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OVERVIEW

The Journal of International Criminal Law (*JICL*) is a scientific, online, peer-reviewed journal, first edited in 2020 by Prof. Dr. Heybatollah Najandimanesh, mainly focusing on international criminal law issues.

Since 2023 JICL has been co-managed by Prof. Dr. Anna Oriolo as General Editor and published semiannually in collaboration with the International and European Criminal Law Observatory (IECLO) staff.

JICL Boards are powered by academics, scholars and higher education experts from a variety of colleges, universities, and institutions from all over the world, active in the fields of criminal law and criminal justice at the international, regional, and national level.

The aims of the JICL, *inter alia*, are as follow:

- to promote international peace and justice through scientific research and publication;
- to foster study of international criminal law in a spirit of partnership and cooperation with the researchers from different countries;
- to encourage multi-perspectives of international criminal law; and
- to support young researchers to study and disseminate international criminal law.

Due to the serious interdependence among political sciences, philosophy, criminal law, criminology, ethics and human rights, the scopes of JICL are focused on international criminal law, but not limited to it. In particular, the Journal welcomes high-quality submissions of manuscripts, essays, editorial comments, current developments, and book reviews by scholars and practitioners from around the world addressing both traditional and emerging themes, topics such as

- the substantive and procedural aspects of international criminal law;
- the jurisprudence of international criminal courts/tribunals;
- mutual effects of public international law, international relations, and international criminal law;
- relevant case-law from national criminal jurisdictions;
- criminal law and international human rights;
- European Union or EU criminal law (which includes financial violations and transnational crimes);
- domestic policy that affects international criminal law and international criminal justice;
- new technologies and international criminal justice;
- different country-specific approaches toward international criminal law and international criminal justice;



- historical accounts that address the international, regional, and national levels; and
- holistic research that makes use of political science, sociology, criminology, philosophy of law, ethics, and other disciplines that can inform the knowledge basis for scholarly dialogue.

The dynamic evolution of international criminal law, as an area that intersects various branches and levels of law and other disciplines, requires careful examination and interpretation. The need to scrutinize the origins, nature, and purpose of international criminal law is also evident in the light of its interdisciplinary characteristics. International criminal law norms and practices are shaped by various factors that further challenge any claims about the law's distinctiveness. The crime vocabulary too may reflect interdisciplinary synergies that draw on domains that often have been separated from law, according to legal doctrine. Talk about “ecocide” is just one example of such a trend that necessitates a rigorous analysis of law *per se* as well as open-minded assessment informed by other sources, *e.g.*, political science, philosophy, and ethics. Yet other emerging developments concern international criminal justice, especially through innovative contributions to enforcement strategies and restorative justice.

The tensions that arise from a description of preferences and priorities made it appropriate to create, improve and disseminate the JICL as a platform for research and dialogue across different cultures, in particular, as a consequence of the United Nations push for universal imperatives, *e.g.*, the fight against impunity for crimes of global concern (core international crimes, transboundary crimes, and transnational organized crimes).

What Happens to Torture Reports Made in Bail Hearings in Brazil? An Analysis of the City of Cuiabá Between May and July 2021

by *Gustavo Silveira Siqueira** & *Marcos Faleiros da Silva***

ABSTRACT: Considered a “civilizational advancement”, bail hearings were included in the Brazilian Criminal Procedure in 2019. This article describes how torture reports made by people caught committing crimes and thus arrested in the city of Cuiabá, Mato Grosso State’s capital, were answered by the Judiciary and the State’s investigative offices. For this research, we examined 641 bail hearings that took place from May to July 2021, as well as the reports’ legal outcomes.

KEYWORDS: Bail Hearings; Brazil; Cuiabá; Mato Grosso; Torture.

“Bail hearings are today a reality. I believe they were a civilizational advancement”
Ricardo Lewandowski

I. Introduction

In his last speech as a member of the Court in April 2023, the Brazilian Federal Supreme Court’s Minister Ricardo Lewandowski stated that bail hearings¹ are a “civilizational advancement”.

At 1:30 PM, May 28, 2011, *Marinho*², a 22-year-old, white, father of underage children, was brought before the judge on duty. Stopped by the police near Cuiabá’s harbor, *Marinho* was caught carrying 1.70 kg of marijuana and arrested for drug trafficking. The bail hearing’s presiding judge attentively and carefully listened to the reports of the authorities up to that moment. The representative from the Public Prosecutor’s Office was present, as was the public defender appointed for the occasion. *Marinho*, when asked by the judge if he had been tortured, reported that he had been subjected to electric shocks and other ill-treatment by the Military Police officers until he told them where the drugs were. The torture reports were included in the hearing’s transcripts. However, this document was not sent by the Judiciary to the legal authorities responsible for investigating such occurrences.³ There was no statement from the State of Mato Grosso Public Prosecutor’s Office nor from the State public defender. *Marinho*

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¹ In the original text, the term used is “*audiências de custódia*” (or “custody hearings”). In Brazil, these hearings are the instances when judges decide if the arrests were legitimate, if pre-trial detention was necessary, and if other precautionary measures such as bail are applicable. Therefore, in terms of function, they are similar to bail hearings in the US. “Custody hearings”, on the other hand, is a term usually applied only to child custody hearings in the US. Because of this, we decided to use the term, “bail hearings”, to translate the original “*audiências de custódia*”. However, we must also point out that some translated documents from Brazil’s judicial oversight institution, the National Council of Justice, translate the term as “detention control hearings” and “pre-trial detention hearings”.

² Fictional name.

³ Nona vara criminal especializada delitos de tóxicos do Tribunal de justiça do Mato Grosso, Case file no. 1007689-37.2021.8.11.0042.

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was charged with drug trafficking. The policemen accused of torturing him, on the other hand, were not even heard.

Established in the Brazilian Criminal Procedure Code by Law no. 13.964/2019, bail hearings have since been thought of as measures to combat torture in the Brazilian criminal system. The present study aims to understand what happened to the torture reports made by people who were arrested and subsequently brought to bail hearings in the City of Cuiabá, between May and July 2021.

We examined 641 bail hearings conducted at the 11th Criminal Court of Cuiabá, all of which took place during the aforementioned period. Among them, we found 143 torture reports made by the detainees to the judges. In these cases, this is what happened: when asked if they had been tortured, 143 people confirmed it. We did not intend to investigate whether they were indeed tortured, or if their treatment constituted some other form of cruel, inhuman or degrading conduct, or even some other crime. Instead, our goal was to investigate what the authorities did after receiving these 143 positive answers.

In other words, our objective was to understand the outcome of the torture reports submitted during the bail hearings. We examined whether there had been an investigation, a criminal charge, a trial, or a ruling following them. In this sense, it is worth mentioning here that there were representatives from the State of Mato Grosso Public Prosecutor's Office, and a lawyer, hired or appointed by the State, present in all these hearings. Indeed, even when the person could not afford a lawyer, a State of Mato Grosso public defender was appointed to the case.

The first section of this article explains how bail hearings were introduced to the Brazilian legal system and since then, how they have been perceived as a torture prevention measure. In the following section, as an illustration of our analysis, we describe the torture allegations reported in a series of bail hearings held in Cuiabá on May 28, 2021. The goal of this section is to expose a microcosm of the research reality, based on various hearings held on the same day. We chose May 28, 2021, because several hearings that demonstrate the general results of this research, took place on that day. These results, in turn, are then presented in the article's following section. Thus, by the end of this paper, we present all the data collected during our research and the several legal outcomes of the torture reports submitted by detainees.

II. Bail Hearings in the Brazilian Legal System and How They Relate to Torture Prevention

Torture is a harmful practice that profoundly affects the humanity and dignity of its victims. According to the Inter-American Convention to Prevent and Punish Torture, approved by the Organization of American States, the practice is defined as follows:

Article 2. For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.⁴

⁴ Organization of American States. Inter-American Convention to Prevent and Punish Torture (Sept. 12, 1985).

In Brazil, Law No. 9455/97 establishes the elements necessary to constitute the crime of torture, based on international conventions. In this context, it is worth mentioning that the Federal Supreme Court understands that torture “is characterized by the infliction of torments and distress that exasperate, in the physical, moral or psychic dimension in which its effects are projected, the suffering of the victim for acts of unnecessary, abusive and unacceptable cruelty”.⁵

One of the torture prevention instruments, bail hearings – also called “pre-trial detention hearings” – are provided for in Art. 7.5 of the American Convention on Human Rights: “Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power (...)”.⁶ In the same manner, Art. 9.3 of the International Covenant on Civil and Political Rights ensures that: “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power⁷ (...)”.⁸

According to Carver and Handley, bail hearings can be one of the main torture prevention measures, as shown in their research commissioned by the Association for the Prevention of Torture (APT). The research indicates that the immediate presentation of the person deprived of liberty before a judge, through the bail hearing method, has an undeniable impact on preventing torture. Judicial oversight, along with informing the family, and providing access to a lawyer and medical exams are essential means to reduce the risk of torture.⁹

Year 2014 marks an important milestone for bail hearings in Brazil, when the National Council of Justice, under Minister Ricardo Lewandowski’s presidency, debated the use of these hearings as a means to combat the Brazilian prison system’s massive torture-perpetrating situation.

On the ADPF 347 ruling (from September 9, 2015), Brazil’s Federal Supreme Court determined that all judges and courts must observe the Covenant on Civil and Political Rights and the Inter-American Convention on Human Rights. Therefore, within a term of 90 days, Brazilian courts were to institute bail hearings, enabling the detained person to be presented before the judicial authority within a maximum 24 hours of their arrest.¹⁰ Ultimately, bail hearings were incorporated into the Brazilian Criminal Procedure Code on articles 287 and 310, which were added to the Code by Law No. 13.964/2019.

On the other hand, research such as the ones conducted by the Institute for the Defense of the Right to Defense¹¹ and Conectas Human Rights¹² points out that, despite bail hearings being an important measure for preventing torture, many problems remain, such as

⁵ Supremo Tribunal Federal. *Tânia L. T. N vs. Herbert F. C, Habeas Corpus no. 70.389-5*. Tribunal Pleno, Judgment (June 19, 1994).

⁶ Organization of American States. *American Convention on Human Rights* (Nov. 22, 1969).

⁷ United Nations, General Assembly Resolution 2200A (XXI), *International Covenant on Civil and Political Rights* (Dec. 16, 1966).

⁸ In addition to provisions in the global and Inter-American Human Rights Systems, bail hearings are also provided for in the European Convention on Human Rights, in art. 5, para. 3, which states that “Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial”.

⁹ RICHARD CARVER, LISA HANDLEY, *DOES TORTURE PREVENTION WORK?* (2016), at 1.

¹⁰ Supremo Tribunal Federal. *Partido Socialismo e Liberdade, Medida Cautelar na Arguição de Descumprimento de Preceito Fundamental nº 347 – Distrito Federal. Plenário*, Judgment (Sept. 9, 2015).

¹¹ Institute for the Defense of the Right to Defense, *O Fim da Liberdade: a urgência de recuperar o sentido e a efetividade das audiências de custódia* (2019), at 80.

¹² Conectas Human Rights, *Tortura Blindada: Como as instituições do sistema de Justiça perpetuam a violência nas audiências de custódia* (2017), at 78.

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underreporting and the normalization of violence. Furthermore, in many cases, torture reports are not properly submitted to the investigative authorities, and those responsible for the torture face no punishment.

In this context, our challenge here was to understand how this torture prevention mechanism worked in the city of Cuiabá during the period of our study.

III. Research Results and the Duty to Investigate Torture Reports

Cuiabá is the capital and largest city of the State of Mato Grosso in Brazil. With a population of around 620,000 people and a metropolitan area with more than one million people, the city's gross domestic product (GDP) per capita is R\$ 42,918.31¹³, higher than the national average. It has an average income of 3.9 minimum wage per person, placing it at 32 on the country's income ranking. On the other hand, the schooling enrollment rate (6 to 14 years old) only reaches 95%, placing it at 4,692 on the national ranking. Infant mortality rates and basic sanitation data are also low compared to other Brazilian State capitals.¹⁴

In the city of Cuiabá, all bail hearings are held by the 11th Criminal Court, which also holds jurisdiction over the Military Justice proceedings. For this research, we examined accounts of torture crimes reported by arrested people in hearings held between May and July 2021, as well as the legal outcomes of these reports. In doing so, we sought to understand what had happened to the 143 torture reports submitted for the 641 observed hearings. We checked investigation outcomes up until a year-and-a-half after the torture reports were submitted at the bail hearings under study. In other words, we tried to identify whether the alleged torture crimes were investigated, and if any criminal, legal, or other administrative procedures were conducted because of them.

In this context, it is worth noting that the torture allegations were presented before the judges during hearings recorded on audiovisual media. All these hearings were attended by representatives of the Public Prosecutor's Office and defense lawyers, and addressed violent acts that took place between the time of the arrest and the bail hearing.

The 143 reports of torture among a total of 641 audiences had initially surprised us. It constituted almost one torture report for every four hearings. This high rate of allegations demonstrated that torture was still a common practice in the Brazilian criminal system. Even though torture is prohibited in all situations in the national and international¹⁵ systems, we need to question the functionality of the Brazilian system. Here, we will examine how the Brazilian system relates to this prevention system.

After identifying them, we tracked down the cases with torture reports, from the moment the persons verbalized that they had been assaulted to the last legal outcome of these submissions. We examined the reports' referrals to investigative offices, to Police Stations, to the Military Police's Internal Affairs, and to the State of Mato Grosso Public Prosecutor's Office. We also checked whether torture reports were being investigated during the period of our study, if any complaints had been filed, and if there had been any criminal proceedings, or any convictions or acquittals. We looked for outcomes in the entire criminal justice system of Cuiabá.

Additionally, we watched all the bail hearings in person or via recordings. In most cases, the accused persons reported being arrested by Military Police officers and transferred to a Civil

¹³ US\$ 8,536.

¹⁴ Data available at <https://cidades.ibge.gov.br/brasil/mt/cuiaba/panorama>.

¹⁵ KAI AMBOS, *TORTURA Y DERECHO PENAL, RESPUESTAS EN SITUACIONES DE EMERGÊNCIA* (2009), at 180.

Police Station. There, they were searched by the police and had their private assets seized and inventoried, before being interrogated, brought to court, presented to a Judge, and in the end, were either granted freedom or sent to prison, according to the magistrate's ruling.

The most reported occurrences were the excessive use of force during the arrest; unofficial interrogations at the crime scene, as a way to press the accused for confessions, as well as information on the whereabouts of other suspects or objects used in the crime; and lack of communication about the arrest to the accused's lawyer or family members.

The reports, in general, also included the use of handcuffs behind the accused's backs, or of the locks being too tight and used for long periods; punching, slapping, kicking and general beatings; choke holds (known as "necktie" or rear-naked choke); plastic bag asphyxiations; drowning asphyxiations; shocks; burns; humiliations; threats; as well as being held in unofficial places or vehicles for long periods.

In other words, all torture methods reported to have taken place during the Brazilian Military Dictatorship were also described in the year 2021, in Cuiabá. Even though the existence of torture can erode the rule of law, as Roxin writes¹⁶, the practice still appears to be constant in Brazil.

IV. May 28, 2021

On the same day that Marinho was detained, as described in the introduction, other people were also brought before the judge in Cuiabá for bail hearings. In this section, we describe the various torture reports submitted during that day. The date, May 28, 2021, chosen here as an example, is just one among the many days that demonstrated the torture reporting routine at bail hearings in the city of Cuiabá.

Rita¹⁷, black, illiterate, and homeless, was arrested for carrying 7.50g of marijuana. Despite claiming to be addicted to the drug, she was arrested for drug trafficking; and when asked if she had been tortured in the bail hearing, she replied, "Yes". She reported having been beaten by the military police officers until she told them about "the drug dealers". The torture allegations, despite their gravity and their inclusion in the hearing's transcripts, did not undergo due investigation procedures. The disregard for Rita's reporting was shared by representatives of both the Public Defender's Office and the Public Prosecutor's Office, who refrained from making any statements about the allegations despite being present at the session. Rita was then criminally prosecuted, and no administrative procedures were conducted about her torture allegations. This outcome, as we will see going forward, was the same for all the hundreds of procedures¹⁸ that we studied.

Roberto¹⁹, white, was arrested for drug trafficking when he was found carrying 1.15kg of marijuana, and brought before the judge on the same day. When asked if he had been subjected to torture, he replied, "Yes". He then reported being subjected to aggression, kicking, "stomping" and threats of beatings. The police officers wanted Roberto to show them where he had found the drugs. According to the report, the beatings only ceased when he took the police officers to his residence so that they could seize more drugs. Roberto's initial arrest was

¹⁶ CLAUS ROXIN, ¿PODRÍA LLEGAR A JUSTIFICARSE LA TORTURA? (2020), at 141.

¹⁷ Fictional name.

¹⁸ Nona vara criminal especializada delitos de tóxicos do Tribunal de justiça do Mato Grosso, Case file no. 1007679-90.2021.8.11.0042.

¹⁹ Fictional name.

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converted into a preventive arrest and the violence allegations, despite being on record and in the transcripts, were not submitted for further investigation.²⁰

Cases like these are commonplace in the city of Cuiabá, where torture reports are typically ignored. Violence is reported by the accused and recorded, and the transcripts of the hearings are signed without the judge referring them for any further investigation, or initiating an inquiry. Usually, Public Prosecutors and the defense also remain silent.

In cases where the judges made referrals for investigative proceedings, the rulings were seldom complied with. Bail hearings of torture practices against detainees are just legal formalities in Cuiabá. One of its essential functions – combating torture – is, therefore, underused.

Júnior²¹, black, homeless, was arrested in the Alvorada neighborhood of the city of Cuiabá and brought to the 11th Criminal Court. The presiding judge of the bail hearing listened attentively to him, just as she did to the other detainees that day. Junior, who showed signs of having Covid-19, when asked if he had been tortured, replied, “Yes”. He then reported that he had been subjected to beatings by police officers, who had identified themselves as Mr. Silva and Mr. Smith – generic names, probably false ones. After the bail hearing, the judge freed Junior. He had been arrested by mistake because someone with the same name – who, on the other hand, was white and from another city – had an arrest warrant against him in Maceió/Alagoas.²²

The violence to which Júnior had been subjected and was reporting was included in the hearing’s transcripts and highlighted by his lawyer – an exceptional occurrence on that day. The document was sent by the Judiciary to the Civil Police for investigation. We went to the Police Station and looked for the investigation proceedings: even after months of the reporting, Júnior still hadn’t been heard in the investigation. Considering that this is one of the first steps in an investigation, one can presume that it was not advancing. The police officers accused of beating Júnior continue to walk free on the streets of Cuiabá.

This case shows that in the many torture reports where a judge orders an investigation – which in itself is a rarity in this Bail Court – it doesn’t undergo due process at the police station.

Also, on May 28, 2021, five other people were brought before the judge for bail hearings. Except for Júnior’s case, where he was released because he had been mistakenly detained, torture report cases share similarities: usually, the person is arrested for drug trafficking, and then the arrest is converted to a preventive detention. Therefore, arrests for drug trafficking and conversion of the initial arrest into preventive detention seem to be the pattern for torture allegations at bail hearings. In such cases, no investigations are conducted about the reported tortures.

Júnior’s case, as shown above, deviates from this pattern. He was not charged with a crime, his prison was considered illegal, and the judge ordered an investigation. Even so, the legal outcome in this case too was unexpected – the investigative inquiry into the complaint registered by Júnior had not yet been concluded and he had not even been heard at the time of this article’s writing.

Throughout our study, we repeatedly questioned whether torture should not be the central element investigated in these cases. Our perception is that the criminal justice system has neglected the narratives concerning the crime of torture. On several occasions, we questioned

²⁰ Nona vara criminal especializada delitos de tóxicos do Tribunal de justiça do Mato Grosso, Case file no. 1007677-23.2021.8.11.0042.

²¹ Fictional name.

²² Nona vara criminal especializada delitos de tóxicos do Tribunal de justiça do Mato Grosso, Case file no. 1007705-88.2021.8.11.0042.

the purpose of a system that commits a crime – torture – to investigate other crimes. Sometimes, the system seems to violate more rights than the accused persons themselves.

And, although it is the State's obligation to promptly and safely guide the individual when deprived of liberty²³, the Brazilian system seems to respond to suspicion of committing a crime with more violence.

V. The Results

Considering all the examined cases, one of the most relevant conclusions that transpired from the research was the commonplace status of the situations mentioned above, and: the fact that usually the prisoners are either poor black men or the socially vulnerable (homeless people and drug users, for example).

In this context, it is worth reaffirming that we are not able to prove whether those people were tortured or not. We cannot claim materiality or even authorship of these facts. The only evidence examined in this research is the bail hearings and what happened during them. That being said, what we can say for sure is that the torture allegations and the violence those people claim to have suffered don't engender any legal outcomes. If bail hearings were drawn up as a means to prevent or avoid the torture of detainees, the hearings that took place in Cuiabá make this goal questionable.

Additionally, in this study, considering the incomes declared in the case files, we found that all individuals who had reported having suffered violence during detention did not belong to the upper class. In other words, at least regarding the researched pool, only members of the most vulnerable strata of the community were subjected to torture.

In the same sense, the National Council of Justice has detected that systematic institutional violence disproportionately impacts some social segments, in particular, poor black people, and residents of the outskirts of urban centers – a profile identical to the one identified in this research:

The issue of torture and ill-treatment in the country permeates several dimensions that result in a scenario of systematic institutional violence, incipient accountability of the agents involved, a fearful social perception of the police, and significant underreporting of torture and ill-treatment. These elements disproportionately impact some social segments, in particular young, black, and poor people, and residents of the urban centers' outskirts – a profile similar to that of those most present at bail hearings.²⁴

For the research period ranging from May to July 2021, we followed 92 days of bail hearings held in Cuiabá. However, only 72 days of audiovisual recordings were located. The audiovisual recordings of 20 days (21.73% of the total) worth of hearings were lost, making researching them impossible. It is believed that the losses happened due to the Covid-19 pandemic, as the standard of arrests in Cuiabá was then changed for health purposes, thus causing the loss of the recordings.

²³ FLÁVIA PIOVESAN, MELINA FACHIN, VALÉRIO MAZZUOLI, *COMENTÁRIOS À CONVENÇÃO AMERICANA SOBRE DIREITOS HUMANOS* (2019), at 94.

²⁴ LUÍS GERALDO SANT'ANA LANFREDI ET AL. EDS., *CONSELHO NACIONAL DE JUSTIÇA (EDS.), PROGRAMA DAS NAÇÕES UNIDAS PARA O DESENVOLVIMENTO, ESCRITÓRIO DAS NAÇÕES UNIDAS SOBRE DROGAS E CRIME* (2020), at 18.

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Table showing relation between the total sample of days from the 11th Criminal Court of Cuiabá – Bail Hearings and Military Justice proceedings and the researched ones, from May to July 2021.

| Total days | Researched days | Lost days |
|------------|-----------------|-------------|
| 92 (100%) | 72 (78,27%) | 20 (21,73%) |

Six hundred and forty-one bail hearings were conducted on the 72 researched days. In 143 of the cases, the detainees gave positive answers when asked by the judge if they had been in any way tortured during the period between being arrested and brought to court – a number equivalent to 22.30% of the hearings. Of the 143 torture reports made at the bail hearings, the Judiciary only submitted five cases for investigation:

1) Case file no. 1007360-25.2021.8.11.0042 – 05/18/2021 hearing (communication sent to the Civil Police’s Internal Affairs);

2) Case file no. 1007940-55.2021.8.11.0042 – 05/28/2021 hearing (communication sent to the Civil Police’s Internal Affairs);

3) Case file no. 1010168-03.2021.8.11.0042 – 07/16/2021 hearing (communication sent to the Military Police’s Internal Affairs);

4) Case file no. 1010814-13.2021.8.11.0042 – 07/29/2021 hearing (communication sent to the Military Police’s Internal Affairs);

5) Case file no. 1008265-30.2021.8.11.0042 – 06/06/2021 hearing (communication sent to the Military Police’s Internal Affairs).

In this context, we must highlight that, despite the five official communications submitted by the Judiciary to the responsible authorities, only two police inquiries were opened to investigate the torture cases mentioned in the bail hearings. However, no legal criminal proceedings were initiated, and the alleged torturers were not brought to trial. The other three communications from the Judiciary to the Police did not lead to the opening of a police inquiry.

The investigation of the two torture cases mentioned remained untouched in the police unit up until the writing of this article. No criminal charges were filed by the Public Prosecutor’s Office, and the investigations have still not produced major outcomes after almost two years.

The ruling that decides on the start of an investigation is often short and timid, since the judge, in most cases, has no probative elements other than the claims made by the tortured person. In many cases, the forensics institute has not concluded its report in time for the bail hearings. Here is an example of a ruling:

Finally, I ORDER that, with the addition of the forensic report to the case file, if any bodily injury is found, the Police’s Internal Affairs Department shall be notified so that it can take adequate measures regarding the allegations of assault [that would have been done] by police officers Silva and Smith.²⁵

In the two cases that resulted in official inquiries, case file nos. 1007360-25.2021.8.11.0042 and 1007940-55.2021.8.11.0042, the victims were not even officially heard to identify the alleged torturers. In the other cases, Internal Affairs determined the opening of preliminary investigations, and no progress followed.

²⁵ Case file no. 1007705-88.2021.8.11.0042, *supra* note 20.

In conclusion, an official investigation was started into the torture reports presented at a bail hearing in only 1.40% of the cases. However, no criminal charges were filed, nor were the police inquiries concluded in any of them.

Table showing relation between torture reports, inquiries, and the punishment of perpetrators of the 11th Criminal Court of Cuiabá – Bail Hearings and Military Justice cases, from May to July 2021.

| Torture reports | Cases forwarded to investigative offices | Official inquiries | Criminal charges/proceedings |
|------------------------|---|---------------------------|-------------------------------------|
| 143 (100%) | 05 (3,50%) | 02 (1,40%) | Zero (0%) |

More than half of the prisoners who reported to have been tortured were arrested for drug trafficking (53.52%), and the rest for a variety of other types of crimes, indicating a higher torture and ill-treatment incidence in cases of repression to the illicit narcotics trade.

Table showing relation between the types of crimes and the presence of torture reports in the 11th Criminal Court of Cuiabá – Bail Hearings and Military Justice cases from May to July 2021.

| | | |
|--|----|--------|
| Drug-related crimes | 76 | 53.5% |
| Property crimes | 40 | 28.17% |
| Maria da Penha Law (domestic violence crimes) | 11 | 7.74% |
| Gun control crimes | 3 | 2.11% |
| Traffic offenses | 5 | 3.52% |
| Others | 7 | 4.93% |

The complete report of the studied cases is filed at the 11th Criminal Court of Cuiabá²⁶.

²⁶ Consulted case files. Nona vara criminal especializada delitos de tóxicos do Tribunal de justiça do Mato Grosso, Case file nos. 1006600-76.2021.8.11.0042, 1006601-61.2021.8.11.0042, 1006627-59.2021.8.11.0042, 1006660-49.2021.8.11.0042, 1006734-06.2021.8.11.0042, 1006740-13.2021.8.11.0042, 1006731-51.2021.8.11.0042, 1006833-73.2021.8.11.0042, 1006836-28.2021.8.11.0042, 1006837-13.2021.8.11.0042, 1006838-95.2021.8.11.0042, 1006839-80.2021.8.11.0042, 1006845-87.2021.8.11.0042, 1006948-94.2021.8.11.0042, 1006947-12.2021.8.11.0042, 1006943-72.2021.8.11.0042, 1006980-02.2021.8.11.0042, 1006979-17.2021.8.11.0042, 1007079-69.2021.8.11.0042, 1007079-69.2021.8.11.0042, 1007117-81.2021.8.11.0042,

What Happens to Torture Reports Made in Bail Hearings in Brazil? An Analysis of the City of Cuiabá Between May and July 2021

Considering the analysis presented above, it is relevant to mention Lucian Maia's research, which criticized the Judiciary's performance, stating that judges are unable to effectively combat torture in their decisions. Here, Maia reported that, at all stages of the justice system's intervention in society, there are serious flaws that need to be overcome. There is underreporting of torture occurrences, allegations that are not investigated, and, even when investigations are conducted, the police's or Public Prosecutor's Office's conclusions downgrade the reports of torture by labeling them with some other crime classification (assaults, abuse of authority). According to the author, almost no one accused of torture is convicted²⁷.

The results found in the analysis of these 92 days of bail hearings in Cuiabá were the same. Of the 143 allegations of torture, only five resulted in a judicial submission for investigation. Even of these five cases, only two police inquiries were opened. A year-and-a-half after the hearings, neither inquiry had been concluded. There were no criminal charges, nor any criminal legal proceedings.

Finally, we must also highlight one last fact about the alleged torture perpetrators: of the 143 reports of torture, 139 people claimed that they were tortured by the Military Police and four by the Civil Police.

VI. Conclusion

Our intention here was not to question the importance of bail hearings in Brazil. In a country with massive numbers of violence, torture, and other crimes, they are essential for exercising judicial control over police activity. This work sought to understand how torture and violence reports were received by the criminal justice system, through the analysis of bail hearings held in the city of Cuiabá, the Mato Grosso State capital, between May and July 2021.

As repeatedly alleged in the hearings at the 11th Criminal Court of Cuiabá, beatings, strangulation, shocks, suffocation, burns, and humiliation are a common occurrence in the city's preventive arrests. Additionally, despite the large number of torture reports made during bail hearings, in most cases, no investigations are conducted by the responsible authorities.

The research results indicate that, in the city of Cuiabá, only in 1.40% of the cases where torture was reported, the allegations were submitted for official investigation by the responsible authorities. Even among those few cases, no official inquiries were completed, nor were any criminal charges filed. It is also worth emphasizing that the judges, prosecutors, and defense lawyers of these cases were all present when the arrested persons reported being tortured.

The essence of bail hearings is that every arrested person must have direct and personal contact with a judge so that the magistrate can examine the conditions in which the person was arrested and provide fairer and more humane rulings. Therefore, it is undeniable that the bail hearings' existence contributes to some level of humanization of the detainees, representing an improvement in the criminal justice system. Therefore, the use of bail hearings must be

1007111-74.2021.8.11.0042, 1007128-13.2021.8.11.0042, 1007128-13.2021.8.11.0042, 1007128-13.2021.8.11.004, 1007117-81.2021.8.11.0042, 1007128-13.2021.8.11.0042, 1007175-84.2021.8.11.0042, 1007178-39.2021.8.11.2021, 1007177-54.2021.8.11.0042, 1007220-88.2021.8.11.0042, 1007218-21.2021.8.11.0042, 1007229-50.2021.8.11.0042, 1007340-34.2021.8.11.0042, 1007348-11.2021.8.11.0042, 1007348-11.2021.8.11.0042, 1007343-86.2021.8.11.0042, 1007343-86.2021.8.11.0042, 1007349-93.2021.8.11.0042, 1007352-48.2021.8.11.0042, 1007360-25.2021.8.11.0042, 1007347-26.2021.8.11.0042, 1007405-29.2021.8.11.0042, 1007409-66.2021.8.11.0042 e 1007458-10.2021.8.

²⁷ LUCIANO MARIZ MAIA, DO CONTROLE JUDICIAL DA TORTURA INSTITUCIONAL: À LUZ DO DIREITO INTERNACIONAL DOS DIREITOS HUMANOS (2006).

improved. Despite the flaws in its execution, bail hearings continue to be relevant, as they represent a paradigm shift and allow for the immediate annulment of illegal arrests, as we were able to observe in this research.

Additionally, we observed that all the people who reported having been tortured or subjected to other forms of violence at some point in their arrest were somehow socially vulnerable. Poor black men and homeless people were the main denouncers of such violence.

In this sense, it is worth noting that on May 28, 2021 – the day we used as an example for the months surveyed – only one case was sent for investigation. Despite the various torture reports made on that day, only the person who was released after the bail hearing – Júnior, who had been mistakenly arrested – had his report submitted for further investigation. The initial impression might be that “only the innocent” are entitled to have their torture reports investigated. We lack the data necessary to reach this conclusion, but the observed Judiciary’s connivance with the dozens of torture allegations seems to reveal a criminal system that is still barely prepared to fight crime – which unfortunately is a reality on the Brazilian streets, prison institutions, and courts.

The investigation of torture carried out by State agents presents difficult problems, mainly because the responsibility for investigating torture crimes lies with the judicial police, whose agents often appear in the records as perpetrators of torture crimes.

Finally, we must express, once again, our surprise. In one way or another, we believed that the Judiciary would occupy a major role in the fight against allegations of torture. That is not what we observed during this research. What we did observe was a bureaucratic system that offered little to no attention to the torture reports made within it, contributing to the reproduction of a system that resembles the evils of a Military Dictatorship that are unfortunately still present in our routines.