

# Women in Prison: Brazil

Analysis from the National Preventive  
Mechanism (NPM)

| August 2024



# Brazil – Federal National Preventive Mechanism

<p><b>UNCAT Ratification</b> 28 September 1989</p>	<p><b>OPCAT Ratification</b> 12 January 2007</p>
<p>National Preventive Mechanism (NPM)</p> <p><b>Federal National Preventive Mechanism (MNPCT)</b></p>	
<p><b>NPM legal framework</b> Law No. 12.847/2013 and Decree No. 8.154/2013</p>	<p><b>NPM operationalisation</b> From 2015</p>
<p><b>NPM structure</b> A new specialised institution administratively linked to the Ministry of Human Rights and Citizenship. The Federal National Preventive Mechanism is part of the National System to Prevent and Combat Torture established by federal legislation<sup>1</sup>, which provides for the creation of a national mechanism and state mechanisms for each federative unit.</p>	<p><b>NPM composition</b> 8 experts (7 women)<sup>2</sup> and 2 technical-administrative assistants (2 women)</p>

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

<p><b>Prison population</b></p> <p>Total prison population</p> <p><b>648,997<sup>4</sup></b></p> <p>Women in prison (total)</p> <p><b>28,876   4.14%</b></p>	<p><b>Women in prison - Characteristics</b></p> <p>Women with children in prison<sup>5</sup></p> <p><b>103 lactating women</b></p> <p><b>99 babies or children</b></p> <p>Foreign women</p> <p><b>269</b></p>	<p><b>Prison staff</b></p> <p>Total prison staff<sup>6</sup></p> <p><b>117,790</b></p> <p>Women prison staff</p> <p><b>31,815 (27%)</b></p>
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<sup>1</sup> Law 12.847 of 2 August 2013, which establishes the National System to Prevent and Combat Torture; creates the National Committee to Prevent and Combat Torture and the Federal National Preventive Mechanism; and makes other provisions.

<sup>2</sup> According to national legislation, the MNPCT is composed of 11 members (art. 12, Law No. 12.847/2013). However, at the time of writing, four positions have yet to be filled, pending the opening of a selection process.

<sup>3</sup> Data collected between July and December 2023 and published on the SISDEPEN website, the prison data collection tool of the National Secretariat for Penal Policies (SISDEPEN) within the Ministry of Justice, which can be accessed at: <https://app.powerbi.com/view?r=eyJrjoiMDY2ODEzOTgtYmJlMy00ZmVklWlwMTFtMTJjZDQwZWRIYjdhlidCI6ImViMDkwNDIwLWQ0NGMtNDNmNy05MWYyLTRiOGRhNmJmZThlMSJ9>

<sup>4</sup> This figure represents the number of people serving sentences in physical cells, i.e. it does not include the 201,380 people under house arrest, either with or without electronic monitoring.

<sup>5</sup> The data categorised by the National Secretariat for Penal Policies shows the number of children in prisons. According to data from 31 December 2023, there are currently 99 children in prisons.

<sup>6</sup> This is based on staff referred to as Criminal Enforcement professionals according to the SISDEPEN prison data collection tool classification.

Women in pre-trial detention	Women with disabilities
8,568	312
Sentenced women	
18,876	
Pregnant women	
230	

## II. Recommendations

### Prison information

- + Carry out a prison census, covering both people serving sentences and those held on pre-trial detention, in order to better assess information on the socio-economic profile of the population deprived of their liberty with a view subsidising public policies aimed at this population, including data disaggregated by gender, with information on the following: place of residence; family income; level of education; self-declared race/skin colour, and, in the case of self-declared indigenous people, specification of the group and territory; marital status; number and age of children; self-declared gender; and self-declared sexual orientation.

### Separation and prison staff

- + Prohibit the detention of women and girls under the watch of male prison staff.
- + Draw up a plan for the decommissioning of mixed units, given the fact that violent acts could potentially be committed against women in such environments, especially sexual violence.

### Healthcare

- + Amend the National Policy for Comprehensive Healthcare for Persons Deprived of Liberty in the Prison System (PNAISP)<sup>7</sup> in order to develop specific strategies for women's healthcare, given the specific health needs of this population.

### Body searches

- + Draw up legislation at the national level to forbid unpleasant body searches in prison and socio-educational environments, with specific provisions for pregnant women, such as prohibiting any search that could pose a risk to their health or that of the baby, including the use of radioactive devices such as body scans.

### Non-custodial measures

- + Expand policies on decarceration and penal alternatives for women deprived of liberty in Brazil, such as: I. Carry out joint prison inspections to identify women, including trans women and women transvestites, who are serving pre-trial detention and meet the requirements of the Mothers' Law (Law No. 13.769/2018), which favours alternatives to pre-trial detention; II. Carry out joint prison inspections in order to identify women serving semi-open custody sentences who are being held under conditions similar to those of closed custody, in order to comply with Binding Precedent 56 of the Federal Supreme Court, which prohibits the detention of

<sup>7</sup> Ministry of Health and Ministry of Justice, National Policy for Comprehensive Healthcare for Persons Deprived of Liberty in the Prison System, 2014, 1<sup>st</sup> edition. This information is available on the following webpage: <https://www.as.saude.ms.gov.br/wp-content/uploads/2016/06/Cartilha-PNAISP.pdf>

people serving a sentence under a more severe prison regime in the absence of an adequate penal establishment, abiding by the parameters set for determining penal alternatives: (a) early release of the sentenced person under a regime with a lack of spaces; (b) electronically monitored release of the sentenced person who leaves early or is placed under house arrest due to a lack of spaces; (c) the serving of sentences restricting rights and/or study of the sentenced person who progresses to the open regime.

### III. Detention issues

According to data from the National Secretariat for Penal Policies for the second half of 2023, there are currently 26,876 women being held in physical cells in Brazil, of whom around 32% are in pre-trial detention<sup>8</sup>. The current Drug Law, established in 2006, has contributed significantly to the increase in Brazil's prison population and, above all, the incarceration of women. According to data from the *World Prison Brief*, in 2000 there were 10,112 women in prison in the country, an increase of around 460% over the last 23 years<sup>9</sup>. Currently, 65% of women in prison in Brazil have been charged with offences under the Drug Law. Black women are the most affected by the country's incarceration policies, accounting for 65% of all women held in prison cells. Socio-economic status is also an important factor in penal selectivity: the vast majority of women in prison have a low level of formal education, with 44% having not even completed primary school.

In addition, the structural conditions of the Brazilian prison system must also be mentioned, since correctional facilities have been built with only male prisoners' needs in mind, and thus, fail to meet those of women. Physical and psychological abuse – mainly through name-calling – appears frequently in the accounts given by women detainees. According to categorised data from the MNPCT, there were reports of physical and psychological abuse against women deprived of liberty in all the units accommodating women that were inspected in 2022.

#### Body searches

The performance of unpleasant body searches of people deprived of liberty is a common practice in all men's and women's prison units inspected by the MNPCT. They are usually carried out several times a day (e.g. every time a person leaves their cell). Searches always entail partial or full stripping and, in most cases, crouching down. There are no reports of body searches of cisgender women being carried out by male prison staff. However, there have been cases of body scans of women being carried out by male staff. In the case of trans women deprived of liberty, searches are typically performed by male staff.

According to categorised data from the NPMCT relating to inspections carried out by the mechanism itself in 2022, unpleasant body searches of women detainees were carried out in 91.7% of the units accommodating women. In addition, in 61.3% of all the penal establishments inspected – which accommodated both women and men – there were reports of body searches being performed on women visitors; and in 87.1% of all the penal establishments inspected, there were reports of physical and moral violence against women visitors.

There is evidence that body searches of women are carried out systematically, without an individualised assessment of the risks or the specific reasons for doing so. It should also be noted that prison authorities do not usually keep any records of body searches.

<sup>8</sup> There are also 19,611 women under house arrest, either with or without electronic monitoring. This means that there are a total of 46,487 women deprived of liberty in Brazil. This information is available on the following webpage: <https://app.powerbi.com/view?r=eyJrIjoiaM2U1MmYyY2QtNjE2Yy00ZmU2LWFmZlItMGU5ZTBhODgzMTQzliwidCI6ImViMDkwNDIwLTQONGMtNDNmNy05MWYyLTQiOGRhNmJmZThlMSJ9>. Accessed on 23/07/2024.

<sup>9</sup> This information is available on the following webpage: [https://www.prisonstudies.org/sites/default/files/resources/downloads/world\\_female\\_imprisonment\\_list\\_5th\\_edition.pdf](https://www.prisonstudies.org/sites/default/files/resources/downloads/world_female_imprisonment_list_5th_edition.pdf). Accessed on 23/07/2024.

Body searches of visitors are still being performed quite frequently, although most of the units inspected by the NPMCT already have body scanners. Whether due to a culture of violence against women or a lack of adequate training, it is common for women to be subjected to unpleasant body searches after they have undergone a body scan, as even the detection of organic matter (gas or faeces) is used as a justification. There have also been complaints that pregnant women have been forced to undergo body scans, despite being contraindicated, and have also been subjected to unpleasant body searches, including being asked to crouch down.

Invasive body searches have not been abolished. Body searches involving touching may still take place in exceptional cases, and are usually carried out by a medical professional at the Forensic Medical Institute or in a hospital.

### Access to mental healthcare

Women deprived of liberty frequently complain about access to mental healthcare. Self-harm and psychiatric medicalisation are more prevalent among women deprived of liberty compared with their male counterparts.

However, there is a significant disparity between prison units, even between those located in the same state. Many of the units do not have a primary care team, as stipulated in the National Policy for Comprehensive Healthcare for People Deprived of Liberty in the Prison System. In those that do have a primary care team, psychiatrists are not always present on a regular basis, and even in units where a full healthcare and psychosocial team is present, it is often difficult to access such teams. In many units, it is the security guards who dictate the regularity of care, as women detainees rely on women prison staff to escort them to the treatment rooms. If staff numbers are low in the unit, or if for any other reason the women prison staff are unable to escort the women detainees, they will not have access to the technical teams and professionals will not be authorised to conduct active searches in the wings.

Health professionals generally do not have complete autonomy in determining care priorities, and it is common for women security officers to take people other than those booked in for care.

According to categorised data from the MNPCT relating to inspections carried out by the mechanism itself in 2022, there were reports of mental health problems in all units accommodating women, without any adequate treatment being provided.

When women are admitted to prisons, an initial medical examination is not guaranteed in practice. Women deprived of liberty often do not have access to a medical, psychological and psychiatric assessment when they first enter prison.

While medicalisation is highly prevalent among women and girls deprived of liberty, this does not necessarily correlate to a high incidence of mental healthcare, because in most cases, such care is not accompanied by some form of psychotherapy. Although there is a growing demand for medical care among women deprived of liberty, the NPMCT is concerned about the use of medicalisation as a mere form of containment rather than treatment.

It should be pointed out that in a context such as Brazil's, where incarcerated women are subjected to squalid living conditions, characterised by food insecurity, unhealthy conditions, lack of material support and menstrual indignity, overcrowding, idleness, family abandonment and systematic and structural practices of physical and psychological violence, the provision of mental healthcare would necessarily depend on improving the material and concrete living conditions in prisons.

Women deprived of liberty tend to be more open and raise mental health issues more often than their male counterparts.

Prison staff also seem to be aware of the importance of these issues for women in detention, but they often delegitimise these demands and reports of mental

suffering. In addition, security officers often exacerbate this suffering through acts of physical and moral violence.

In Brazil, there is no standardised training curriculum for prison staff. In this sense, each federative state has the autonomy to set out its own staff curriculum. The MNPCT has already heard reports from various members of prison staff that there is no specific training provided on gender issues and that the training largely focuses on security measures and means of restraint.

There is also a general lack of suicide and self-harm prevention protocols in the prisons inspected by the MNPCT, regardless of the gender of the prison population.

### Use of means of restraint

There are no detailed regulations in Brazil regarding the use of physical restraint. The main normative reference is Binding Precedent 11<sup>10</sup> of the Federal Supreme Court, which states that handcuffs should only be used in exceptional circumstances and in cases of resistance and a well-founded fear of escape or danger to the physical integrity of the prisoner or others, and that the use of handcuffs and the exceptional nature of their use must be justified in writing. There are no protocols regulating the use of means of chemical restraint in prisons in Brazil.

However, there is national legislation prohibiting the use of handcuffs on women who are in labour or who have recently given birth. Law No. 3.434/2017<sup>11</sup> expressly prohibits the use of handcuffs on pregnant women during medical-hospital procedures carried out in preparation for childbirth and during labour, as well as on women during the immediate postpartum period.

In practice, the use of means of restraint is not noted in official records or documents. Similarly, such means are usually employed arbitrarily, without analysing individual cases, and are often undocumented.

### Contact with the outside world

In Brazil, there is a culture of women detainees being abandoned by their families, which is not the case for men.

Only a minority of women in prison receive family visits and assistance. Many mothers will also lose contact with their children, or even be stripped of their parental authority, due to imprisonment.

This leads to a prevailing patriarchal culture, and, in turn, a stricter moral judgement of women detained for criminal offences.

## IV. Women in a special situation of vulnerability

It is important to point out that most women in prison in Brazil are black, have lived in peripheral urban areas and have a limited formal education behind them. Therefore, any analysis of women deprived of liberty in Brazil must necessarily consider the intersections of race and gender in the phenomena of criminalisation and incarceration.

According to SENAPPEN data, 65% of all women held in physical cells are black or mixed race, representing a significantly higher percentage than the 55% of black women in the total female prison population<sup>12</sup>. The vast majority of women in prison

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<sup>10</sup> <https://portal.stf.jus.br/jurisprudencia/sumariosumulas.asp?base=26&sumula=1220>

<sup>11</sup> <https://www2.camara.leg.br/legin/fed/lei/2017/lei-13434-12-abril-2017-784610-publicacaooriginal-152355-pl.html>

<sup>12</sup> Data from the 2022 Continuous National Household Sample Survey, presented in a report by the Ministry of Racial Equality. This information is available on the following webpage: <https://www.gov.br/igualdaderacial/pt-br/composicao/secretaria-de-gestao-do-sistema-nacional-de-promocao-da-igualdade-racial/diretoria-de-avaliacao-monitoramento-e-gestao-da-informacao/informativos/informe-edicao-mulheres-negras.pdf>. Accessed on 23/07/2024.

have a low level of formal education, which points to a class divide in penal selectivity: 54% have completed primary school; only 19% have completed secondary school; and just 1.9% have completed higher education. If we also analyse the female prison population by age group, it is deeply concerning that 54.7% of women detainees are aged under 34. The imprisonment of young women can have a significant impact on their life trajectories, increasing their vulnerability and social marginalisation and exposing them to a greater risk of suffering other forms of violence throughout their lives.

It is also important to note that the proportion of women with their children in prison is almost double that of men: 43.67% compared to just 19.87%. This figure chimes with the many reports of broken ties with children, and mental suffering related to separation from children, observed in women detainees during MNPCT inspections. During the inspections, it was also found that women in prison have often been subjected to various forms of violence throughout their lives, particularly sexual and domestic violence. Coming from a background of extreme social and family vulnerability, women have a smaller support network in prison, severely exposing them to the squalid living conditions of the penitentiary establishment in which they now find themselves. This lack of support certainly has an impact on their leaving prison and their chances of social reintegration.

## LGBTIQ+ women

Although lesbian women are mostly socially accepted among the general female prison population, they will often face prohibitions and retaliation from the prison administration against displays of affection in prison units.

In many cases, transgender women and women transvestites do not have the right to choose whether they will be held in men- or women-only units. During the inspections performed in 2022, it was found that these transgender women and women transvestites were mostly held in male units, in specific cells or wings, and in mixed units.

The inspections also revealed the invisibility of the incarcerated LGBTQIAPN+ population. There were unanimous reports of disrespect for self-identified names in the units and of LGBT-phobic name-calling, and it was also difficult for the LGBTQIAPN+ population to sustain romantic relationships within the units. There were even numerous reports of couples who were in the same cell being separated, including as punishment for displays of affection.

It was also found that the designated LGBTQIAPN+ units and actually have the same characteristics as male units. In these areas, trans women and women transvestites are treated as if they were men; all direct care and assistance in the units is provided by male prison staff, including unpleasant body searches. In addition, hormone therapy is not guaranteed for trans women and women transvestites, some of whom even end the treatments that they started before entering prison. For more information, see the "National inspection report on the LGBTIQ+ population deprived of their liberty in Brazil"<sup>13</sup>.

Cases of self-harm and psychiatric medicalisation in transsexual women and women transvestites are extremely serious and much more marked than those among the general prison population.

An excellent example to illustrate this point is the Jason Albergaria Prison in Minas Gerais, which was inspected in 2022, as it is the only prison in Brazil exclusively for the LGBTQIAPN+ population, more specifically for cisgender gay men and trans women or women transvestites (regardless of sexual orientation) who have not undergone gender reassignment surgery, which represents a form of reducing gender to genitalia and disrespecting self-declaration. The prison was plagued in 2021 and 2022 by a

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<sup>13</sup> This information is available on the following webpage: <https://mnpctbrasil.files.wordpress.com/2023/09/relatorio-nacional-lgbti.pdf>

spate of suicide cases and attempts, with 11 suicide deaths recorded between January 2021 and June 2022. Self-harm was also a common practice among women detainees during that time. Following the most recent suicide case, the Chief Magistrate of the district's Criminal Court partially closed the unit<sup>14</sup>.

## V. Alternatives to detention

The main regulatory reference in this regard is the so-called Mothers' Law (Law No. 13.769/2018)<sup>15</sup>, which stipulates that pregnant women, or women who are mothers or responsible for children or people with disabilities, will be placed under house arrest rather than pre-trial detention, provided that: I - she has not committed the offence with violence or posed a serious threat to the person involved; and II - she has not committed the offence against her child or the person in her care.

This legislation stems directly from the Supreme Court's ruling in February 2018, when it issued Habeas Corpus 143641 in order to establish the replacement of pre-trial detention with house arrest for pregnant women, lactating mothers and mothers of children up to 12 years old, or people with disabilities across the country. In this regard, the Early Childhood Framework (Law 13.257/2016) had already brought about significant changes by amending the articles of the Criminal Procedure Code, in order to establish the possibility of replacing pre-trial detention with house arrest for pregnant women and women with children up to 12 years old.

According to SENAPPEN data, there was a highly significant increase in the number of people under house arrest (either with or without electronic monitoring) in Brazil between 2018 and 2023, from 9,887 people (of which 1,091 were women) to 201,380 people (of which 19,611 were women). Among the female prison population, the proportion of women under house arrest during this period rose from 3.08% to 42%. Therefore, there is reason to believe that this rapid increase is linked to the abovementioned amendments to legislation and case law.

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

- + [Annual Report 2022](#)
- + [Inspections of the prison and socio-educational system units of the state of Alagoas](#)
- + [Report on regular inspections in the prison and socio-educational systems of the state of Bahia](#)
- + [Inspection report on The prison and socio-educational units of the state of Minas Gerais](#)
- + [Inspection carried out by the Federal National Preventive Mechanism in the state of Paraná](#)
- + [Regular inspections of the prison and socio-educational system units of the state of Sergipe:](#)
- + [National inspection report on the LGBTIQ+ population deprived of their liberty in Brazil](#)

This report is part of the [Global NPM report on Women in Prison](#).

Access the full report here: [www.aptr.ch/global-report/](http://www.aptr.ch/global-report/)

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<sup>14</sup> For more detailed information, see the "Inspection Report on Units of the Prison and Socio-Educational Systems of the State of Minas Gerais", available on the following webpage: [https://mnpctbrasil.wordpress.com/wp-content/uploads/2022/08/relatorio-missao-mg-para-publicacao\\_compressed.pdf](https://mnpctbrasil.wordpress.com/wp-content/uploads/2022/08/relatorio-missao-mg-para-publicacao_compressed.pdf)

<sup>15</sup> This information is available on the following webpage: [https://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2018/lei/l13769.htm](https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/l13769.htm)