

JOINT REPORT
MONITORING

HUMAN RIGHTS





1. INTRODUCTION





This joint human rights monitoring report has been prepared in accordance with the constitutional role of the Public Defenders' Office to promote human rights, offer legal guidance, and ensure complete and free legal assistance to individuals and groups in vulnerable situations.

As a result of the anti-democratic riots that took place on the 8th and 9th of January 2023, about 1,418 individuals were arrested, including individuals apprehended in flagrante delicto at Praça dos Três Poderes (Three Powers Square), and others who occupied an area facing the Army Headquarters in Brasília¹.

As stated in Item 2 of the operative part of the decision recorded in Inquiry No. 4,879/DF, which is presently pending before the Federal Supreme Court, the Justice Rappourter of the case determined:

2) EVICTION AND COMPLETE DISSOLUTION within 24 hours of the encampments located in the vicinity of the Headquarters and other military installations, which have been used for the organisation of the anti-democratic riots, and apprehension of all individuals involved in flagrante delicto for the offences outlined in Articles 2, 3, 5 and 6 (terrorist acts, including preparatory actions) of Law 13,260 of the 16th of March 2016, and in Articles 288 (criminal association), 359-L (violent disruption of the Democratic Rule of Law) and 359-M (coup d'état), 147 (threat), 147-A, Paragraph 1, III (persecution), 286 (incitement to crime). (g.n.)

As a result of the decision, in addition to the individuals who had already been arrested in flagrante delicto, approximately 1,200 people were transported to the National Police Academy, where hearings and the processing of the arrests would take place.

Following this procedure, the examination proceedings at the Forensic Medicine Institute (IML) were carried out, and with the assistance of the Civil Police, the detainees were transferred to the Papuda Penitentiary Complex in Brasília, in the Federal District. The male detainees were sent to the Provisional Detention Centre II, while the female detainees were housed at the Women's Prison of the Federal District.

¹ Available at <https://g1.globo.com/df/distrito-federal/noticia/2023/01/12/bolsonaristas-radicaais-presos-em-brasilia-sao-vacinados-contracovid-19-na-penitenciaria-da-papuda.ghtml>. Accessed on 01.13.2023.



Considering these events and given the high demand for legal assistance and the risk of overburdening the Federal District prison system, the Federal Public Defenders' Office (DPU) and the Federal District Public Defender's Office (DPDF) organised meetings with several institutions. They also conducted inspections at places of deprivation of liberty and mobilised public defenders to oversee custody hearings. Based on the data and information obtained, the Defenders' Offices also took legal measures before the Federal Supreme Court and the Department of Corrections and Rehabilitation of the Federal District.

Below, we provide a concise chronological account of the measures taken.



2. INSPECTION PROCEDURES





2.1. National Police Academy, 09/01/2023

On the 9th of January 2023, when the first convoys with detained individuals arrived at the National Police Academy (ANP), representatives of the Federal Public Defenders' Office (DPU) visited the location to engage in discussions with police authorities about the flow of hearings and the drafting of arrests in flagrante delicto. Additionally, they assessed the conditions of the detained individuals, notably regarding medical assistance, meals, access to information, etc.

Several buses were parked in the ANP yard, each containing approximately 40 individuals. **No one was restrained in handcuffs, all individuals had access to mobile phones and were able to communicate with each other, and there were staff members and ambulance teams available to provide medical care.**

In discussions with Chief Officer Negrais, who was responsible for coordinating the work of the Federal Police, it was observed that hearings would take place in ANP rooms arranged for 20 chief officers and clerks from the Federal Police to work simultaneously. Subsequently, after the hearings, the detained individuals would be referred to the Forensic Medicine Institute for routine medical examinations. Afterwards, it was the responsibility of the Civil Police of the Federal District to escort the arrested individuals to the prison facilities where they would enter the correctional system.

During the mission, it was observed that individuals had the opportunity to consult with retained lawyers in advance, who were also allowed to attend the hearings of the Federal Police.

Following this, efforts commenced to execute the court order for the arrest of those who were allegedly in the encampments near the Headquarters and other military facilities for having engaged in the anti-democratic riots.



2.2. Secretariat of Penitentiary Administration, 10/01/2023

On the 10th of January (Tuesday), in a joint meeting with the Federal Public Defender's Office and the Federal District Public Defender's Office, the Secretariat of Penitentiary Administration of the Federal District (SEAPE-DF), represented by Secretary Wenderson Souza e Teles and his team, pointed out that they had received approximately 232 male and 119 female detainees as a result of the anti-democratic riots since Sunday.

They estimated an **increase of approximately 10% in the prison population in the Federal District**. They reported that, as part of contingency measures, they had reactivated blocks, acquired mattresses, and secured sufficient food for the detained individuals. They also arranged doctors to provide medical care at an average rate of 60 people per hour at the IML (Forensic Medicine Facility).

According to SEAPE, meals for the detainees was ensured on Monday by the Secretariat of Social Development. Starting from the 10th of January, SEAPE would be responsible for providing food to the individuals detained at the Federal Police Academy.

The Secretariat pointed out that about **500 individuals had been released by the Federal Police for humanitarian reasons**, including fathers and mothers with children, older adults, and those with comorbidities. The Secretariat pointed out that they had reactivated Blocks IV and VI of the Provisional Detention Centre (CDP) II, and Block IV of CDP I was allocated for the potential relocation of female inmates from the Women's Prison. It was clarified that blocks IV and VI of CDP II were accommodating male detainees, and it was possible to open two additional blocks if required. The Secretariat confirmed that Individuals detained for the anti-democratic riots were being held separately from those previously in the prison system.

When asked about the co-habitation of female and male detainees within the same prison unit, they answered that the judge of the Corrections and Rehabilitation Centre had authorised such an arrangement in Case 0400061-70.2023.8.07.0015. This decision raised significant concern for the Public Defenders' Offices, who believed that **a more suitable alternative would be to release women under the semi-open regime, allowing them to work in day-release jobs while being monitored electronically. About 85 women were found in this situation.**

Regarding electronic monitoring, SEAPE reported that all of them would



be covered under the current contract. However, there were only 200 available in stock, and it would take approximately 10 days for them to become operational. They also expressed concerns about the cases involving incarcerated individuals returning to their states of origin. They reported that 85 female inmates are currently in the semi-open regime with day-release jobs, which could theoretically be monitored electronically, which could potentially create 120 openings in the prison system.

Finally, they committed to responding quickly to the following information requested by the Public Defenders' Offices:

- a) The number of pregnant women, lactating women, mothers, or individuals responsible for children up to 12 years old or individuals with disabilities, as well as older adults, indigenous individuals, individuals with disabilities, and those who fall into the high-risk group. This information should cover both the current prison population and the individuals detained by the Federal Police in the recent Operation.
- b) The occupancy capacity of CDPs I and II, as well as that of other facilities within the Prison Complex, and the final number of individuals to be incarcerated in each establishment.
- c) Information on individuals in pre-trial detention for more than 90 days within the Prison Complex.
- d) Information on individuals in pre-trial detention facing charges related to nonviolent crimes or crimes without the immediate threat force.
- e) An assessment of the material conditions within the Prison Complex and the capacity of the Secretariat of Penitentiary Administration to ensure the incarcerated population's rights, such as access to sufficient food and clothing, medical assistance, outpatient treatment, access to the infirmary, adequate spaces for rest and sleep, access to sunlight, and other rights as outlined in the Criminal Enforcement Law and district regulations.
- f) Information on the allocation of female detainees in CDP I, with the reasoning for not placing them in the Women's Prison of the Federal District.
- g) A complete list of the names of individuals who have entered the prison system as of the 8th of January 2023.



On the 11th of January 2023, SEAPE-DF presented a partial response to the questions, pointing out that CDPs I and II have **980 openings** each, and that the Women's Prison of the Federal District (PFDF) has **1,028 openings**.

They reported that on the 11th of January 2023, the number of individuals in custody was as follows: **1,361 individuals** in CDP I; **1,577 individuals** in CDP II; and **923 individuals** in the PFDF. In their response, SEAPE also noted that “when considering the existing physical limitations of the Women’s Prison of the Federal District, the VEP/TJDFT authorised, as an exceptional measure, the allocation of female inmates in Block VI of CDP I, provided that they remained completely separated from the male prison population (...)”. It was also mentioned that this use of the block would only occur if the structural and operational capacity of the PFDF was exceeded, which at that time could accommodate a maximum of 300 more women.

Regarding the material conditions of the units, SEAPE stated that every effort was being made to provide material assistance to incarcerated individuals by providing personal and collective hygiene items, mattresses, blankets, sandals, and other necessities. They also reported that each prison would have a Basic Health Care Team (UBS Prisional), which had been reinforced to meet the high demand.

2.3. Inspection at the National Academy of the Federal Police - Rodovia DF-001, KM 02, Setor Habitacional, Taquari - Lago Norte - 10/01/2023, 12:00

The Public Defenders' team was received by Federal Chief Officer Henrique. At first, the representatives of the Public Defenders' Offices gathered in a room and then visited the gymnasium.

Individuals detained in the events on the 8th of January (Sunday), as well as those brought from the encampment in front of the Army HQ on the 9th of January (Monday), were housed at the National Police Academy (ANP).

According to the police authority, individuals over 60, those with comorbidities, pregnant women, and parents accompanying minor children were released between Monday and early Tuesday. **Subsequently, it was determined that a total of 599 individuals were released for these reasons².**

Individuals with health complications were transported to hospitals and subsequently released. These individuals were identified and then granted release.

Others underwent screening procedures, hearings, and searches before

² Available at <https://www.correiobraziliense.com.br/politica/2023/01/5065203-pf-libera-599-manifestantes-de-atos-terroristas-por-questoes-humanitarias.html>. Accessed on 13.01.2023.



being taken into custody. The Civil Police of the Federal District was responsible for their transportation, which was carried out by bus.

No children or teenagers were present at the ANP on the day of the meeting, and the confiscation of mobile phones happened only after the hearings and the preparation of the Report of Detention in Flagrante Delicto.

The chief officer denied any reports of deaths on the premises, dismissing them as being fake news. Individuals escorted to the ANP remained in possession of their phones until the screening and hearings conducted by the police authority.

Some individuals refused to be heard and identified. The presence of older individuals still on the premises could be attributed to this, as well as others who were with family members.

Three meals were provided, including breakfast, lunch and dinner, and water was made readily available. According to the chief officer, the food was supplied by DEPEN.

At the time of the visit, approximately 700 individuals remained detained at the ANP. According to the police authority, an average of 30 people were interviewed per hour, with the plan being to transfer all individuals to the prison system by Wednesday.

Following the meeting with the Federal Chief Officer, the public defenders visited the place where individuals were being held. Most were in the gymnasium, but some were in their own tents set up on the lawn in the surroundings of the gym. None of these individuals were subjected to handcuffing.

Showers were not available, which was one of the most pressing issues requiring immediate attention in resolving the situation of these individuals.

2.4. Ministry of Human Rights - 10/01/2023, 13:00

The meeting was chaired by the National Human Rights Ombudsman, Bruno Renato Teixeira.

The Minister of Human Rights and Citizenship, Silvio Almeida, was in attendance and opened the meeting, which also included the team from the Ombudsman's Office the Office of the Undersecretary of Human Rights and Ethno racial Equity of the State Secretariat of Justice of the Federal District, and experts



from the National Mechanism for Preventing and Combating Torture (NMPCT).

According to Sueli, the Undersecretary of Human Rights, two teenagers were present until the night of the 9th of January 2023, but they had been released with their families.

Child Protective Services, the Secretariat of Children and Adolescents, and the Secretariat for Elders were also notified. The Secretariat of Social Development (SEDES) provided food on the 9th of January.

SEDES also worked on ensuring transportation for those individuals who were unable to return at their own expense. Psychologists and social workers were also assigned to provide care for the population.

2.5. Inspection in CDP II - Blocks IV and VI - 10/01/2023, 15:00

The DPDF and DPU representatives were accompanied by three experts from the National Mechanism for Preventing and Combating Torture.

Upon arrival at the unit, the teams were welcomed by Deputy Director Barreiro. During the initial meeting, they inquired about the structure of the unit to accommodate individuals detained during the events of the 8th and 9th of January 2023.

In view of the large number of incarcerated individuals, an unprecedented number, SEAPE set up a task force to receive them. In fact, civil servants from other units and areas of the Secretariat were seconded to manage the influx of people expected at CDP.

The person in charge of the prison unit stated that, since Sunday, the 8th of January, the unit had been receiving people who had been detained and that, up until that moment, 287 inmates had already been accommodated in the unit. All of these individuals in custody were distributed in Block VI of the unit, which had previously been deactivated. At the time of our visit, a bus was entering the place, transporting about 43 individuals deprived of their liberty. These individuals, as well as those expected to arrive subsequently, would be assigned to Block IV, which had also been deactivated.

The two blocks have a combined capacity to house 196 people. However, each cell, designed for eight occupants, currently accommodates twelve individuals.



The official also informed that they anticipated the arrival of at least 400 detained individuals. **Therefore, the number of available spaces in Block IV was manifestly insufficient to house the expected number of individuals.**

There is a third deactivated block in CDP II, which was being used as a warehouse. Management reported that in CDP I, which is next door, there is also an empty block. However, it was informed that, in a meeting with the Head Judge of the Department of Corrections and Rehabilitation, the State Federal Prosecution Service and SEAPE, it had been determined that the block would be reserved for women who could not be accommodated in the Women's Prison of the Federal District. It was also reported that there were other deactivated blocks in that unit as well.

Although no people who identify themselves as LGBTQIA+ were found, the civil servant pointed out that there is a specific block intended to receive this group.

He informed that everyone who arrived was taking a rapid test for Covid-19, and that, among them, three tested positive and were isolated. It was also reported that the unit would provide vaccination for all people, according to the facility's protocol.

He also pointed out that the unit had 900 mattresses available for distribution. He reported that all individuals received personal hygiene kits and cleaning products on arrival.

Regarding food, we were informed that an increase in the number of meals was made possible by the supply company, that all people received four meals a day, and that, should an increase be required, the company would provide that.

He reported that 97% of the individuals who arrived were not from the Federal District and came from other states.

Personal belongings were seized, inventoried and stored, but cash values were left in the possession of the individuals. The Prison Administration mentioned, for example, the case of a person who was in possession of BRL 3,000.00 in cash. Another citizen, identified as a retired civilian police officer, carried a safe with a gun.

The personal belongings were allocated in a disused bathroom in the sunbathing area because, according to the Prison Administration, there was no other



suitable place to store the large volume of belongings that the detainees had brought. Tags were used to identify their owners. According to the Prison Administration, the belongings had yet to be listed and described to facilitate their return.

During the visit to Block VI, which was already occupied, we had the opportunity to quickly interview some individuals held in custody. There were 12 people in each cell, and all of them had mattresses. Each cell has four bunk beds with two beds each, so four people slept on the floor.

Each cell had a sink, a shower with cold water, and a toilet. The bathroom is in sight of those who walk through the hallway, and there is no privacy to use it. The cell doors are plated, and there are some vents, which provide lighting and moderate ventilation on site.

Most of the individuals reported that they had received a hygiene kit, but among the people who had arrived recently, some had yet to receive these items. Some individuals even reported that they were not given bed linen and towels. They also highlighted the need for a waste bag in the cells.

Some of the detainees were wearing the unit's standard clothes, white shorts and shirts, while others still wore their own clothes. The civil servant reported that they were providing clothes for everyone.

Unanimously, the individuals held in custody reported that they were treated in a respectful and dignified manner in the unit by the Prison Officers, as well as by the Civil Police. Individuals reported that they had undergone medical care, but some were still without access to long-term medication, such as medication for high blood pressure or cardiovascular diseases.

During the visit, we observed two moments in which medical staff provided health care.

Among the detainees, we identified some reserve military personnel.

During the interviews, we found that the greatest claim of the individuals held in custody was contacting family, as not all were able to do so. In fact, some individuals also had mothers and partners in detention and, until that moment, had no information about their whereabouts (still in custody or released).

Most individuals have no private legal assistance. Some reported that they had not yet been able to contact their lawyers.



We also went to Block IV, where more individuals expected to arrive at the unit would be held. The block was still empty, and the people who had just arrived in the unit were in the sunbathing courtyard undergoing a screening procedure. This block has the same structure as Block VI, and its cells are in good condition.

Until that moment, no one had gone through a preliminary hearing. The interviewees had been detained on Sunday and had been in the unit since the afternoon of the 9th of January. They reported they undergone forensic examination.

In conclusion, it was evident that the unit lacks the capacity to accommodate all the detained individuals, as there is still a large group awaiting to be booked and transferred to the facility.

It should be noted that the total number of arrested individuals, approximately 1,500, constitutes roughly 10% of the total prison population of the Federal District.

In this sense, the NMPCT expressed concern about the strain that this number of detainees may place on the prison system of the Federal District, potentially impacting those who are already deprived of liberty and facing difficulties in seeking assistance. This sudden influx of detainees has undoubtedly disrupted the routine provision of criminal services, notably since the Department of Corrections and Rehabilitation's decision to suspend the preparation of sentence remission reports for 30 days.

The temporarily assigned employees will need to return to their regular duties, leaving the unit understaffed. The on-site workforce was unprepared for the unexpectedly high number of arrivals which resulted in such an extraordinary demand.

We also find the prospect of placing women in male prison units to be highly concerning, as it contradicts both the Criminal Enforcement Law and international regulations.

The following are some photographic records:





















2.6. Inspection at the Women's Prison of the Federal District, 10/01/2023, 16:30

Members of the Federal Public Defenders' Office and the Public Defender's Office in the Federal District visited the Women's Prison of the Federal District (PFD), commonly known as "Colmeia", to gather information and data on female detainees. There were concerns about prison unit overcrowding and the potential relocation of female inmates to the male prison unit.

We were met by Director Kamila Mendonça. She reported that they started receiving the first women in the early hours of Monday (81 individuals). Subsequently, they continued to receive convoys until the total number of new female inmates reached 161. She pointed out that they arrived without the prison being informed or having information about their condition; many were unaware of their destination. A few cases of COVID-19 were detected, and those infected were isolated.

They arrived with only the clothes they were wearing, often not conforming to the prison unit's standard. In most cases, they had not been able to bathe. Upon admission, they were provided with material, social, medical, and psychological assistance. There were no plans for detention hearings, and some individuals were over 60 years old. We started the inspection in the wings that were set aside exclusively for the newly arrived detainees. The wings had a good external appearance, and there were no reports of shortages of hygiene materials or food. However, we were unable to enter the premises as the cells remained open at all times, and the director considered that, if necessary, common areas could be used for night-time rest.

We spoke with detainees of different ages who had recently arrived at the facility. One of them had a shaved head and mentioned her need for cancer treatment. We requested documentation to prepare a request for release to facilitate the custody hearing. The director expressed uncertainty about the prison unit's capacity to handle an exponential increase of inmates. **She pointed out that the entire workforce needed to be mobilised to maintain the unit's normal operations and that providing legal assistance to the women were crucial.**

At the end of our visit, we discussed the possibility of returning in the coming days to assess the impact of the ongoing influx of individuals into the prison unit.

2.7. CDP II Inspection - 12/01/2023, 10:00



Teams from the DPDF (Public Defenders and Psychosocial Personnel), DPU and DPSC. We were welcomed by Deputy Director Barreiro, who explained that lawyers were allowed entry according to the following procedure: five service rooms per block, from 9:30 to 18:00, with ten lawyers visiting every 30 minutes.

The initial phase of admitting the detainees had been completed, and they had now started meeting with lawyers and distributing materials individually.

During our consultations in the cells of Wings A and B of Block VI, **we observed that the individuals in custody lacked access to direct sunlight.** The Deputy Director confirmed this, citing a shortage of staff to manage the entry and exit of inmates, as the available staff was primarily engaged in the intake and registration of individuals sent to the prison unit.

Additionally, it was observed that the number of preliminary hearings held was limited, sometimes exceeding five days from the time of arrest. Many people reported having no contact with their family, even at the time of arrest. The main demand is to contact their family members (many do not remember their relatives' phone numbers).

A lack of supply of sufficient hygiene kits for all the inmates was verified, especially soap and deodorant.

The work overload of the prison unit's employees, especially prison officers, remains.

Total inmates: **904 new inmates.** The number increased from **1,200 to 2,104 individuals**, representing an 85% increase in the prison population in CDP II.

The management stated there will be a transfer of 300 previous inmates to CDP I and that individuals that arrived on the 8th or 9th will be gathered in CDP II.

All available personnel were summoned on Sunday, supported by the employees of CDP I. They considered that the staff would be sufficient.

The Director informed that many materials were received, and there was great difficulty in sorting these materials. Personal belongings were identified and stored; cash, medication, and gold rings remained in the possession of the detainees (one of them held BRL 3,000).

White clothes were being provided. All inmates received new mattresses; hygiene kits were received and distributed gradually. Food was supplied by the Vogue company, and **there was no canteen in operation.**



The team noted **many reports of mental health issues, including depression and anxiety**. There was a cell occupied exclusively by older adults, many military personnel (including Navy officers), police officers from other states, individuals with higher education degrees who were distributed in separate cells, establishing them as Special Housing Units. No information was provided on prison transfers.

All inmates were tested for COVID upon arrival and were offered vaccination during health screening; some were vaccinated.

During the inspection, **it was observed that there was an average of 14 to 16 people per cell**. Reports were collected about the presence of many leaks in the cells of Wing A and B, Block VI, which would make it impossible to sleep when it rains.

The team was concerned about the information that the Federal Police reserved a room for collecting biological samples from the inmates upon arrival, with the purpose of identifying their genetic profile.

Regarding food, some individuals described **poor quality meals and a limited supply of fruit**, with accounts of the disposal of many meals (lunch and dinner) because they were unappetizing and poorly prepared.

Many do not have access to their long-term prescription medication. They confirmed that they had enough mattresses and there were no reports of violence, but **some reported that female correctional officers were conducting degrading searches.**

The Public Defenders and SUAP psychologists provided consultation during the interviews in the prison cells. The main orientation was regarding the dynamics, purpose, and outcome of the preliminary hearings, following the decision of Justice Alexandre de Moraes.

Another action taken was to provide advice on the legal and constitutional rights of all individuals deprived of liberty and to raise awareness of human rights, the logistical challenges faced by the prison administration due to the large number of concurrent detainees, and the need for equal treatment with previous inmates.

There were numerous statements about the challenges of contacting lawyers, and the work of the Public Defenders' Office was acknowledged and praised. A list of names and emergency measures was prepared.



2.8. Inspection at the Women's Prison of the Federal District, 01/10/2023, 16:30.

The commission consisted of Federal Public Defenders and Public Defenders of the Federal District, as well as experts from the National Mechanism for Preventing and Combating Torture. The Women's Prison of the Federal District (PFDF), also known as "Colmeia", is a medium-security prison intended for the confinement of convicts sentenced to a prison term in closed or semi-open regime, as well as individuals in provisional detention. Under exceptional circumstances, following cases previously analysed by the Corrections and Rehabilitation Centre of the Federal District, it can also receive federal provisional prisoners.

The unit was built in the 1990s, and since then, has undergone some remodelling and expansion, currently having a maximum capacity of 1,028 inmates. Due to the large number of arrests made on the 8th of January, the number of inmates is nearing overcrowding.

In an initial conversation with the General Management of the unit, we received important information regarding the situation of women who had just arrived at "Colmeia", as well as the procedures adopted to accommodate them properly. From the 10th to the 13th of January, **493 women arrived, transferred from the National Police Academy. Three of them, because they are lawyers, were transferred to a Special Housing Unit.** On the day they arrived it was found that they were unaware that they were being taken to a prison facility, as the police officers responsible for the escort did not inform them where they were being taken, only informing they were being taken to the bus station. We were able to confirm this through the statements of some of the detainees we interviewed. According to the management, **these women were severely shaken** because of the way they arrived in the unit, and due to the fact that most had never been in a prison facility before.

Considering that "Colmeia" was not prepared to receive this many women, the management had to make **some changes that impacted the routine of the inmates already serving time in the unit, such as the removal of the 17 trans women from a block to cells originally intended for conjugal visits.** This way, an average of 12 to 13 people were distributed among the cells, which have a capacity for 8 people.

The Administration has already distributed mattresses, blankets, hygiene kits containing two packs of sanitary pads and cleaning products. **Only the**



uniforms, slippers, and bedding (linen and towel) were missing, all of which are made in the sewing workshop of the unit by the inmates; and as soon as those were ready, they would be delivered to all. Four meals are served each day: breakfast (consisting of chocolate milk and bread), lunch (including a source of protein, rice, and beans), dinner (including a source of protein, rice and beans), and supper (consisting of bread and fruit). The food containers with the meal weighs 600 grams. Water for drinking and cleaning is available 24 hours through taps in the cells. **Hot showers are available in the cells, which was the subject of a complaint by the interviewees.**

Additionally, the Management pointed out that **the unit is not equipped to meet a greater health care demand, as its Health Team is currently small, and in case of a longer stay of individuals in custody in the unit, an increase in the number of workers will be necessary.** Similarly, an increase in the number of prison Officers should be considered, although the unit had already received some extra employees from other units to reinforce the shifts. It was also stated that it was challenging to extract data from the copies of the Reports of Detention in Flagrante Delicto for the individuals in custody since all had the same content typed, and the personal data was filled in manually, which made it difficult to understand the handwriting.

The Management also said that the Federal Police had been at the unit since morning collecting DNA samples³ and identifying the individuals, and that 100 of them had already gone through a preliminary hearing. Regarding the belongings of the individuals in custody, they were appropriately sorted and labelled with names, and jewellery (even wedding rings, cash, and cards) were forwarded to SEAPE. Bags, clothes and other objects are stored in a warehouse. Mobile phones were also taken to the warehouse and, so far, have not been examined.

In a conversation with the Federal Police criminal expert, she reported she had already **collected DNA samples from 150 women**, and, until that moment, only two had refused to undergo the examination. The expert also informed that she was supported by a court decision to carry out the procedure.

Subsequently, we requested access to the transgender inmates who had to be transferred from their respective wards, so that the detainees arriving could be accommodated. In conversation with the transgender women, it was clear they were

³ Available at http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/112654.htm#art4
https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/lei/112037.htm

frustrated at **being abruptly removed from their social wards, as well as having their routines disrupted, such as having their rights to sunbathing and social visitation infringed.** They find themselves distressed and anxious for being held in tiny cells, with no expectation of returning to their old living quarters.

Some reported that they had been without sunbathing for three days, and had just had that right restored the previous day, but with reduced time. **About four to five of them are held and distributed in the tiny conjugal visit cells; they even had to unclog the toilet with their hands.** They also report that they share a tight space for sleeping, since there is only one bed and the others sleep on the floor. They also complained that they do not have the right to work in the sewing workshops together with the other women, but that they would like to have another opportunity for the purpose of obtaining remission of sentence. Currently, they are only able to obtain remission through the “Ler Liberta” project and for handicrafts. They also say that they can study and have access to ENCCEJA and ENEM annually, but that currently, because they are in the conjugal visit cells **without adequate lighting in the corridor (light bulbs burned out), they cannot read the study material after 18:00.**

They reported that, with the increase in the prison population, daily sunbathing has been delayed and reduced, and that it should be 1:30 hours of sunbathing a day, which has not been occurring properly. They assert that, on the 12th of January 2023, for example, it did not happen.

They asserted that the use of intimate space was also not re-established and that transgender inmates do not have access to work like other inmates. They emphasized that the visiting rooms need to be readjusted, under the same conditions as Block A, where the individuals detained for engaging in the anti-democratic riots were being held.

Seventeen transgender women are currently in the unit, and none of them can proceed with feminizing hormone therapy, as it is difficult to have access to hormones (both in tablets and injectable), which require a prescription for purchase. They express a strong desire for medical supervision during their treatment.

Subsequently, we proceeded to the block where the individuals detained for the anti-democratic riots were being held, as their DNA samples had already been collected. We started the interviews from the furthest cells, where we heard accounts of health issues, and emotional and psychological shock due to the way they were arrested and escorted to the prison. **They said not all of them had**



received dry clothes yet (unit uniforms), slippers, and the medication that had already been requested. We identified people with health problems who need to continue taking their medication regularly, such as individuals with HIV, individuals with diabetes, heart problems, hypertension, fibromyalgia, and asthma or bronchitis. We also identified individuals with special dietary requirements, including lactose and gluten intolerance.

In general, the most significant request is for access to a lawyer or public defender, and they ask incisively if they will be released after the preliminary. **They also complain about the difficulty of not being able to make contact with their families and the delay in the delivery of the requested medication. They also complained about the rice being served raw and the beans tasting sour, stating that the food is difficult to digest.**

Complaints were registered regarding the lack of sufficient blankets (those distributed were said to be very thin, and more would be needed to keep people warm at night), the absence of bath towels, and spare underwear for menstrual hygiene. On the other hand, the female detainees reported that they are treated with respect by the Prison Officers.

During the collective assistance in the cells, guidance was provided on the dynamics, purpose, and results of the preliminary hearings, as per the decision of Justice Alexandre de Moraes.

Another action taken was to advise individuals about their legal and constitutional rights, and to raise awareness about human rights, the logistical challenge faced by the prison administration due to the large number of concurrent detainees and the need for equal treatment with previous inmates.

Additionally, in response to report that many individuals had been encouraged to hire private lawyers even when lacking the financial resources to do so, **the representatives of the Public Defenders' Offices clarified the institution's constitutional duty to provide free legal assistance.** They informed individuals that, prior to their preliminary hearings, they would have a private interview with a public defender who would provide further instruction and apply for pre-trial release or other provisional remedies alternative to imprisonment during the hearings. It was also clarified that these services could also be provided throughout the criminal proceedings.

It is worth noting that **gender inequality is also evident in the prison**



environment, with female inmates experiencing greater vulnerability than male inmates. Unlike men, who had some prison rules overlooked due to the exceptional circumstances, being allowed, for example, to wear black and even camouflaged clothing, **women reported restrictions on certain items, such as black bras. The men under custody in CDP retained possession of their cash and wedding rings, while women were deprived of all personal items.**

Due to lack of availability of uniforms, **women reported being unable to change their clothes since the moment of their arrest.** Assistance was provided to women who were using blankets to cover themselves while their clothes were washed. In cell 11, there was no shower, and in cell 13, wing A, Block VI, there was no automated toilet flush. Women used bags filled with tap water to clean themselves.

During the collective consultations, it was emphasized that the prison situation itself is a violation of human rights, and the problems reported by the recently arrived were similar to those of other inmates, especially regarding the quality of food. It was highlighted that the Unconstitutional State of Affairs of the entire Brazilian prison system was recognized by the STF. This state of affairs disproportionately violates the rights of women, the transgender population, and black individuals. Merely crossing the gate of a prison unit is enough for the incarcerated person to be subjected to an infringement of fundamental rights and to be characterized as vulnerable.

It should be mentioned that the requests made to the Judiciary Branch to grant release in the case of women in special situations (older individuals, women with disabilities, and those accompanying minor children or with people with disabilities under their guardianship or both), as well as the electronic monitoring of women in semi-open regimes and day-release jobs, were also aimed at mitigating the situation of prison violations and reducing the prison population. This is precisely to prevent some violations committed against previous female inmates, as well as the group of transgender women whose prison situation had substantially worsened, and also the women detained for engaging in the anti-democratic riots who suffer from the absence of items that should be available to all inmates.

2.9. CDP II Inspection, 13/01/2023. DNA sample collection.

Upon becoming informally aware of DNA samples being collected by



experts from the Federal Police, members of the Public Defender's Office of the Federal District visited the Provisional Detention Centre II, at 16:30 on the 13th of January 2023, to assess the situation. Upon their arrival at the Unit, they were accompanied by Legal Director Justino to meet with Federal Police expert responsible for collecting the material. The expert informed them that they **were in compliance with the decision of Justice Alexandre de Moraes. The collection process involved introducing a swab into the nose of the individual in custody and collecting fingerprints.** According to the expert, there was a consent form, and on that day, only six detained individuals refused to sign it.

Subsequently, at around 17:00, the same members of the Public Defenders' Office of the Federal District visited CDP I to assess the conditions of the detainees who were participating in preliminary hearings. **During conversations with several individuals in custody, many reported that some cells were already accommodating 22 inmates, despite only having 8 beds.** Considering that more than 95% of the detainees had residence outside the Federal District, many were anxious about their family situation as they were not entitled to a telephone call.

It was also observed that **many were still wearing the same clothes they had worn on the day of their arrest and had not received prison uniforms. There were several complaints about the supply of towels,** as inmates were having to share towels (only one towel for every two individuals).



3. FOLLOW-UP TO THE PRELIMINARY HEARINGS



Moreover, at the beginning of the week, on the 9th of January 2023, the Federal Public Defenders' Office, through DPGF Ordinance No. 38/2023, established a task force of federal public defenders to participate in preliminary hearings, provide comprehensive and free legal assistance, and inspect the prison system of the Federal District.

In total, **39 representatives were part of the team responsible for monitoring the proceedings daily**, under the coordination of the Secretariat of Actions in the Prison System and entry-level criminal defenders in Brasília/DF. The list for the extraordinary action of Federal Public Defenders in preliminary hearings was submitted to the Federal Regional Court of the 1st Region, and throughout the week, more than 1,000 Legal Aid Proceedings were initiated. Hundreds of preliminary hearings were carried out, and a communication channel was established with family members and other defenders, among other measures.

Within the scope of the Public Defenders' Office of the Federal District, preliminary hearings began under the TJDFT on the 11th of January, in the afternoon, with Judges and Public Defenders from the Preliminary Hearing Centre of the Federal District.

From the 12th to the 15th of January, this task force continued, as per Decision No. 3/2023 of the DPDF/CG. It involved the participation of **64 Public Defenders of the Federal District**, including those who effectively participated and those who were on call, working in two shifts. This was done in coordination with the Special Advisory and the Preliminary Hearing Centre of the Public Defenders' Office of the Federal District. There were also referrals to the Corrections and Rehabilitation Centre, for **healthcare, which led to the opening of requests for measures with the Department of Corrections and Rehabilitation of the Federal District, in addition to numerous calls to family members.**

During the preliminary hearings, there were actions and omissions that, to some extent, contradicted fundamental rights and guarantees. Despite the seriousness of the facts, it is in contexts such as the current one that the Democratic Rule of Law is tested to its limits to ensure fundamental rights without any form of discrimination, even to those who may have denied it.

It is crucial to remember that the objectives of the Public Defenders' Office include upholding the Democratic Rule of Law, the prevalence and effectiveness of human rights, and ensuring comprehensive defence and adversarial proceedings (Article 3-A, LC no. 80/1994).

Therefore, this monitoring aligns precisely with the constitutional duties of the institution, and based on these objectives, the Federal Public Defenders' Office



and the Public Defenders' Office of the Federal District document such violations as per their institutional duties provided for in Article 134 of the Federal Constitution, in Article 4, III, V, VII of Complementary Law no. 80/1994, Articles 261 (Paragraph 1) and 310 of the Code of Criminal Procedure, and Article 81-A of the Criminal Enforcement Law (Law No. 7.210/1984).

3.1. Violations observed

- Breach of Conventional, Legal and Jurisprudential Frameworks
 - Federal Constitution of 1988.
 - American Convention on Human Rights (San José Pact of Costa Rica).
 - International Covenant on Civil and Political Rights.
 - Code of Criminal Procedure.
 - Criminal Enforcement Law (Law 7.210/84).
 - International Parameters from Acosta Calderón v. Ecuador; Chaparro Álvarez and Lapo Iñiguez v. Ecuador; Cabrera Garcia and Montiel Flores Case v. Mexico; López Álvarez Case v. Honduras.
 - UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
 - United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules).
 - United Nations rules for the treatment of women prisoners and non-custodial measures for women offenders (Bangkok Rules).
 - Decisions of the Federal Supreme Court issued in the Argument of Noncompliance with Fundamental Precept (ADPF) 347 and Direct Action of Unconstitutionality 5240.
 - Resolution 213 of the 15th of December 2015, of the National Council of Justice.

3.1.1. Partial Delegation of Powers for Preliminary Hearings to be conducted by First-Instance Judges

As per the provisions of Article 310 of the Code of Criminal Procedure, as amended by Law 12403 of the 4th of May 2011, the Justice of the Federal Supreme Court issued a decision within the context Inquiry 4,879. This decision partially delegated jurisdiction to conduct preliminary hearings to the Judges of the Court of Justice of the Federal District and Territories and the Federal Regional Court of the 1st Region. This pertained **specifically to the formal regularity of the arrest process and legal and normative questions**. The Supreme Court retained jurisdiction over any requests made by the parties, including those relating to the provisions of Article 310, I, II and III, of the Code of Criminal Procedure, which deals



with preliminary hearings.

Regarding custody hearings, Article 7, 5, of the American Convention on Human Rights (also known as the Pact of San José of Costa Rica) determines that “*Any imprisoned or detained person shall be brought promptly before a judge or other officer authorized by law to exercise judicial power (...)*”. Similarly, Article 9, 3, of the International Covenant on Civil and Political Rights states that “*Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power (...)*”.

Brazil ratified the American Convention in 1992, promulgating it through Decree No. 678 on the 6th of November of that year. Additionally, after ratifying the International Covenant on Civil and Political Rights (ICCPR) in 1992, it was promulgated via Decree No. 592. Consequently, these normative provisions, incorporated into the Brazilian legal system via the internalization of said treaties, are in force in Brazil. While they hold a hierarchy below the Constitution, they take precedence over other legislation. This interpretation is in accordance with the jurisprudence established by the STF in Extraordinary Appeal No. 466.343/SP, with Justice Cezar Peluse serving as the Rapporteur, on the 22nd of November 2006.

It is important to note that, in view of the explicit provision in Article 310 of the Code of Criminal Procedure, mere communication of the arrest to the judge, as outlined in Article 306 of the Code of Criminal Procedure, is insufficient to satisfy the right to a preliminary hearing. The prisoner must be **physically presented and given the opportunity to address the presiding magistrate directly**. It is in this sense that the jurisprudence of the Inter-American Court of Human Right has developed. In the case of **Acosta Calderón vs Ecuador**, it was held that “*the mere knowledge by a judge that a person is detained does not fulfil this guarantee, as the prisoner must appear in person and provide their statement before the judge*”³. Following the same interpretation, the Inter-American Court pointed out in the case of **Chaparro Álvarez and Lapo Iñiguez vs Ecuador**, that “*to meet the requirement of Article 7.5 of ‘being brought’ before a judge, the judicial authority must personally hear the prisoner and consider all the explanations they provide, to decide whether to proceed with release or maintain the deprivation of liberty*”.

The Federal Supreme Court itself, in its consideration of the unconstitutional state of affairs of the Brazilian prison system in a decision issued in **Noncompliance with Fundamental Precept (ADPF) No. 347**, established the obligation to present the arrested person to the competent judicial authority. Additionally, in a decision rendered in **Direct Action of Unconstitutionality No.**



5240, it affirmed the constitutionality of the practice by the Courts of presenting the arrested person to the competent judicial authority.

The National Council of Justice, in turn, through **Resolution No. 213** of the 15th of December 2015, determines that *“every person arrested in the act of committing a criminal offence, regardless of the motive or nature of the act, must be brought before the competent judicial authority within 24 hours of the reported act, and be heard about the circumstances surrounding their arrest or apprehension”*.

There is no difficulty in understanding the meaning and purpose of preliminary hearings. **They simply ensure a direct interaction between the judge and the individual under investigation, mediated by the adversarial system, guaranteed by the presence of the Federal Prosecution Services and the defence.** This provides an opportunity, firstly, to prevent and, if necessary, to halt acts of torture or ill-treatment of the individual under investigation and, secondly, to promote a democratic forum for discussing the legality and the need of detention.

Upon reading Article 310 of the Code of Criminal Procedure, it becomes evident that the judge presiding over the preliminary hearing, primarily, determines the legality of the arrest, grants release pending trial, or converts the flagrant arrest into pre-trial detention, provided that the legal requirements are met.

In fact, by "dismembering", so to speak, the powers related to the preliminary hearing, **the appraisal of any requests made by the parties to the auxiliary courts was restricted, including those related to the object of the preliminary hearing itself.** Furthermore, the judicial authority that will actually determine the unlawfulness of the arrest or the conversion of a flagrant arrest into pre-trial detention (which, in this case, will be the Rapporteur of the Inquiry), **will not have had any contact with the person in custody. Additionally, there are no time constraints for analysing release requests made by the defence**, rendering the entire process devoid of substance.

It should be noted that the requirement for immediate release following the assessment of the unlawfulness of an arrest is enshrined in the Federal Constitution. Article 5, Item LXV, explicitly states that "courts shall promptly release individuals who have been unlawfully arrested".

In addition to the aforementioned regulations, which hold a status below that of the Constitution but take precedence over other legislation, present in the American Convention on Human Rights and the International Covenant on Civil and Political Rights, the decision rendered is also in opposition to the jurisprudence of the Inter-American Court of Human Rights and the jurisprudence of the Supreme Court itself in terms of concentrated constitutional control.

The decision also contravenes Article 5, Item LXV of the Constitution,



the letter of Article 310 of the Code of Criminal Procedure, and negates the provisions outlined in Resolution No. 213, of the 15th of December 2015, by the National Council of Justice. Consequently, this measure undermines a swift mechanism for halting and rectifying unlawful arrests in flagrante delicto. **The preliminary hearing is rendered ineffectual and loses its efficacy in safeguarding the rights of detained individuals.**

3.1.2. Retention of individuals in custody even after the prosecution has requested their release

Law No. 13.964/2019, through the removal of the expression "ex officio" from Article 282, Paragraphs 2 and 4, and Article 311, all of the Code of Criminal Procedure, **categorically prohibited pre-trial detention or the imposition of precautionary measures other than imprisonment, without the prior request of the Federal Prosecution Services, whether during a criminal investigation or legal proceedings.** Thus, based on the current legal framework, the court's *ex officio* actions concerning precautionary deprivation of liberty are no longer lawful.

It should also be noted that the Federal Constitution, by promoting the separation of the functions of prosecution and trial, adopts the accusatory system of criminal prosecution. This system ensures that no one will be deprived of liberty or their assets without due process, as provided for in Article 5, LIV. From this perspective, **when the accusatory body, during the preliminary hearing, requests the individual's release, with or without the application of precautionary measures other than imprisonment, the release becomes mandatory.** Failure to release would risk perpetuating an *ex officio* arrest, which is not allowed under the Brazilian legal system.

During the preliminary hearings held from the 10th to the 15th of January 2023, the Federal Public Defenders' Office established a registration system for cases in which the Federal Prosecution Services requested provisional release, with or without the application of provisional measures other than imprisonment. Once the accusatory body requests the release of the individual in custody, the literal provisions of Articles 311 and 282, Paragraph 2, of the Code of Criminal Procedure must be followed. There is no justification for maintaining an *ex officio* arrest or imposing precautionary measures without the prosecution's request in this regard.

The legislative reform carried out in 2019 simply aligned the Code of Criminal Procedure with the accusatory system established by the Federal Constitution. The Federal Supreme Court itself, in its judgment of **Habeas Corpus No. 188.888/MG**, recognized **the legal impossibility for magistrates, even**



outside the context of the preliminary hearing, to decree, *ex officio*, the preventive detention of any person subject to criminal persecution (whether during a police investigation, criminal investigation procedure, or legal proceedings). This recognition was based on the innovations introduced by Law No. 13.964/2019 (the Anti-Crime Law), which emphasised the accusatory system adopted by the Constitution and denied judges the authority to impose, *ex officio*, this type of precautionary deprivation of individual liberty (CPP, Article 282, Paragraphs 2 and 4, combined with Article 311)", according to the opinion of the Rapporteur.

Therefore, it is evident that with the partial delegation of powers to judges of first instance to hold preliminary hearings, the arrests that are perpetuated, even with the request of the accusatory body for release, are in conflict with the Brazilian legal system.

3.1.3. Failure to present the prisoner within 24 hours

Prior to the legal provision, there was no precise definition of what it meant to "take a prisoner without delay" to a competent judicial authority. The Inter-American Court of Human Rights, in its ruling on **López Álvarez vs Honduras**, deemed the 24-hour timeframe compatible with the American Convention on Human Rights. It is worth noting that Brazilian lawmakers also incorporated this time limit for subjecting an arrest in flagrante delicto to judicial review (Article 306, Paragraph 1, CPP). Following the amendment introduced by Law 12,403/2011, Article 310 of the Code of Criminal Procedure **explicitly stipulated the 24-hour period**, a requirement also outlined in Resolution No. 213, of the 15th of December 2015, by the National Council of Justice.

In the case of **Cabrera Garcia and Montiel Flores vs Mexico**, the Inter-American Court ruled that presenting the arrested individual to the judge within five days seemed inconsistent with the principle of "taking a prisoner without delay". Conversely, in the case of **Chaparro Álvarez and Lapo Íñiguez vs Ecuador**, the Inter-American Court recognised a violation to the right to custody due to the delay in bringing the individual before a judge as required by the ACHR, as it extended beyond the fourth day.

Concerning the individuals arrested as of the 8th of January 2023, either due to their involvement in the anti-democratic riots or based on a decision rendered in Inquiry 4,879, the 24-hour deadline for holding preliminary hearings was not observed, resulting in cases where individuals were presented in court



approximately six days after their arrest.

Undoubtedly, the situation experienced is exceptional, marked by the rapid arrest of a significant number of individuals, all of whom were referred to the prison system of a single federal entity, namely the Federal District. However, considering that a substantial part of the preliminary hearings occurred and continue to occur virtually, obviating the logistical challenges associated with physically transporting the detainees, and that both the Public Defenders' Offices and the Federal District were present in all the established courtrooms, promptly providing legal assistance, there is no valid justification for the prolonged delay in presenting detainees to the Judiciary for preliminary hearings.

Furthermore, it must be emphasised that it is the duty of the State, which has ordered the deprivation of liberty of these individuals on the grounds of legal compliance, to also adhere to the law concerning the procedural rights and guarantees stipulated therein.

Drawing from the provisions of the Code of Criminal Procedure, Resolution 213, of the 15th of December 2015, by the National Council of Justice, and the jurisprudence established by the Inter-American Court, it becomes evident that the prolonged timeframe for presenting detained individuals is a breach of the criminal procedural norm, which ought to lead to the immediate declaration of the unlawfulness of the arrests.

3.1.4. Denial of the right to contact family members or indicated person

As per the explicit provision found in Article 5, Item LXII, of the Federal Constitution, the arrest of any individual and their whereabouts shall be **immediately** communicated to the competent judge, and to the family of the individual or a representative named by them. Likewise, Article 306 of the Code of Criminal Procedure, in accordance with the constitutional mandate, specifies that the arrest of any individual and their whereabouts shall be **immediately communicated to the competent judge, the Federal Prosecution Services and the family of the arrested individual or an individual named by them.**

Regrettably, in the arrests that occurred since the 8th of January 2023, either due to involvement in the anti-democratic riots or by virtue of a decision rendered in Inquiry 4,879, **there has been a disregard for the constitutional rights of detainees to communicate with a family member or an individual named by them.**

It is imperative to bear in mind that Article 136, Paragraph 3, Item IV of



the Federal Constitution stipulates that, even during the period in which the state of defence is in force, any arrested individual shall not be deprived of the right to communicate with the external world. The prohibition of communication for detained individuals is an exceptional circumstance and must follow the provisions of Article 21 of the Code of Criminal Procedure. This instrument determines that the prohibition of communication of the defendant can only be imposed by court order, and solely when the interests of society or the convenience of the investigation so require.

Undoubtedly, in the current situation, **there is no justifiable reason for continuing the communication ban for detainees.** Even if such reasons existed, they should have been explicitly stated in the decision rendered in the records of Inquiry 4,879, which did not occur. Consequently, there has been a violation of a constitutional provision that determines the communication of any arrest to a family member of the arrested individual or an individual named by them.

3.1.5. Report of Detention in Flagrante Delicto in deficit

The Code of Criminal Procedure, from Article 304 onwards, specify the necessary documents for a report of detention in flagrante delicto. Compliance with these legal documentation requirements serves multiple purposes: i) providing detained individuals with information about the grounds for their arrest; ii) facilitating the legal preparations of the defense, particularly in formulating requests for unlawfulness and release; iii) ensuring oversight of the lawfulness of the arrest by the Federal Prosecution Services and the Judiciary.

Without a doubt, compliance with legal standards during the deprivation of an individual's liberty is an imperative in any democratic society governed by the rule of law. Failure to do so opens the door to excessive use of force and potential arbitrariness. The Federal Supreme Court, in the proceedings of **Habeas Corpus No. 186.490/SC**, on the 10th of October 2020, recognized that the report of detention in flagrante delicto serves as **a formal documentation**, *"primarily aimed at substantiating – as a necessary and indispensable measure – the regularity and legality of precautionary deprivation of liberty for individuals involved in criminal events. This requires strict adherence by the State to the rules provided for in criminal procedural legislation, as any deviation would unfairly burden the liberty status of individuals under the custody of Public Authorities"*.

During the preliminary hearings, **a significant number of reports of detention in flagrante delicto were found to be deficient. These reports lacked**



the documentation indicated in the Code of Criminal Procedure, from its **Article 304 onwards**, including interviews with the driver, witnesses, and forensic examinations. Notably, regarding forensic examinations, Resolution 213 by the National Council of Justice, Article 8, item VII, stipulates that during custody hearings, the judicial authority must interview the individual arrested in flagrante delicto, and check whether a forensic examination has been carried out, ordering one if required by the Resolution itself.

Therefore, in accordance with the case law of the Federal Supreme Court, which recognises the report of detention in flagrante delicto as a formal documentation, the continued deprivation of liberty, even in cases where arrest reports lack the required documentation as per the law, **is a situation that should be rectified by declaring the immediate unlawfulness of the arrests made in contravention of the legislation.**



4. LEGAL MEASURES TAKEN





As previously mentioned, on the 10th of January 2023, a request for information and data was submitted to the Secretariat of Penitentiary Administration of the Federal District to assess the impact of the number of arrests made by the Federal Police. At that time, the data remained highly volatile due to the ongoing work at the ANP and the continuous influx of individuals into the Federal District prison system.

Hence, it was necessary to wait until the flow of arrests in flagrante delicto had concluded before sending a new letter on the 13th of January 2023, to assess the situation of the prison system after all arrests had been processed. In this letter, the Federal Public Defenders' Office requested information on the total capacity and current occupancy levels in the prison system of the Federal District. Additionally, it sought daily updates on the number of vacancies and capacity for each ward, block, and prison unit.

In response, the Secretariat of Penitentiary Administration provided all the requested data, including the following:

- The prison system of the Federal District has a capacity for 8,651 inmates, but it currently houses 16,783 inmates; The Women's Prison of the Federal District houses more female inmates (1,161) than its capacity (1,028). The detention of a significant number of women resulted in severe overcrowding, particularly in some areas of the prison, such as Block VI and Wings A and B of Block III. For instance, where there is a capacity to house 11 inmates, **91 women are being housed, and where there is a capacity to house 24 inmates, 105 Women are being housed.**
- CDP II is operating at an **occupancy rate exceeding 200% of its maximum capacity**, with 2,236 inmates instead of the expected 980 it is supposed to accommodate. The wings of blocks IV and VI, which is where the people arrested in recent days are, have a capacity to house 98 inmates, but are currently housing 237, 223, 197 and 201 individuals. The overcrowding is also observed in other blocks of the prison unit (II and VII, for example) and in the Provisional Detention Centre I, which currently houses 1,331 inmates.

In light of this situation, the Public Defenders' Offices, fulfilling their constitutional role as promoters of human rights and authorised by the Criminal Enforcement Law (Law No. 7.210/1984) to ensure the lawful execution of sentences, acting in the defence of vulnerable individuals at all levels and instances, individually and collectively, have taken actions to prevent the collapse of the prison system of



the Federal District and to uphold the fundamental rights and guarantees of all individuals in custody.

The measures taken align with the objectives of the Public Defenders' Office as outlined in Article 3-A, with a particular focus on upholding the principles of the Democratic Rule of Law, promoting human rights and ensuring comprehensive defence and due legal process.

On Sunday, the 8th of January, the Federal Public Defender-General issued a statement in which he strongly denounced the attacks on public institutions and the Democratic Rule of Law. On that occasion, the institutional head also took decisive steps to ensure that the DPU acted collectively, serving as an embodiment and instrument of the democratic regime, to investigate responsibility and implement preventive and remedial measures in response to these potentially seditious acts.

Additionally, in collaboration with other national human rights institutions and networks, the DPU released a public statement expressing unequivocal rejection of attacks on Brazilian democracy and calling for immediate action by the relevant authorities. Likewise, the Public Defenders' Office of the Federal District and the National Council of General Public Defenders (CONDEGE) have issued public statements condemning the anti-democratic riots.

On Monday, the 9th of January, the DPU and DPDF requested information from the Government of the Federal District. The aim was to establish responsibilities and identify preventive and remedial measures, notably focusing on the action plan adopted, the role of the police force, the identification of the authorities involved, measures to prevent further attacks, and accountability for those implicated.

On the same day, the Secretary-General of Institutional Articulation and the Secretary of Access to Justice, together with the Head and the shift of the 2nd CatDF unit, visited the National Police Academy to assess the detention conditions and the process of taking individuals into custody, obtaining essential information for subsequent actions.

Also on Monday, the 9th of January, a task force of federal public defenders was created to participate in preliminary hearings, provide comprehensive and free legal assistance and inspect the prison system of the Federal District.

On Tuesday, the 10th of January, in a coordinated effort involving the SGAI, the National Working Group on Incarcerated Individuals, and the DPDF,



another visit was made to the National Police Academy. There was also a meeting with the Secretary of Penitentiary Administration of the Federal District, a visit to the Provisional Detention Centres and the Women's Prison of the Federal District, a meeting with the Ombudsman's Office and the Minister of State of the Ministry of Human Rights and Citizenship, a debate with the National Mechanism for Preventing and Combating Torture, and a meeting with the judge of the Criminal Enforcement Court of the Federal District to gather information and data to subsidize the actions of the Public Defenders' Office.

On the same track, we are following, in partnership with the DPDF, the developments of the recent decision of Justice Alexandre de Moraes. He recognized the jurisdiction of the Federal Supreme Court due to Inquiry No. 4,879 and mandated that the TJDF and TRF1, as delegated jurisdictional bodies, conduct preliminary hearings. He also notified the Public Defender's Offices to participate in these concentrated efforts.

On Tuesday, through the Advisory Office of the Federal Supreme Court (AASTF), the DPU, together with the DPDF, filed a request for the release of vulnerable groups before the Federal Supreme Court. These groups, as per the precedents of the Court itself, meet the requirements to be released pending trial. **The petition also encompasses a request in favour of the population already in the prison system of the Federal District, as they are also to be affected by the eventual collapse of the prison system.**

On Wednesday, the 11th of January, the AASTF of the DPU petitioned the Federal Supreme Court to review the decision of Justice Alexandre de Moraes. This request aims for judges responsible for preliminary hearings to be able to release detainees and impose several provisional measures. The request was based on the Federal Constitution (Article 5, LXV), the American Convention on Human Rights (Article 7.5), the International Covenant on Civil and Political Rights (Article 9.3) and the Code of Criminal Procedure (Article 300).

On Thursday, the 12th of January, the Public Defenders' Office of the Federal District and the Federal Public Defenders' Office filed an interlocutory appeal requesting an injunction in Case No. 0400061-70.2023.8.07.0015. This case is currently at the Criminal Enforcement Court of the Federal District, and the appeal led to the revocation of the decision that allowed women to be allocated to Block VI of CDP I (a men's prison) via a retraction.

On Friday, the 13th of January, the Federal Public Defenders' Office and the Public Defenders' Office of the Federal District petitioned in the records of



Complaint No. 53.005/DF for Justice Gilmar Mendes to consider a request for the application of Binding Precedent No. 56. This request involves the granting of early release subject to the use of electronic monitoring equipment for women in the semi-open regime at the Women's Prison of the Federal District. This measure would result in the release of another 120 inmates from the prison unit, which is currently overcrowded.

On Saturday, the 14th of January, the Federal Public Defenders' Office and the Public Defender's Office of the Federal District submitted a request to the Criminal Enforcement Court of the Federal District (VEP/DF) for the expansion of the items to be delivered within the "cobal" (a bag with food and hygiene and cleaning items). This request also included the implementation of receipt by the Post Office transportation and distribution service for the more than 1,100 arrested from the anti-democratic riots at Praça dos Três Poderes and the demobilization of the encampment on the 8th and 9th of January. **This request also aims to benefit the entire prison population.**

The request was made because complaints about the lack of food, and hygiene and health materials provided by the prisons were already common with fewer inmates. With the rise in demand, it is reasonable to assume the need to increase the delivery of supplies and food to meet the needs with sufficient quality and quantity. **The Public Defenders' Offices also requested the continued operation of the canteens within the prisons of the Federal District, along with an expansion of the available product range.**

From the outset of these events, the Federal Public Defenders' Office, in partnership with the Public Defenders' Office of the Federal District and other State Public Defenders' Offices, established a communication channel for family members, provided assistance within the prison units, carried out inspections on the incarceration conditions, and represented defendants in preliminary hearings, among other measures. Joint missions were carried out at the National Police Academy, the Women's Prison of the Federal District, and the Provisional Detention Centres I and II of the Federal District.

In total, over 1,000 legal assistance proceedings resulted from the monitoring work during custody hearings. Federal and district public defenders are present in courtrooms daily and provide comprehensive and free legal assistance to individuals facing financial or legal hardship who lack legal representation.



5. MONITORING OF RELEASE PERMITS





On the 20th of January 2023, members of the Federal Public Defenders' Office and the Public Defenders' Office of the Federal District visited the Integrated Electronic Monitoring Centre (CIME), an agency of the Secretariat of Penitentiary Administration of the Federal District responsible for programming and implementing electronic monitoring equipment in individuals subjected to such provisional measures by court order.

The purpose of the visit was to assess how and under what conditions the orders granting release pending trial subject to provisional measures, issued by Justice Alexandre de Moraes, were being complied with.

During discussions with the director of CIME, it was revealed that the release permits related to individuals in custody due to the anti-democratic riots began to be implemented on the 19th of January 2023. On that day, 54 electronic monitoring equipment were attached to male individuals (26 in the morning and 28 in the afternoon). Additionally, 30 were attached to female individuals on the 19th of January 2023.

On the 20th of January 2023, a total of 152 electronic monitoring equipment were scheduled to be fitted, 100 for men and 52 for women.

The average time required to fit each device is 40 minutes per staff member. As of the 20th of January 2023, the director of CIME informed that there were 494 devices in stock, and it was anticipated that they would all be fitted in accordance with the directives of Justice Alexandre de Moraes by Sunday, the 22nd of January 2023.

The placement of electronic monitoring devices resulting from orders issued by other courts was not being affected. In fact, between the 18th and the 20th of January 2023, 82 devices were placed, as per a decision issued by Justice Gilmar Mendes in the case concerning inmates of the Federal District who were in the semi-open regime with day-release jobs.

The director of CIME informed that SEAP had structured a collaborative staffing effort, allowing the Electronic Monitoring Centre to receive an additional 10 staff members to assist with the process.

Personal belongings of those in custody were being sent by the prison units so that the released individuals could access them as soon as the monitoring devices were fitted. However, mobile phones were still being confiscated. The



individuals released received permits outlining all provisional measures. They were also given the opportunity to inform a family member or close associate about their release. In the absence of a family member or friend, they could contact a lawyer.

The majority of those released were being welcomed by family members and close associates, with the possibility of returning immediately to their respective homes. For individuals without the financial means to return home and without any contacts, the Public Defenders' Office of the Federal District provided guidance cards explaining how these individuals could seek assistance from the Secretariat of Social Development (SEDES/DF) to obtain transportation.

Individuals in custody were transported to CIME in handcuffs but had them removed upon arrival. They then waited to be called for the fitting. Food was provided, including snacks sent by the prison units themselves.

The following are some photographic records of the visit to CIME:







6. CONCLUSION AND RECOMMENDATIONS





Despite the seriousness of the acts committed against the Democratic Rule of Law, it is this very Democratic State of Law that must be unwavering in its unconditional defence of fundamental rights and guarantees without any form of discrimination. The Federal Public Defenders' Office and the Public Defenders' Office of the Federal District, as embodiments and instruments of the democratic regime, will persist in their constitutional duty to promote human rights, defend democracy, and provide access to rights for all individuals in need, without discrimination of any kind.

Based on the data and information collected from inspections, meetings, preliminary hearings, official letters, and petitions filed, the Public Defenders' Offices present the following recommendations to public bodies and authorities:

- Criminal prosecution bodies, during necessary investigations and criminal actions related to democratic acts, must take all required measures to individualize the conduct of the accused for their involvement in the invasion of Praça dos Três Poderes. It is imperative that the state sanctions adhere to the principles of legality, culpability, individualization of penalties, and subjective accountability, as objective or collective accountability goes against the national legal system.
- During police investigations and in the subsequent public criminal action, adherence to the accusatory principle must be observed, ensuring full defence and adversary proceedings, respecting the deadlines and objectives of preliminary hearing, guaranteeing communication between detained individuals and their relatives or another designated person, including all required documentation in the Report of Detention in Flagrant Delicto and other legal papers. Additionally, the right to appoint a lawyer of the accused person's choice must be respected, and in cases of financial insufficiency or failure to appoint one, full and free legal assistance by the Public Defenders' Office must be ensured.
- Public authorities in the Federal District have a constitutional duty to ensure public security to preserve public order and the safety of people and property (Article 144 of the Federal Constitution). It is indispensable, under the penalty of responsibility and the practice of an act of misconduct in public office (*improbidade administrativa*), to adopt all measures to prevent the occurrence



of new anti-democratic riots and to hold those responsible, whether direct or indirectly, for aggressions against the Democratic Rule of Law, its institutions, or the general population.

- All measures of prevention, accountability, and ensuring non-repetition must adhere to fundamental rights and guarantees. It is impermissible for executive or procedural measures to contradict the principles and rules established in the Federal Constitution, international human rights treaties, and other regulations of the Brazilian legal system. This includes the collection of genetic material and other means of proof, which must observe the chain of custody (Article 158-A, CPP), the constitutional right to remain silent, and the principle of non-self-incrimination (*nemo tenetur se detegere*), as outlined in Article 5, LXIII, of the Federal Constitution, combined with Article 186 of the Code of Criminal Procedure. This ensures that the individuals investigated are aware of their constitutional rights prior to the production of evidence.
- In light of the unconstitutional state of affairs in the Brazilian prison system (ADPF no. 347), essential measures must be taken to alleviate overcrowding in prison facilities in the Federal District, notably through the application of Binding Precedent no. 56 and the expedited release of individuals deprived of liberty. This includes 85 women who were in the semi-open regime and were released subject to electronic monitoring.
- The execution of sentences and pre-trial detention in the prison system of the Federal District must guarantee individuals deprived of their liberty all rights not affected by their sentence or the law, as per Article 3 of the Criminal Enforcement Law. This encompasses material, health, legal, educational, social, and religious assistance, such as the obligation to provide nutritionally adequate food and maintain cells in compliance with international standards (UN International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Bangkok Rules, Mandela Rules) and national human rights guidelines (Resolutions of the National Council for Criminal and Penitentiary Policy), such as cell size and minimum standards, access to sunlight, provision of drinking water, and access to personal



hygiene items, among others.

- Transgender individuals who are serving sentences or are in pre-trial detention within the prison system should not face setbacks in their rights, including their right to work, education, dignified living conditions (including sufficient space in cells and adequate access to sunlight), sunbathing, and other rights unaffected by their criminal sentences. Therefore, it is imperative that SEAP takes immediate measures to relocate them to an appropriate space within the Women's Prison of the Federal District, as the current location where they are housed (the conjugal visit parlour) does not meet these necessary requirements.
- Regarding preliminary hearings for individuals arrested as a result of democratic acts, the Public Defenders' Offices have observed the crucial need for the delegated judicial authority to conduct a thorough analysis of the conditions of detention and the possibility of granting release. Furthermore, decisions should be made to grant release, at the very least, to the hyper-vulnerable groups already recognised by precedents set by the STF, STJ, and CNJ. This includes older adults, parents responsible for children under the age of 12 or individuals with disabilities, individuals with comorbidities, etc., and those who do not have a request for preventive detention made by the Federal Prosecution Services. This approach aligns with the accusatory principle and the prohibition of ex officio imprisonment.

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