state of depression. Another young woman also reported being separated from her same-sex partner and becoming a victim of harassment at SEAP-TB. These indications are a cause for serious concern given the unit's problematic history of lesbophobia, in which the separation of couples has been used as a sanction on previous occasions.

The behaviour of one of these young women when they first spoke to us was rather striking; she first arrived with great suspicion, with her head down and her hands between her back, looking at us, and promptly asked if we were "human rights" [people]. Responding rather positively, she asked to be excused, knelt down with her face against the bed and remained silent for about two minutes. When she got up, already crying, she told us how much she had asked God for "our presence", which for us is a clear sign of suffering. The way she acted was not an isolated case, since the first woman deprived of liberty that we interviewed also cried throughout the exchange, demonstrating a serious state of anguish and despair towards the regime in the unit, and emphasised the fact, several times, that she could not stand the loneliness. It is also important to mention that during a visit in May of this year, the woman inmate mentioned in the first report had returned to the same unit, telling us that she is a psychiatric patient and that she had been sent there because she had had another episode. Although she was not considered to be suffering by the health team, she tried to set herself on fire and had self-harm marks all over her arm on her first day back in the unit.

It was also found that LGBTQIAP+phobia was another contributing factor to the violence suffered by these women detainees, given that their sexual orientation was cited as a justification for the use of cellular isolation, as can be seen in the phrases that they reported hearing, such as "since you're a dyke, you want to be like a man, you'll also get the same punishment as a man".

It is also worth mentioning that all women detainees held in maximum-security cells, i.e. those who do not have contact with other women inmates due to the serious risk that they pose to their survival, live in complete solitary confinement, entitled to sunbathe at most. Another important point to note is that in SEAP-ISE and SEAP-TB, there are approximately 100 inmates per unit, and in these particular units, it is clear that the deprivation of liberty, exacerbated by inactivity and the extensive time spent by inmates in cells, has had a continuously negative impact on their mental health.

## IV. Women in a special situation of vulnerability

### Pregnant and postpartum women

In its work, MEPCT/RJ has stressed the fact that the conditions surrounding pregnancy, childbirth and the postpartum period are incompatible with the deprivation of liberty. Regardless of the progress made in creating a less hostile prison space, the Maternal and Child Unit, and the drastic reduction in the number of detained pregnant women in the state thanks to the Early Childhood Framework, these measures have still proven insufficient in preventing physical and psychological violations against this population.



The National Policy for the Care of Women Deprived of Liberty and Returning from the Prison System (PNAMPE) provides specific guidelines for pregnant women and mothers of new-borns in the prison system. In addition, Rede Cegonha (Stork Network), a universal public policy for the comprehensive care of pregnant women, women in labour, postpartum women and babies that provides access to humane and preventive care, advises that women deprived of liberty be included in this policy and cared for within the external health network, with the technical team being responsible for the area in which the unit(s) is located.

In the state of Rio de Janeiro, the law<sup>9</sup> guarantees the right to humane childbirth within the public health system, ensuring that pregnant women have the right to choose the delivery procedure and pain relief, and that the pregnant woman must be listened to during the process. Pregnant women have access to an individual birth plan and may choose to be accompanied. This right should also be accessible to women deprived of liberty.

In 2016, State Law No. 7193/2016 expressly prohibited the use of handcuffs or any means of restraint on inmates in labour. This triumph was achieved thanks to the significant pressure that civil society placed on the State Legislative Assembly leading to the subsequent discontinuation of one of the most brutal forms of obstetric violence. This practice was also prohibited across Brazil through Federal Law No. 13,434/2017, which amended the Criminal Procedure Code.

In 2018, MEPCT/RJ observed a severe cycle of obstetric violence against women in prison: they were placed in cells in a deplorable condition, they were provided with a bell so that they could call for help when giving birth, and they were handcuffed while being escorted in cars that were completely inadequate. In hospital, they were often humiliated and mistreated. There are reports of women being forced to crawl in order to drink directly from the tap, of medical staff abandoning these women at the time of delivery, of handcuffs only being removed when the baby was delivered, of the presence of a prison officer with a rifle in the delivery room, and of these women being separated from their newborn baby on their return to the prison unit.

These findings led to the opening of a civil enquiry into the situation of pregnant and postpartum women in prison and impelled the Working Group on Women and Girls Deprived of Liberty of the State Committee to Prevent and Combat Torture to start drawing up a flow chart detailing the care procedure to be followed for pregnant women, women in labour and postpartum women, in consultation with the Doulas Association.

The adoption of these measures helped bring about significant changes, such as the provision of a room for prenatal examinations within the unit, transfer to the Maternal and Child Unit from the seventh month of pregnancy onwards and the provision of a prison primary care team for the women-only units.

With regard to the childbirth care procedure, it has been established that the woman inmate must inform the health team of the onset of labour so that they can provide the initially required care by referring her to a primary care unit, and then, following an initial screening, proceed by transferring her to hospital. These journeys are carried out by the SOE, and there are reports from women detainees of both the use and non-use of handcuffs in such circumstances. According to reports given by postpartum women to MEPCT/RJ, hospital treatment has improved. One woman even reported that one of the hospital's health professionals stopped SOE officers from assaulting her and also requested that her handcuffs be removed during labour.

However, MEPCT/RJ still receives reports of harassment by prison staff assigned to the primary care unit. In 2021, the mechanism was informed about restricted access to nutrition and unpleasant and humiliating practices, including moral offences (e.g.: "she has a lot of children, so if you touch her you'll get pregnant", "he must have

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<sup>9</sup> State Law No. 7.191/2016.

been mad to get you pregnant"). As for health issues and prenatal care, the organisation was also alerted to the high incidence of mother-to-baby syphilis contamination. However, we were also informed that pregnant women are able to access treatment as soon as the infection is identified, which allows babies to be born without the potential after-effects of the disease.

Since then, discussions and negotiations have continued among the Working Group on Women and Girls Deprived of Liberty, composed of the MEPCT/RJ, the Public Prosecutor's Office, the Public Defender's Office, the Secretariat for Prison Administration, the State Secretariat for Health and the Municipal Secretariat for Health of Rio de Janeiro. The Municipal Secretary has updated the flow chart detailing the care procedure to be followed, which includes detained pregnant women in the Rede Cegonha (Stork Network: a public policy on the care of all pregnant women in the municipality. It also includes a concept provided for in this policy: the linking visit, i.e. a visit to the maternity hospital in order to get acquainted and ask questions. In addition, this policy states that these women will be transferred to the Albert Schweitzer Hospital in the Stork Network's dedicated ambulance. It is also worth mentioning that this hospital was chosen specifically for the delivery procedure because it is capable of handling both routine and highly complex deliveries, ensuring the most comprehensive care possible for pregnant women. Moreover, the flow chart mentioned above, which was renamed as "Guidelines for the Prevention of Violence and Guaranteeing the Rights of Pregnant Women, Women in Labour and Postpartum Women Deprived of Liberty"<sup>10</sup> was developed collectively by this working group and published as a joint resolution regarding the prevention of any form of torture or ill-treatment of this population.

## V. Alternatives to detention

### **Good practice: Legal Framework for Early Childhood as an important step towards reducing female incarceration**

The amendment to article 318 of the Criminal Procedure Code by the law establishing the Legal Framework for Early Childhood was an important step towards reducing the incarceration of women in Brazil. It stipulates that women with children up to 12 years old or with disabilities should have their pre-trial detention replaced by house arrest, except in cases of crimes involving violence or serious threats towards the person or against their children. In February 2018, the Supreme Court granted the collective Habeas Corpus 143.641 with minister Ricardo Lewandowski as rapporteur, guaranteeing house arrest within 60 days for all pregnant women and mothers of children up to 12 years old who were held in pre-trial detention, except for women held in pre-trial detention for crimes involving serious violence or threats, crimes involving their children and exceptional circumstances that must be substantiated. Although the limitation laid down in the ruling is arbitrary and violates the right to the presumption of innocence for the detained women who are not eligible for house arrest under such legal act, in theory the vast majority of women deprived of liberty who are accused of drug trafficking would benefit from the measure.

However, owing to the loophole in the court ruling, the Courts of Justice have shown a certain reticence towards applying the provisions of the Early Childhood Framework. Pregnant women and mothers are constantly denied their freedom, with the following justifications being provided: a lack of proof of residence, children being in the care of grandparents, lack of evidence of the woman's indispensability with regard to looking after her children and the extent of the danger posed by the defendant, among others. All these justifications subvert both the legislation and the Supreme Court ruling,

<sup>10</sup> Accessed at: <https://drive.google.com/drive/folders/OBBylgDzCTzaAEUFpSOV91N0xmR1k?resourcekey=0-OGSzn0ipM6s1Q5E1TskGpw>

rendering both texts ineffective in practice.

On 24 October 2018, the same minister extended the previous ruling, clarifying that it applies to women whose sentences have not been transited in rem judicatam and pointing out that women detained for drug trafficking should be covered by habeas corpus.

## VI. Other relevant information from the LPM on women in prison

- + [Women, girls and the deprivation of liberty in Rio de Janeiro, State Mechanism for the Prevention of Torture of Rio de Janeiro](#)
- + ["Being put in your place as a detainee", Human Rights Violations of Girls and Women Deprived of Liberty in Rio de Janeiro.](#)
- + [Report on Regular Inspections of the Units of the Prison and Socio-educational and Prison Systems of the State of Rio de Janeiro, State Mechanism for the Prevention of Torture of Rio de Janeiro and the Federal National Preventive Mechanism](#)
- + [Inspection Report of Frederico Marques Public Prison, State Mechanism for the Prevention of Torture and Federal National Preventive Mechanism](#)

This report is part of the Global NPM report on Women in Prison.

Access the full report here: [www.apt.ch/xxxxxx](http://www.apt.ch/xxxxxx)