

## Barefoot and shirtless feet: a tasting of the punitive process or a social portrait?

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**Abstract** *This work has as its object a critical statement about the admission process of people deprived of liberty (PPL) at the gateway to Rio de Janeiro, who go through unfavorable situations, such as the naturalization of the invisibility of the vulnerable profile of inmates as well as their presentation in custody hearings, with part of their clothing and shoes removed by police officers. The selective profile of PPL does not coincide with the population that commits crimes and crimes, as important and decisive socioeconomic, political, racial and cultural filters operate for deprivation of liberty. Therefore, the custody hearing is a public policy aimed at curbing violations and guaranteeing fundamental rights, which is the guarantee of human rights.*

**Key words** *Human rights, Prison system, Custody hearing, Violence*

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## Introduction

Undeniably, the debate on human rights has progressed from the perspective of public security, even in a polarized way, evidenced in narratives such as: “human rights for human rights”, reproduced in the most diverse societal spaces. The issue is that the system prison in Rio de Janeiro, in parallel with the unbridled growth of the population deprived of liberty (PDL), requires distancing the stigma of the Unconstitutional State of Things (ECI). The Unconstitutional State of Things was acknowledged by the Federal Superior Court through the Argument of Noncompliance with Fundamental Precept (ADPF) 347 of the widespread violations of fundamental rights in the Brazilian prison system and reiterated state inertia in September 2015.

With more than two decades of experience as a correctional officer, the implementation of camera surveillance inside the liberty deprivation institutions and effective actions in the inspection and correctional spheres to face State violations has helped curb physical violence. The entry of higher education civil servants into public security, interested in fulfilling the duty established in the Constitution, also mitigates the culture of naturalized violations of rights in the prison system.

If increased surveillance and punishment of police officers involved in this custody process reduce physical violence, several torture practices that leave no marks are still committed daily and are naturalized and accepted by the PDLs as part of the criminal enforcement process.

In six months as a criminal police officer in Benfca’s custody hearings (CH) in Rio de Janeiro from March 2021, I identified many PDLs without some of their clothing. Indignation and curiosity led me to investigate this situation to understand why this occurred. The reports of dozens of PDLs converged on two explanations: when they were detained in the police stations, PDLs were informed that long pants, colored blouses, flip-flops, and closed shoes were not allowed in the prison units, while others reported that they were already barefoot and shirtless when arrested. After the CH, dressed in a white blouse borrowed from the State, however, many barefoot, when benefiting from freedom, must return them and go out into the streets, exposed to insalubrity and humiliation, especially those without resources or family support upon leaving the deprivation period.

The reality of the deprivation of liberty process is clear regarding the detainees, traversed

mainly by the axis of intersectionality, in a situation of oppression from a sociological viewpoint, through ethnicity, gender, class, and sexuality issues. We characterize the CHs within this socially stigmatized PDL profile. They mainly aim to determine the legality of imprisonment, the sentence period, and ascertain any violation of the fundamental rights of the PDLs.

What is seen in specific settings is a violation and exposure of these subjects to vulnerabilities, as the moral judgment on the behavior of PDLs defines how they live in society, discriminating and hindering their access to primary, egalitarian, and universal rights.

Given what has been presented, the object of study is a critical statement about the admission process of the PDLs at the gateway of prisons in Rio de Janeiro. PDLs are submitted to insulting and stigmatizing moments after their clothes are ripped off by police officers, leaving them vulnerable. These State representatives naturalize this whole context. Since the custody hearing is a public policy aimed at curbing violations and ensuring fundamental rights, law enforcement bodies and the National Council of Justice should guide actions that identify institutional violence, which does not even leave physical marks, so that the CH’s objective, which is ensuring human rights, is achieved.

## Development

Violence is a social and Public Health problem that threatens social development and affects the relationships and quality of life of people and society. The most direct consequence of the increasing violence is the growing number of PDLs and the problems arising from the living conditions in the prison system. Initially, we should underscore that depriving subjects of their right of free passage anywhere in Brazil does not begin in the prison system.

As soon as the subject is captured, mainly by the military police, by arrest warrant or *flagrante delicto*, at the time of the personal search (a body search is carried out by a police officer at the time of arrest or approach of a suspect to search for drugs or any other item that may characterize the act, besides the security issue), part of his clothing is retained. These belongings are withdrawn under the pretext that they are forbidden in the environment of deprivation of liberty for security reasons, such as shoelaces (which can be used for hanging) and closed shoes (which can be used as a hiding place). When presented at po-

lice stations (civil police) for registration of the offending act and decision of the police authority to detain the subjects, they must enter the prison system (criminal police) so that they can be presented in court within a maximum period of 24 hours in the CH.

The CHs implemented to reduce temporary deprivations and taking measures in the face of possible cases of ill-treatment and torture in the process of apprehending PDLs and guaranteeing fundamental rights is an old internalized norm in Brazil, which was definitively institutionalized through the National Council of Justice (CNJ) only from 2015 with several federal states that joined the project, including Rio de Janeiro. However, the CNJ defines the custody hearing as:

*[...] an action by the National Council of Justice whereby citizens arrested in flagrante delicto are brought before a judge within 24 hours, accompanied by their lawyer or a public defender [...]. Judges will also assess whether pretrial detention can be replaced by provisional release until the final judgment of the case and will adopt, if applicable, precautionary measures such as electronic monitoring and periodic appearance in court. They may also order medical examinations to determine whether there was mistreatment or police abuse during the arrest<sup>1</sup>.*

Within the prison system, access to flip-flops is only allowed if they meet the norm imposed by the State: if they are Hawaiian-type and white. For this reason, so many arrive barefoot at custody hearings. The PDLs reported that personal items such as cellphones, original identification documents, and money amounts of individuals when arrested (most detentions) are not transferred together with the PDLs to the prison unit's gateway, currently, the Frederico Marques Custody House in Benfica, so that they are duly taken care of in the custody session.

Another aggravating factor is that if PDLs are released after the CH to comply with precautionary measures other than imprisonment, it is impossible to recover these items immediately. The belongings left at the police stations or discarded are needed so that they can return to their homes with minimum dignity.

When these individuals are in a situation of social vulnerability, they are directed to social assistance, to the People in Custody Care Service (APEC), so that at least one attempt to contact the family by telephone is carried out, a palliative strategy. However, material assistance that will significantly contribute to that individual's life is not provided.

When released, these subjects leave through the front door without minimal conditions of dignity: barefoot, shirtless, and without money, because there is no efficient and effective assistance plan for them to travel to their homes or shelters. Many incarceration cases arising from inland Rio de Janeiro state, where there are no Court of Justice bases for carrying out these CHs, further potentiate this return problem after freedom guaranteed by law operators<sup>2</sup>.

When classifying the country's prison system as the "Unconstitutional State of Things", The Federal Superior Court (STF) considered that existing public policies for managing a more humane prison system must be effectively administered, monitored, and their results evaluated concretely by all the powers of the State and the society, since the sentence execution system as it is now, with several flagrant violations, is far from being a resocializing device to contribute to the social reintegration of individuals after they are deprived of liberty, increasing social violence.

This observation about many PDLs in custody hearings barefoot is not unprecedented. Newton (2016), a public defender who also worked in the CHs in the Benfica neighborhood of Rio de Janeiro, criticizes in an electronic article entitled *The dirty barefoot feet at the Palace of Justice*.

*[...] justice acts like a serpent; that is, it only reaches those who are barefoot. The punitive left, which raves and enjoys the possibility of advances by criminal agencies in social strata previously considered untouchable, has yet to be present in Rio de Janeiro's ordinary confinement, as those deprived of shoes routinely invade the courtrooms<sup>3</sup>.*

Thus, we perceive a harsh criticism of the naturalized actions that annihilate human rights. Imposed by a relationship of oppression and destruction of human dignity that threatens the guarantee of fundamental, civil, political, and social rights. Another highlight is the social bias of the barefoot issue, highlighting the social abyss between judged and judging:

*While legal stakeholders show off their beautiful clothes, suits, bags, and fancy shoes, the Military Police bring the handcuffed barefoot to the custody hearings<sup>3</sup>.*

The State abandons its people since it does not provide equal opportunities and makes them sick due to inequalities. When they transgress, they become even more disposable, without the right to access the basic needs, such as footwear, at least to present themselves to the magistrate who is very well dressed, with power over the other's life, who will judge him if the imprison-

ment is legal and without violations. In the recent work entitled *The management of superfluous, neoliberalism and the Carlos Eduardo Figueiredo prison-warehouse*, the definition of prison-warehouse is:

*[...] a control and exclusion device aimed at the expropriated and disadvantaged population due to the new social and economic dynamics. [...] as a shipwreck of the welfare state caused by neoliberalism, the prison is the quickest and most "effective" solution to manage the marginalized population's bodies<sup>4</sup>.*

The reality of the current social exclusion and imprisonment process is due to an absent state that promotes economic growth at any price while ignoring and despising care and solidarity with others; the other becomes an enemy through fear (of the poor), competition, and lack of empathy<sup>4,5</sup>.

The PDLs arriving half-naked at the gateway of the prison system is the literal personification of *homo sacer*, naked life, a killable and disposable being who does not deserve to die because he is not holy enough, but if someone kills him, he should not be punished. because *homo sacer* was not someone important. The naked man deserves the abandonment of all<sup>6</sup>.

Therefore, there is a distinct theoretical discussion between formal law provided for and guaranteed in the Constitution and human rights, which are rights of human dignity. In terms of violations, human rights are more affected because they refer to the right to dignified preservation of life.

## Final considerations

This initial tasting of the judicial and penal devices portrays the abandonment of the social purpose of liberty deprivation institutions. It is evident that, even with the efforts of specific sectors in implementing public policies aimed at guaranteeing human rights in the segregated environments of prisons, the policy of mass imprisonment and the selective nature of the absent and neoliberal state is geared toward death labeling.

It is useless to reach a public policy for a given demand to advance in a successful gain if it is not implemented as a cross-sectional, strengthened, and committed network that reaches the layers traversed by inequalities and defends human rights comprehensively and universally.

Who wins and who loses, in a minimal state, the unbridled contest for survival? If the relationships of oppression and violence are not identified and exposed, there is no struggle and no victory without struggle, as everyone loses. If the injustice that affects the other does not outrage those around, there is no possibility of a just and peaceful society. It makes no sense to access goods to survive and not live. You can only live with dignity when living in an egalitarian way, without the hierarchy of rights and classes.

However, how much the PDLs have access to protective measures and devices is questioned since human rights have yet to be implemented, contrasting the formality of the wording of the law and the distances in effective practice. We expect that the rights of people in liberty deprivation institutions will not be threatened or violated [if it happens, the guarantee of reparation should be in place] so that they consider justice and respect. After all, human rights should never be denied.

## Collaborations

L Garcia contributed to the conception/design of the paper, analysis, interpretation of data, writing of the paper, critical review of its content, and approval of the final version. WS Padilha contributed to the writing of the paper, critical review of its content, and approval of the final version. LPBS La Rubia contributed to the design of the paper and critical review of its content. VCG Villanova contributed to the critical review of the paper's content, grammatical review, and approval of the final version.

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