Handbook on

Handcuffs and Other Instruments of Restraint in Court Hearings

Practical guidelines and international standards

"JUSTIÇA PRESENTE" SERIES | STRENGTHENING OF DETENTION CONTROL HEARINGS

Omega Research Foundation

UNODC
United Nations Office on Drugs and Crime

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CNJ CONSELHO NACIONAL DE JUSTIÇA

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Coordination of the Series Fazendo Justiça: Luis Geraldo Sant'Ana Lanfredi; Natalia Albuquerque Dino de Castro e Costa; Renata Chiarinelli Laurino; Valdirene Daufemback; Talles Andrade de Souza; Débora Neto Zampier;

Revision: Anna Giudice; Daniela Dora Eilberg; Luis Gustavo Cardoso; Matthew McEvoy;

General Supervision: Marina Lacerda e Silva and Rafael Barreto Souza

Technical Supervision: Daniela Dora Eilberg

Support: Communication Fazendo Justiça

Diagramming: Alvetti Communication

Translation from Portuguese to English: Camilla Zanatta; Daniela Dora Eilberg; Matthew McEvoy;

Based on the Handbook prepared by Omega Research Foundation

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INTRODUCTION

The “Handbook on Handcuffs and Other Instruments of Restraint in Judicial Hearings” is a document translated and adapted from the original handbook developed for the Brazilian judiciary which is entitled “Handbook on Handcuffs and Other Instruments of Restraint in Judicial Hearings - Practical guidelines for the implementation of Binding No. 11 of the Federal Supreme Court (STF) by the judiciary and Courts[1]”. Both instruments are the result of a technical cooperation between the Omega Research Foundation and the Programme “Fazendo Justiça”.

Fazendo Justiça, previously called "Justiça Presente”, is an unprecedented interinstitutional partnership between the National Council of Justice (CNJ), the United Nations Development Programme (UNDP) and the United Nations Office on Drugs and Crime (UNODC), with support from the Ministry of Justice and Public Security (MJSP) of Brazil, represented by the National Penitentiary Department (DEPEN). The Programme “Fazendo Justiça”, among other goals, aims to strengthen and professionalise pretrial detention hearings, as well as related pretrial services, with a view to fully implementing CNJ Resolution No 213/2015 and the legislation related to pretrial detention hearings, known in Brazil as detention control hearings. These hearings are an important human rights protection officially introduced and overseen in Brazil by the CNJ. They aim to guarantee the right to be presented before a judicial power and to receive a hearing within 24 hours of arrest. Their purpose is to analyse the legality of the in flagrante delicto arrest, determine whether the person will await trial at liberty or in provisional detention, as well as identify whether there was police violence.

Between June 2019 and December 2020, UNODC consultants monitored detention control hearings in each of Brazil’s federal units. The experience of these consultants contributed greatly to the development of a collection of authoritative and contemporary standard-setting handbooks on detention control hearings. These handbooks, known collectively as “Série

1 In Portuguese, see “Manual sobre algemas e outros instrumentos de contenção em audiências judiciais. Orientações práticas para implementação da Súmula Vinculante nº 11 do STF pela magistratura e Tribunais” In: https://www.cnj.jus.br/wp-content/uploads/2020/10/Manual_de_algemas-web.pdf.

Justiça Presente", address priority issues related to detention control hearings, including: social protection, judicial decisions, combating and preventing torture, and the use of handcuffs and other instruments of restraint.

During their 18 months assisting in the strengthening of detention control hearings, the consultants were approached by members of the judiciary in several states with questions concerning the appropriate and lawful use of instruments of restraint during hearings. The National Council of Justice sought out the Omega Research Foundation[2], a leading institution on the subject, in order to collect technical information that could support the work of the judiciary regarding the use of instruments of restraint on people under the State's custody. This consultation resulted in a very detailed document, with practical considerations regarding the use of handcuffs, international standards and parameters, as well as experiences of courts in other countries. The production of the Brazilian Handbook was based on this material.

Adapted for a more international audience, the present Handbook contains information on relevant legislation, case-law and good practice from Brazil and several other countries and sets out guidelines and recommendations applicable to judicial hearings in general.

This Handbook aims to assist the work of judges, members of the Public Prosecutor's Office, the Public Defender's Office, criminal defence attorneys and other professionals, in order to promote common understanding regarding the use of instruments of restraint in line with national and international parameters and principles. In addition, the Handbook aims to contribute to the reduced use of instruments of restraint, strictly limited to exceptional cases, the prohibition of inappropriate instruments and techniques, and the prevention of fundamental rights violations arising from the use of handcuffs in court hearings.

It is also a useful tool for the defendant, as well as for their families, civil society organizations, external observers, control and oversight bodies and other actors that monitor these practices within the criminal and juvenile justice systems.

The first chapter details some of the factors that judicial authorities and other public officials should consider when determining whether to use instruments of restraint, particularly in light of international law and standards.

2 The Omega Research Foundation is a British organization that carries out evidence-based projects, training and research on the use of force by state agents, as well as on the global process of production, trade and use of military, security and police equipment.

The second chapter includes examples and analysis of legislation and jurisprudence from several jurisdictions, providing important elements for judicial consideration in the context of criminal hearings, including detention control hearings. In recognition of the origins and aims of the original handbook, this chapter will pay particular attention to Brazilian law and practice.

The third chapter describes the different types of instruments of restraint and techniques for their application, including illustrative images and detailed descriptions to enable actors in the justice system to base their analysis and decisions on sound technical knowledge. In addition, some of the risks associated with each type of handcuffs or other instruments of restraint and the specified techniques are indicated. The description of the risks is not exhaustive but aims to cover those most associated with each instrument or technique. Still focusing on technical aspects, the chapter considers how the use of different instruments and techniques can impact the rights of the accused.

Finally, it should be noted that, for the purposes of this Handbook, whenever the terms judicial or criminal hearing are mentioned, it should be understood as also applicable to hearings held in the juvenile justice system, as the principles of legality and non-discrimination forbid that children be subjected to more punitive laws than adults[3] [4].

3 Art. 35, I, da Lei nº 12.594/2012 – Lei do Sistema Nacional de Atendimento Socioeducativo (SINASE).

4 See: https://www.cidh.oas.org/countryrep/JusticiaJuvenileng/jjii.eng.htm#_ftnref22.

1 GENERAL CONSIDERATIONS ON INSTRUMENTS OF RESTRAINT

1.1 INSTRUMENTS OF RESTRAINT AND LIMITS ON THEIR USE

Instruments of restraint are applied to the body to restrict or immobilise the movement of an individual. Their use can sometimes be considered in the courtroom to protect the rights to life and security of criminal suspects and prisoners, as well as security officials, judges, members of the legal profession and of the public in general. However, this should be exceptional and never routine, and based on well-founded risks which are explained and recorded in the proceedings. It is important for the judiciary and other stakeholders to be aware of the exceptional nature of this measure.

Judicial authorities have the power to impose restrictions on persons suspected of or charged with crimes, for example, in exceptional circumstances, by remanding them in custody. According to the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, "The imposition of restrictions upon [a person arrested or detained pending investigation and trial] which are not **strictly required** for the purpose of the detention

or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden [Emphasis added]"[5]. Ordering the use of instruments of restraint during a judicial hearing is one such restriction, but it is subject to additional limits because of the heightened risk of negatively impacting on human rights, particularly due process rights.

Instruments of restraint are a tool of law enforcement and a means of coercion. As such, it is important to note that the UN Code of Conduct for Law Enforcement Officials requires officials to "respect and protect human dignity and maintain and uphold the human rights of all persons"[6]. Any use of instruments of restraint must comply with international use of force standards and principles[7]. This means that their use must be exceptional and proportional, and limited to "serious, urgent and necessary cases as a last resort after having previously exhausted all other options, and for the time and to the extent strictly necessary"[8].

The UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), strict limits on the application of instruments of restraint on a person in custody or otherwise deprived of their liberty[9]. These instruments may only be used when authorised by law and in the following circumstances:

(a) As a precaution against escape during a transfer, provided that they are removed when the prisoner appears before a judicial or administrative authority;

(b) By order of the prison director, if other methods of control fail, in order to prevent a prisoner from injuring himself or herself or others or from damaging property; in such

5 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the United Nations General Assembly. Resolution 43/173 of 9 December 1988, Principle 36 (2).

6 Code of Conduct for Law Enforcement Officials, adopted by UN General Assembly resolution 34/169. The resolution was adopted without a vote on 17 December 1979.

7 These include the principles of legality, necessity, proportionality, precaution and responsibility. See Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, received by UN General Assembly Resolution 45/166. The resolution was adopted without a vote on 14 December 1990.

8 Principles and Good Practices on the Protection of Persons Deprived of Liberty in the Americas, adopted by the Commission during its 131st regular session, held from March 3-14, 2008, Principle XXIII (2).

9 The United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), although not legally binding, were unanimously adopted by the United Nations General Assembly (UNGA Resolution A/RES/70/175 adopted on 17 December 2015) and represent "the minimum conditions that are accepted as adequate by the United Nations". Rules 47 and 48 on restrictions are found in Part I, which apply to all categories of prisoners, including those who are yet to appear at trial (Preliminary Note 3).

instances, the director shall immediately alert the physician or other qualified health-care professionals and report to the higher administrative authority.[10]

Even under these circumstances, the use of instruments of restraint must also meet three other principles: other less intrusive methods must be insufficient to contain the risk posed; the least intrusive method of restraint necessary to control the prisoner should be used, based on the level and nature of the risks posed; and they must be applied for the shortest amount of time necessary[11].

1.2 INSTRUMENTS OF RESTRAINT AND RIGHTS POTENTIALLY AFFECTED

The use of these instruments at the moment of arrest, in places of deprivation of liberty, during transportation of the person deprived of liberty and during judicial hearings may substantially impact the fundamental rights of persons deprived of liberty.

In the specific context of judicial hearings, the rights that could potentially be affected by the use of handcuffs and instruments of restraint include the rights to a fair trial, particularly in relation to the presumption of innocence, the right of persons deprived of liberty to be treated with humanity and respect for their dignity and the right to be free from torture and other ill-treatment. Furthermore, the rights to communicate with counsel and defend oneself with equality of arms could be affected[12]. The general standards discussed in this Handbook are also applicable in other contexts, and they are discussed in greater detail elsewhere.[13]

The American Convention on Human Rights, also known as the Pact of San José, sets out that "Every person accused of a criminal offense has the **right to be presumed innocent** so long as his guilt has not been proven according to law"[14].

10 Nelson Mandela's Rules, Rule 47.

11 Nelson Mandela's Rules, Rule 48.

12 See Deck v. Missouri, 544 U.S. 622 (2005).

13 See, for example: Fair Trials, Innocent until proven guilty? The presentation of suspects in criminal proceedings, 2019, available at https://www.fairtrials.org/publication/innocent-until-proven-guilty-0 and Omega Research Foundation, Tools of Torture and Repression in South America: Use, manufacture and trade, 2016, available at https://omegaresearchfoundation.org/publications/tools-torture-and-repression-south-america-use-manufacture-and-trade-july-2016.

14 American Convention on Human Rights, Article 8(2).

The unjustified presentation in court of suspects in instruments of restraint can "**cause irreversible damage to a suspect's reputation and can also affect judgments about a person's guilt or innocence**"[15]. It is for this reason that the UN Human Rights Committee stated that the presumption of innocence requires that "Defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals".[16]

The **presumption of innocence** is "fundamental to the protection of human rights"[17]. According to empirical studies, when people are shown images of an arrest, the more severe the instrument or method of restraint used, the more likely they are to think the arrested person is guilty[18]. While judges should be less susceptible to bias than ordinary members of the public, **the unnecessary use of instruments of restraint in the courtroom risks creating bias, reinforcing stigmas and unduly influencing judicial decisions**[19]. For example, in a detention control hearing the decision whether or not to remand a suspect in pre-trial detention may be affected by how the person is presented before them[20].

In general, the use of handcuffs and instruments of restraint **carries with it a risk of violating the right to physical and mental integrity**. These means are intrinsically invasive and risk causing injury, pain and /or humiliation[21]. In addition, they are often used not just to control a

15 Fair Trials, Innocent until proven guilty? The presentation of suspects in criminal proceedings, 2019, available at https://www.fairtrials.org/publication/innocent-until-proven-guilty-0, p. 5.

16 UN Human Rights Committee, General Comment No. 32, Article 14: Right to equality in trials and tribunals and to a fair trial (Ninetieth session, 2007), available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en, parágrafo 30.

17 UN Human Rights Committee, General Comment No. 13, Article 14 (Twenty-first session, 1984), available at http://www1.umn.edu/humanrts/gencomm/hrcom13.htm, parágrafo 7.

18 Fair Trials, Innocent until proven guilty? The presentation of suspects in criminal proceedings, 2019, available at https://www.fairtrials.org/publication/innocent-until-proven-guilty-0, p. 52.

19 Fair Trials, Innocent until proven guilty? The presentation of suspects in criminal proceedings, 2019, available at https://www.fairtrials.org/publication/innocent-until-proven-guilty-0, pp. 43-44.

20 Fair Trials, Innocent until proven guilty? The presentation of suspects in criminal proceedings, 2019, available at https://www.fairtrials.org/publication/innocent-until-proven-guilty-0, pp. 46.

21 Associação para a Prevenção da Tortura (APT) e Reforma Penal Internacional (PRI), Instruments of Restraint: Addressing risk factors to prevent torture and ill-treatment, 2015, available at https://www.apt.ch/sites/default/files/publications/factsheet-5_use-of-restraints--en.pdf.

person's movement, but to deliberately cause unnecessary pain or injury or to punish, such as, for example, by over-tightening, which could constitute ill-treatment or torture.

The European Court of Human Rights has issued several judgments which are relevant to the use of instruments of restraint in judicial hearings[22]. In a particularly pertinent judgment, the ECtHR established that **the unjustified handcuffing of an accused during public hearings was degrading treatment**, and constituted a violation of the prohibition of torture and other ill-treatment[23].

The use of instruments of restraint contravenes international human rights law when they are applied on **discriminatory grounds**. This may be particularly relevant in countries where there are minorities or marginalised groups.

Other rights may also be affected, such as the right to health. The UNODC-OHCHR Resource

22 European Court of Human Rights, Case of Erdoğan Yağiz v. Turkey, 6 March 2007, para. 42-47.

23 European Court of Human Rights, Case of Gorodnichev v. Russia, 24 May 2007.

book on the use of force and firearms in law enforcement notes that, where a person has a condition that may be aggravated by the application of instruments of restraint, their use may amount to excessive force[24]. It is therefore important to document the characteristics and conditions of the person who is restrained, such as pregnant women and/or women giving birth, people with disabilities and sick people, among others.

1.3 CASE-SPECIFIC RISK ASSESSMENTS

When making a decision on whether or not to use handcuffs or other instruments of restraint in a criminal courtroom, the judge must analyze the information in the case file and consider the multiple factors surrounding the specific case.

Law enforcement officials responsible for escorting people in custody or otherwise deprived of their liberty should be given clear information on this matter and instructed to refrain from systematically requesting that suspects be handcuffed or restrained during judicial hearings. In this regard, the international *corpus juris* provides some useful guidelines.

According to the UN Committee against Torture (UN CAT), "The guiding principle in the matter of restraints and the enjoyment of rights generally is that the status, penalty, legal condition or disability of an individual cannot be a reason to automatically impose [instruments of] restraints"[25]. Furthermore, the decision to use instruments of restraint on a person in custody or otherwise deprived of their liberty can only be justified by "a valid grave security reason"[26].

Therefore, risk assessments must be **case-specific, taking into account multiple factors, and not based on their status alone**[27]. Such factors should be considered in relation to one another to provide a complete picture, including an analysis of **whether the suspect voluntarily surrendered**, whether they belong to a vulnerable group (e.g. children, the elderly, pregnant women, persons with disabilities, etc.), and whether there was a **health check**, including mental health, conducted by experts[28].

24 United Nations Office on Drugs and Crime (UNODC) and Office of the United Nations High Commissioner for Human Rights (OHCHR), Resource book on the use of force and firearms in law enforcement, 2017, p. 82.

25 UN Committee against Torture, "Observations of the Committee against Torture on the revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR)", 16 December 2013, UN doc. CAT/C/51/4, para. 36.

26 Report on the 2008 visit of the Subcommittee on Prevention of Torture (SPT) to Benin, 15 March 2011, CAT/OP/BEN/1, para. 107.

27 Status particularly involves characteristics of a legal nature, ranging from being a migrant to being suspected of association with criminal groups.

28 Fair Trials, Innocent until proven guilty? The presentation of suspects in criminal proceedings, 2019, available at https://www.fairtrials.org/publication/innocent-until-proven-guilty-0, p. 53.

Official records showing the suspect's involvement in violent incidents while in detention or escape attempts may form part of the risk assessment. The assessment should also consider the **frequency of incidents** involving physical violence, threats or escape attempts from the specific courtroom where the hearing will take place.

Other factors may include the "age, gender, respective size and apparent strength and fitness (i.e. physical condition) of a person"[29]. Importantly, **staff shortages cannot be used to justify the use of handcuffs** or other instruments of restraint, nor can other structural deficiencies[30].

Similarly, **the nature of an unproven allegation or criminal charge should not be considered** for the purposes of determining whether to use instruments of restraint, as to do so would be prejudicial to the outcome of the criminal justice process, in particular to due process safeguards and the presumption of innocence. Therefore, any assessment of the need to use handcuffs or other instruments of restraint in a judicial hearing should always be multifactorial and individualised.

Crucially, **the effectiveness of other, potentially less intrusive security measures should be given priority**, such as, for example, the presence of trained security officials who should not be equipped with lethal weapons, emergency exit points in the courtroom, architectural design of buildings[31], among others.

In any case, **it is ultimately up to the court and not police or security staff to decide whether instruments of restraint should be used in the courtroom**. Where a judge delegates the decision whether or not to use these instruments to security officials, this could potentially have implications for the principle of the independence of the judiciary and undermine confidence in the administration of justice.

Even where a judge has determined the need to use handcuffs at the beginning of proceedings, **once a judge orders the release or conditional release** of a suspect or prisoner, all instruments of restraint **should be immediately removed**, because there is no longer a valid grave security reason for their use.

29 United Nations Office on Drugs and Crime (UNODC) and Office of the United Nations High Commissioner for Human Rights, Re-source book on the use of force and firearms in law enforcement, 2017, p. 82.

30 United Nations Convention against Torture (UNCAT), "Observations of the Committee against Torture on the revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR)", 16 December 2013, UN doc. CAT/C/51/4, para. 37.

31 See CNJ, Manual de Arquitetura Judiciária para Audiência de Custódia. 2021.

Finally, it should be noted that the widespread, standardized and systematic use of handcuffs or other instruments of restraints in a particular courtroom or jurisdiction would suggest, a priori, incompliance with international human rights law and standards, and all possible measures should be taken to change this.

1.4 SPECIFIC GROUPS

Judges, prosecutors, lawyers, other professionals and external legal monitors should be aware that standards have been developed on the use of instruments of restraint on specific groups. These standards complement the general standards outlined above.

The vulnerability of children, including adolescents, deprived of liberty has been recognised under international human rights law, which indicates that the use of instruments of restraint on children must be exceptional, only occurring when all other means of control have failed, never causing humiliation or degradation, and for the shortest possible amount of time. The use of instruments of restraint must be authorised and specified by law and regulation[32]. To justify the use of instruments of restraint, the child must pose an imminent threat of injury to him or herself or others and restraints should not be used solely to secure compliance with orders[33].

International human rights standards provide that "Instruments of restraint shall never be

32 United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), adopted by General Assembly resolution 45/113 of 14 December 1990, Rule 64; United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice.

33 United Nations Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the juvenile justice system, UN doc. CRC/C/GC/24, para. 95 (f).

used on women during labour, during birth and immediately after birth"[34] [35]. While it is unlikely that a woman in labour will be presented before a judge, the judiciary and security officials should consider the needs and vulnerability of women in an advanced stage of pregnancy or post-labour, as this prohibition should be considered equally applicable in the courtroom.

It is also worth noting that if the suspect is handcuffed and needs to use the toilet, he or she would need assistance, which would constitute a degrading situation, especially considering gender issues and the vulnerability of women in relation to security agents. It is important to emphasise that persons deprived of their liberty should be escorted by officers of the same sex, with special attention to transgender persons, who should be asked the gender of public officer they want to escort them.

In many countries, racial disparities are particularly evident in the functioning of the criminal and juvenile justice systems, resulting in the disproportionate representation of minority groups in places of detention. In this sense, **judicial authorities must consider the racial dimension of any decision concerning the use of instruments of restraint, aiming to guarantee the principle of non-discrimination** and the presumption of innocence of minorities.

In addition, the principles of necessity, proportionality and non-discrimination require that even where no explicit standards have been developed, the vulnerabilities of certain groups must be taken into account when determining the level of risk they pose and whether instruments of restraint are needed[36]. Such groups may include **persons with mental or physical disabilities, homeless people, LGBTI+ people, the elderly, sick or injured persons, migrants, refugees, indigenous peoples and other minority groups[37]**.

34 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), adopted by General Assembly resolution 65/229 of 21 December 2010, rule 24. See also Nelson Mandela Rules, Rule 48 (2).

35 In practice the Nelson Mandela rules are UN standards and norms on crime prevention and criminal justice even though they can also be seen as part of international human rights standards, however they do not have the binding nature of human rights treaties.

36 APT e PRI, Instruments of Restraint: Addressing risk factors to prevent torture and ill-treatment, 2015, pp. 7-8.

37 See J Murdoch and R Roche, The European Convention on Human Rights and Policing: A handbook for police officers and other law enforcement officials, Council of Europe, 2013, available at https://www.echr.coe.int/Documents/Handbook_European_Con-vention_Police_ENG.pdf, pp. 34-35 e APT e PRI, Instruments of Restraint: Addressing risk factors to prevent torture and ill-treatment, 2015.

2
INTERNATAL STANDARDS AND PRACTICE

International good practice indicates that instruments of restraint should be used exceptionally during court hearings on a reasoned basis due to the specific circumstances of the case. In many countries, however, the application of this rule has been inconsistent, and it is common for persons deprived of their liberty to be presented in the courtroom with instruments of restraint and prison clothing.

The Handbook now briefly considers how the judiciary and monitoring bodies in several countries handle this issue. These references are intended to assist judges, prosecutors, public defenders and lawyers when interpreting the rules discussed above.

The **South African** courts have repeatedly emphasised that instruments of restraint should only be used exceptionally during judicial hearings and that it is a matter for the judge to decide. The High Court has said the practice is "unsatisfactory, undesirable and objectionable and is to be

deprecated and strongly disapproved of", for the following reasons:

i. it may indicate to a judicial officer that the accused is serving a prison sentence for a previous conviction, **effectively placing inadmissible evidence** before the court;

ii. it may influence a judicial officer to **infer that the accused is dangerous, potentially inducing fear or apprehension**;

iii. it may induce a judicial officer to infer that the accused has previously attempted to escape from custody or has given reason to believe that he or she may attempt to escape;

iv. it violates the human dignity of the accused; and,

v. it potentially violates the dignity of the court, which is "**a civilized forum for rational discourse and analysis, and not a detention, punishment or torture centre**"[38]

The South African judge reinforces that the accused person has the right not to be presumed guilty, and that the use of handcuffs during a judicial hearing provokes anticipated inferences regarding dangerousness, inducing fear and apprehension, effects that are incompatible with the rationality necessary for the performance of judicial activity, placing such practice in the realm of illicit evidence.

In Brazil, the Supreme Federal Court has established strict parameters for the use of restraint instruments in a decision that is binding on the Judiciary and the three levels of government (municipal, state and federal). The Binding Precedent No. 11, of 22 August 2008, determines that:

> *The use of handcuffs is only lawful in cases of resistance and well-founded fear of escape or danger to one's own or another's physical integrity, on the part of the prisoner or a third party, with the exception justified in writing, under penalty of disciplinary, civil and criminal liability of the agent or authority and the nullity of the arrest or the procedural act to which it refers, without prejudice to the civil liability of the State*

38 S v Phiri (2033/05) [2005] ZAGPHC 38, [15]. Note that the Court applies this reasoning to both the use of restraint and the presentation of an accused in prison clothing.

This is the main normative basis on the use of handcuffs or other instruments of restraint in force in Brazil. Its scope involves court hearings but goes beyond the strictly judicial sphere and also affects the use of handcuffs in the context of police arrests, places of deprivation of liberty, among others.

Similar arguments were mentioned by the ministers of the **Brazilian** Supreme Court in the vote on HC 91952:

> *"So, when facing the jury, handcuffs project an image that is fixed in the judge's own judgment. As a matter of fact, as the eminent lawyer from the rostrum has already pointed out, they convey an idea of dangerousness and, in some way, this interferes with the judgment that will be issued.*[39]"

Among the precedents that underpinned the release of the Binding Precedent, the STF stressed that the use of handcuffs would have deleterious effects on the exercise of a full defence and the adversarial principle. It established that: "Keeping the accused in a hearing, with handcuffs, without having demonstrated, in view of previous practices, the dangerousness, means placing the defense, from the beginning, on an inferior level, not to mention the completely degrading situation.[40]"

Furthermore, the Code of Criminal Procedure (CPP) stipulates that: "The use of handcuffs on the accused shall not be allowed during the period he or she remains in the jury room, unless absolutely necessary for the order of the proceedings, the safety of witnesses or the guarantee of the physical integrity of those present[41]. Moreover, the Supreme Federal Court, in its decision in HC 91.952-9 SP, has already found that keeping the accused handcuffed during the trial session of the jury court caused prejudice to the defence. There is a similar prohibition in the Code of Military Criminal Procedure that provides: "The use of handcuffs should be avoided, provided that there is no danger of escape or aggression on the part of the prisoner[42]

Supreme Federal Court - ARE 847.535:

39 HC 91952, Reporting Justice Marco Aurélio, Full Court, judgment on August 7, 2008, DJe 19.12.2008.

40 HC 91952, Reporting Justice Marco Aurélio, Full Court, judgment on August 7, 2008, DJe 19.12.2008.

41 Code of Criminal Procedure, Article 474 (3).

42 Code of Military Criminal Procedure, Article 234.

The Supreme Federal Court has clearly identified the potential for the unnecessary use of handcuffs in the courtroom to adversely affect the accused's right to the presumption of innocence.

> *"As a 'rule of treatment', the presumption of innocence prevents any anticipation of a condemnatory judgment or recognition of guilt of the accused, whether by situations, practices, words, gestures, etc., For example: the impropriety of maintaining the accused*

Binding Precedent no. 11 in detention control hearings

Detention control hearings were instituted as a national policy by the National Council of Justice in 2015, through Resolution CNJ No. 213/2015. More recently, the requirement to hold these hearings was enshrined in law, in articles 287 and 310 of the Code of Criminal Procedure, following the approval of Law No. 13,964 in 2019. One of the purposes of the detention control hearing is to facilitate the identification of cases of torture and other cruel, inhuman and degrading treatment.

The Resolution of CNJ No. 213/2015 expressly restricts the use of handcuffs in Article 8, II, so that the judicial authority ensures that "the person arrested should not be handcuffed, except in cases of resistance and well-founded fear of escape or danger to their own or another's physical integrity, and that the exceptional situations should be justified in writing". Furthermore, in Protocol II of that Resolution, it is indicated that it may be considered as evidence of torture or cruel, inhuman or degrading treatment "when the person in custody has been [...] handcuffed without written justification or subjected to other physical restraints [...], without reasonable cause, at any time during the detention".

In addition, in light of the guidelines of the Binding Precedent No. 11, it is equally essential to ensure that handcuffs or other restraints are not used in other acts and procedures within the detention control hearing, such as during private interview with the defense counsel or consultations with the psychosocial team.

in humiliating exposure in the dock, the use of handcuffs when unnecessary, the abusive disclosure of facts and names of people by the media, the decree or maintenance of unnecessary precautionary detention, the requirement to remain in prison to appeal due to the existence of conviction in the first instance etc. (Inter-American Court, Case of Cantoral Benavides, Sentence of 18-8-2000, paragraph 119)[43]"

In the **United States**, the use of instruments of restraint in jury trials has been subject to very strict limitations. These guidelines are based on the presumption that juries could be influenced by information which is extraneous to the process, such as the use of handcuffs, which could influence their decision[44]. The country's legal standards continue to evolve. The Court of Appeals for the Ninth Circuit[45], in United States v. **Sanchez-Gomez**, declared unconstitutional a blanket policy to place prisoners in handcuffs, leg cuffs and a belly chain for most non-jury proceedings, and this was subsequently upheld by the Court en banc[46]. Although the Supreme Court later vacated the judgment as the defendants' criminal case had ended, it did not consider the constitutionality of the policy in question, thus the rationale remains highly relevant. The Court of Appeals declared the policy on the use of instruments of restraint unconstitutional because it did not meet the standard of an "adequate justification of its necessity", ruling that **the use of instruments of restraint under the policy was an "affront to the dignity and decorum of the proceedings" and risked interfering with a defendant's constitutional rights, namely to participate in their defence and communicate with their counsel**[47].

Regarding jury trials in the US, security measures inside the courtroom are solely within the trial judge's discretion. In the small number of cases where inherently abusive body-worn electric shock restraints are used in the courtroom, the use of these is regularly ruled an abuse of trial discretion on appeal[48]. The US Supreme Court has held that placing a defendant in instruments of restraint in a courtroom during trial is an "inherently prejudicial practice that… should be

43 ARE 847.535 AgR, voto do rel. min. Celso de Mello, j. 30-6-2015, 2ª T, DJE de 6-8-2015.

44 United States v. Zuber, 118 F.3d 101, 102 (2d Cir. 1997), 104.

45 With federal-wide jurisdiction involving the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington.

46 United States v. Sanchez-Gomez, 798 F.3d 1204 (9th Cir. 2015), vacated en banc, 859 F.3d 649 (9th Cir. 2017), vacated, 138 S. Ct. 1532 (2018). For more, see: Neusha Etimad, To Shackle or not to Shackle? The Effect of Shackling on Judicial Decision--Making, 28 Southern California Review of Law and Social Justice 349 (2019).

47 United States v. Sanchez-Gomez, 798 F.3d 1204 (9th Cir. 2015), 1208. The case reached the US Supreme Court, but the specific issue of the use of handcuffs was not examined, so the precedent remains relevant in the country (United States v. Sanchez-Go-mez, 138 S. Ct. 1532, 2018).

48 Justice, In the Dock: Reassessing the use of the dock in criminal trials, 2015, p. 27.

permitted only where justified by an essential state interest specific to each trial". The Court has also stated that the use of "shackles and gags" can significantly influence a jury and is "**an affront to the very dignity and decorum of judicial proceedings**", as well as greatly reducing the ability of the defendant to communicate with his or her counsel. Furthermore, the Court has held that the prohibition of the routine use of visible shackles during the guilt or penalty phases of a capital trial is "a basic element of due process protected by the Federal Constitution"[49]. In the majority of hearings requiring additional security measures in the USA, additional security officers are stationed in the courtroom.

EU Directive on Presumption of Innocence, 2016

Preamble (20) The competent authorities should abstain from presenting suspects or accused persons as being guilty, in court or in public, through the use of measures of physical restraint, such as handcuffs, glass boxes, cages and leg irons, unless the use of such measures is required for case-specific reasons, either relating to security, including to prevent suspects or accused persons from harming themselves or others or from damaging any property, or relating to the prevention of suspects or accused persons from absconding or from having contact with third persons, such as witnesses or victims. The possibility of applying measures of physical restraint does not imply that the competent authorities are to take any formal decision on the use of such measures.

ARTICLE 5
Presentation of suspects and accused persons

1. Member States shall take appropriate measures to ensure that suspects and accused persons are not presented as being guilty, in court or in public, through the use of measures of physical restraint.

2. Paragraph 1 shall not prevent Member States from applying measures of physical restraint that are required for case-specific reasons, relating to security or to the prevention of suspects or accused persons from absconding or from having contact with third persons.

49 Deck v. Missouri, 544 U.S. 622 (2005).

As can be seen below, as part of their obligation to protect the right to presumption of innocence, **European Union** Member States must ensure that suspects are not presented in court as guilty, through the use of instruments of restraint. For further discussion on legal protections in different domestic jurisdictions, see the **Fair Trials** publication referenced here[50].

In the jurisdiction of England and Wales (UK), the Criminal Procedure Rules allow for additional security measures – including the use of instruments of restraint – to be taken for "high-risk prisoners", but these are only permitted if other less obtrusive measures are unavailable[51]. The decision to order a prisoner to appear in instruments of restraint "must comply with the requirements of the European Convention on Human Rights, particularly Article 3, which prohibits degrading treatment[52]". A judge may only grant an application for the use of restraints if:

(a) there are good grounds for believing that the prisoner poses a significant risk of trying to escape from the court (beyond the assumed motivation of all prisoners to escape) and/or risk of serious harm towards those persons in court or the public generally should an escape attempt be successful; and

(b) where there is no other viable means of preventing escape or serious harm.

It is for the court to decide whether additional security measures are to be applied, based upon information submitted by the head of security at the establishment holding the prisoner. This information should contain "current, specific and credible evidence that the security measures are both necessary and proportionate to the identified risk and that the risk cannot be managed in any other way"[53], and the defence should be given the opportunity to respond to the application. The template to be used for submitting an application states: "**The nature of the offence is not a ground to support the application**"[54].

50 Fair Trials, Innocent until proven guilty? The presentation of suspects in criminal proceedings, 2019, available at https://www.fair-trials.org/publication/innocent-until-proven-guilty-0, pp. 30-31.

51 Criminal Practice Directions, CONSOLIDATED WITH AMENDMENT NO.8 [2019] EWCA CRIM 495, CPD I General Matters 3L: SECURITY OF PRISONERS AT COURT, 3L.1 – 3L.2

52 Ibid, 3L.5.

53 Ibid, 3L.6.

54 Court Management Directions Form in National Offender Management Service and HM Courts & Tribunals Service, Security of Prisoners at Court, June 2015, Annex E.

In addition, the England and Wales Court of Appeal has recognised that delegating to public security officials the decision of whether or not instruments of restraint should be used, risks this becoming a systematic practice. This was noted in the case of **Regina v. Horden**, where the Court noted that custody officers routinely make applications for the use of handcuffs, often with few supporting facts.

Other countries also prohibit the broadcasting in the media of images of people restrained by handcuffs. Since 2000, French law has punished with high fines media outlets that publish images of "an identified or identifiable person who is the subject of criminal proceedings but who has not been convicted and who appears to be handcuffed or in custody", according to article 35 of the Law of 29 July 1881 on the freedom of the press[55].Similar legislation is in place in Japan and South Korea. Images tend to be pixelated or modified in these cases[56].

In **Ireland**, instruments of restraint are not used in courtrooms. The only measure taken inside the courtroom when there are security concerns is the placement of additional security personnel[57]. In fact, the prejudice caused by members of a jury seeing an accused in handcuffs outside the courtroom and the effect on the accused of being held in handcuffs have been considered partial grounds for quashing a criminal conviction[58].

Instruments of restraint are very rarely used in courtrooms in **the Netherlands** as their use is considered to undermine the presumption of innocence, despite the fact that there is no jury. Their use is usually limited to instances where a psychological or psychiatric evaluation has determined that a defendant poses a serious risk. It is also noteworthy that there are alarm devices under judges' and prosecutors' tables in every courtroom, which can alert security personnel stationed outside the courtroom[59].

Taking as a premise the context of places of deprivation of liberty, the European Committee for

55 Les photos du terroriste présumé du Thalys menotté peuvent-elles être diffusées?, Le Monde.fr, 2015.

56 What's Up With the Blurred Or Pixelated Handcuffs In Japan, France And South Korea?, I'm A Useless Info Junkie, available at https://theuijunkie.com/pixelated-handcuffs-japan/, accessed on 4 jun. 2020.

57 Ibid, p. 28.

58 D.P.P. v. McCowan 31/03/2003 [2003] 4 IR 349. The High Court held that the detention of an accused "in handcuffs for a period of time sufficient for him to be seen by part or all of the jury in the courtroom was a matter that should be taken seriously. There was prejudice attached to the accused being seen in that position and it could affect the accused himself.

59 Justice, In the Dock: Reassessing the use of the dock in criminal trials, 2015, pp. 28-29.

the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) sets out the guiding principles for the use of instruments of mechanical restraint in different contexts, which are:

i. Their use should be exceptional;

ii. They should be used for the minimum duration possible;

iii. There should be formal regulations on their use;

iv. Each episode of use should be recorded in detail;

v. Instruments should be designed to minimize their harmfulness; and

vi. Health care should be provided following any use[60].

Exceptionality is the most fundamental principle with regard to judicial hearings, which is consolidated through an individualised assessment in the specific case.

The use of handcuffs for the shortest possible time is an important point of consideration, especially taking into account that the person is probably already subjected to the use of handcuffs long before the hearing begins, from internal journeys to the police station or prison, in transport vehicles and, sometimes, within the spaces of the court itself. This may be an additional element supporting a decision to remove instruments of restraint during the hearing.

Regarding the regulation of the use of force involving instruments of restraint, courts should develop a use of force protocol or standard operating procedure (SOP) that specifies how handcuffs should be used when needed. Subsequently, these standards should be periodically reviewed. In addition, it is essential to keep a record of episodes where restraints were used.

As for the design of handcuffs or other instruments that are the least harmful possible, this Handbook provides relevant inputs both for the elaboration of regulations by the courts and for

60 COE, Council of Europe, Report to the Swedish Government on the visit to Sweden carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 28 May 2015, Strasbourg: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 2016.

day-to-day decision-making in hearings by judges and other actors in the justice system.

The guidelines also point to the need for health monitoring after the use of handcuffs, especially in cases where the use was motivated by the need to "avoid the risk of harm to the individual or others". In this situation, the use of these instruments would only be authorized in scenarios of aggressive behavior by persons deprived of liberty, be it self-injury or injury to others. It is common for such behavior to be related to psychological disorders, the misuse of medication, alcohol and other drugs, or occasionally certain types of disabilities. In any case, it is essential to make a referral to the healthcare system for further medical and psychological evaluation in order to diagnose possible problems and, adopt appropriate measures and make any further necessary healthcare referrals[61].

61 MNPCT, National Mechanism for Preventing and Combating Torture, Report on visits to deprivation of liberty units in Tocantins, Brasília: MNPCT, 2017.

3
INSTRUMENTS OF RESTRAINT IN THE CONTEXT OF JUDICIAL PROCEEDINGS

The Handbook focuses on instruments of restraint whose use has been documented in custodial settings and courtrooms; the list of types of instruments of restraint covered is not exhaustive. However, it is important to note that international human rights law also prohibits the "use of chains, irons or other instruments of restraint which are inherently degrading or painful[62]" The Omega Research Foundation has set out some of the types of restraints that could be considered to fall under this definition[63].

This chapter aims to provide elements to enable judges and other actors in the criminal justice system to make more informed decisions on the use of instruments of restraint, considering their impact and legality, distinguishing between the characteristics of different types of instruments and the techniques adopted to apply them.

62 Nelson Mandela Rules, Rule 47 (1).

63 Omega Research Foundation e University of Exeter, Monitoring Weapons and Restraints in Places of Detention: A Practical Guide for Detention Monitors, p. 7, available at https://omegaresearchfoundation.org/publications/monitoring-weapons-and-restraints-places--detention-practical-guide

5.1 TYPES OF INSTRUMENTS OF RESTRAINT

This section provides an overview of the design and functionality of some of the most commonly used instruments of restraint in judicial proceedings in various countries, as well as the primary risks associated with each type, which criminal justice professionals should be aware of.

All handcuffs and other instruments of restraint can be used abusively. For example, they can be used to place people in stress positions or to lever or pull a restrained person to cause pain.

By itself, the use of handcuffs can cause injuries, traumas or other damages to the physical integrity of the person being restrained. In addition, their application may also aggravate injuries or physical and health conditions that precede the arrest or that arise from it. These considerations should be based on the available information and the account of the person deprived of liberty for proper decision-making by the judicial authority.

The material from which the instruments of restraint are produced is of prominent relevance. All metal restraint instruments present a general risk of causing lacerations and abrasions to the skin, which can result in long-term physical damage, particularly if used for prolonged periods. These restraints are often over-tightened to cause pain and discomfort, which can easily result in permanent injuries[64], as well as neurological damage and bone fractures[65].

Thus, in exceptional cases where restraints are used, handcuffs or other metal instruments should be replaced by non-rigid restraints as soon as possible, especially in controlled environments such as courts.

It is important to note that the UNODC-OHCHR Resource Book on the Use of Force and Firearms in Law Enforcement recommends that "metal limb restraints, such as leg cuffs or chains that connect the limbs with chains to handcuffs and belts, should be avoided. Soft restraints should always be preferred"[66].

64 Grant, AC, e Cook, AA, "Um estudo prospectivo nas neuropatias de algemas", Muscle & Nerve 23(6), 200, 933–938, 937.

65 Payne-James J, "Técnicas de Imobilização, Lesões, e Morte: Algemas", Encyclopedia of Forensic and Legal Medicine (4), December de 2016, 127-129, 129.

66 United Nations Office on Drugs and Crime (UNODC) and Office of the United Nations High Commissioner for Human Rights (OHCHR), Resource book on the use of force and firearms in law enforcement, 2017, p.84.

In these exceptional cases of application, if the use of non-rigid instruments is not possible, handcuffs and other metal instruments must necessarily have a chain - not hinged or rigid structures - and a double lock, as they present less risk than other types of metal handcuffs, as will be discussed later in this Handbook.

Double-locking mechanisms:
Metal instruments of restraint

Most modern metal handcuffs and leg cuffs feature a double-locking mechanism to prevent over-tightening. Once the instruments of restraint are double locked, they cannot be further tightened.

Single-locking handcuffs, in contrast, can be progressively tightened through the ratchet, either with the intention of causing additional pain and discomfort, or, inadvertently, if there is a struggle, if the restrained person tries to loosen the device, or if they bump into a place or object causing more pressure on the cuff.

In the context of a controlled environment like a judicial hearing, even if the exceptional use of instruments of restraint is warranted, preference should be given to soft restraints (see section below for more information). If metal restraints are used, these should always be double-locking in order to avoid causing unnecessary pain or discomfort. Models vary, but the secondary lock is often activated with the narrow tip of the key on the side of the cuff, as illustrated below.

PRIMARY LOCK

SECONDARY LOCK

5.1.1 Chain-link handcuffs

Chain-link handcuffs are metal instruments used by law enforcement officials all over the world. They consist of two wrist cuffs (also known as bracelets), adjustable by a ratchet, joined together by a short chain that allows a limited degree of movement.

These chain-link handcuffs should be replaced with soft restraints as soon as is feasible, particularly in controlled environments like courtrooms. However, where metal handcuffs are used, these should be double-locking chain-link handcuffs as they pose less risk than other types of metal handcuffs, as discussed on the previous page.

5.1.2 Hinged handcuffs

Hinged handcuffs are metal instruments connected by a hinge rather than a chain, they can be single or double locking. This type of handcuffs allows a lesser degree of movement than chain-link handcuffs and, therefore, poses a greater risk of injury and abuse.

Due to the greater restriction, they place on movement, when used for extended periods hinged handcuffs risk causing unnecessary discomfort or pain to the wrist, forearm or shoulder. In addition, they are open to being used inappropriately as a pain compliance tool, particularly when used as a lever[67] to pull or twist.

As a rule, hinged handcuffs should not be used in judicial hearings. As already mentioned, preference should be given to double-locking chain-link handcuffs. However, soft restraints should be given preference whenever feasible, particularly in controlled environments like courtrooms.

67 Hassad, FS et al, "Complaints of pain after use of handcuffs should not be dismissed", BMJ, 318(7175), January 1999, 55.

5.1.3 Rigid handcuffs

Rigid handcuffs, also known as speed cuffs, are most commonly used by law enforcement at the moment of arrest or to intervene in a fight, as they can be applied quickly. They consist of two adjustable cuffs connected by a solid bar. The individual cuff can be snapped quickly over the person's wrist to apply restraint.

Rigid handcuffs are open to being used inappropriately as a pain compliance tool, particularly when used as a lever to pull or twist, potentially causing wrist, forearm or shoulder injuries. Due to the greater restriction, they place on movement, when used for extended periods they can cause unnecessary discomfort or pain to these parts of the body. According to medical studies, bone injuries may occur as a result of direct trauma at the moment of application of rigid handcuffs or when they are used as a lever.

Rigid handcuffs pose a greater risk of injury and abuse than chain-link handcuffs. For this reason, it is recommended that rigid handcuffs should not be used in judicial hearings.

5.1.4 Leg cuffs

Leg cuffs comprise two adjustable ankle cuffs linked by a chain, which is generally longer than the chain linking wrist restraints to allow a greater degree of movement. Leg cuffs should never have a rigid bar or heavy chain as this significantly increases the risk of injury. The image below demonstrates the larger cuff size and longer chain as compared with chain-link handcuffs.

International human rights standards assert that the effective use of handcuffs will bring most people under control as it makes it more difficult to run away or cause harm to oneself and others. However, these standards also recognise that additional measures may be needed if the suspect persists in aggressive behavior, and these may include limb restraints. Nonetheless, it is recommended that "metal limb restraints, such as leg cuffs … should be avoided. Soft restraints should always be preferred".[68] Leg restraints restrict movement of the legs and therefore carry an inherent risk of causing the restrained person to fall and suffer secondary injuries. When their use is deemed necessary, due to an exceptionally high level of risk posed, the restrained person should be closely escorted by a trained law enforcement official to reduce the risk of falling. The

68 United Nations Office on Drugs and Crime (UNODC) and United Nations Office of the High Commissioner for Human Rights (OHCHR), Resource book on the use of force and firearms in law enforcement, 2017, p.84.

official must understand that the primary purpose of such an escort is to protect the restrained person.

Furthermore, metal leg restraints risk causing deep vein thrombosis and necrosis when used for prolonged periods. Their use involves the same risks regarding lacerations and other harms posed by the prolonged use of metal instruments of restraint in general. As a rule, metal leg restraints should not be used in judicial hearings and, if they are used, this should never be for more than the minimum time necessary.

Lever method adopted for guiding a restrained person by means of application of handcuffs behind the back - Causes intense discomfort, pain and high risk of resulting in physical injuries.

5.1.5 Weighted leg cuffs

Like ordinary leg cuffs, **weighted leg cuffs** consist of two cuffs, usually larger than ordinary handcuffs, linked by a chain. The cuffs are usually non-adjustable and models can weigh up to 8kg. They are heavier than is necessary to adequately restrain an individual, their use constitutes, a priori, a violation of the prohibition of torture and other ill-treatment.

International human rights standards indicate that weighted instruments of restraint s. Specifically, the UN Resource book on the use of force and firearms in law enforcement states that "There should be an absolute prohibition on weighted restraints"[69]. The UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement classify "weighted restraints" as unlawful, owing to the fact that they are "inherently degrading or unnecessarily painful[70]"

In addition to the risks laid out above associated with the use of ordinary leg cuffs, weighted leg cuffs restrict movement to a much greater degree and increase the risk of ankle injury. Weighted leg cuffs should never be used, including in judicial hearings.

69 UNODC and OHCHR, Resource book on the use of force and firearms in law enforcement, 2017, United Nations Human Rights: Office of the High Commissioner, p. 84.

70 Office of the United Nations High Commissioner for Human Rights, UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, 2020, p. 20.

5.1.6 Combination cuffs

Combination cuffs are handcuffs and leg cuffs linked together with a long chain. They are designed to simultaneously restrict movement in more than one part of the body.

Combination cuffs severely restrict movement. Their use entails an **increased risk of injury from falls due to the difficulty of the restrained person using their hands to break the fall**. In addition, a short chain length in relation to the height of the restrained person can force the person to stoop when standing, which may be humiliating or degrading for the restrained person and pose additional risks of secondary injuries due to falls. These secondary injuries are of particular concern because **they are likely to affect the neck and head and may cause serious cranial and cervical trauma or even death**.

Even if a person is deemed to pose an exceptionally high risk, it is difficult to justify the use of combination cuffs in a controlled environment such as a courtroom. For this reason, and based on international standards, it is recommended that they are not used in judicial hearings.

5.1.7 Belly chain / Transport belt

Belly chains are metal chains placed around the waist and attached to handcuffs. Transport belts consist of a leather or fabric belt that is placed around the waist and attached also to handcuffs. Both are usually used during prisoner transport and are designed to further restrict movement by keeping the restrained person's arms close to the body.

Both belly chains and transport belts entail an increased risk of injury from falls due to the difficulty of the restrained person using their hands to break the fall.

For this reason, the use of belly chains and transport belts should be strictly avoided in judicial hearings.

5.1.8 Body-worn electric shock devices

Body worn electric shock devices, also called stun belts or stun cuffs, are designed to be attached to a detainee's body, for example, as a belt, sleeve, cuff, or vest, enabling the application of an electric shock via remote control.

They are often marketed as a discreet form of restraint for use on persons deprived of their liberty during court appearances, transfers and/or the provision of medical care. Their use has been documented in several countries, including the US[71] and South Africa[72].

Activation of a body-worn electric shock device causes severe pain to the wearer and can cause their muscles to contract involuntarily, which can result in falls and secondary injuries. Other physical effects can include muscular weakness, involuntary urination and defecation, heartbeat irregularities, seizures and welts on the skin.

Even when such devices are worn but not activated, they maintain the wearer in constant fear of severe pain for as long as they are worn. As such, the wearing of body-worn electric shock devices is inherently degrading to the dignity of the person.

The UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement consider "electrified instruments of restraint" to be "inherently degrading or unnecessarily painful"[73]. Similarly, the UN CAT has recommended that the use of "electro-shock stun belts" to restrain those in custody be abolished[74]. Body worn electric shock devices should never be used in judicial hearings.

71 Omega Research Foundation, "Use of body-worn electric shock in US State prisons", 2016, available at https://omegaresearchfoundation.org/case-studies/use-body-worn-electric-shock-us-state-prisons.

72 The Institute for Security Studies and Omega Research Foundation, "Tools of torture? Use of electric shock equipment among African police", ISS Policy Brief 85, June 2016, available at https://omegaresearchfoundation.org/sites/default/files/uploads/Publications/Tools%20of%20Torture.pdf.

73 Office of the United Nations High Commissioner for Human Rights, UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, 2020, p. 20.

74 United Nations Committee Against Torture, Conclusions and Recommendations of the Committee against Torture: United States of America, 15 May 2000, UN Doc. CAT/C/24/6, para. 180 (c).

5.1.9 Plastic handcuffs (disposable handcuffs)

Plastic handcuffs are lightweight, single or double cuffs, resembling "cable ties".

Most of these handcuffs can only be tightened, but not loosened, which makes it very easy to purposely or inadvertently cause the wearer severe pain and discomfort.

Most plastic handcuffs cannot be double-locked, which increases the risk of direct compression injuries caused by over-tightening, for example, if the restrained person struggles to loosen them. Plastic handcuffs can easily break the skin and cut into flesh over time.

They are designed for use when detaining large numbers of people quickly, or in emergency situations. They are, therefore, not appropriate for judicial hearings and should not be used.

5.1.10 Soft / fabric instruments of restraint

Soft instruments of restraint are adjustable cuffs made from soft fabrics that can be attached to the wrists or ankles to restrict movement. In general, **the use of soft restraints entails a lower risk** of the restrained person sustaining injury or suffering pain than when metal restraints are used. Soft restraints are not commonly used in Brazil or the wider region.

However, the United Nations Office on Drugs and Crime (UNODC) and United Nations Office of the High Commissioner for Human Rights (OHCHR) advise that **soft instruments of restraint should always be preferred over metal ones.** This guideline is particularly relevant in a controlled setting such as a courtroom.

In some jurisdictions, the restrained person is given wristbands to wear under metal restraints to reduce the risk of injury[75]. There is a lack of research into the effectiveness of this method in reducing harm.

It is important to remember **that soft restraints are still a means of coercion** and, thus, are subject to the international norms and parameters and use of force principles set out in Section 1. If used routinely, unnecessarily or inappropriately – for example, if they are over-tightened or applied for a prolonged period - their use may constitute cruel, inhuman or degrading treatment, violate due process rights, depending on the specific circumstances, and even amount to torture.

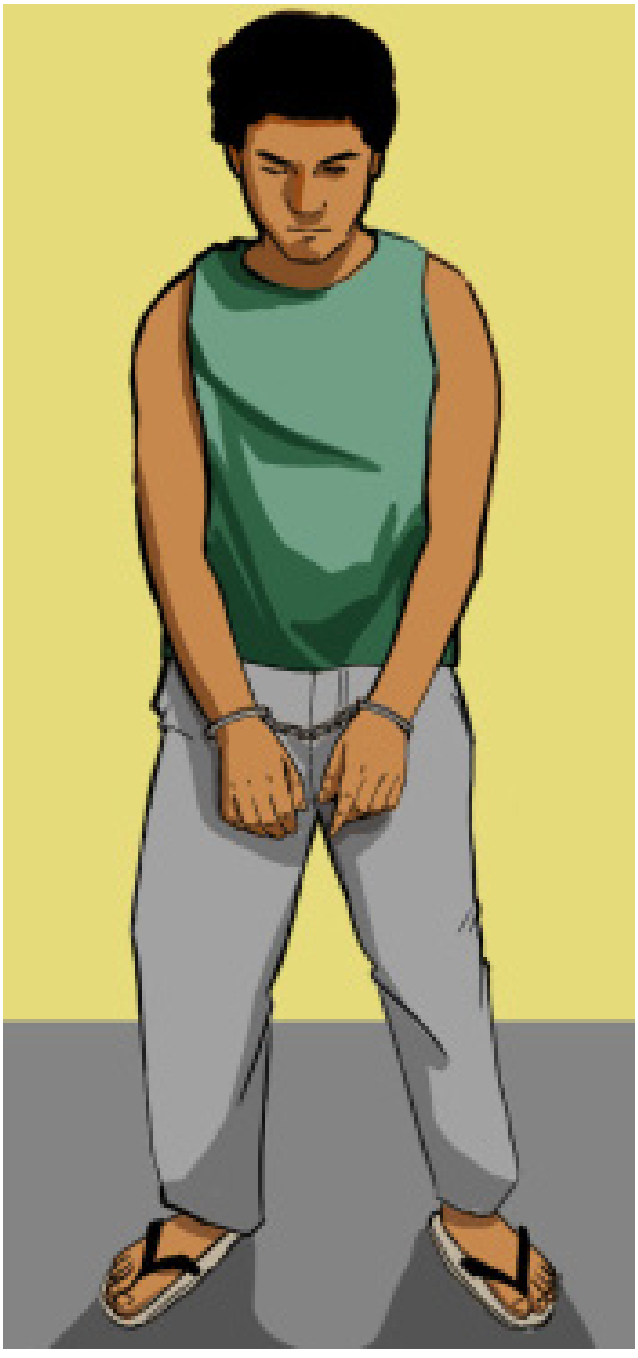
75 Rights International Spain, Sospechosos y medidas de contención: De la importancia que reviste la for-ma en que un sospechoso o acusado es presentado ante el tribunal, el público y los medios, 2019, available at http://rightsinternationalspain.org/uploads/publicacion/eca5be7ba0dab99f85e605b4d73988d13a2077bb.pdf, p. 19.

5.2 Techniques used to apply instruments of restraint

In addition to understanding and documenting the types of restraints used, it is also important for judges, prosecutors, public defenders, lawyers, other professionals and external monitors of the criminal justice system to know how these instruments are applied.

5.2.1 Application of restraints to the front

Handcuffs or soft restraints can either be applied to the front or behind the back of the suspect. Application of restraints to the front allows the suspect to maintain some degree of movement of their arms and lowers the risk of secondary injuries from falls.



In the context of judicial hearings, **applying instruments of restraint to the front may permit the suspect to use body language to express themselves, albeit to a limited degree**. This handcuffing technique can also facilitate important procedural matters, such as where a signature is required, as well as enabling the person to use the toilet unaided, avoiding degrading situations.

In general, applying instruments of restraint to the front does not expose the suspect to the same degree of vulnerability compared to the other techniques discussed below. However, subjective factors will largely determine the degree of vulnerability felt.

The application of instruments of restraint to the front can still lead to injuries, such as skin lacerations, which can in turn lead to further complications if left untreated.

5.2.2 Application of restraints behind the back

The application of handcuffs or other wrist restraints behind the suspect's back restricts the suspect's movement more than applying them to the front, and increases the risk of hyper-extension and associated nerve/muscle injuries.

The use of hinged or rigid handcuffs behind the back is **particularly prone to abuse**. For example, a security official would simply have to pull up on the handcuffs to potentially inflict severe pain on the restrained individual.

The application of handcuffs behind the back often makes the restrained person curve their thorax forward and lower their head in order to reduce discomfort. This can lead to **less eye contact between the restrained person and the authorities**, as well as **limiting the use of body language, both of which could easily be misinterpreted as a sign of shame or guilt**. When this technique is used in judicial hearings, it could impact on the right to the presumption of innocence and due process rights.

Restraining a person behind the back places them in a position of heightened vulnerability. In the context of a judicial hearing, this may impact upon the suspect's testimony if they feel unable to express themselves without their hands or feel too vulnerable to testify freely. It may also be impractical, for example if a signature is required.

When torture or other ill-treatment is alleged in judicial hearings, such as when a suspect is first brought before a judicial authority, the presiding judge should gather information on the methods used by the alleged aggressors and a description of the injuries suffered, capturing photographic or video evidence when the alleged victim grants their consent. If handcuffed, particularly behind their back, **the alleged victim may be impeded from simulating the acts of torture suffered, identifying their injuries or having their injuries photographed or recorded**.

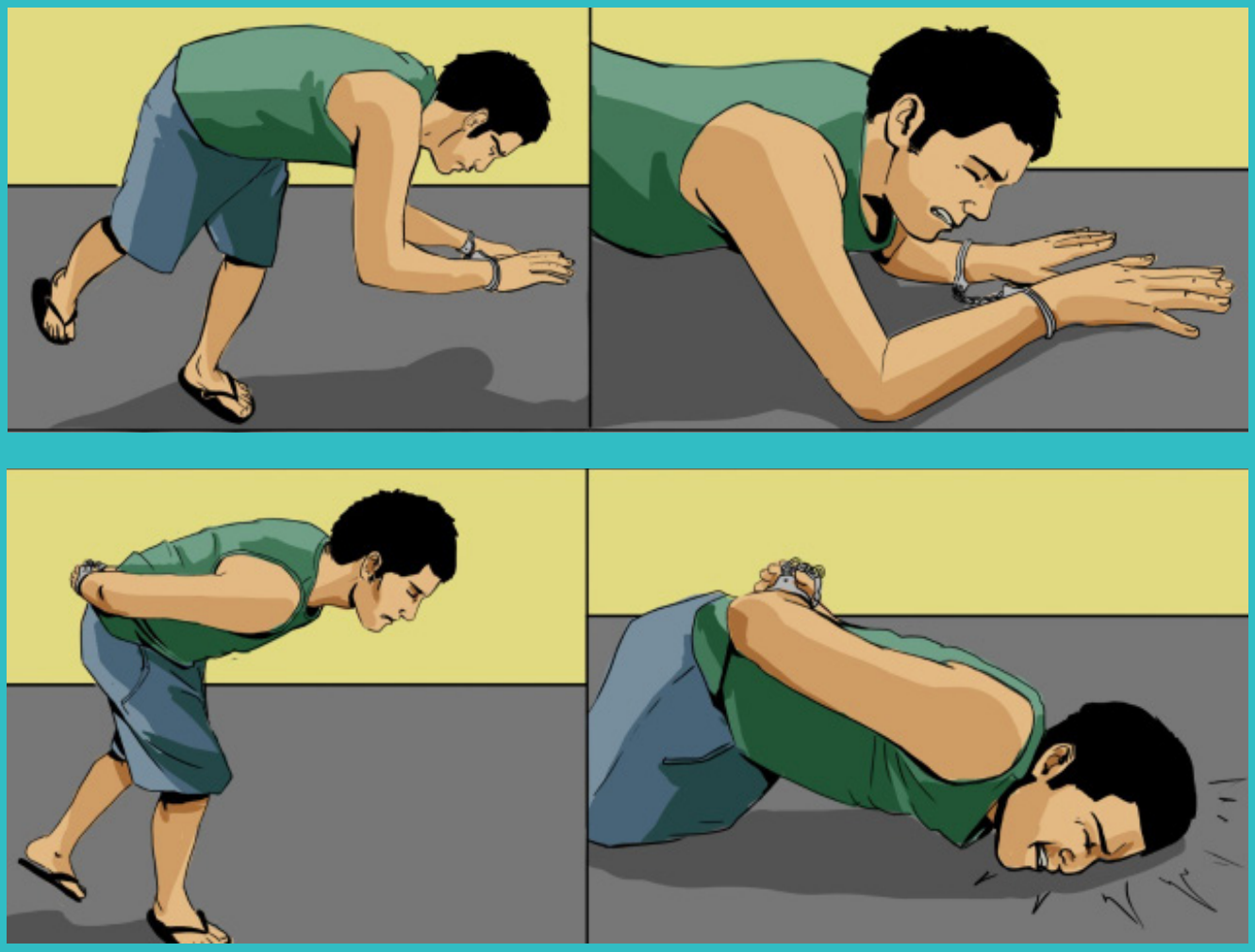
Should the subject fall, they would find it difficult or impossible to use either their hands or legs to break the fall, increasing the risk of serious injury.

Furthermore, in many courtrooms, chairs for suspects and prisoners have backrests. **Sitting on a chair with a backrest while handcuffed behind the back is uncomfortable and may affect a suspect or accused's ability to pay attention to and adequately participate in the proceedings**.

Should the suspect need to use the toilet, when restrained in this way, they would need assistance, which could be embarrassing and degrading.

In view of these negative effects on due process and the identification of ill-treatment and torture, the application of restraints behind the back should be avoided in the controlled environment of judicial hearings and courtrooms.

Application to the Front vs. Application Behind the Back



Application behind the back poses a risk of trauma to the head, neck and thorax region, as illustrated in the image above

5.2.3 Simultaneous use of hand and leg restraints

As stated in section 3.1.4 of this Handbook, leg restraints carry an inherent risk of causing the restrained person to fall, with a further risk of secondary injuries.

When the hands and legs are restrained simultaneously, there is an increased risk of injury from falls as the level of restriction can inhibit the person's ability to break the fall and protect themselves, particularly the head. This risk increases significantly when the person's hands are restrained behind their back.

When this technique is used, it is especially important that the restrained person should be closely escorted by a trained law enforcement official to reduce the risk of falling. The official must understand that the primary purpose of such an escort is to protect the restrained person.

The simultaneous use of instruments of restraint on the hands and feet/ankles is particularly intrusive. As a rule, this technique should not be used in judicial hearings.

5.2.4 Restraining persons to one another

The practice of restraining suspects to one another increases the risk of falls and resulting injuries as suspects may be unable to use their hands to break falls and protect themselves from injury. Even if one of the restrained persons stumbles or falls, this can be hazardous for the other person(s) restrained to them. Good use of force practice dictates that "For safety reasons, **handcuffs should not be used to handcuff someone to another person or object.**"[76].

76 United Nations Office on Drugs and Crime (UNODC) and Office of the United Nations High Commissioner for Human Rights (OHCHR), Resource book on the use of force and firearms in law enforcement, 2017, p.82.

In addition to safety concerns, mechanically restraining suspects together in a controlled environment is inherently degrading and inappropriate, failing to respect the dignity of each individual. Another relevant factor concerns **health measures to prevent the spread of contagious diseases**, such as tuberculosis and serious influenza viruses, caused by coronaviruses, in particular COVID-19.

In judicial hearings, the application of this technique may prevent suspects or accused from being able to sit down, sign documents, etc. and may be considered a violation of their right to the presumption of innocence and other due process rights. Furthermore, it could characterize a **violation of the principle of individualisation of punishment**."

Based on international standards and guidelines, instruments of restraints should never be used to restrain one person to another during judicial hearings.

FINAL CONSIDERATIONS AND RECOMMENDATIONS

The use of handcuffs or other instruments of restraint imposes, by its nature, risks affecting physical integrity and health. These instruments can cause serious skin, joint, blood circulation and even neurological damage to the people being restrained, and the damage can lead to chronic and permanent health conditions.

In addition to health issues, there are other serious impediments to the exercise of fundamental rights in the sphere of due legal process, including the right to defend oneself with equality of arms and the presumption of innocence. Such impediments may have harsh repercussions on freedom, leading to exposure to cruel, inhuman and degrading treatment and even torture.

The decision about their use in judicial settings, and especially during judicial hearings, will always remain the responsibility of the judicial authority, and this premise constitutes a foundation of the principle of independence and impartiality of the judiciary. Moreover, international good practice recognises that the use of restraints in court hearings threatens the inherent decorum of court hearings and the inherent dignity of the courts, where cases should be assessed rationally and

which are fundamentally different from detention units or penitentiary centres.

For this reason, if a judge considers a case to be exceptional therefore requiring the use of handcuffs, he or she should follow international standards on the use of mechanical restraints in all contexts:

i. The exceptionality of their use;

ii. The minimum duration of their use;

iii. Formal regulations for their use;

iv. Detailed recording of the episodes of their use;

v. Follow-up on subsequent health care.

In order to ensure the safeguarding of fundamental rights and the principles of procedural equality and equal treatment, presumption of innocence and due process of law, it is recommended that the Courts:

1. Train and instruct security agents responsible for escorting persons deprived of liberty that are to be presented before a judge on the exceptionality of the use of instruments of restraint during court hearings, and promote further training on international standards on the use of force and instruments of restraint;

2. Monitor the frequency of incidents and methods involving physical violence, threats or escape attempts related to the specific courtroom where the hearing will be held and prioritize other potentially less intrusive means of security, such as, the presence of properly trained security officers who are not the same ones who carried out the arrest, availability of emergency exit points in the courtroom, ensuring the architectural design of courtrooms and other areas in the courthouse provides sufficient physical space, among others;

3. Provide information to judges responsible for holding detention control and criminal hearings, including hearings related to the execution of sentences, regarding the

international guidelines on the use of force and instruments of restraint, as well as reports on incidents that have occurred in the courtrooms where they will be acting;

4. Involve other key actors in the process of developing regulations on security in judicial settings, including the use of handcuffs, in particular relevant Executive Branch organs, community groups, other legal professional bodies, committees and mechanisms for preventing and countering torture, as well as civil society organizations.

In turn, it is recommended that the judicial authority always verify the information in the procedural records and the circumstances of the judicial hearing in question, adopting the following procedures:

1. Conduct a multifactorial, individualised and case-specific risk assessment based on the principles of necessity, proportionality and non-discrimination, considering age, gender and the vulnerabilities of certain groups that include persons with disabilities, persons with mental health problems, homeless persons, LGBTI persons, elderly, sick or injured persons, migrants, refugees, indigenous groups and other minority groups;

2. Providing detailed information to the person in custody, accused or sentenced, on the objectives, procedures and possible decisions to be taken in the judicial act to be held, in particular clarifying the reasons for the removal or not of handcuffs or other instruments of restraint, before the hearing begins;

3. Register in writing the reasons for the decision on the use of instruments of restraint as well as the statements of the parties on the issue;

4. Even if the need for restraint has been assessed at the beginning of the hearing, once the release of the accused, defendant or convicted person is ordered, the immediate removal of handcuffs or other instruments of restraint must also be ordered;

5. Any person on whom handcuffs are used should subsequently be offered a medical check-up, especially in cases where the reason for their use is to "avoid the risk of harm to the individual or others," since such behaviour may be related to psychological disorders, the misuse of medication, alcohol or other drugs, or even a disability.

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Department of Monitoring and Inspection of the Prison System - DMF

Presidency Assistant Judges - DMF/CNJ

Luís Geraldo Sant'Ana Lanfredi (Coordenador); Antonio Carlos de Castro Neves Tavares; Fernando Pessôa da Silveira Mello; Walter Godoy dos Santos Júnior

Team

Adriana Kelly Ferreira De Sousa, Alessandra Amâncio Barreto, Alexandre Padula Jannuzzi, Alisson Alves Martins, Ana Clara Rodrigues da Silva, Ane Ferrari Ramos Cajado, Anália Fernandes de Barros, Camilo Pinho da Silva; Caroline Xavier Tassara, Carolini Carvalho de Oliveira, Danielle Trindade Torres, Emmanuel de Almeida Marques Santos, Gabriel Richer Oliveira Evangelista, Giovane Maciel da Costa, Helen dos Santos Reis, Jéssica Gonçalves de Sousa, Jessica Sales Lemes, Joaquim Carvalho Filho, Joseane Soares da Costa Oliveira, Karla Cariz Barreira Teodosio, Karla Marcovecchio Pati, Larissa Lima de Matos, Lino Comelli Junior, Luana Alves de Santana, Mariana Py Muniz, Melina Machado Miranda, Nayara Teixeira Magalhães, Rogério Gonçalves de Oliveira, Sirlene Araújo da Rocha Souza, Thaís Gomes Ferreira, Valter dos Santos Soares, Wesley Oliveira Cavalcante

UNDP Brazil (United Nation Development Programme)

Assistant Resident-Representative and Coordinator of the Programmatic Area: Maristela Baioni
Coordinator of the Peace and Governance Unit: Moema Freire

Project Management Unit

Gehysa Lago Garcia; Mayara Sena; Polliana Andrade e Alencar; Thais Barros.; Thaís Barros

Technical Team

General Coordination

Valdirene Daufemback; Talles Andrade de Souza; Adrianna Figueiredo Soares da Silva; Amanda Pacheco Santos; Ana Virgínia Cardoso; André Zanetic; Arletiane da Silva Azevedo; Débora Neto Zampier; Edson Orivaldo Lessa Júnior; Francisco Jorge H. Pereira de Oliveira ; Gustavo Bernardes; José Lucas Rodrigues Azevedo; Leonam Toloto Bernardo; Liliane Frez da Silva; Luciana da Silva Melo; Marcela Moraes; Marília Mundim da Costa; Mário Henrique Ditticio; Natália Caruso Theodoro Ribeiro; Renata de Assumpção Araujo; Semilla Dalla Lasta de Oliveira; Sérgio Peçanha da Silva Coletto; Tatiany dos Santos Fonseca; Vivian Coelho

Axis 1

Fabiana de Lima Leite; Izabella Lacerda Pimenta; Ednilson Couto de Jesus Junior; Janaina Homerin; Zuleica de Araújo

Axis 2

Fernanda Machado Givisiez; Dillyane de Sousa Ribeiro; Eduarda Lorena de Almeida; Mayara Silva de Souza

Axis 3

Felipe Athayde Lins de Melo; Pollyanna Bezerra Lima Alves; Juliana Garcia Peres Murad; Natália Ribeiro; Sandra Regina Cabral de Andrade

Axis 4

Alexander Cambraia N. Vaz; Alexandra Luciana Costa; Alexandre Lovantini Filho; Alisson Alves Martins; Ana Teresa Iamarino; Anderson Paradelas; Alef Batista; André Ferreira Moreira; Andréa Letícia Carvalho Guimarães; Ângela Christina Oliveira Paixão; Angélica Santos; Antonio Pinto Jr.; Aulus Diniz; Bruna Nascimento; Bruno Miranda; Camila Primieri; Carlos Sousa; Clara Monteiro; Cledson Alves Junior; Cleide Diniz; Cristiano Nascimento Pena; Daniela Correa Assunção; Elaine Santos; Elenilson Chiarapa; Emanuelli Caselli Miragluio; Felipe Carolino Machado; Fernanda Coelho Ramos; Flavia Franco Silveira; Francisco Jorge H. Pereira de Oliveira; Gildo Joaquim de Alves de A Rêgo; Gustavo Ferraz Sales Carneiro; Gustavo José da Silva Costa; Hely Firmino de Sousa; Inessa Diniz Luerce; Jeferson Rodrigues; Jéssika Lima; João Batista Martins; Joe Chaves; Jorge Silva; Jucinei Santos; Karla Luz; Keli Rodrigues de Andrade; Kleiber Faria; Leandro Celes; Lian Carvalho Siqueira; Luciana Barros; Lunna Luz Costa; Marcel Phillipe Silva e Fonseca; Marcelo Pinheiro Chaves; Marcelo Ramilo; Maria Alves; Neidijane Loiola; Rafael Marconi Ramos; Renata Martinez; Reryka Silva; Roberto Marinho Amado; Rodrigo Cerdeira; Rodrigo Proença; Roger Araújo; Rogério de Santana; Rose Marie Botelho Azevedo Santana; Thais Barbosa Passos; Valter dos Santos Soares; Vanessa Branco; Virgínia Bezerra Bettega Popiel; Vivian Murbach Coutinho; Wellington Lira.

Local Coordinations

Adriana Raquel (GO); Ana Pereira (AL); Arine Caçador Martins (RO); Camila Belinaso (RS); Cláudia Gouveia (MA); Daniela Bezerra Rodrigues (RN); Daniele Rebouças (MT); Fernanda Nazaré Almeida (PA); Flávia Ziliotto (PR); Gabriela Machado (SC); Higor Ca-taldo (AP); Isabela Cunha (SE); Jackeline Freire Florêncio (PE); Jaira Magalhões (RR); Juliana Marques Resende (MS); Luanna Marley (AM); Lucas Pereira de Miranda (MG); Lucilene Mol (ES); Mariana Cavalcante de Moura (PI); Mariana Leiras (RJ); Mayes-se Silva Parizi (BA); Nadja Furtado Bortolotti (CE); Pâmela Dias Villela Alves (AC); Regina Lopes (TO); Thabada Almeida (PB).

UNODC (United Nations Office on Drugs and Crime)

Director of UNODC Liaison and Partnership Office in Brazil: Elena Abbati
Coordinator of the Rule of Law Unit: Nívio Caixeta Nascimento

Team

Ana Luiza Villela de Viana Bandeira; Ana Maria Cobucci; Ana Paula Cruz Penante Nunes; Annie Akemi Palandi Yanaga; Camilla Zanatta; Daniela Carneiro de Faria; Daniela Dora Eilberg; Denise de Souza Costa; Flora Moara Lima; Gabriel Ro-berto Dauer; Gabriella de Azevedo Carvalho; Igo Gabriel dos Santos Ribeiro; Lívia Zanatta Ribeiro; Luis Gustavo Cardoso; Mariana Andrade Cretton André Cruz; Mariane Franco Ferreira; Marina Lacerda e Silva; Matheus de Oliveira Ranna; Nara Denilse de Araújo; Nathália L. Mendes de Souza; Rafael Gomes Duarte; Pedro Lemos da Cruz; Thays Marcelle Rapo-so Pascoal; Tuane Caroline Barbosa; Vinicius Assis Couto; Viviane Pereira Valadares FelixAna Luiza Villela de Viana Bandeira; Ana Maria Cobucci; Ana Paula Cruz Penante Nunes; Annie Akemi Palandi Yanaga; Camilla Zanatta; Daniela Carneiro de Faria; Daniela Dora Eilberg; Denise de Souza Costa; Flora Moara Lima; Gabriel Roberto Dauer; Gabriella de Azevedo Carvalho; Igo Gabriel dos Santos Ribeiro; Lívia Zanatta Ribeiro; Luis Gustavo Cardoso; Mariana Andrade Cret-ton André Cruz; Mariane Franco Ferreira; Marina Lacerda e Silva; Matheus de Oliveira Ranna; Nara Denilse de Araújo; Nathália L. Mendes de Souza; Rafael Gomes Duarte; Pedro Lemos da Cruz; Thays Marcelle Raposo Pascoal; Tuane Caroline Barbosa; Vinicius Assis Couto; e Viviane Pereira Valadares Felix.

Consultants on detention control hearings

Gloria Maria Vieira Ventapane (AC); André Rocha Sampaio (AL); Jamille Bispo Rocha (AM); Jamile Carvalho (BA); Ailton Vieira da Cunha (CE); João Vitor Abreu (ES); Victor Neiva (GO); Luann Silveira Santos (MA); Carolina Pitanga (MT); Sama-ra Monteiro dos Santos (MS); Giselle Fernandes Corrêa (MG); Thays Marcelle Raposo Pascoal (PA); Antonio Carlos de Lima (PB); Laís Gorski (PR); Rafael Silva West (PE); Regina Cavalcante (PI); Luciana Simas (RJ); João Paulo Diogo (RN); Pedro José Pacheco (RS); Marcus Giovani Ribeiro Moreira (RO); Alan Miguel Alves (RR); Maressa Proença (SC); Lucineia Rocha (SE); e Denise de Sousa Costa (TO).

Specialized Consultants

Ana Claudia Nery Camuri Nunes; Cecília Nunes Froemming; Dillyane de Sousa Ribeiro; Eduardo Georjão Fernandes; Felipe da Silva Freitas; Fhillipe de Freitas Campos; Helena Fonseca Rodrigues; José Fernando da Silva; Leon de Souza Lobo Garcia; Letícia Godinho de Souza; Maria Gorete Marques de Jesus; Maíra Rocha Machado; Maria Palma Wolff; Mayara Silva de Souza; Natália Ribeiro; Natasha Brusaferro Riquelme Elbas Neri; Pedro Roberto da Silva Pereira; Suzann Flavia Cordeiro de Lima; Raquel da Cruz Lima; Silvia Souza; Thais Lemos Duarte; Thais Regina Pavez; Thaisi Moreira Bauer.

Former Contributors

Department of Monitoring and Inspection of the Prison System - DMF

Alexandre Abreu da Silva; Ane Ferrari Ramos Cajado; Auristelia Sousa Paes Landino; Gabriela de Angelis de Souza Penaloza; Karoline Alves Gomes; Kamilla Pereira; Liana Lisboa Correia; Luana Gonçalves Barreto; Lucy Arakaki Felix Bertoni; Marcus Vinicius Barbosa Ciqueira; Rayssa Oliveira Santana; Rennel Barbosa de Oliveira; Ricardo de Lins e Horta; Rossilany Marques Mota; Túlio Roberto de Morais Dantas; Victor Martins Pimenta.

UNDP BRAZIL (United Nations Development Programme)

Ana Carolina Renault Monteiro; Ana Pereira; Ana Carolina Guerra Alves Pekny; André José da Silva Lima; Ariane Gontijo Lopes; Beatriz de Moraes Rodrigues; Carlos José Pinheiro Teixeira; Carolina Costa Ferreira; Celena Regina Soeiro de Moraes Souza; Cesar Gustavo Moraes Ramos; Christiane Russomano Freire; Cláudio Augusto Vieira da Silva; Cristina Gross Villanova; Cristina Leite Lopes Cardoso; Daniel Medeiros Rocha; Daniela Marques das Mercês Silva; David Anthony G. Alves; Dayana Rosa Duarte Morais; Flávia Saldanha Kroetz; Filipe Amado Vieira; Fernanda Calderaro Silva; Gabriela Lacerda; Isabel Oliveira; Iuri de Castro Tôrres; João Marcos de Oliveira; Joenio Marques da Costa; Julianne Melo dos Santos; Luana Natielle Basílio e Silva; Lucas Pelucio Ferreira; Luciano Nunes Ribeiro; Luiza Meira Bastos; Luis Gustavo Cardoso; Luiz Scudeller; Manuela Abath Valença; Marcus Rito; Marília Falcão Campos Cavalcanti; Michele Duarte Silva; Noelle Resende; Olímpio de Moraes Rocha; Paula Jardim; Rafael Silva West; Rafael Barreto Souza; Regina Cláudia Barroso Cavalcante; Ricardo Peres da Costa; Rogério Duarte Guedes; Solange Pinto Xavier; Tania Pinc; Thayara Castelo Branco; Vânia Vicente; Vanessa Rosa Bastos da Silva; Vilma Margarida Gabriel Falcone; Wellington Pantaleão; Yuri Menezes dos Anjos Bispo.

TECHNICAL PRODUTCS

Publicações editadas nas séries Fazendo Justiça e Justiça Presente

CRIMINAL PROPORTIONALITY (AXIS 1)

Penal Alternatives Collection

- Manual de Gestão para as Alternativas Penais
- Guia de Formação em Alternativas Penais I – Postulados, Princípios e Diretrizes para a Política de Alternativas Penais no Brasil
- Guia de Formação em Alternativas Penais II – Justiça Restaurativa
- Guia de Formação em Alternativas Penais III – Medidas Cautelares Diversas da Prisão
- Guia de Formação em Alternativas Penais IV – Transação Penal, Penas Restritivas de Direito, Suspensão Condicional do Processo e Suspensão Condicional da Pena Privativa de Liberdade
- Guia de Formação em Alternativas Penais V - Medidas Protetivas de Urgência e Demais Ações de Responsabilização para Homens Autores de Violências Contra as Mulheres
- Diagnóstico sobre as Varas Especializadas em Alternativas Penais no Brasil

Electronic Monitoring Collection

- Modelo de Gestão para Monitoração Eletrônica de Pessoas
- Monitoração Eletrônica de Pessoas: Informativo para os Órgãos de Segurança Pública
- Monitoração Eletrônica de Pessoas: Informativo para a Rede de Políticas de Proteção Social
- Monitoração Eletrônica de Pessoas: Informativo para o Sistema de Justiça
- Monitoração Eletrônica Criminal: evidências e leituras sobre a política no Brasil
- Sumário Executivo Monitoração Eletrônica Criminal: evidências e leituras sobre a política no Brasil

Collection Strengthening of the Detention Control Hearings

- Manual sobre Tomada de Decisão na Audiência de Custódia: Parâmetros Gerais (sumários executivos em português / inglês / espanhol)
- Manual sobre Tomada de Decisão na Audiência de Custódia: Parâmetros para Crimes e Perfis Específicos
- Manual de Proteção Social na Audiência de Custódia: Parâmetros para o Serviço de Atendimento à Pessoa Custodiada (sumários executivos em português / inglês / espanhol)
- Manual de Prevenção e Combate à Tortura e Maus Tratos na Audiência de Custódia (sumários executivos em português / inglês / espanhol)
- Manual sobre Algemas e outros Instrumentos de Contenção em Audiências Judiciais: Orientações práticas para implementação da Súmula Vinculante n. 11 do STF pela magistratura e Tribunais
- Manual de Arquitetura Judiciária para a Audiência de Custódia
- Caderno de Dados I – Dados Gerais sobre a Prisão em Flagrante durante a Pandemia de Covid-19
- Cadernos de Dados II – Covid-19: Análise do Auto de Prisão em Flagrante e Ações Institucionais Preventivas

UNODC: Criminal Justice Manuals – Portuguese Translations

- Manual de Princípios Básicos e Práticas Promissoras sobre Alternativas à Prisão
- Manual sobre Programas de Justiça Restaurativa

Informational Materials

- Cartilha Audiência de Custódia: Informações Importantes para a Pessoa Presa e Familiares
- Relatório Audiência de Custódia: 6 Anos

JUVENIL JUSTICE SYSTEM (AXIS 2)

- Guia para Programa de Acompanhamento a Adolescentes Pós-Cumprimento de Medida Socioeducativa de Restrição e Privação de Liberdade - Caderno I - Diretrizes e Bases do Programa
- Guia para Programa de Acompanhamento a Adolescentes Pós- Cumprimento de Medida Socioeducativa de Restrição e Privação de Liberdade - Caderno II - Governança e Arquitetura Institucional
- Guia para Programa de Acompanhamento a Adolescentes Pós- Cumprimento de Medida Socioeducativa de Restrição e Privação de Liberdade - Caderno III - Orientações e Abordagens Metodológicas
- Reentradas e Reiterações Infracionais: Um Olhar sobre os Sistemas Socioeducativo e Prisional Brasileiros
- Manual Resolução CNJ 367/2021 – A Central de Vagas do Sistema Estadual de Atendimento Socioeducativo
- Manual sobre Audiências Concentradas para Reavaliação das Medidas Socioeducativas e de Semiliberdade e Internação

CITIZENSHIP (AXIS 3)

Political Collection for Ex Inmates

- Política Nacional de Atenção às Pessoas Egressas do Sistema Prisional

- Caderno de Gestão dos Escritórios Sociais I: Guia para Aplicação da Metodologia de Mobilização de Pessoas Pré-Egressas
- Caderno de Gestão dos Escritórios Sociais II: Metodologia para Singularização do Atendimento a Pessoas em Privação de Liberdade e Egressas do Sistema Prisional
- Caderno de Gestão dos Escritórios Sociais III: Manual de Gestão e Funcionamento dos Escritórios Sociais
- Começar de Novo e Escritório Social: Estratégia de Convergência
- Prison Policy Collection
- Modelo de Gestão da Política Prisional – Caderno I: Fundamentos Conceituais e Principiológicos
- Modelo de Gestão da Política Prisional – Caderno II: Arquitetura Organizacional e Funcionalidades
- Modelo de Gestão da Política Prisional – Caderno III: Competências e Práticas Específicas de Administração Penitenciária
- Diagnóstico de Arranjos Institucionais e Proposta de Protocolos para Execução de Políticas Públicas em Prisões
- Os Conselhos da Comunidade no Brasil

SYSTEMS AND CIVIL IDENTIFICATION (AXIS 4)

- Guia Online com Documentação Técnica e de Manuseio do SEEU

MANAGEMENT AND CROSS-CUTTING THEMES (AXIS 5)

- Manual Resolução 287/2019 – Procedimentos Relativos a Pessoas Indígenas acusadas, Rés, Condenadas ou Privadas de Liberdade
- Relatório Mutirão Carcerário Eletrônico – 1ª Edição Espírito Santo
- Relatório de Monitoramento da COVID-19 e da Recomendação 62/CNJ nos Sistemas Penitenciário e de Medidas Socioeducativas I
- Relatório de Monitoramento da COVID-19 e da Recomendação 62/CNJ nos Sistemas Penitenciário e de Medidas Socioeducativas II
- Manual Resolução no 348/2020 – Procedimentos relativos a pessoas LGBTI acusadas, rés, condenadas ou privadas de liberdade

FAZENDOJUSTIÇA

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