

Migrants and custody hearings



Thus, the calamity that has been descending on a larger and larger number of people is not the loss of specific rights, but the loss of a community willing and able to guarantee any rights. - Hannah Arendt

With the prison population having tripled in the last 16 years, Brazil today occupies 3rd place in the ranking of countries with the largest number of prisoners in the world, after the United States and China.¹ It is also known that about 30% of detainees are provisional prisoners.² Although in a smaller percentage, there are a growing number of foreign provisional prisoners in Brazil, especially given the current exoduses in Latin America, arising from serious humanitarian crises.

Despite the continuing concentration of the prison population in São Paulo, one must note a significant increase in foreign prisoners in states like Roraima, with the large percentage of Venezuelan prisoners standing out.

Proving the State's difficulty in keeping up with the speed of historical changes, today fewer than 2% of state prisons have wings or cells especially devoted to the holding of foreign prisoners. In the federal sphere, there is still no wing devoted especially to foreigners.³

In the field of custody hearings, the occasion on which the judicial branch assesses the legality of the detention in flagrante delicto and the need (or not) to continue the provisional segregation, the situation is the same. In practice, specific aspects of the foreigner's condition, which range from the language barrier to the lack of a fixed address, make it difficult to enforce the guarantees that the legislation assures to foreigners and to individuals in general, from the act of detention in flagrante to the custody hearing.

Drawn up based on interviews with consultants from the National Justice Council (Conselho Nacional de Justiça - "CNJ"), members of the Program "Present Justice"⁴, which aims to confront structural problems in the prison and socio-educational system in Brazil, this booklet seeks to indicate solutions for some of the main difficulties found by these consultants in custody hearings of foreigners in which they took part.

Seeking to strengthen the access to justice and the preservation of the right to legal representation guaranteed to Brazilians and foreigners, having observed the guarantees of due process of law, this study deals, in accessible language, with the rights of the detainee, under Brazilian and international laws.

With a special focus on women, as well racial or ethnic and LGBTQIA+ minorities, and despite not being a substitute for qualified legal advice, the text below is a useful tool to guide foreign detainees about criminal procedure in Brazil.

This booklet, initially published in Portuguese, English, Spanish and French, is thus another important instrument in fulfilling the principles that inspired the Migration Law (Law no. 13.445/2017) and, above all, those that govern the Federative Republic of Brazil, enshrined in article 4 of the Constitutional Charter, notably regarding the prevalence of human rights and the formation of a true Latin American community of nations.

Ricardo Lewandowski

Justice of the Federal Supreme Court

About the booklet

This booklet is intended for the migrant and refugee population in Brazil, which currently represents more than 1 million people in the country, according to the Ministry of Justice. With different nationalities and cultures, it is natural that such people do not possess in-depth knowledge of the functioning of the Brazilian justice system. However, the lack of knowledge about rights is one of the first obstacles to expanding access to the legal system.

The purpose of this publication is to explain the holding of custody hearings and the fundamental rights of a person accused of committing a crime – valid for Brazilians, migrants and refugees residing in Brazil. In addition, the migrant population also has specific rights in criminal matters, which must be observed at all stages, from being stopped by police to the completion of proceedings.

The custody hearing, the focus of this publication, is a way of analyzing whether or not to keep a person arrested at the scene in detention (i.e., at the time of or shortly after committing a crime), functioning as a barrier to entry into the Brazilian prison system. Along these lines, it also serves to verify whether the resulting arrest is provided for in Brazilian laws, examining, for example, whether there was the use of torture or mistreatment by the police or in detention.

It is important to emphasize that custody hearings do not serve to convict or acquit anyone, since they do not analyze the crime itself, but rather only the circumstances under which the arrest was carried out at the scene and whether there are reasons to keep the person in detention.

In practice, it works like this: if a person – whether Brazilian or not – is arrested at the scene, that is, committing a crime (or right after commission or in circumstances in which he or she can be presumed to be the perpetrator of a recent crime), he or she must be brought before a judicial authority (judge) within 24 hours. Besides the accused, a public defender or lawyer of the accused, a representative of the Public Prosecutor's Office (body responsible for deciding whether or not to bring charges against the accused) and a judge shall participate in the custody hearing. The judge may or may not uphold the detention, for example, by granting release pending trial or by establishing the fulfillment of an alternative measure in place of detention.

It is important for a non-Brazilian person arrested at the scene to know his or her rights and to inform his or her defense counsel if they were violated at the time of his or her arrest. **This is what a custody hearing is for: firstly, checking whether the arrest is in accordance with Brazilian laws and whether there is a need to keep the arrested person in detention. But, more than that, custody hearings serve to protect the right to freedom and other rights, such as to life and physical integrity.**

We know that the Brazilian criminal justice system is selective and can violate rights, especially those of poor and vulnerable people. However, this reality cannot be naturalized. In this regard, most of the scenes presented in this booklet reflect the ideal scenario, that is, one in which all those responsible for applying the law, from the police to judges,

strictly observe the provisions of Brazilian laws, without discrimination with regard to race, gender, social class or nationality, for example.

If you need legal assistance on this matter, you may contact the Federal Public Defender's Office or the Public Defender's Office of the State wherever you are. A complete list of the contact details for assistance, with telephone numbers, e-mail addresses and addresses, can be found at the end of this booklet.

Custody hearings, step by step



Phase 1

Arrest at the Scene

In Brazil, if you were arrested (i) during the commission of a crime, (ii) shortly after the commission of a crime, or (iii) under circumstances making it possible to conclude that you participated in a current crime, it means that you were arrested at the scene. Following arrest, before long, you will face the custody hearing.

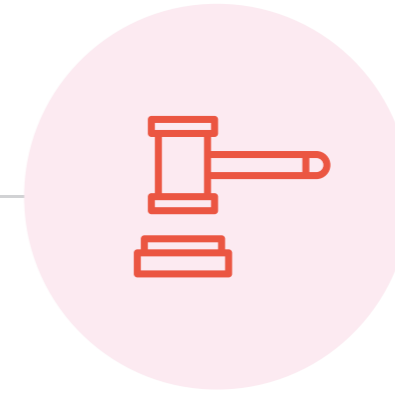


Phase 2

Registration of the arrest at the scene by the competent authority - “Drawing up the record of the arrest at the scene” (APF)

At this time, you should inform the police authority if you want your consular or diplomatic authority to know about your arrest and about personal information, such as (i) the existence of children (age, if they have special needs), (ii) serious illnesses, and (iii) any other information you deem necessary. After registration, you will be transferred to a provisional detention center and will wait until the custody hearing is held, which should take place in the shortest possible time.

Simultaneously with the arrest registration, the police authority may initiate an investigation regarding the crime that resulted in the arrest at the scene.



Phase 3

Custody Hearing

Moments before the start of the hearing, you may talk to a lawyer or public defender. In Brazil, it is the right of a person under arrest to receive legal assistance from a lawyer and, in the absence of such a lawyer, from a public defender. This is the time when you should share with your defense counsel all relevant information: if you are a mother, breastfeeding or pregnant, if you suffer from mental illness or any condition that requires continuous treatment, if you have suffered any violation to your physical integrity after arrest, if you were the victim of aggression, if you are coming to Brazil as a refugee, if you

are a victim of human trafficking, etc. After the interview with the defender, you will be brought before the judge.

It is extremely important for you to also share this information with the judge during the custody hearing. In addition, an interpreter must be present so that you can understand everything that is said at the hearing.



Phase 4

Possible scenarios after the custody hearing

At the end of the custody hearing, the judicial authority will decide whether to release you immediately, uphold your arrest - converting it into pre-trial detention - or to apply other provisional measures among those listed below.

Thus, in summary, the custody hearing may have the following outcomes:

RELEASE OF THE PERSON UNDER ARREST based on release from illegal detention. In this case, the judge understands that there was an irregularity in the arrest at the scene;

PROVISIONAL RELEASE without imposition of bail or other provisional measures: when the arrest at the scene occurred in accordance with the law, but the criteria for upholding pre-trial detention are not met. This IS NOT equivalent to CRIMINAL ACQUITTAL;

APPLICATION OF PROVISIONAL MEASURES, meaning the substitution of the arrest with measures restricting rights appropriate to

the specific case, with the possibility of being applied separately or jointly.

The main provisional measures provided for in the Brazilian Code of Criminal Procedure are:

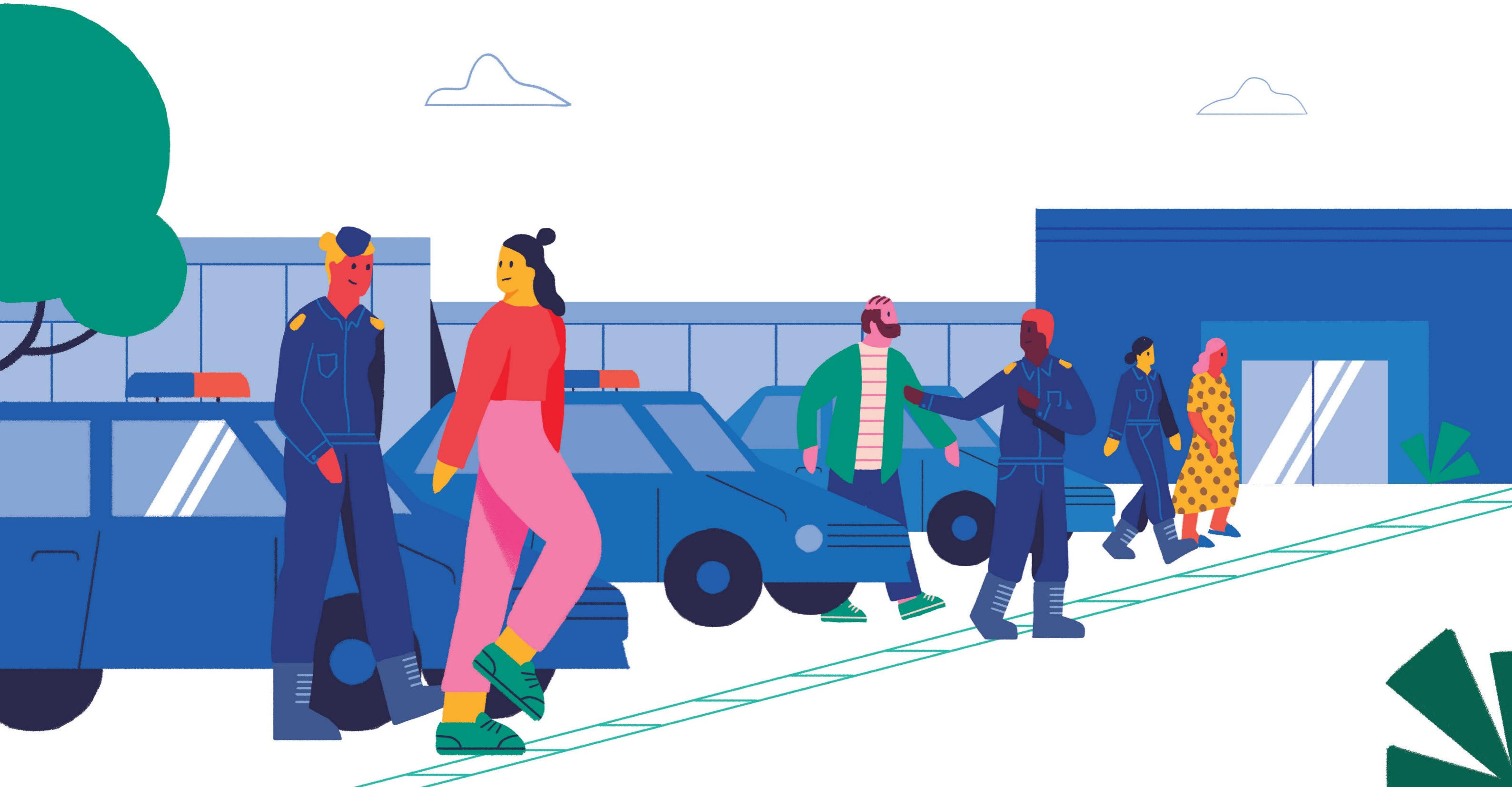
- a. periodic appearance in court, within the time frame and under the conditions established by the judge, to report and justify activities;
- b. prohibition of access to or attendance at certain places when, due to circumstances related to the event, the defendant or accused must remain far from these locations to avoid the risk of new violations;
- c. prohibition from maintaining contact with a certain person when, due to circumstances related to the event, the defendant or accused must keep a distance;

- d. prohibition from leaving the District when staying is appropriate or necessary for the investigation or fact finding;
- e. curfew at night and on days off when the investigated person or accused has a fixed residence and job;
- f. provisional detention of the accused in the event of crimes committed with aggression or serious threat, when determined by experts to be criminally incapable [of restraint] or to have diminished criminal capacity [of restraint] and there is a risk of recidivism;
- g. bail, in the event of violations that permit it, to ensure appearance at proceedings, avoid the obstruction of justice or in the event of undue resistance to a court order;
- h. electronic monitoring;
- i. document (passport) retention.

UPHOLDING DETENTION due to case-specific factors. This IS NOT equivalent to a CRIMINAL CONVICTION! In Brazil, the judge must justify pre-trial detention and may only order it if he/she understands that there is a risk associated with the release of the person under arrest, such as, for example, commission of new crimes, flight, interference in the investigation, etc.;

Three people of different nationalities were arrested at the scene accused of committing a crime.

After going through an interrogation at the police station, they were taken to the criminal court for a hearing with the judge.





— Hello! I am the public defender who will represent you at the custody hearing.

This is our interpreter, who will translate the entire hearing for you here today, okay? Anyone who is not fluent in the Portuguese language is entitled to the presence of an interpreter so that he or she can understand what is said before and during the hearing.





The judge will ask questions, such as your name and age, whether you use drugs, drink alcohol or take controlled- use medications, for example, whether you work, have children, any pre-existing illness and whether you were the victim of any aggression or humiliation at the time of arrest. The judge will also ask whether you know why you are there and ask you to state how the events that led to the arrest occurred.

You will have the freedom to decide whether or not to state how the events occurred, because under Brazilian legislation, the right to be silent and not to incriminate yourself must be observed. Thus, if you do not want to tell us how the events occurred or provide some other information, it is not necessary to talk.

— The main objective of the custody hearing is to ensure that the arrest at the scene was in compliance with the provisions of Brazilian laws, but it is important that you know that it is not for acquittal or conviction: the custody hearing only verifies whether the arrest has a legal basis to be upheld or not. What the judge will decide is whether you will be detained or released pending trial.

Before the hearing, we will talk in a private room about what happened before, during and at the time of arrest.

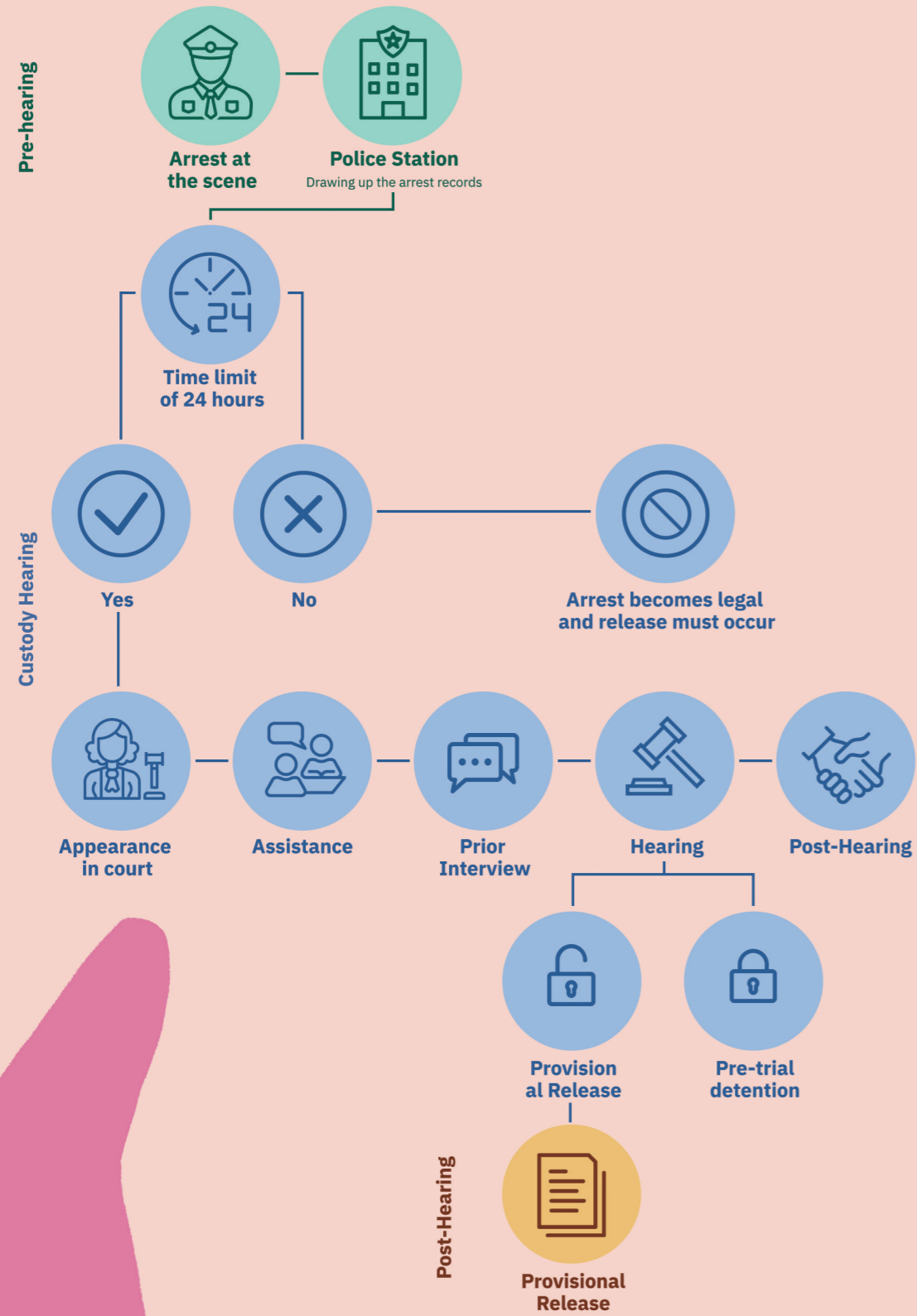
This conversation is called a prior interview and is held without the presence of police officers or anyone else, only us and the interpreter. This interview is for you to tell us your version of the

events and other relevant information that you want to share at this time.

Ah, it is important to say that all the rights presented herein are valid for any person, regardless of whether or not you committed the offense.



Steps of Custody Hearings



— It is important for you to know that in Brazil, there are a number of laws applicable to persons under arrest or accused of having committed a crime, regardless of whether they are Brazilian or not.



Rights of detained persons



- Being treated with respect, not being humiliated and not being subjected to torture or to cruel, demeaning or degrading treatment and punishment and having their safety guaranteed;
- Having their physical and moral integrity respected;
- Being informed about their rights, including that of remaining silent and receiving assistance from family and a lawyer;
- Not being discriminated against due to their race, color, national or social origin, gender, language, religion or political opinion, etc.;
- Having gender, age, background history and needs taken into account for the purposes of determining the detention facility where they will be held;
- Men and women must remain separate, whenever possible;
- Having access to sufficient food, drinking water and clothing;
- Having access to health and medical care (medical services according to the same standard as those offered to Brazilians, without discrimination), as well as medical assistance in urgent cases;
- Having access to material, legal, educational, social and religious assistance;
- Having contact with the outside world – periodically, under the necessary supervision, detained persons are entitled to communicate with family members and friends;
- Having access to communication with a designated public defender or lawyer in a confidential manner and at no cost, if unable to pay;
- Being tried within a reasonable period.



— Madam, I am from another country... What will happen to me after this hearing? Will I be expelled from the country?



— No! No migrant will be summarily expelled from the country due to a police record or arrest, for example. The process of expulsion from the country follows a specific procedure, as established by the Brazilian Migration Act. Even so, there is an analysis by the authorities to assess whether the person should be expelled or not. Did you request refugee status when entering Brazil?



— I didn't ask for refugee status, does that make a difference?



— There is a small difference, because the request for refugee status must be made at the first

opportunity or at a hearing. In the case of refugee status applicants, there is the right to not be returned to their country of origin or to where they may be the victim of human rights violations. In these cases, for example, the detainee does not want the consulate to know



he or she came to Brazil. As you are not a refugee status applicant, the consulate should be informed about your arrest. Have you received any help from the consulate from your country since you were arrested?





— No, I didn't even know that the consulate could know or be informed about my arrest. How does it work? Can I ask for any kind of help from the consulate or diplomatic authority?



— If you are not a refugee status applicant, the consulate must be informed that you were arrested shortly after the arrest. Then, the police authority must inform the consular body if it is in your interest, given that it is a right of yours.

If the police officer does not inform the consulate, the judge will take measures at the hearing to notify the consulate of your country. Also, if the notification to the consulate about your arrest at the scene was denied, you should notify the judge at the hearing, because this is considered an illegal practice. You have the right for the consulate to know about your arrest.

 — I don't live in Brazil, and I don't have any home where I can stay, because I was arrested at the airport when I got here. Does that mean that I can be arrested just for not having a residence in Brazil or having been born here?

 — A person cannot be arrested just for being a migrant. You cannot be held in detention only because you don't have a fixed residence in Brazil, okay? We can check the address of a family member who lives here in Brazil or, if you have none, you can be referred to an institution that hosts migrants. Migrants and refugees have specific rights under law in cases of arrest.


Specific rights of detained migrants





- Having access to information on laws related to the prison system, to the rights of persons under arrest, to legal assistance and to obligations while in detention. This information must be translated into the most commonly used languages, but if the detainee does not understand these languages, assistance must be provided by an interpreter who can perform the translation;
- Being able to report the arrest to the consulate of their country of origin and having help from the diplomatic authorities of the State to which they belong. In the case of detainees from States without diplomatic or consular representation in Brazil and stateless refugees, the right to appeal to communicate with diplomatic representatives of the State in charge of their interests or another national or international authority with the function of protecting such individuals;
- Receiving interpreter assistance.
- Being able to communicate with a lawyer or public defender confidentially and, if they do not speak the local language, the Brazilian prison authorities must facilitate access to the services of a competent and independent interpreter;


You can find them in CNJ (Conselho Nacional de Justiça [National Council of Justice]) Resolution no. 213/2015, Mandela Rules, Decree no. 678/92, Decree no. 61.078/67 and in the International Covenant on Civil and Political Rights.


Subsequently, the defense counsel conducted a prior interview with the pregnant woman.

 — Hello, how are you? As I mentioned, I will be your lawyer and I will represent you during the custody hearing. I see that you are expecting a little baby. How many months in are you?

 — Six months.

 — Is it your first child?

 — No, I have an older son, aged eight years.

 — Please note that women who are pregnant or who are mothers of children up to 12 years of age have specific rights, even if the woman is not Brazilian.



Specific rights of detained women



- Serving the sentence at an establishment other than that intended for men;
- Having indicated, in the record of the arrest at the scene, information about the existence of a child and their respective ages, if they have a disability, in addition to the name and contact details of the person in charge of caring for the children (if applicable), to be indicated by the detainee;
- Having pre-trial detention replaced by house arrest when (i) pregnant, or (ii) the mother or guardian of children or people with disabilities and in the event of not having committed a crime with aggression or serious threat to another person or of having committed the crime against her child or dependent;
- Requesting that the child's best interest be taken into consideration in the decision on whether or not the child is to remain in custody;
- Having special accommodation for all pre-natal and post-natal care and treatment needs, when pregnant - specific procedures must be adopted for births to occur at a hospital outside the prison unit;
- Remaining with their children during the breastfeeding period;
- At prison units housing the children of detainees, measures must be taken to ensure (a) internal or external daycare centers with qualified personnel, where children may be left when they are not under the care of their father or mother, and (b) pediatric healthcare services, including medical screening, upon admission and constant monitoring of their development by specialists;
- Not having their child who is in the prison unit treated as a detainee;
- Having internal security performed only by female agents;
- When there are bilateral or multilateral treaties between countries, the transfer of non-resident migrant detainees to their country of origin, especially if they have children, must be considered as early as possible during their incarceration, subject to a prior request or informed consent from the woman in question;
- If a child who lives with a non-resident migrant detainee is removed from detention, sending the child to his/her country of origin shall be considered, considering his/her best interest and after consulting the mother.



— I would like to understand better what is happening. Could you let me know?



— This conversation before the custody hearing serves exactly that purpose, so that you can understand why you are here and tell me your version of the facts. You have the right to information, the right to know why you are detained. I would like to listen to you and find out your version of the facts.

Before you tell me what happened, could you tell me if you were assaulted or were the victim of any name calling, offense or humiliation at the time of your arrest? Any physical or verbal aggression must be reported.



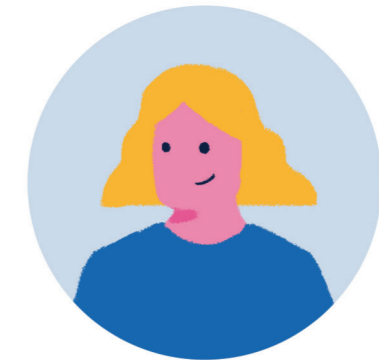
— No, I didn't suffer any aggression. I was arrested by the police officers and taken to the police station. I stayed there in silence, because I didn't understand what they were saying.




— Take note that as a migrant, all your human rights must be respected, and no form of humiliation must be tolerated. Migrants are entitled to equal treatment and non-discrimination. You are entitled to information throughout the process and, especially, understand what is being said at the hearing.




— Could you tell me how the arrest happened? Everything that is said here will remain confidential, and we will build your defense strategy together.




A female police agent walks up to both of them and advises them that the hearing will begin shortly.

 — Thank you very much for talking with me. You have really put me at ease!

 — That's great! Rest assured that we will be together throughout the custody hearing. Stay calm during the hearing, okay? If you have any questions, I will be at your side, as well as the interpreter.




The judge, the public prosecutor, the interpreter, the pregnant woman and her public defender were present in the hearing room.


 — Good morning everyone! Today, we are here to hold the custody hearing and to ensure that all of her rights have been upheld so far. Let's evaluate the legality of this arrest at the scene and whether there was torture or violation of any other right.

— Given that the accused is from another country, we need to ensure the presence of an interpreter so that she understands all her rights and the purpose of this hearing.



— Based on the analysis of the facts, considering that she is a pregnant woman and that she is the mother of a child under 12 years of age, I order conversion from detention in *flagrante delicto* into house arrest.

 — What does that mean? Am I going to be detained?

 — House arrest works like this: you will provide an address where you currently live, i.e. the address of your home here in Brazil. In this way, you must stay home full time and can only leave with the Judge's authorization. If you need to take your child to school or to the doctor, for example, you need to request authorization from the Courts. A lawyer can help you get this authorization.



Back in the waiting room, the defense counsel called the gentleman who was awaiting his custody hearing for a prior interview.



— Do you have any health problems or pre-existing illnesses that require treatment?

The gentlemen answered “yes” by nodding his head.



— If you have a health problem, say everything [about it] during the hearing so that the judge can inform the Secretariat of Penitentiary Administration and other authorities for you to continue your treatment.



Together, they entered the hearing room.



— It is important for you know that Brazil grants specific rights to people with disabilities who are in detention.

At the hearing, the judge considered the accused’s mental health history and ordered his provisional release with....

Rights of people with disabilities in detention



- Not being held in prison units and the adoption of procedures to remove them from institutions for the mentally ill, as soon as possible;
- Having access to health and medical care (medical services of the same standard available to Brazilians in general, without discrimination);
- Having access to psychiatric treatment;
- Having information provided verbally.

The above rights can be found in the Mandela Rules.





— Madam, first of all, I need to say that I am a transgender woman, and I am afraid of being sent to a men’s prison!



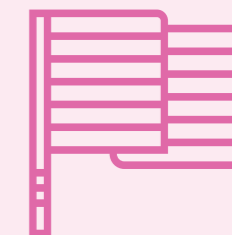
— It’s important that you told me that. Let’s do everything we can to prevent that from happening, especially because Brazil has specific laws for the LGBTQIA+ population. You have the right to be referred to by your social name, i.e., as you feel most comfortable introducing yourself

to people, and to be transferred to prison units according to your gender identity. A transgender woman may ask to be transferred to a female prison, and a transgender man also has the right to choose the prison unit, whether female or male.

There are also other specific rights for the LGBTQIA+ population.



Rights of detainees belonging to the LGBTQIA+ population



In general, in addition to the other rights guaranteed to detainees in Brazil, the resolution provides for the following list of rights below:

- Being called by their social name, according to their gender;
- Having specific living spaces for transvestites and gays in male prisons, provided that the detainee wishes to move to this specific space;
- In the case of male and female transsexual persons, the right to be transferred to female prison units;
- In the case of transsexual women, the right to equal treatment with respect to other detained women;
- When transvestite or transsexual, the right to wear female or male clothing, according to gender, and to have long hair, if any, guaranteeing the possibility of retaining other characteristics of the female or male gender adopted;
- Comprehensive health care, including maintenance of hormonal treatment for transsexuals and specific follow-up.

The above rights can be found in Joint Resolution No. 1, of April 15, 2014, of the National Council to Combat Discrimination and of the National Council on Criminal and Penitentiary Policy, which established policies for receiving LGBTQIA+s detained in Brazil.



— Could you tell me in detail what the moment of your arrest was like?



— Madam, I don't even know why I was arrested. The police officers found me while I was at home. They said they had received an anonymous complaint and broke down my door.



— Did they present any document, a warrant, for example?



— No, they ended up tearing the place up, and I was arrested and taken away.



— Thank you very much, madam. What do you actually call what the judge ordered?



— She released you from detention! That is, the judge considered that your arrest was illegal. Police officers

cannot enter someone's house without a court warrant for search and seizure. They can only enter with such a warrant during the day or if there is evidence proving that a crime is happening at the scene, as per the Constitution. As this was not the case, such an arrest is considered illegal.



After the hearing is over, they leave the room with a smile on their faces.



The custody hearing is a recent procedure in the Brazilian legal system. Its implementation in the country, in 2015, helps to supervise possible cases of institutional violence in Brazil.

In this booklet, we seek to show fictitious cases in which most of the agents involved, from police officers, all the way to the defense counsel, public prosecutor and magistrate, follow what Brazilian laws determine. However, we know that sometimes, this may not be the reality and that attempts taken to arrest at the scene and the custody hearing itself may violate rights, segregate people and automate cases that should never be dealt with in this way.

There are different possible outcomes for a custody hearing: house arrest, provisional release and release from detention. However, there is also another possible outcome: upholding detention. In this case, the detention in *flagrante delicto* is converted into pre-trial detention and the accused person must wait in detention for the conclusion of the criminal proceedings at a Provisional Detention Center. The conversion

of detention in *flagrante delicto* into pre-trial detention does not equate to a conviction, and there are also legal instruments that make it possible to challenge the legality of pre-trial detention, such as, for example, requests for reconsideration of the decision and granting of provisional release, in addition to habeas corpus actions.

The custody hearing is not the time to evaluate conviction or acquittal, but rather to verify whether the arrest at the scene was carried out in accordance with Brazilian laws and whether there is a need to keep the accused person in detention.

If you, as a migrant or refugee, experience any circumstance involving a conflict with Brazilian law, contact the Public Defender's Office through the following channels:



PUBLIC DEFENDER'S OFFICE FOR THE STATE OF ACRE | www.defensoria.ac.def.br

Telephone: +55 68 3223-8859

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF ALAGOAS | www.defensoria.al.gov.br

Telephone: +55 82 3315-2782

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF AMAPÁ | www.defensoria.ap.def.br

Telephone: + 55 96 3131-2570

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF AMAZONAS | www.defensoria.am.gov.br

Telephone: + 55 92 3633-2955 / +55 92 3633-2986

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF BAHIA | www.defensoria.ba.def.br

Telephone: + 55 71 3117-6973 / + 55 71 3117-6923

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF CEARÁ | www.defensoria.ce.def.br

Telephone: +55 85 3101-3424 / +55 85 3101-3434

PUBLIC DEFENDER'S OFFICE FOR THE FEDERAL DISTRICT | www.defensoria.df.gov.br

Telephone: +55 61 2196-4300 / +55 61 2196-4301

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF ESPÍRITO SANTO | www.defensoria.es.def.br

Telephone: +55 27 3222-1744

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF ESTADO DE GOIÁS | www.defensoriapublica.go.gov.br

Telephone: +55 62 3201-7025 / + 55 62 3201-7024

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF MARANHÃO | www.defensoria.ma.def.br

Telephone: +55 98 3221-6110 / + 55 98 3231-0958

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF MATO GROSSO | www.defensoriapublica.mt.gov.br

Telephone: +55 65 3613-3400

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF MATO GROSSO DO SUL | www.defensoria.ms.gov.br

Telephone: +55 67 3318-2502

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF MINAS GERAIS | www.defensoriapublica.mg.gov.br

Telephone: +55 31 3526-0500 / +55 31 3526- 0319

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF PARANÁ | www.defensoriapublica.pr.gov.br

Telephone: + 55 41 3219-7300

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF PARAÍBA | www.defensoria.pb.gov.br

Telephone: +55 83 3221-5448 / +55 83 3221-6320 / +55 83 3221-6327

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF PARÁ | www.defensoria.pa.def.br

Telephone: +55 91 3201 2700

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF PERNAMBUCO | www.defensoria.pe.def.br

Telephone: +55 81 3182-3700

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF PIAUÍ | www.defensoria.pi.def.br

Telephone: + 55 86 3232 0350 / + 55 86 3233-7407

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF RIO DE JANEIRO | www.defensoria.rj.def.br

Telephone: +55 21 2332-6224

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF RIO GRANDE DO NORTE | www.defensoria.rn.def.br

Telephone: + 55 84 3232-9758

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF RIO GRANDE DO SUL | www.defensoria.rs.gov.br

Telephone: +55 51 3211-2233

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF RONDÔNIA | www.defensoria.ro.def.br

Telephone: +55 69 3216-5013

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF RORAIMA | www.defensoria.rr.def.br

Telephone: +55 95 2121-4777

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF SANTA CATARINA | www.defensoria.sc.gov.br

Telephone: +55 48 3665- 6370

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF SÃO PAULO | www.defensoria.sp.gov.br

Telephone: +55 11 3106-1888

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF SERGIPE | www.defensoria.se.def.br

Telephone: +55 79 3205-3800 / +55 79 3205-3830 / +55 79 3205-3831

PUBLIC DEFENDER'S OFFICE FOR THE STATE OF TOCANTINS | www.defensoria.to.def.br

Telephone: +55 63 3218-6713

FEDERAL PUBLIC DEFENDER'S OFFICE

Unlike state public defenders, the Federal Public Defender's Office may be called into action if the charge concerns a crime falling under federal jurisdiction, such as international drug trafficking, currency counterfeiting, money laundering, crimes involving federal agencies and crimes involving the indigenous population, for example.

Based in all states of Brazil, the Federal Public Defender's Office can be contacted through the addresses and means of contact listed on the following website: www.dpu.def.br/contatos-dpu. If you need help, look for the Public Defender's Office closest to you.

Remember to state during the custody hearing



- If you wish to inform the consulate;
- If you are breastfeeding or pregnant;
- If you have children and, if so, information about them (age, those with special needs, etc.);
- If you are the main person responsible for a person with disabilities;
- If you are suffering from severe illness or suffer from mental illness or any condition that requires continuous treatment;
- If you were the victim of aggression or suffered something that could be classified as torture, including at the time of your arrest. E.g., in the event of humiliation, name calling, some type of physical aggression, etc.
- If you came to Brazil as a refugee;
- If you are a victim of human trafficking, etc.

Remember your rights!

- Having an interpreter present at custody hearings;
- Informing the consulate and family about an arrest at the scene;
- Not being detained just for not having a fixed residence in Brazil (assess, with your defense counsel, the possibility of indicating the residence of a family member in Brazil and/or the possibility of going to a shelter);
- As a mother, the right to have the child's best interest observed, even if this means that the child is detained (and, in this case, the right not to have the child treated as a detainee);
- Not suffering from any type of discrimination, such as, for example, not being treated differently because of your gender and sexual orientation; not being treated differently because of your nationality.

Footnotes

1. <http://www5.tjba.jus.br/portal/brasil-triplica-populacao-carceraria-em-apenas-16-anos-e-fica-em-terceiro-lugar-na-posicao-entre-os-maiores-encarceradores-do-mundo-saiba-mais/>
2. Figure released by the National Penitentiary Department (Departamento Penitenciário Nacional [Depen]), a body linked to the Ministry of Justice and Public Security on 02/14.2020. <http://antigo.depen.gov.br/DEPEN/depen-lanca-infopen-com-dados-de-dezembro-de-2019>
3. <http://dados.mj.gov.br/dataset/infopen-levantamento-nacional-de-informacoes-penitenciarias>
4. Partnership between the CNJ and the United Nations Development Program.
5. Cavalcanti, L; Oliveira, T.; Macedo, M., Imigração e Refúgio no Brasil [Immigration and Refuge in Brazil]. 2020 Annual Report. Migration Series. International Migrations Observatory; Ministry of Justice and Public Security/National Council of Immigration and General Coordination for Labor Immigration. Brasília, DF: OBMigra, 2020. Available at: <https://portaldeimigracao.mj.gov.br/pt/dados/relatorios-a>. Accessed on Apr. 30, 2021.
6. Data available on the Ministry of Tourism website. Available at: <https://portaldeimigracao.mj.gov.br/pt/dados/microdados/1733-obmigra/dados/microdados/401205-sismigra> Last access on: September 03, 2020.

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Intended for the migrant and refugee population, the purpose of this publication is to explain the holding of custody hearings and the fundamental rights of a person accused of committing a crime.

Custody hearings require that any person arrested at the scene be brought before the Court within 24 hours to analyze the need to uphold detention or not, functioning as a barrier for entry into the Brazilian prison system. They also serve to verify whether the resulting arrest is provided for in Brazilian laws, examining, for example, whether there was the use of torture or mistreatment by the police or in prison.

The booklet also provides information regarding the specific rights of the migrant population in criminal matters, which must be observed at all stages, from being stopped by police to the completion of the legal process.

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