

São Paulo, March 12th, 2013.

**Mr. Emilio Álvarez Icasa**  
**Executive Secretary**  
**Inter-American Commission on Human Rights**  
**Organization of American States**  
**1889 F Street, NW**  
**Washington, DC 20006**

**Re: Thematic Hearing on Human Rights and Solitary Confinement in the Americas**

**Solitary confinement in Brazil: Special Disciplinary System**

Dear Secretary,

The first Special Disciplinary System that officially emerged in Brazil was created in 2001, not long after the massive prison revolt that erupted in the state of São Paulo in February of that year. This revolt occurred simultaneously in 29 prison facilities and involved nearly 28,000 prisoners. The uprising was coordinated on a scale never before seen, and it publicly exposed, for the first time, the degree of organization between prisoners from different prisons.

Nearly 3 months after the event, the São Paulo Prison Administration Department (“SAP”) published “SAP Resolution 26”, creating the brand new Special Disciplinary System (“RDD”). The system consists of isolation of the detainee for 180 days upon first offense and for 360 days for subsequent offenses. In July 2002, “SAP Resolution 49” was published, restricting visitation rights and interviews with lawyers.

Given the context presented above, we can see that the creation of this system was intended to isolate the leaders of criminal organizations, in order to disrupt and weaken them. In this sense, the RDD has always been viewed as a means of controlling prisoners who have been sentenced to long prison terms – i.e., supposedly major criminals – and as such have “*nothing to lose*”.

Therefore, the political discourse on the topic claims that this is the only way to disrupt the big criminal organizations.

Also in 2001, after major repercussions following the events in São Paulo, Bill No. 5.073/01 to establish the RDD on a federal level began its passage through the national Congress, with urgent status. Federal Law No. 10.792/2003 was approved and promulgated in just 2 years, making alterations to the Criminal Enforcement Law (Federal Law No. 7210/1984) and introducing the Special Disciplinary System on a national level.

**The RDD established by Federal Law included aspects of the system in place in São Paulo, but it also went a step further. Today, all such systems in Brazil follow the rules set by this law:**

- **Duration of up to three hundred and sixty days, a punishment that may be repeated upon subsequent serious offenses, up to a limit of one sixth of the length of the sentence;**
- **Confinement in an individual cell;**
- **Weekly visits by two people, not including children, for a two-hour duration;**  
**and**
- **Right to leave the cell to spend 2 hours each day outside.**

This system may be imposed on pre-trial or convicted prisoners who are accused of committing a premeditated crime while imprisoned, or when they have committed any act that could give rise to subversion of internal order and discipline.

In addition to these hypotheses, any prisoner who poses a high risk to the order and security of the prison or of society may also be put in RDD confinement. Finally, prisoners suspected of involvement or participation in criminal organizations or gangs may also be subject to this system.

One of the most blatant illegalities of RDD is the absence of an adversarial process for it to be imposed. All that it needed is for the criminal enforcement court to consult the Public Prosecutor's Office for an opinion, but the same opportunity is not available to the prisoner's lawyer.

**In the state of São Paulo, there are currently 23 detainees being held in RDD. Six of them are in confinement for at least 360 days, another six for 240 days, nine for 180 days and two for 90 days. As we can see, the average length of confinement is an unbelievable 234 days per prisoner<sup>1</sup>!**

There is just one general medical practitioner, working a twenty-hour week, available to treat all these prisoners. Additionally, 3 psychologists, each working a thirty-hour week, are also available. No specific health policy exists to treat the physical and mental health of these prisoners.

In 2004 the National Criminal and Prison Policy Council prepared a report on the federal law that created the RDD and concluded that: "given the conflict between the rules instituted by Law No. 10.792/03 pertaining to the Special Disciplinary System and those contained in the Brazilian Constitution, in International Human Rights Treaties and in the United Nations Standard Minimum Rules for the Treatment of Prisoners, the new system is found to be incompatible in several key ways, such as the failure to guarantee the sanity of the prisoner and the excessive duration of the confinement, which implies a violation of the prohibition on cruel, inhuman or degrading punishment or treatment established in the aforementioned instruments. Moreover, the lack of any clear classification of the offending behaviors or any correspondence between the alleged disciplinary offense that is committed and the resulting punishment reveal that the RDD does not possess the legal nature of an administrative penalty, but is instead an

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<sup>1</sup> All this information was obtained by Conectas Human Rights through the Freedom of Information Law (Federal Law No. 12.527/11), since it is not available to the general public.

attempt to segregate prisoners from the rest of the prison population, in conditions that are not permitted by law.”

In 2008, the Federal Council of the Brazilian Bar Association filed a case in the Federal Supreme Court calling for Federal Law No. 10.792/2003 to be declared unconstitutional, since it violates due process and the right to an adversarial process and a full defense. Indeed, all that is required for a prisoner to be held in RDD is a request by the prison administration and an order from the judge – there is no legal process, nor any proceedings.

Furthermore, it is an affront to the dignity of the human person and a violation of the ban on torture, cruel punishment and degrading treatment. The prisoner remains isolated and incommunicado, with strict limitations on visitors. It is also an affront to the constitutional provision according to which “the sentence shall be served in separate establishments, depending on the nature of the offense, the age and the sex of the convict” – the type of confinement established by the RDD is not authorized by the Brazilian Constitution.

In fact, the Special Disciplinary System constitutes cruel and inhuman punishment, since it imposes on a given category of individuals an intense suffering for a prolonged period. This type of confinement has severe psychological consequences and is a genuine violation of the physical and psychic integrity of the prisoner. These human rights violations are unacceptable and are in breach of international norms as well as the Brazilian Constitution and the Criminal Enforcement Law.

Furthermore, experts who have studied prisoners isolated in individual cells nearly all day long, with a minimal amount of interaction with the environment and minimal opportunity for social interaction, attest that prisoners can develop severe psychiatric disorders. Isolation can lead to the exacerbation of pre-existing disorders, but it can also cause people with no previous psychiatric condition to present symptoms of a disorder.

If this were not bad enough, people who have been subjected to this type of extreme confinement continue to present severe symptoms even after their time in isolation is over, such as intolerance of social interaction and difficulties reintegrating into society.

The Brazilian Constitution establishes that nobody shall be submitted to torture, nor to inhuman or degrading treatment<sup>2</sup>, and it considers the practice of torture or any neglectful conduct that could have prevented torture from occurring to be a non-bailable crime that is not subject to clemency or pardon.<sup>3</sup> Moreover, it expressly forbids the application of cruel punishments<sup>4</sup>, while also guaranteeing respect for the moral and physical integrity of prisoners<sup>5</sup>.

Furthermore, Brazil has a federal law that deals specifically with the prohibition of torture (Law No. 9.455/97) and the country is also a signatory to numerous treaties that expressly ban torture: (i) Convention against Torture and Other Cruel or Inhuman Treatment or Degrading Punishments, of 1984 – ratified by Brazil in 1991; (ii) Optional Protocol to the Convention against Torture and Other Cruel or Inhuman Treatment or Degrading Punishments, in effect in the country since 2007<sup>6</sup>; (iii) Inter-American Convention to Prevent and Punish Torture, of 1985 – ratified by Brazil in 1989.

In 2009, the UN Committee against Torture – the official body created by the Convention against Torture and Other Cruel or Inhuman Treatment or Degrading Punishments ratified by Brazil – in its report produced after a visit to Brazil, expressed its deep concern with the Special Disciplinary System, mentioning this institution several times in the report. In addition, the committee recommended that Brazil review its RDD policy and stressed that prolonged isolation may amount to torture.<sup>7</sup>

Finally, it is worth pointing out that Brazil's RDD was expressly condemned in the interim report of the Special Rapporteur on Torture as a form of solitary confinement akin to torture<sup>8</sup>.

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<sup>2</sup> Article 5, III, Brazilian Constitution.

<sup>3</sup> Article 5, XLIII, Brazilian Constitution.

<sup>4</sup> Article 5, XLVIII, Brazilian Constitution.

<sup>5</sup> Article 5, XLIX, Brazilian Constitution.

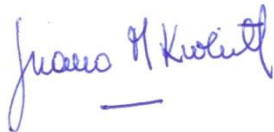
<sup>6</sup> Brazil ratified the OPCAT on December 18, 2002. It deposited its instrument of ratification on January 11, 2007.

<sup>7</sup> "The State party should review the disciplinary policy regimes for detainees (RDD/RDE) currently being implemented. The State party is reminded that prolonged isolation may amount to torture". U.N. Committee Against Torture. Report on Brazil produced by the committee under article 20 of the Convention and reply from the government of Brazil. CAT/C/39/2."

<sup>8</sup> "States around the world continue to use solitary confinement extensively (see A/63/175, p. 78). In some countries, the use of Super Maximum Security Prisons to impose solitary confinement as a normal, rather than an "exceptional", practice for inmates is considered problematic. (...) For example, in Brazil,

The case challenging the legality and constitutionality of the Special Disciplinary System has not yet been heard by the Federal Supreme Court and no date has yet been set for this to occur.

Your faithfully,



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Law 10.792 of 2003, amending the existing “Law of Penal Execution”, contemplates a “differentiated” disciplinary regime in an individual cell for up to 360 days, without prejudice to extensions of similar length for new offences and up to one sixth of the prison term.”