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Letter JG n. [XX]/2026
Rio de Janeiro, September 30, 2026.

To:
Dr. Pau Pérez-Sales
United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Office of the United Nations High Commissioner for Human Rights (OHCHR)

Palais des Nations, CH-1211 Geneva 10, Switzerland
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Subject: Submission – Technical guide on prison overcrowding

Dear Special Rapporteur,

The following contributions result, in part, from the analysis of public data produced by state agencies and civil society organizations, articulated through the accumulated experience of NGO Justiça Global in strategic litigation before the Inter-American Human Rights System (IAHRS) concerning the rights of persons deprived of liberty.

This document aims to respond directly to items 1, 3, 4, 5, 6, 7, and 8 of the call for input. Nonetheless, it opens with comprehensive information on the relevance of historical inequality factors that structure practices promoting overcrowding in prison institutions. Local specificities aside, these inputs provide analytical frameworks for countries with racialized populations and a colonial past, offering solutions for contexts of institutional violence generated or deepened by these factors.

Another relevant element concerning the contributions of Brazilian civil society is that, despite the legislative differentiation between juvenile and criminal justice, successful experiences in Brazil can serve as guidelines for public policies and broad judicial capacity-building strategies.

Race, racism, and overcrowding: Systematized and analyzed evidence spanning more than four decades in Latin America demonstrates that the racialized theories that underpinned the enslavement of Indigenous, African, and Afro-descendant peoples beginning in the 16th century underwent a process of sophistication, driving structural inequalities that direct the functioning of justice systems. This complex theoretical and practical framework is also a foundational element of institutional violence, torture, and ill-treatment in contexts of deprivation of liberty, further manifesting in weak accountability and sparse transparency among oversight bodies.

Overview of Brazil: Currently, Brazil records a population deprived of liberty of 964,668 individuals under state custody. This contingent reflects profound demographic and racial asymmetries: most imprisoned persons are Black (composed of Black and mixed-race individuals, who represent between 68% and 69% of the total with declared racial data) and predominantly male (approximately 96.5%), with 33,488 women in custody at the end of 2025. Regarding parenthood and family responsibilities, most of detainees have direct dependents (predominantly one to three children per person), alongside the ongoing detention of pregnant and lactating

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women in standard communal cells. In terms of age, approximately 90% of the prison population consists of youth and adults of productive age (between 18 and 45 years old), while the elderly population in custody, though numerically smaller, faces extreme vulnerability due to a lack of accessibility, adapted infrastructure, and specialized medical care for chronic conditions.

Lethality, overcrowding, and structural inequalities: Lethality in the Brazilian penitentiary system reached a historical peak in 2025, recording 3,318 deaths under state custody in a single year, which consolidates a 149% increase in the total prison mortality rate since 2016 and accumulates 23,942 deaths over the last decade. Far from being an inevitability, this mass mortality is driven by chronic overcrowding and degrading confinement conditions - marked by severe rationing of drinking water, food deprivation, unhygienic environments, and a lack of healthcare assistance - configuring conditions that qualify as torture and cruel, inhuman, or degrading treatment.

In this environment, the transmission of infectious diseases such as tuberculosis is up to 25 times higher than the general population average, leading to the majority of deaths being officially classified under "natural causes or disease," which conceals the state's responsibility in directly and indirectly causing these fatalities. Intentional violence inside prisons, conflicts, and suicides disproportionately victimize Black youth from peripheral communities. While men account for 96% of direct prison deaths, incarcerated women face the rapid worsening of serious illnesses stemming from medical abandonment and negligence. This entire picture demonstrates structural racism and systematic criminal selectivity, compounded by institutional erasure reflected in high under-reporting rates and the deliberate absence of race and cause-of-death records in official documents and judicial certificates.

“Measures that have successfully reduced prison populations” and “Reducing time spent in prison”: In 2018, the Inter-American Court of Human Rights (IACtHR) ordered, in the operative paragraphs of the Provisional Measures concerning the Curado Complex, located in Pernambuco, that each day of deprivation of liberty served under conditions incompatible with international standards (“unlawful”) verified in the facilities be counted double, as a reparatory measure in response to the grave human rights violations denounced since 2011.

The context of extreme severity in the Curado Prison Complex was characterized by chronic overcrowding, armed violence, recurring mortality, torture, the operation of “inmate trusties” (*chaveiros*), and the absence of effective state control over the penal establishments. Civil society organizations initiated action on this case by requesting precautionary measures before the Inter-American Commission on Human Rights (IACHR) on August 4, 2011. In March 2014, given the persistence and worsening of the violations, the precautionary measures were converted into provisional measures by the Court.

Between 2022 and 2026, the initiative reached a cumulative total of 13,092 beneficiaries. The program began in 2022, with 286 beneficiaries during its implementation phase, registering significant expansion in 2023 during its consolidation period, when it served 7,486 people. In subsequent years, operational sustainability was prioritized, with 2,594 individuals assisted in 2024 (maintenance and qualification phase) and 2,349 in 2025 (operational continuity phase). In 2026, 377 people benefited, according to partial data currently being consolidated[1].

[1] Data consolidated from monitoring conducted by the Beneficiaries' Representatives.

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In 2018, the Curado Complex held 5,899 people for a designed capacity of 1,819 places, configuring critical overcrowding exceeding 200%. Currently, the facilities house approximately 1,107 people deprived of liberty for 1,750 places, representing a reduction of more than 80% in the complex's prison population.

"Capacity limits, prevention and emergency responses": The Brazilian experience in the juvenile justice sector offers an emblematic and legally binding example of setting a maximum occupancy ceiling and preventing overcrowding through the judgment of Collective Habeas Corpus No. 143.988/ES by the Federal Supreme Court (STF). In recognizing that chronic overcrowding generates a situation incompatible with human dignity and violates the principle of comprehensive protection, the STF barred the admission of adolescents above the unit's designed capacity (100%) and mandated strict adherence to the *numerus clausus* principle. When this established ceiling is reached or exceeded, the ruling triggers a mandatory sequence of actions for judicial authorities: the duty to re-evaluate cases involving infractions committed without violence or serious threat; the transfer of excess individuals to non-overcrowded facilities close to their family residence; and, should that be impossible, substitution with non-custodial measures or conversion into house arrest. This legal doctrine directly targets the penal selectivity that disproportionately affects youth marginalized by social origin, skin color, and territory.

In coordination with the STF ruling, the National Council of Justice (CNJ) research report shows how this precedent fostered administrative arrangements and nationwide early-warning systems, notably CNJ Resolution No. 367/2021, which created the Central Vacancy Registry (*Central de Vagas*). This administrative mechanism manages facility occupancy in real time through a scoring system based on the gravity of the infraction, serving as an "institutional barrier" that blocks the admission of adolescents without available capacity and requires the judiciary to observe the exceptional nature of custodial deprivation.

Complementing this are concentrated review hearings (CNJ Recommendation No. 98/2021), which establish periodic reviews of custodial measures every three to six months in the presence of the adolescent, family, and multidisciplinary teams, as well as emergency health guidelines (CNJ Recommendation No. 62/2020), which prioritized the release of vulnerable groups, pregnant women, mothers, and minor offenders during epidemiological crises.

The convergence between the statutory occupancy ceiling via *numerus clausus* and administrative regulation through the *Central de Vagas* generated a sustained historical reduction of over 44% in the population of adolescents deprived of liberty in Brazil between 2018 and 2022. Across intersectional markers, data highlights that the demographic subjected to detention is overwhelmingly comprised of male, Afro-descendant adolescents living in precarious urban peripheries. The successful practices analyzed proved effective precisely by disrupting punitive automatism directed at this profile for non-violent acts, such as low-level drug trafficking. However, the study points out that the long-term viability of these containment measures relies on persistently confronting structural racism and police violence at territorial "entry points," underscoring the necessity of sustaining the Judicial Observatory proposed by the STF to monitor data and ensure sustained compliance with capacity limits.

"Prison construction and expansion": Historical experience in the prison complexes of Pedrinhas (Maranhão) and Curado (Pernambuco) demonstrates that physically expanding places and constructing new penal units categorically failed to curb overcrowding over the medium and long term. In Curado, Pernambuco, despite funding allocations from the National Penitentiary

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Fund (FUNPEN) and investments of tens of millions of reais in building the Itaquitinga and Araçoiaba complexes, Curado's occupancy rate remained at critical levels exceeding 200% of capacity. In evaluating this situation, the IACtHR explicitly emphasized that the ongoing violation of personal integrity cannot be remedied by waiting for new prisons to be built, since newly created capacity is swiftly "swallowed" by the uninterrupted flow of new detentions generated by the criminal justice system. Similarly, in Maranhão, continuous budgetary allocations for physical prison expansion following successive crises and massacres failed to reverse chronic overpopulation, providing at best temporary relief before cells were filled again by new detentions.

An analysis of public budgets in both states reveals that space expansion drains substantial resources that could otherwise support alternative sanctions and open-custody measures. In Pernambuco, for instance, while the state government committed approximately R$ 115.6 million to constructing and expanding prison spaces, it allocated a mere R$ 581,200 to policies supporting alternatives to incarceration. In Maranhão, the Annual Budget Law set aside over R$ 134.3 million for expanding and modernizing penitentiary facilities, leaving non-custodial measures with negligible funding.

This ongoing policy of building more cells impacts vulnerable territories and reproduces deep asymmetries across race, gender, and social origin. The population detained in these complexes is overwhelmingly made up of young Afro-descendant men, who represent 69.6% of the prison population, originating from urban peripheries characterized by socioeconomic precarity and targeted policing. In facilities such as Curado and Pedrinhas, adding physical space without overhauling the punitive paradigm merely widened the borders of degradation and institutional violence—marked by potable water shortages, widespread tuberculosis outbreaks, and the transfer of internal facility control to criminal factions or trusties (*chaveiros*). From a gender and diversity standpoint, simply adding cells worsened negligence toward vulnerable groups, such as LGBTI individuals, pregnant women, and persons with disabilities, who are relegated to makeshift, unsanitary quarters lacking security and specialized medical attention.

The core lessons drawn from the Curado and Pedrinhas crises demonstrate that supplying new prison spaces acts as an incentive to expand the punitive net rather than as a solution to overcrowding, in line with determinations by the IACtHR in the Curado Resolution and the Federal Supreme Court's Binding Precedent No. 56 (*Súmula Vinculante 56*). State and federal administrations concentrate the bulk of public expenditures on building and expanding penal establishments. In Pernambuco, for example, the budget dedicated to creating spaces reached R$ 115.6 million, while funds for alternatives to detention totaled only R$ 581,200. Sole reliance on prison construction consistently proves ineffective over the medium and long terms. Even in years marked by massive space creation (such as 2024, when roughly 25,000 new places were created), the number of incarcerated individuals over the same timeframe grew at a far steeper pace (nearly 60,000 new admissions). In 2025, Brazil reached 964,668 people in custody and an ongoing structural deficit of 281,213 places.

Groups disproportionately affected and social drivers of imprisonment: In the Brazilian context, the most effective measure to curb unnecessary female incarceration and mitigate the harms of overcrowding has been developing gender-sensitive normative and jurisprudential standards aligned with the Bangkok Rules. The foundational milestone of this framework was the judgment of Collective Habeas Corpus No. 143.641/SP by the STF, codified in Articles 318 and 318-A of the Criminal Procedure Code and regulated by CNJ Resolution No. 369/2021.

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This framework established the mandatory substitution of pre-trial detention with house arrest or open-custody alternatives for pregnant women, mothers of children up to 12 years old, or mothers of persons with disabilities, provided the alleged offenses were committed without violence or serious threat. Applying this collective order operates as an essential preventive shield against a carceral environment characterized by severe structural deprivation - as shown by official penitentiary system data (SISDEPEN), which records only 58 to 59 dedicated cells/dormitories for pregnant women nationwide, while hundreds of pregnant and nursing women remain confined in ordinary communal cells.

The imperative for these safeguards reflects the trajectory of female imprisonment in Brazil, which grew by 43.7% between 2016 and 2025 - outpacing the growth rate of male incarceration—driven primarily by the punitive enforcement of the Drug Law against women facing extreme socioeconomic precarity, often acting as low-level couriers, coerced by partners, or acting as sole family breadwinners. This demographic is disproportionately composed of Afro-descendant women residing in peripheral neighborhoods. To ensure that population reduction measures neither disadvantage nor render specific groups invisible, concrete institutional safeguards are required: a) *ex officio* granting of release benefits, assigning presumptive credibility to a mother's declaration of child custody without bureaucratic hurdles; b) explicit prohibition of financial bail conditions that penalize poverty; c) mandatory, non-penalized referrals to public healthcare, mental health, and social assistance systems; and d) protection and sheltering protocols against post-release gender-based violence and local criminal retaliation, ensuring that release is paired with community support and social inclusion.

The STF also established that degrading physical strip searches (*revista íntima vexatória*) are unconstitutional, as they violate human dignity, bodily privacy, and the prohibition of cruel, inhuman, or degrading treatment, rendering any evidence obtained through this procedure inadmissible.

In its ruling on General Repercussion Theme 998 (ARE 959.620/RS), the Supreme Court solidified the following legal standards. It determined that subjecting prison visitors to forced nudity, body cavity examinations, or squatting is prohibited. Prison security must instead be maintained through non-invasive screening technologies, including body scanners, metal detectors, and X-ray systems.

Consequently, evidence discovered through the seizure of illicit items (such as narcotics or mobile phones) via invasive searches performed in violation of fundamental guarantees is considered null and void as a matter of law. Applying the fruit-of-the-poisonous-tree doctrine bars criminal prosecution of visitors predicated exclusively on invasive searches conducted without individualized reasonable cause. Manual physical inspections remain permissible only on an exceptionally narrow basis, requiring verified, pre-existing individualized suspicion (such as a documented report or concrete prior lead), a reasoned decision by the facility warden or judicial authorization, and execution strictly by licensed health personnel within an appropriate medical setting.

Obstacles to implementation: The primary obstacles preventing governments from adopting or effectively implementing measures to reduce the prison population are rooted in a complex interplay of ideological, political, legal, institutional, financial, and social factors. Politically, the prevalence of penal populism serves as a central barrier, as public officials regularly lean on

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hardline punitive rhetoric for immediate electoral advantage, fearing that promoting decarceration or community-based measures will be framed as weakness in public security governance.

This dynamic is continually amplified by sensationalist media narratives that disproportionately emphasize violent crime, stoking widespread insecurity, entrenching a punitive public mentality, and eroding popular support for non-custodial alternatives. Furthermore, a persistent absence of political accountability permits governments to treat prison overcrowding as an endemic baseline rather than as an urgent institutional crisis or a violation of international human rights commitments.

In legal and normative domains, penal hypertrophy and rigid statutory systems operate as structural drivers of prison expansion. Broad criminal offense definitions, mandatory minimum sentences, and excessively punitive drug legislation - which hit low-level offenders, marginalized communities, and racialized populations hardest - severely restrict judicial discretion. These legal hurdles are compounded by an entrenched institutional culture within the judiciary and prosecution services that treats pre-trial detention as a default mechanism rather than an exceptional measure of *ultima ratio*. Within law enforcement bodies and prison administrations, systemic risk aversion, a lack of internal incentives to apply alternatives, and corporate resistance from security personnel - who frequently equate lower incarceration rates with a loss of resources or institutional authority - substantially hinder structural reforms.

Lastly, the chronic misallocation of public funds and structural underfunding of community-based alternatives severely restrict the operationalization of non-custodial measures. Public budgets systematically prioritize police infrastructure and physical prison expansion over alternative sanction monitoring, electronic surveillance, and restorative justice programs. This fiscal imbalance is compounded by persistent shortfalls across social safety networks, including mental health care, substance dependence treatment, housing assistance, and social reintegration services. Lacking adequate funding for these essential social pillars, states fail to address the socioeconomic drivers of crime, sustaining high recidivism rates and fueling the cycle of mass incarceration.

Costs and allocation of resources: An analysis of public financing across the Brazilian penal system reveals a profound asymmetry between the steep costs of carceral infrastructure and minimal investments in penal alternatives and community services. State budget reviews demonstrate a systematic focus on physical expansion and tactical rearmament: in Pernambuco, for instance, while R$ 115.6 million (17% of the department's budget) was earmarked for prison space construction, a mere R$ 581,200 (0.08%) was assigned to policies supporting alternatives to prison.

In Maranhão, over R$ 134.3 million was budgeted for expanding and modernizing facilities, to the detriment of structured investments in social assistance and mental health networks. Although the economic cost of holding an individual in physical custody is disproportionately higher than open supervision or electronic monitoring (which grew to cover 13.5% of the carceral population), budgetary decisions continue to choke off non-custodial alternatives, perpetuating carceral dependency.

This policy decision to concentrate capital in building prisons has yielded an unfavorable cost-benefit balance from economic, social, and public security perspectives. In 2025, total public

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security expenditures in Brazil reached R$ 163.1 billion - primarily driven by state spending of R$ 131.2 billion - yet the rapid rise in the detained population (which reached 964,668 people) pushed the structural deficit to 281,213 places.

Mass cell construction neither generated savings nor lowered recidivism, as investments in new capacity are quickly "swallowed" by the unrelenting stream of pre-trial detentions at the front end. From a social standpoint, insufficient reintegration resources yield a system where only 21.6% of incarcerated persons have access to work—with over 80,000 receiving no financial compensation whatsoever—while legal aid via Public Defender Offices and community mental health and harm reduction services remain critically underfunded.

Evidence gathered under the National Plan to Address the Unconstitutional State of Affairs in Prisons (*Plano Pena Justa* – ADPF 347) indicates that redirecting existing resources is the only viable path to achieving sustainable reductions in incarceration and economies of scale. The juvenile justice experience illustrates the positive impact of capacity limits combined with budgetary reallocation: prioritizing open-custody measures and strengthening social networks produced a reduction of more than 53% in the population of detained adolescents since 2016. Strategically reallocating federal and state funds—such as the National Penitentiary Fund (FUNPEN), which managed R$ 841 million in 2025—toward vacancy regulation hubs, non-custodial alternatives, and community reintegration programs demonstrates that controlling the prison deficit does not require allocating more money to construction but rather replacing carceral architecture with investments in racial justice and social guarantees.

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We thank you for the opportunity to contribute to this crucial mandate and remain at your disposal should you require any further information or clarification.

Sincerely,

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