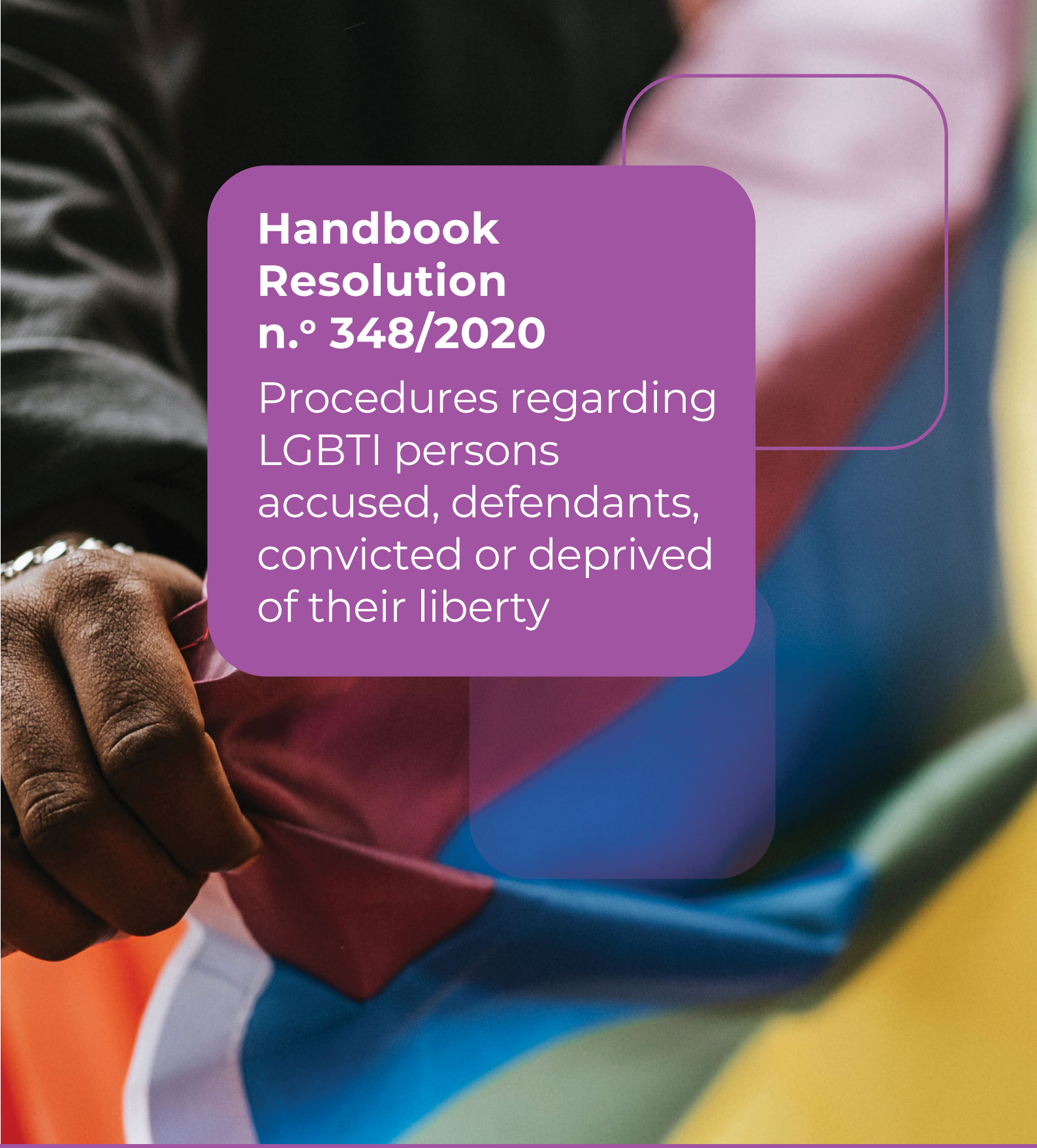

# Handbook Resolution n.º 348/2020

## Procedures regarding LGBTI persons accused, defendants, convicted or deprived of their liberty

SERIES FAZENDO JUSTIÇA | MANAGEMENT AND TRANSVERSAL THEMES COLLECTION

SENAPPEN
Secretaria Nacional de Políticas Penais

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## Procedures regarding LGBTI persons accused, defendants, convicted or deprived of their liberty

BRASÍLIA, 2024

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This work is dedicated to Fernanda Calderaro (in memoriam), who contributed greatly to the elaboration of CNJ Resolution No. 348/2020. Fernanda left us early, having been one of the thousands of Brazilian victims of Covid-19. With her trajectory as a human rights activist, excellent professional, researcher in lesbian health, LGBTI activist, and, mainly, for being who she was, with her resistance and unmistakable laugh, Fernanda will continue to inspire us.

# SUMMARY

# FOREWORD

The National Council of Justice (CNJ), in partnership with the Ministry of Justice and Public Security (MJSP) and the Brazilian office of the United Nations Development Programme (UNDP Brazil), develops the Program Fazendo Justiça (Doing Justice) establishing a significant milestone in the search for innovative solutions in the field of criminal and juvenile justice.

The program works to qualify structures and services, promotes training, supports the drafting of regulations and public policies, and develops informative documents. These materials include guides, manuals, researches and models that combine technical and normative knowledge with the reality experienced in different places across the country. These products identify good practices and offer guidance to facilitate the immediate and effective implementation of interventions.

The program is aligned with the decision of the Supreme Court in the Claim of Non-Compliance with a Fundamental Precept Lawsuit (ADPF) No. 347, which in October 2023, recognized that Brazilian prisons are in an unconstitutional state of affairs and demanded national and local plans to overcome this situation. The program also carries out various actions in the juvenile justice field, following the principle of absolute priority guaranteed to adolescents and young people in the country's norms and laws.

At present, 29 initiatives are being carried out simultaneously, taking into account challenges considering the complete cycle of criminal and juvenile justice, as well as cross-cutting initiatives. Among them is the International Articulation and Protection of Human Rights, which facilitates the exchange of experiences between Brazil and other countries in public policies related to the criminal and juvenile justice cycle.

We recognize that each country faces unique contexts and challenges. We also believe in sharing knowledge and experiences as a tool for collective transformation. To this end, titles selected from the program's different collections have been translated into English and Spanish, such as this publication.

The strategy behind international articulation also includes support for events, courses, and training in collaboration with international partners, as well as the translation into Portuguese of standards and publications aligned with the topics worked on by the program. This promotes a necessary exchange of ideas and practices for a future in which dignity and respect for fundamental rights are common values for all of us.

**Luís Roberto Barroso**

President of the Supreme Court and the National Council of Justice

# PRESENTATION

The Brazilian Constitution underpins our aspirations as a society founded on the democratic rule of law while fostering social advancement with respect for fundamental rights and human dignity. In this sense, it is the indelible duty of the institutions, especially of the Judiciary, to make sure that our actions point to this civilizing north, not only rejecting deviations to this end, but acting now to transform the present we long for.

In 2015, the Supreme Court recognized that almost 1 million Brazilians live outside the country's maximum law while inside our prisons, with harmful effects on the degree of inclusive development to which we have committed ourselves through the United Nations Agenda 2030. It is this scenario that is dealt with by the Program Fazendo Justiça, a partnership between the National Council of Justice (CNJ) and the United Nations Development Program, with the support of the Ministry of Justice and Public Safety, through the National Penitentiary Department.

Even during the Covid-19 pandemic, the program has been carrying out structuring deliveries based on collaboration and dialog between different actors all over the country. There are 28 actions developed simultaneously for different phases and needs of the criminal cycle and the juvenile justice cycle, which include the facilitation of services, reinforcement of the regulatory framework, and production and dissemination of knowledge. It is in the context of this last objective that this publication is inserted, now part of a robust catalog that brings together advanced technical knowledge in the field of accountability and rights assurance, with practical guidance for immediate application throughout the country.

The volume is part of a collection of contents on Management and Transversal Themes prepared by the Program Fazendo Justiça as part of a set of initiatives aimed at strengthening actions throughout the criminal and juvenile justice cycle, looking at vulnerabilities that deepen in the context of deprivation of liberty, such as those affecting self-declared LGBTI people.

This publication meets the provision established by CNJ Resolution n.º 348/2020, which establishes guidelines for the treatment given by the justice system to this population group. In addition to listing the general assumptions for the Judiciary to act in cases involving accused, defendant or convicted LGBTI people, the work brings together guiding concepts for decision-making, assistance parameters and support structure in addressing the issue. The objective is to safeguard rights and guarantees that are compatible with the Brazilian constitutional text, as well as with national and international norms that deal with this matter.

**Luiz Fux**

President of the Supreme Court and the National Council of Justice

# INTRODUCTION

# 1 INTRODUCTION

In recent decades, Brazil has experienced a worrying explosion in the rates of incarceration and application of juvenile justice measures of internment, in a conjuncture that favors the degradation of the conditions of compliance with sentences and juvenile justice measures. There is a worsening in the scenario of violation of fundamental rights in relation to dignity, physical and psychological integrity of the people inserted in the penitentiary and juvenile justice systems, not complying with a wide range of constitutional provisions, international and infra-constitutional rules, such as the Criminal Execution Law (LEP) and the Criminal Procedure Code (CPP).

The situation was even recognized by the Supreme Court (STF), which, when deciding on the Claim of Non-compliance with a Fundamental Precept Law Suit (ADPF) n.º 347[1], declared that there was an **Unconstitutional State of Affairs** in the Brazilian prison system. Likewise, the Supreme Court has extended the understanding to juvenile justice, having stated, in the judgment of *Habeas Corpus* (HC) n.º 143,988/ES[2], that the Unconstitutional State of Affairs can also be verified in several places of internment of adolescents and young people.

In the aforementioned ADPF n.º 347, the STF registered that the responsibility for this reality could not be attributed to a single and exclusive branch, but to all three — Legislative, Executive and Judiciary — and not only to those of the Union, but also to those of the Member States and the Federal District. It also pondered that there are problems both in the formulation and implementation of public policies, and in the interpretation and application of the criminal law. Regarding the **role of the Judiciary**, in particular, the STF has shown its responsibility to rationalize the enforcement of the criminal law, to minimize rather than aggravate the situation.

For an action that is actually engaged in improving this context, the social foundation that underlies the criminal and juvenile justice systems must be understood in a broad way. Historically, the model underlying such systems overlooks human subjectivities, composed of an amalgam of social markers of difference such as gender, race, ethnicity, class, age, physical ability, and nationality, among many others. And in the face of factors such as the increase in female incarceration and the rise of the LGBTI movement's agendas in society, the interfaces between gender and the justice system have been highlighted.

New guidelines occupy the public agenda, breaking the silence around themes previously considered "taboo". Issues such as maternity, sexual freedom and health in prison, and special wards or cells for transgender people in penal establishments are gaining evidence in the current debate about prison policy in Brazil. There is also a lack of information and indicators on the profile and reality of self-declared LGBTI people, and the reflexes of this deficit can be seen in several fields.

1 ADPF n.º 347 MC/DF, Justice Rapporteur Marco Aurélio, j. 09.09.2015.

2 HC n.º 143988/ES, Justice Rapporteur Edson Fachin, j. 25.08.2020.

In this context, the **LGBTI population**[3] deprived of their liberty is at particular risk of **torture and ill-treatment**, both within the criminal and juvenile justice systems and in other contexts, such as medical facilities. As alleged in 2016 by the United Nations (UN) Special Rapporteur on Torture, it is found that the criminal justice system tends to neglect the specific needs of people self-declared as part of the LGBTI population[4]. In addition, the STF has recognized the generalized state of unconstitutionality also in juvenile justice, and the same situation is verified in the reality of LGBTI adolescents and young people in juvenile detention programs.

Based on this diagnosis, the National Council of Justice (CNJ) organized, between 2019 and 2020, a **series of meetings** with representatives from agencies and entities of the justice system, the Judiciary, the Executive Branch, and civil society. The intention was to establish an open debate that would truly allow for the structuring of alternatives to ensure that criminal and juvenile justice procedures involving self-declared LGBTI people were compatible with both the Brazilian constitutional text and with national and international forecasts, proposals and standards on the subject.

As a result of this process of dialogue, CNJ Resolution n.º 348 was approved on October 13, 2020, establishing guidelines for the treatment of the LGBTI population by the criminal and juvenile justice systems. Among the core provisions of the Resolution, the following can be highlighted: (i) the identification of the LGBTI person through **self-declaration**; (ii) the information and consultation regarding the **definition of the place of deprivation** of liberty; (iii) the safeguarding of the **right to maternity** for lesbian, transvestite and transgender women and to transgender men; (iv) express **provisions on the guarantee of material, health, legal, educational, labor, social, and religious assistance**, as well as the **right to visits**, including intimate ones, and to the **expression of subjectivity**; in addition to (v) **the extension to adolescents and youth** in juvenile justice proceedings and during the execution of the juvenile justice measure.

With the aim that the guidelines set forth in CNJ Resolution n.º 348/2020 are properly applied, it is essential that magistrates recognize LGBTI identity through self-declaration, regardless of the individual conceptions of others, as provided in art. 4 of the aforementioned normative act. To this end, it is up to the judge to indicate that **self-declaration** as part of the LGBTI population entails the **incidence not only of the ordinary rights and guarantees** that is, those assured to all people, **but also of the specific guarantees of the LGBTI population**, reaching across all procedural acts.

Safeguarding these rights and guarantees is even more necessary at a time when the world has been facing an unprecedented **pandemic** for more than a year. Considering the need for social isolation policies as an effective measure to slow down the contagion of Covid-19, it must be pondered how the **mental health** impacts of the LGBTI population deprived of liberty may be greater than in people who

3 The term "population" will be used to refer to a group of subjects with specific phenomena and variables of their own, situated at the intersection between the natural movements of life and the particular effects generated by institutions. This definition was developed by Michel Foucault in the work **History of Sexuality I**: The Will to Knowledge, and in the case of the provisions brought in by CNJ Resolution n.º 348/2020, the group of subjects to which it refers have, as the core of their identification, sexuality and gender.

4 Special Rapporteur on Torture to the UN General Assembly, *Report of the Special Rappourteur on torture and other cruel, inhuman or degrading treatment or punishment,* January 5, 2016, A/HRC/31/57, p. 10.

do not suffer prejudice in a structural way. Furthermore, **vulnerabilities** deepen in a context of crisis, worsening the reality of people already exposed to violence, whether physical, material, symbolic, and/or psychological.

Achieving effective protection encompasses, fundamentally, **the creation and strengthening of specific mechanisms aimed at vulnerable populations**, such as self-declared LGBTI people, in addition to policies, actions, and projects to guarantee their rights. The purpose of this Handbook, in addition to complying with the provisions of CNJ Resolution n.º 348/2020, is to provide the Judiciary with a tool that can be used to deal with the unconstitutional state of affairs that characterizes the penitentiary and juvenile justice systems.

In the path paved by the STF and many other courts, agencies and entities, national or international, recognizing the structural dimension of the problem and the impacts generated in vulnerable groups, such as the LGBTI population, constitutes a correct step towards the transforming objective that moves players of the justice system, or any interested person, to consult this Handbook on the CNJ Resolution n.º 348/2020.

We wish you good, edifying and useful reading!

# GENERAL ASSUMPTIONS

FOR THE ACTION OF COURTS AND JUDGES IN CRIMINAL CASES INVOLVING LGBTI PERSONS ACCUSED, DEFENDANTS OR CONVICTED

## 2 GENERAL ASSUMPTIONS FOR THE ACTION OF COURTS AND JUDGES IN CRIMINAL CASES INVOLVING LGBTI PERSONS ACCUSED, DEFENDANTS OR CONVICTED

The Federal Constitution of 1988 establishes as fundamental objectives of the Federative Republic of Brazil the construction of a **free, fair and solidary society** and the promotion of the **well-being of all people**, without prejudice of origin, race, sex, color, age, and any other forms of discrimination (art. 3, I and IV). Furthermore, it determines that **all people are equal before the law**, "without distinction of any kind, guaranteeing Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, safety, and property" (art. 5).

The constitutional text also guarantees that **no person must be subjected to torture or to inhuman or degrading treatment** (item III), that there must **be no cruel punishment** (item XLVII, e) and that punishment must be served in different establishments, according to the nature of the crime, the age and the sex of the convicted person (item XLVIII), and that **respect for their physical and moral integrity** must be ensured (item XLIX).

In the same sense, Federal Law n.º 7,210/1984 (Criminal Execution Law — LEP) stipulates the **duty to respect the physical and moral integrity of** convicted persons and temporary prisoners (art. 40), as well as being the rights of all prisoners (art. 41): access to sufficient food and clothing (item I); work assignment and its remuneration (item II); material, health, legal, educational, social, and religious assistance (item VII); visit of spouse, partner, relatives and friends (item X); nominal call (item XI) and equal treatment, except as to the requirements of individualization of the penalty (item XII).

In addition, as also provided by the Federal Constitution, the principles of human rights enshrined in **international documents and treaties** signed by Brazil are part of the list of rights enshrined in the constitutional order, occupying the same material status (art. 5, § 2). For the theme addressed in this Handbook, we highlight the need to observe the content guaranteed in the **following international normative diplomas**:

- Universal Declaration of Human Rights (1948);
- International Covenant on Civil and Political Rights (1966);
- International Covenant on Economic, Social and Cultural Rights (1966);
- American Convention on Human Rights ("Pact of San Jose de Costa Rica", 1969);
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984);
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules", 1985);

- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador", 1988);
- Convention on the Rights of the Child (1989);
- United Nations Standard Minimum Rules for the Design of Non-Custodial Measures ("Tokyo Rules", 1990);
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("Havana Rules", 1990);
- Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001);
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002);
- United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders ("Bangkok Rules", 2010).
- United Nations Standard Minimum Rules for the Treatment of Prisoners ("Nelson Mandela Rules," 1957, updated 2015);

In the specific area of **rights and guarantees for self-declared LGBTI people**, special attention must be paid to the provisions of the principles on the application of international human rights law in relation to sexual orientation and gender identity, better known as the "Yogyakarta Principles".

Promulgated in 2006 by a panel of experts from twenty-five countries in Yogyakarta, Indonesia, the principles are not a statement of aspirations or a charter of rights. The document compiles and reinterprets definitions enshrined in treaties, conventions, resolutions, and other international texts on human rights in order to apply them to situations of discrimination, stigma, and violence experienced by people and groups on the basis of their sexual orientation and gender identity.

An **intersectional perspective** underlies the drafting of the Yogyakarta Principles, with the concern in its preamble that the experiences of "violence, harassment, discrimination, exclusion, stigmatization, and prejudice" are compounded "by discrimination including gender, race, religion, special needs, health status, and economic status".

Prison, as a space of multiple segregations, relegates the differences that make up people's reality and (re)produces inequalities amalgamated to categories of differentiation additional to gender, such as race, ethnicity, age, physical ability, sexual orientation, and nationality, among many others. Intersectionality is "a conceptualization of the problem that seeks to capture the structural and dynamic consequences of the interaction between two or more axes of subordination" (CRENSHAW, 2002, p. 177). The concept serves to analyze how racism, patriarchy, class oppression, and other discriminatory systems are embodied, generating basic inequalities that structure the relative positions of each individual in society. It is thus "a tool for understanding and analyzing the complexity that exists in the world, in people, and in human experience" (COLLINS; BILGE, 2016, p. 25).

Furthermore, the document is guided by the concepts of **"self-determination"** and **"self-definition"** thus meant in the text:

> **PRINCIPLE 3**
>
> **THE RIGHT TO RECOGNITION BEFORE THE LAW**
>
> Everyone has the right to be recognized everywhere as a person before the law. Persons of diverse sexual orientations and gender identities come to enjoy legal capacity in all aspects of life. Each person's **self-defined** sexual orientation and gender identity is integral to their personality and one of the most basic aspects of **self-determination**, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery sterilization, or hormone therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parental status, may be invoked to prevent the legal recognition of a person's gender identity. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity (emphasis added).

In addition, the Yogyakarta Principles make specific proposals on **deprivation of liberty, access to justice, and treatment during the period of detention of LGBTI people**. Special note must be made of principles 8 and 9, which each make recommendations to the Signatory States regarding the treatment of LGBTI people by the criminal justice system. See:

> **PRINCIPLE 8**
>
> **THE RIGHT TO A FAIR TRIAL**
>
> Everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, in the determination of their rights and obligations in in a suit at law and in any criminal charge against them without prejudice or discrimination on the basis of sexual orientation or gender identity.
>
> **States shall:**
>
> **a)** Take all necessary legislative, administrative and other measures to prohibit and eliminate prejudicial treatment on the basis of sexual orientation or gender identity at every stage of judicial process, in civil and criminal proceedings, and in all other judicial and administrative

proceedings which determine rights and obligations, and to ensure that no one's credibility or character as a party, witness, advocate or decision-maker is impugned by reason of their sexual orientation or gender identity;

b) Take all necessary and reasonable steps to protect persons from criminal prosecutions or civil proceedings that are motivated wholy or in part by prejudice regarding sexual orientation or gender identity;

c) Undertake programmes of training and awareness-raising programs for judges, court personnel, prosecutors, lawyers and others regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity.

**PRINCIPLE 9**

**THE RIGHT TO TREATMENT WITH HUMANITY WHILE IN DETENTION**

Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Sexual orientation and gender identity are integral to each person's dignity.

**States shall:**

a) Ensure that placement in detention avoids further marginalising persons on the basis of sexual orientation or gender identity or subjecting them to risk of violence, ill-treatment or physical, mental or sexual abuse;

b) Provide adequate access to medical care and counseling appropriate to the needs of those in custody, recognizing any particular needs on the basis of their sexual orientation or gender identity, including with regard to reproductive health, access to HIV/AIDS information and therapy and access to hormone or other therapy as well as to gender-reassignment treatments where desired;

c) Ensure, to the extent possible, that all prisoners participate in decisions regarding the place of detention appropriate to their sexual orientation and gender identity;

d) Put protective measures in place for all prisoners vulnerable to violence or abuse on the basis of their sexual orientation, gender identity or gender expression and ensure, so far as is reasonably practicable, that such protective measures involve no greater restriction of their rights than is experienced by the general prison population;

e) Ensure that conjugal visits, where permitted, are granted on an equal basis to all prisoners or detained, regardless of the gender of their partner;

f) Provide independent monitoring of detention facilities by the State as well by non-governmental organizations, including organizations working in the spheres of sexual orientation and gender identity;

g) Undertake programmes of training and awareness-raising programs for prison officials and all other persons in the public and private sector who are engaged in detention facilities, regarding

international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity.

Using the Yogyakarta Principles and the Nelson Mandela Rules, the **Inter-American Court of Human Rights (IACHR)**, when issuing Advisory Opinion OC-24/7 requested by the Republic of Costa Rica, in addition to providing a glossary of definitions such as sexual orientation, gender identity, and gender expression, it also affirmed them as categories safeguarded by art. 1.1 of the American Convention on Human Rights (ACHR). In this sense, the Inter-American Court ratified the **prohibition of any discriminatory norm, act or practice based on a person's sexual orientation or gender identity** (item 68).

The aforementioned Advisory Opinion OC-24/7 further provides for the **right to identity**, which encompasses the rights to recognition of legal personality, name, and gender identity. It enshrined the duty of the States to ensure "the recognition of people's gender identity, as this is vitally important for the full enjoyment of other human rights," and that the lack of recognition may "hinder the exercise of other fundamental rights and therefore have a significant differential impact on transgender persons," who, in general, "are in a situation of vulnerability" (item 114).

In view of the normative and principle framework presented, the following general assumptions must guide the actions of courts and magistrates in criminal cases involving accused, defendants or convicted LGBTI people, as summarized in art. 2 of CNJ Resolution n.º 348/2020:

I) Guarantee the **right to life and to the physical and mental integrity of** the LGBTI population, as well as **to sexual integrity, body safety, freedom of expression of gender identity and sexual orientation**;

II) Recognition of the **right to self-determination of gender and sexuality of** the LGBTI population; and

III) Guarantee, without discrimination, **all social rights**, such as health, study, and work, foreseen in the legal and conventional instruments related to the population deprived of liberty, in compliance with penal alternatives or under electronic monitoring, as well as the guarantee of **specific rights** of the LGBTI population.

It is also important to highlight that, in line with the provisions of the **Statute of the Child and Adolescent (ECA), children, adolescents, and young people have the right to freedom, respect, and dignity as human beings in the process of development and as subjects of civil, human, and social rights** guaranteed in the Federal Constitution and other laws.

The **right to respect** consists of the inviolability of the physical, psychological, and moral integrity of children, adolescents, and young people, including the preservation of their image, identity, autonomy, values, ideas, and beliefs, and personal spaces and objects (art. 17 of the ECA). Furthermore, the care for the dignity of children, adolescents and young people implies **keeping** them safe from any inhumane, violent, terrifying, vexatious or embarrassing treatment (art. 18 of ECA).

In this sense, Law n.º 12,594/2012, when establishing the **National System for Juvenile Justice Care (SINASE)**, provided that the **execution of juvenile justice** measures must be **individualized**, con-

sidering the age, capabilities and personal circumstances of adolescents and youth, as well as **without incurring in any discrimination**, notably on the basis of ethnicity, gender, nationality, social class, religious, political or sexual orientation, association or belonging to any "minority" or status (art. 35, VI and VIII).

Also according to the SINASE law, **respect for personality, intimacy and freedom of thought and religion** should also govern the fulfillment of the juvenile justice measure by adolescents and youths (art. 49, III).

Thus, considering (i) **the constitutional principle of absolute priority** in the promotion and defense of the fundamental human rights of children, adolescents and young people, among which the rights to dignity, respect and freedom are included; (ii) the **right to be protected from all discrimination, exploitation, cruelty, violence and oppression**, and (iii) the **principle of legality** which prohibits the imposition of more onerous treatment on adolescents than that conferred on adults (art. 35, I of Law 12,594/2012), all provisions present in CNJ Resolution n.º 348/2020 will apply, equally, to **adolescents and youth** apprehended, processed for committing an infraction or serving a juvenile justice measure who **self-determine** as part of the LGBTI population (art. 15).

# GUIDING CONCEPTS AND IDENTIFICATION

## OF THE LGBTI POPULATION IN CUSTODY, ACCUSED, DEFENDANT, CONVICTED, DEPRIVED OF LIBERTY, IN COMPLIANCE WITH PENAL ALTERNATIVES OR ELECTRONICALLY MONITORED

# 3 GUIDING CONCEPTS AND IDENTIFICATION OF THE LGBTI POPULATION IN CUSTODY, ACCUSED, DEFENDANT, CONVICTED, DEPRIVED OF LIBERTY, IN COMPLIANCE WITH PENAL ALTERNATIVES OR ELECTRONICALLY MONITORED

The identification of an accused or defendant person as belonging to the LGBTI population happens exclusively through **self-declaration**, that is, the faculty of each person to identify themself and declare their gender identity and sexual orientation[5].

The self-declaration can be made at any time during **the criminal procedure**, including during the detention control hearing and until the punishment is extinguished by the completion of the sentence, and the declarant's rights to privacy and integrity must be guaranteed, as determined by the *caput* of art. 4 of CNJ Resolution n.º 348/2020. It can also be manifested at **any time during the procedure of verification of the infraction and during the execution of the juvenile justice measure**, respecting the same rights guaranteed in the criminal procedure.

If the magistrate receives information, by any means, that the person in court is part of the LGBTI population, the magistrate must inform the person **about the possibility of self-declaration** and, in **simple and accessible language**, about the rights and guarantees to which the person is entitled. It is also important to emphasize that human sexuality and gender expressions are fluid, so that a person's self-declaration as part of the LGBTI population, as well as identification within this category, **may or may not be exclusive,** with the **possibility of varying over time and space** (art. 14 of CNJ Resolution n.º 348/2020).

## 3.1. Glossary

In order to guide the application of the guidelines brought by CNJ Resolution n.º 348/2020, facilitating the understanding about the right to self-determination and the possible guarantees to each person, the referred normative act is based on some concepts, listed in art. 3. Such guiding concepts were developed from the glossary of the "Free & Equal" campaign, created by the United Nations (UN), and are not intended to be exhaustive, and the names by which people will self-determine must be accepted.

5 It is important to note that CNJ Resolution n.º 348/2020 also applies to young people and adolescents who are apprehended, prosecuted for committing an infraction, or serving a juvenile justice measure, as provided in art. 15. For this reason, self-declaration as part of the LGBTI population is also valid for the identification of young people and adolescents as eligible to enjoy the rights and guarantees safeguarded by this normative act. This choice must be informed and independent of the authorization of parents or legal guardians, in the same sense already provided by other regional regulations, such as SESP Resolution n.º 18/2018, from the state of Minas Gerais, and Ordinance n.º 04/2020, from the Federal District.

### 3.1.1. Sexual orientation

It corresponds to the **physical, romantic and/or emotional attraction of** one person to another, unrelated to gender identity or sexual characteristics. Resolution n.º 348/2020 uses the categories listed below, without prejudice to others that people may self-determine:

- Gay men and lesbian women: they are attracted to people who have the same gender, that is, men and women, respectively;
- Heterosexual people: they are attracted to people of a gender different from their own;
- Bisexual people: they have affective-sexual attraction for people of more than one gender.

### 3.1.2. Gender identity

The way people identify themselves as **female, male, or another expression they use**. All people have a gender identity, which is part of their identity as a whole. Typically, a person's gender identity is aligned with the sex that was assigned at birth.

Just as a person who does not identify with the gender assigned at birth is called **"transgender," "cisgender** " is the term used to describe people whose own gender identification is aligned with the biological sex assigned at birth.

It is important to remember that gender identity is **distinct from sexual orientation and sexual characteristics** of each person. Furthermore, given the wide variety of words used in self-determination, it is essential to respect the **terms, names, and pronouns** that each person uses to refer to himself/herself.

### 3.1.3. LGBTI people

Despite the variety of acronyms used to represent the plurality of gender identities and sexual orientations (LGBT, LGBT*, LGBTQ, LGBTQI, LGBTI+, among others), CNJ Resolution n.º 348/2020 adopted "LGBTI" to refer to the population covered by the foreseen guidelines. The acronym LGBTI refers to "lesbian, gay, bisexual, transgender, and intersex" people, and is used worldwide by renowned institutions such as the United Nations and Amnesty International.

### 3.1.4. Transgender people

Still called "trans" in common shorthand, they are people who **recognize themselves as having a gender different from the one they were assigned at birth**, comprising several identities that vary from one culture to another. In Brazil, transsexual, transvestite, crossdresser, and binary or gender fluid people can be included among the transgender population. Specifically, it can be systematized as follows:

- Trans women: they identify as women, but have been designated men when they were born;
- Trans men: they identify as men, but have been designated women when they were born;

- Non-binary or gender fluid people: transgender people who do not identify at all with the gender binary spectrum.

While some transgender people want to undergo surgeries or hormone therapy to align their body with their gender identity, others do not. The right to self-determination is personal, not allowing public agents to condition the identification of the person on the performance of bodily interventions or on any exogenous requirement.

### 3.1.5. Intersex people

They are born with **sexual characteristics that do not fit the typical definitions of male and female**, such as sexual anatomy, reproductive organs, and/or hormonal and/or chromosomal patterns. There are a number of conditions that can result in visible or non-visible intersex characteristics. Such characteristics may be **apparent at birth or developed during life**, such as during puberty, so that many intersex people do not even know they are intersex. They can also have varied sexual orientations and gender identities.

## 3.2. Protection of personal data and confidentiality of self-declaration

The need to self-declare as LGBTI in order to access specific rights and guarantees can create **risks and difficulties for** the person declaring. Being openly gay, lesbian, transgender and/or transvestite in already hostile environments such as prisons or juvenile detention centers can imply a situation of vulnerability even greater than that experienced in society, exposing the declarant both to harassment from institutional agents and from other people deprived of liberty.

For this reason, there is in CNJ Resolution n.º 348/2020 an express concern with the **protection of personal data and the confidentiality of self-declaration** of people as part of the LGBTI population, which must also be implemented by the courts and magistrates that apply it. The art. 5 states that in case of self-declaration as a LGBTI person, the Judiciary will record this information in its computerized systems, which must **ensure the protection of personal data and the full respect for individual rights and guarantees**, especially intimacy, privacy, honor, and image[6].

In addition, the magistrate must, on his/her own initiative **or at the request of the defense or interested party**, determine that the information is stored in a restricted manner or, in cases provided for by law, declare the self-declaration to be **confidential**.

The procedures brought by CNJ Resolution n.º 348/2020 follow the personal data protection discipline stipulated by Law n.º 13,709/2018, better known as the **General Law of Personal Data Protection (LGPD)**. It is important to note that information corresponding to a person's self-declaration as

6 The data and diagnoses contained in **medical records**, especially regarding serological information and other sexually transmitted infections (STIs), must also be guaranteed confidentiality, in safeguard of the constitutional right to privacy (art. 11, I, f, of CNJ Resolution n.º 348/2020).

part of the LGBTI population may be considered **sensitive personal data** (art. 5, II, of the LGPD), and must be protected according to the guidelines defined by this Law.

## 3.3. Right to a social name

As recognized in Advisory Opinion OC-24/7, issued by the Inter-American Court of Human Rights for the Republic of Costa Rica, the American Convention on Human Rights, in its provisions on the free development of the personality (arts. 7 and 11.2), the right to privacy (art. 11.2), the recognition of legal personality (art. 3), and the right to a name (art. 18), it assures **the right of each person to autonomously define their sexual and gender identity, as well as the data that appear in registries and identity documents (item 155).**

Following this understanding, another important advance in CNJ Resolution n.º 348/2020 was the establishment, in art. 6, that self-declared LGBTI persons subject to criminal prosecution have the **right to** be addressed by their **social name and chosen name,** according to their gender identity and despite any divergence from their civil register name. It is recommended that the social name is expressly included in the records, as a form of correct identification of the person, as well as in the computer systems in which the process is carried out (art. 5, of CNJ Resolution n.º 348/2020).

> According to CNJ Resolution n.º 270/2018, social name is "that adopted by the person, by means of which they identifies and is recognized in society, and declared by it." The judge must ask the self-declared transgender person about the name they identify with and which pronouns they would like to be referred to.

Such provision is in line with several preceding norms and decisions, such as the Joint Resolution of the National Council of Criminal and Penitentiary Policy and the National Council for Combating Discrimination CNPCP/CNCD/LGBT n.º 01 of 2014. In art. 2 of this Resolution, it is stated the duty of **people deprived of liberty and their visitors** have to preserve aspects related to sexual orientation and gender identity, including the right to be addressed by their social name.

Likewise, Federal Decree n.º 8,727/2016, when disposing about the use of the social name and the recognition of gender identity in the scope of the direct federal public administration, autonomous and foundational, assured transsexuals, transvestites and intersex people in contact with the criminal or juvenile justice system the guarantee of treatment by their **self-identified name**, even if in disagreement with the civil register. If the name informed does not appear on the arraignment form for the prison or juvenile justice unit, the writing must be done by whoever is competent to do so, including the **court of penal execution or juvenile justice** measure[7].

Furthermore, the Supreme Court (STF) has already ratified the possibility of changing the civil register without the need to undergo surgical procedures or hormone therapy. On August 2018, when

7 Even the Ministry of Education (MEC) provides the possibility for students under the age of eighteen to request the use of the social name during enrollment or at any time, in accordance with the provisions of art. 1,690 of the Civil Code and the Child and Adolescent Statute (art. 4 of Resolution n.º 01/2018 of MEC).

judging Extraordinary Appeal n.º 670,422/RS, the STF fixed the thesis that the transgender person "has a subjective fundamental right to change his or her prename and gender classification in the civil register, not requiring, for this, nothing beyond the **manifestation of the individual's will**, which may exercise this faculty **both through the judicial route and directly through the administrative route**" (emphasis added).

It is clear that **access to specific rights for all self-declared LGBTI people does not depend on rectified documentation, as well as on the submission of surgical or hormonal procedures; self-declaration is enough for them to be fully guaranteed**[8]. However, if the person wishes to issue new adapted documents, it is possible for the procedure to take place in court, even if the person is serving a sentence or a juvenile justice measure in confinement.

According to the provisions of Resolution CNJ n.º 348/2020, the magistrate, when requested by the self-declared LGBTI person or by the defense, and with the **express authorization** of the **interested** party, is responsible for the issuance of documents, in accordance with art. 6 of CNJ Resolution n.º 306/2019[9], or the rectification of civil documentation. It also provides that the issuance and rectification of civil documents for the LGBTI population will be **free of charge** (art. 14).

This provision is complemented by the aforementioned Federal Decree n.º 8,727/2016, by providing the possibility for the self-declared transsexual or transvestite person to request, "at any time, the inclusion of his/her social name in official documents and in the records of information systems, registrations, programs, services, files, forms, medical records, and the like of federal public agencies and entities of the direct federal, autonomous, and foundational public administration" (art. 6).

Among the possibilities of practical implementation of the request for issuance or rectification of civil documents, the judge may request support from the Social Offices, public equipment of shared management between the Judicial and Executive Branches, fostered by the National Council of Justice in several states of the federation[10]. The Social Office, as well as the Social Assistance Reference Center (CRAS), the Specialized Social Assistance Reference Center (CREAS), and other assistance or care services for people who have been released from prison can help magistrates ensure that this right becomes a reality. Furthermore, the Public Defender's Offices can also contribute to this process.

8 The Inter-American Court understands that "in the context of the procedures for recognition of the right to gender identity, **it is unreasonable to demand that people comply with requirements that distort the purely declarative nature of the procedures. Nor it is appropriate for such demands to be erected as demands that go beyond the bounds of intimacy**, since it would force people to submit their most intimate decisions and the most private matters of their lives to public scrutiny by all actors directly or indirectly involved in this process" (item 133 of Advisory Opinion OC-24/7, emphasis added).

9 Establishes guidelines and parameters for issuing civil documentation and for biometric civil identification of persons deprived of liberty.

10 Instituted by CNJ Resolution n.º 307/2019, the Social Office is a public equipment of shared management between the Judiciary and Executive branches, responsible for carrying out reception and referrals of egresses and pre-egresses from the prison system and their families to existing public policies, articulating an intersectoral and inter-institutional policy of social inclusion that correlates and demands initiatives from different state and municipal public policies, systems, and civil society actors.

# THE DECISION-MAKING

## IN CASES INVOLVING AN LGBTI PERSON IN CUSTODY, ACCUSED, DEFENDANT, CONVICTED, DEPRIVED OF LIBERTY, IN COMPLIANCE WITH PENAL ALTERNATIVES OR ELECTRONICALLY MONITORED

# 4 THE DECISION-MAKING IN CASES INVOLVING AN LGBTI PERSON IN CUSTODY, ACCUSED, DEFENDANT, CONVICTED, DEPRIVED OF LIBERTY, IN COMPLIANCE WITH PENAL ALTERNATIVES OR ELECTRONICALLY MONITORED

As mentioned, the recognition of a person as a member of the LGBTI population will be made exclusively through **self-declaration** collected at any stage of the criminal or juvenile justice procedure. Based on self-declaration, the CNJ Resolution n.º 348/2020 lists three aspects concerning LGBTI self-identified people that require **special attention** from magistrates when **making decisions**, in order to ensure **due access to all the rights guaranteed to them, whether general or specific.**

Important issues to be observed in the decision-making process are listed below, divided as follows: **(i)** definition of the place of deprivation of liberty; **(ii)** reports of violence or serious threat; and **(iii)** specificities of lesbian, bisexual, transvestite, transgender, and transsexual women.

## 4.1. Definition of the place of deprivation of liberty

The allocation of self-declared LGBTI people to correctional and juvenile facilities must be done with great caution, ensuring **sufficient information and consultation with the person concerned** about the facility where he/she prefers to be held. This methodology is recommended in several spheres, such as by the UN Subcommittee for the Prevention of Torture[11] and by the Ministry of Justice and Public Security[12], being fully adopted by CNJ Resolution n.º 348/2020.

Thus, as provided in art. 7 of the aforementioned Resolution, the decision on the place of deprivation of liberty will be made after **questioning the preference of the person arrested,** which can be done at any time during the criminal prosecution and execution of the sentence. It will be, yet, guaranteed the **possibility of changing the place of custody**, in order to ensure the general objectives of CNJ Resolution n.º 348/2020. The same applies to the **juvenile justice** structure, guaranteeing the adolescent or young person, from the process of verification of the infraction to the end of the execution of the juvenile justice measure, the indication of the unit where he/she prefers to serve the period of internment.

Although this questioning is possible at any time, it is responibility of the magistrate to make it concrete when in the criminal justice system, in the detention control **hearing** that takes place after the arrest in *flagrante delicto* or in compliance with the arrest warrant, and in the **presentation hearing** in juvenile justice proceedings. Furthermore, the person may be **questioned in the delivery** of the sentence and in the **hearing in which the deprivation of liberty** is decreed, and the location preference must be

11 UN Subcommittee on Prevention of Torture during presentation before the Inter-American Commission on Human Rights on October 23, 2015 (157th period of sessions, Human Rights Situation of LGBT Persons Deprived of Liberty in Latin America).

12 Technical Note n.º 9/2020/DIAMGE/CGCAP/DIRPP/DEPEN/MJ.

**formally** stated in the judicial decision or sentence that will determine the compliance with the established measure (art. 8, §§ 1 and 2, of CNJ Resolution n.º 348/2020, respectively).

Listening to the opinion of the person deprived of liberty on the definition of the place of custody by the State, after obtaining all the necessary clarifications from the judge, is extremely important, as it concerns the most appropriate and **adequate place for the gender** identity of the person in custody and/or the **place that will provide more security, without this meaning any kind of punishment or prejudice to the rights of the LGBTI population.**

It is important to emphasize that the possibility of expressing a preference for the place of deprivation of liberty, as well as any change, must **be communicated expressly to the person self-declared as part of the LGBTI population, in simple and accessible language.** All the necessary information must also be **presented** to allow the interested party to make the choice they consider most appropriate.

Such communication must explain, in detail and in an understandable manner, about **(i)** the structure of the facilities available in the respective area, **(ii)** the location of male and female units and **(iii)** the existence of specific wards or cells for the LGBTI population, as well as about **(iv)** the consequences of the choice in the coexistence and in the exercise of rights (art. 8, I, of CNJ Resolution n.º 348/2020), which must not mean exclusion from access to rights granted to the population of the same establishment.

Among the allocation alternatives made available by CNJ Resolution n.º 348/2020, **self-declared transgender persons, self-identified as male or female, must be asked about their preference for custody in a female, male or specific unit**, if there is one in the region. Once the unit has been defined**, they can give their opinion on whether they prefer to be held in the general community or in specific wards or cells**, if any**.**

In turn, also according to CNJ Resolution n.º 348/2020, **people self-declared as part of the gay, lesbian, bisexual, intersex, or transvestite population must be asked about their preference for custody in the general community or in specific wards or cells**.

However, it is noteworthy that, for the purposes of applying arts. 7 and 8 of the aforementioned Resolution, it is necessary to pay attention, in the analysis of the concrete case, to the provisions of Law n.º 13,869/2019, which deals with crimes of abuse of authority, especially to the provisions of art. 21, which states as follows

*Art. 21. Keep prisoners of both sexes in the same cell or confinement space:*

*Penalty — detention, from 1 (one) to 4 (four) years, and a fine.*

There is also, according to the text of the Resolution, the possibility that **self-declared transsexuals** may choose to serve time in a female, male or specific unit, if any, and in the chosen unit, may choose to be detained in the general community or in specific wards or cells, if any.

This option is recommended by the National Penitentiary Department (DEPEN) in Technical Note n.º 9/2020/DIAMGE/CGCAP/DIRPP/DEPEN/MJ; a document that was the basis for the decision made by Justice Luís Roberto Barroso, on March 18, 2021, when he judged the request for Precautionary Mea-

sure in the Claim of Non-compliance with the Fundamental Precept Law Suit (ADPF) n.º 527, **ensuring the possibility for transsexual women and transvestites.**

This guideline is also based on the understanding of the **Inter-American Court of Human Rights (IDH Court)**, in the Advisory Opinion OC-24/7/2017, which states that sexual orientation, gender identity and gender expression are protected by art. 1.1 of the American Convention on Human Rights.

This guarantee was acclaimed by the **Inter-American Commission on Human Rights (IACHR)** in its most recent report on human rights in Brazil. For the Commission, the existence of the possibility of choice "represents an important step towards ensuring that deprivation of liberty no longer results in multiple violations for vulnerable and stigmatized groups, advancing the application of the principles of equality and non-discrimination on the basis of gender identity and/or expression" (IACHR, 2021, p. 70).

And as it is well stated in the 3rd paragraph of art. 7 of the CNJ Resolution n.º 348/2020, the allocation of a person self-declared as part of the LGBTI population in a certain prison or juvenile justice unit, defined after hearing the interested party, **cannot result in the loss of any right in relation to the other people in the same place,** especially regarding access to work and study, health care, food, hygiene, material, social or religious assistance, sunbathing, visitation, and other routines existing in the establishment.

Therefore, also considering what is established by art. 5 of the Criminal Execution Law (n.º 7,210/1984), the magistrate's **preferred criterion** for defining the place of confinement of a self-declared LGBTI person will be the person's **expression of will** according to his/her gender identity and/or sexual orientation. We reiterate the validity of the same criterion for **adolescents and young people** apprehended, prosecuted for committing an infraction or serving a juvenile justicemeasure who self-determine that they belong to the LGBTI population, as provided by art. 15 of CNJ Resolution n.º 348/2020.

Finally, it is possible for the **Justice Controller´s Office**, which is responsible for inspecting places of deprivation of liberty, to find out from self-declared LGBTI people **where they are actually allocated** and whether, after the period corresponding to the initial definition, they **confirm** their stated choice. If necessary, such magistrate **can make necessary arrangements for these people to stay in the place they consider most suitable**.

## 4.2. Reports of violence or serious threat

As has been shown, the already degrading experience of deprivation of liberty exposes self-declared LGBTI people to even greater violence. In 2015, the **UN Subcommittee on Prevention of Torture (SPT)** reported that it had received numerous "reports from prisons of beatings, sexual violence, isolation, and targeted forms of violence, including so-called 'corrective rapes' of lesbian women, and intentional beating of the breasts and faces (cheeks) of trans women in order to rupture implants and release toxic substances[13].

13 Eighth Annual Report of the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, March 26, 2015, 67th paragraph.

Lesbian women, gay men, and bisexual or transgender people report **higher rates of physical, psychological, or sexual violence** than the general population deprived of liberty — violence perpetrated not only by fellow detainees, but also by police and other institutional actors. And despite the superiority of such rates, **fear of reprisals and lack of trust in complaint mechanisms** often prevent reporting of abuse and mistreatment[14].

As for the Brazilian reality, on November 2018, when issuing a Resolution on Provisional Measures in the case of the Curado Penitentiary Complex in Recife/PE, the Inter-American Court of Human Rights (IDH Court) ordered the Brazilian State to urgently adopt **concrete measures to guarantee the life and personal integrity of the LGBTI population deprived of liberty**. Facing this panorama, CNJ Resolution n.º 348/2020 presents guidelines on how the judges must take action when they become aware of reports of violence and serious threat against self-declared LGBTI persons in detention. In such cases, art. 9 provides that, with the **prior request and hearing of the interested party**, the analysis of an eventual **request for transfer** to another establishment must be **prioritized**. Furthermore, it is reiterated that the **compulsory transfer between places of custody is prohibited as a form of sanction or punishment of** the self-declared LGBTI person (art. 11, VII, a).

And given the fear of reprisals if they report acts of violence to the authorities, self-declared LGBTI people in detention must also be given the **option of confidentiality** when reporting abuses, especially sexual abuses, in prisons and juvenile facilities, in line with what is guaranteed by art. 5 of CNJ Resolution n.º 348/2020 and the General Law on Personal Data Protection (LGPD). Such precautions aim to preserve the intimacy, private life, identity, personal data, and image of the person making the accusation; the judge may even determine the secrecy of the judicial proceedings in **relation to the data, depositions, and other information**.

It is emphasized **that any person deprived of liberty victimized by some kind of violence, such as physical, sexual, or psychological, must promptly receive medical, psychological, and social care**, in addition to other measures that may be necessary, **such as inclusion in protection programs and referral to the health and social protection network,** with the support of a multi-professional team.

## 4.3. Specificities of lesbian, bisexual, transvestite, transgender women and transsexual men

In recent years, there has been a greater visibility in the public sphere of specific populations in detention, such as women and self-declared LGBTI people, as well as a growing engagement of social movements, organizations and institutions around their demands. The marker "gender", therefore, does not define only women or the LGBTI population deprived of liberty; it is a key category to understand deprivation of liberty and the multiple relationships that emerge and are produced in it.

In this context, in 2016, Law n.º 13,257, also known as the "Early Childhood Milestone," was enacted, which determined the inclusion of items IV, V and VI in art. 318 of the Criminal Procedure Code

14 Based on annotation by the Special Rapporteur on Torture to the UN General Assembly, published in Report of the Special Rappour- teur on torture and other cruel, inhuman or degrading treatment or punishment, January 5, 2016, A/HRC/31/57, p. 10.

(CPP). These sections provide, respectively, for the possibility of substituting preventive detention by house arrest when the **perpetrator is a pregnant *woman*** or has a child under twelve years of age (items IV and V), or **a *man*, if he is the only one responsible for the care of a child under twelve years of age** (item VI). The same article also provides for the possibility of substituting preventive detention by house arrest for ***any person*** who is **essential to the special care of a person under six years of age or with disabilities** (item III).

After the judgment of Collective *Habeas Corpus* n.º 143,641/SP by the Supreme Court[15], Law n.º 13,769, of December 19, 2018, was approved, which consolidated in the Code of Criminal Procedure objective criteria for the substitution of preventive detention for house arrest. The aforementioned law established as the **only conditions preventing** (i) not having committed a crime with violence or serious threat to a person, and (ii) not having committed the crime against his/her child or dependent. There is, therefore, no provision that limits the application of such rights on the basis of gender identity or even the sexual orientation of the beneficiary.

Thus, art. 10 of CNJ Resolution n.º 348/2020 reiterates the **exceptionality of provisional arrest** also for LGBTI persons who are pregnant, breastfeeding, mothers and guardians of children under twelve years of age or persons with disabilities, in accordance with arts. 318 and 318-A of the CPP. It must also be noted that the release to less restrictive prison regimes provided for in art. 112, 3rd paragraph of the Criminal Execution Law (LEP), guaranteed to women who are pregnant or are responsible for children or persons with disabilities, is equally applicable to lesbian, transgender, and transvestite women, as well as to transgender men.

15 It is important to point out that the decision in Collective *Habeas Corpus* n.º 143,641/SP was also extended, by the STF, to adolescents and young people subject to juvenile justice measures. Since harsher treatment than that given to adults is prohibited (art. 35, I, of the SINASE Law), the **rights guaranteed by art. 10 of CNJ Resolution n.º 348/2020 must be fully guaranteed to self-declared LGBTI adolescents and young peolple in compliance with juvenile justice measures.**

# TREATMENT OF THE LGBTI POPULATION DEPRIVED OF LIBERTY

# 5 TREATMENT OF THE LGBTI POPULATION DEPRIVED OF LIBERTY

As provided in art. 11 of Resolution CNJ n.º 348/2020, the judge of penal or juvenile justice execution, in the exercise of his/her supervisory powers, must ensure that in prisons and juvenile justice service establishments where there are self-declared LGBTI persons in prison, **material, health, legal, educational, social, and religious assistance is guaranteed**, without any form of discrimination on the basis of sexual orientation or gender identity.

Thus, the social rights of the LGBTI deprived of liberty population, already provided for in the Criminal Execution Law, in Joint Resolution n.º 1/2014 CNPCP/CNCD/LGBT[16] and in other national or international norms, are ratified, with the reinforcement that **self-declaration and custody in specific spaces must not hinder access to services and the exercise of rights in the establishments destined to deprivation of liberty.**

As stated in art. 11 of CNJ Resolution n.º 348/2020 (item VI), it is the magistrate's duty to ensure that the specific living spaces for self-declared LGBTI people are **not used to apply disciplinary measures or any coercive methods to them or to other prisoners. Internal movement procedures that guarantee access to environments where health, educational, social, religious, material, and work assistance is offered** must be ensured; and any discriminatory act that, based on specificities, may deprive the LGBTI population of access to such services and rights is forbidden.

At a minimum, magistrates, as well as other actors in the criminal and juvenile justice systems, must proceed in accordance with what is explained in the following items, with the aim of ensuring that self-declared LGBTI persons in detention have full access to all applicable rights, whether general or specific to their population.

## 5.1. Health care

The already presented Yogyakarta Principles, specific to the rights and guarantees of self-declared LGBTI people, stipulate that Signatory States, such as Brazil, have the obligation to

> *Provide adequate access to medical care and counseling appropriate to the needs of those in custody, **recognizing any particular needs of persons on the basis of their sexual orientation or gender identity**, including with regard to reproductive health, access to HIV/AIDS information and therapy, and access to hormonal or other therapy, as well as to gender-reassignment treatments where desired (principle 9, emphasis added).*

16 The Joint Resolution proposed by the National Council for Combating Discrimination (CNDC) and the National Committee for Criminal and Penitentiary Policy (CNPCP), published on April 17, 2014, establishes that LGBTI persons deprived of their liberty have the right to conjugal visits (art. 6) and to access to health care (art. 7), education (art. 9), vocational training (art. 10) and to financial assistance (art. 11) for their dependents, according to the same criteria used for the general prison population. In addition, transgender men and women, including transvestites, have the right to wear clothes according to their gender identity (art. 5), to maintain hormone therapy and to specific health monitoring (art. 7, sole paragraph).

In accordance with the international provision, art. 7 of Joint Resolution n.º 1/2014 CNPCP/CNCD/LGBT guarantees the LGBTI population in prison "**full health care**, meeting the parameters of the National Policy of Integral Health of Lesbians, Gays, Bisexuals, Transvestites and Transsexuals — LGBT and the National Policy of Integral Health Care for People Deprived of Liberty in the Prison System — PNAISP" (emphasis added).

The Criminal Execution Law also foresees, in art. 14, that the health care of the pre-sentenced person will include medical, pharmaceutical, and dental care. It also details that if the penal establishment is not "equipped to provide the necessary medical assistance, this will be provided elsewhere, by means of authorization from the direction of the establishment", in addition to ensuring the "medical follow-up to the woman, mainly in the prenatal and postpartum periods, and extensive to the newborn" (art. 14, §§ 2 and 3, of LEP). It is emphasized that these rights related to health monitoring associated to prenatal, childbirth, and postpartum care must also be ensured to transsexual men who find themselves in this situation, without prejudice to the guarantee of other rights.

In the same sense, **comprehensive health care for adolescents and youth is fundamental to the System of Juvenile Justice Services (SINASE)**, as established by Law n.º 12,594/2014 and all specific norms on well-being, life, safety, and physical and moral integrity in contact with juvenile justice, such as the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, popularized as the "Havana Rules"[17].

Because of this relevance, in the scope of the juvenile justice system, as well as in prisons, there is also a health policy of its own. This is the National Policy for Integral Health Care of Juveniles in Conflict with the Law, in Detention and Provisional Detention (PNAISARI), which is regulated by MS Ordinance n.º 1,082/2014. In item II of art. 9 of the aforementioned Ordinance, it is foreseen the coverage of sexual and reproductive health of adolescents and young people by PNAISARI.

The medical care regulated by PNAISP and PNAISARI must, whenever possible, be made through the appropriate **health services of the community** where the place of deprivation of liberty is located, in order to prevent stigmatization and promote individual respect and integration of the adolescent and young person in the community. In Brazil, specifically, the guarantee of access to all levels of health care for people in prison or under juvenile justice measures must occur through reference and counter-reference, according to the rules of the **Unified Health System (SUS)**.

In this context, the right to health in the correctional and juvenile justice environment must observe the different needs of self-declared LGBTI people, **equity** being a **fundamental principle of SUS.**

17 According to the Havana Rules, **all adolescents and young people** "must receive appropriate medical care, both preventive and therapeutic, including dental, ophthalmological, and mental health care, as well as pharmaceutical products and special diets, according to medical indication" (rule 49).

**Stigma and discrimination** often act as serious barriers to access and use of health services by LGBTI people, and can lead to denial of care, poor care, and offensive or arbitrary treatment[18].

For this reason, meeting the demands of the LGBTI population deprived of liberty must occur in a comprehensive manner, with a true **multidisciplinary articulation between the poles of action of public health**. At a glance, the specific rights listed in art. 11 of CNJ Resolution n.º 348/2020 can be highlighted; providing, where possible, guidelines that can assist magistrates to ensure due access to all self-declared LGBTI persons deprived of their liberty in the country.

A quick look at the statistics allows us to conclude that the incarcerated population in Brazil is mostly poor and black, with a growing representation of women and self-declared LGBTI people. Given this panorama, the already presented intersectional view is very important, especially when it comes to populations violated by occupying different categories, such as racial, ethnic, gender, and class, among many others. It is recommended that judges base their decisions, whenever possible, also on specific policies, such as the National Policy for the Integral Health of the Black Population, in order to guarantee both general and individual rights to consubstantially vulnerable people.

### 5.1.1. The right to hormone therapy and its maintenance

In a report released on March 2021 on the human rights situation in Brazil, the Inter-American Commission on Human Rights (IACHR) stated with concern that many transgender and intersex persons do not receive hormone therapy during their period of deprivation of liberty. This fact contradicts provisions such as those of Joint Resolution n.º 1/2014 CNPCP/CNCD/LGBT, which ensures the right of transgender persons to the maintenance of hormone therapy and specific health monitoring (art. 7, sole paragraph).

Indeed, **not all transsexual, transvestite, and intersex people wish to undergo hormonization or other bodily interventions**, gender identity being uniquely personal and independent of external validations. **However, the possibility must be guaranteed to those who demand it**.

Compulsory withdrawal from hormone therapy can have several consequences, both physical and psychological. To avoid such issues, CNJ Resolution n.º 348/2020 guarantees to the self-declared LGBTI person deprived of liberty or in compliance with penal alternatives and electronic monitoring the **right to hormone therapy and its maintenance**, if desired. And it is responsibility of the judge to ensure that this guarantee is put into practice.

The Basic Prison Health Units (UBSp) are part of the PNAISP's strategy to guarantee access, for people in **prison**, to comprehensive care in the SUS. Additionally, Ordinance n.º 2,803/2013, from the Ministry of Health, redefined and expanded the **transsexualizing process made available by SUS**, guar-

18 According to the Pan American Health Organization (PAHO), stigma and discrimination are a major barrier to access and use of health services for LGBTI people, and it is "important to better understand the causes and develop innovative health system responses to meet their specific and differentiated needs. Available at: https://www. paho.org/bra/index.php?option=com_content&view=Article&id=5318:stigma-and-discrimination-are-the-main-barriers-to-health-for-the-lgbt-population&Itemid=820. Accessed on: Apr. 31, 2021.

anteeing measures, such as gynecological, urological and endocrinological treatment for transsexual, transvestite and intersex people.

Considering the provisions of both normative acts, as well as all other national and international normative acts on the subject, magistrates working in penal or juvenile justice may **make representations** to the prison or juvenile justice administrations, and also to the state health service, to ensure that the **hormonization protocols** already in effect are applied[19]. They can also demand the supply of drugs that can be dispensed by the SUS, in addition to **guaranteeing**, before the prison or juvenile administration, **the entry of medications during visits to the** units[20].

### 5.1.2. Specific health follow-up and guaranteed testing

Another aspect verified by the IACHR when reporting on the human rights situation in Brazil was the finding that, despite the adoption of some measures that incorporate the gender perspective in prison centers, **the lack of medical care for women and the LGBTI population persists**. In particular, with regard to health care for women, the Commission

> *[...] noted that in many establishments women do not receive gynecological services or even have access to products necessary for feminine hygiene. Recently, the IACHR was also informed about the lack of adequate nutrition for pregnant women (IACHR, 2021, pp. 72-73).*

In this regard, the Commission points out that, according to the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, **women deprived of their liberty have the right to specialized medical care that adequately responds to their physical and biological characteristics,** as well as their reproductive health needs. Furthermore, it points out that States must regularly provide essential items for women's own health needs; **the caveats also apply to transgender men**.

With regard to **transgender women**, the IACHR recalls that it is the States' obligation to provide health care that recognizes any specific need based on gender identity and/or expression, in the terms already enshrined in the Yogyakarta Principles.

In view of recommendations such as those made by the Inter-American Commission on Human Rights, CNJ Resolution n.º 348/2020 reinforces the right of the LGBTI population in prison to have **access to specific health care**, especially for people living with HIV, tuberculosis (TB), HIV-TB and co-infections, as well as other chronic and infectious diseases or disabilities, and also due to demands resulting from the transsexualization process.

It foresees a guarantee of **non-mandatory** testing for infectious diseases such as HIV, tuberculosis and co-infections, and for other chronic and infectious diseases or disabilities. Thus, it points to **the**

19 It is responsibility of the judge to ensure all the measures provided for in the protocols, such as the need for psychological and psychiatric evaluations during a period of two years, with follow-ups and final diagnosis that may or may not refer the patient to body modification surgeries (MS Ordinance n.º 2,803/2013).

20 Such medications may be delivered by any category of visitor, such as extended family and friends, in accordance with the provisions of art. 11, V, of CNJ Resolution n.º 348/2020.

**need for special attention to people**, not only self-declared LGBTI, **living with HIV/AIDS**, as well as to those who present with tuberculosis and co-infections, besides other chronic and infectious diseases, and disabilities.

The judge has the **duty of care to** guarantee these rights, and can **order the prison administration, the social and educational administration, or the public health services.** It can also **urge the same entities to carry out various actions**, such as the isonomic distribution of condoms and supplies for the prevention of STIs, like lubricant gels.

### 5.1.3. Guarantee of psychological and psychiatric care

Historically, self-declared LGBTI people are **exposed to a variety of violence, be it physical, material, symbolic, and/or psychological**. Cultural practices such as the unwillingness to value different gender experiences, the absence of discussion about diversity and plurality in schools, and the dissemination of cis-heteronormative standards, among others, contribute to the stigmatization, isolation, and vulnerability of the LGBTI population.

Such violence is aggravated in a context of total scarcity such as institutionalized deprivation of liberty, imposed in spaces of multiple segregations that reproduce typical social roles and strengthen the aggressions already faced, outside the walls, by the people relegated to them. For this reason, the 25th Mandela Rule states that

> *Every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the **physical and mental health** of prisoners, paying particular attention to prisoners special health-care needs or with health issues that hamper their rehabilitation*
>
> *The health-care service shall consist of an **interdisciplinary team**, with sufficiently qualified personnel, acting with full clinical independence, and **shall encompass sufficient expertise in psychology and psychiatry** (emphasis added).*

In addition, the Bangkok Rules are pioneering in presenting a specific concern for the mental health of women prisoners, provided for in two specific rules (rules 12 and 13). In addition to LGBTI experiences, the Yogyakarta Principles state that **everyone has the right to the highest attainable standard of physical and mental health** without discrimination on the basis of sexual orientation or gender identity, and that sexual and reproductive health is a fundamental aspect of ensuring this right (principle 17).

Given these considerations, in accordance with the CNJ Resolution n.º 348/2020, it is responsibility of the judge to **ensure the provision of psychological and psychiatric care** to self-declared members of the LGBTI population in detention, considering the inevitable worsening of the mental health of this population in situations even more limiting and potentiating social violence.

In addition to psychological and psychiatric care for self-declared LGBTI persons deprived of liberty, Resolution CNJ n.º 348/2020 guides that the **right to psychosocial care must encompass con-**

**tinuous actions also directed to visitors**, in respect to the principles of equality and non-discrimination, as well as the right to self-recognition[21].

### 5.1.4. Special care: Covid-19

The same Inter-American Commission on Human Rights mentioned above, in releasing "Report on Trans and Gender Diverse Persons and their economic, social, cultural, and environmental rights" in 2020, pointed out that with the advent of the Covid-19 pandemic, **LGBTI people have been especially affected by the crisis**, as they experience pre-existing conditions of violence, exclusion, and deprivation. It also highlights the invisibility to which LGBTI people, and particularly transgender people, have been relegated in the formulation of policies in response to national and global emergencies, such as humanitarian assistance plans and economic reactivation.

In this context, the IACHR recommends **(i)** the social inclusion of LGBTI persons in economic recovery measures; **(ii)** the adoption of protocols for health care and for complaints about gender-based and domestic violence; **(iii)** the strengthening of policies that ensure respect for gender identity in the hospital setting, guaranteeing the continuity of health services provided to transgender persons before the health crisis; and **(iv)** the adoption of campaigns to prevent and combat homophobia, transphobia, and discrimination based on sexual orientation, ensuring the protection of the right to gender expression.

As it is well known, the calamitous situation of the penitentiary and juvenile justice systems in Brazil is greatly aggravated by the Covid-19 pandemic. The lives of thousands of people deprived of their liberty, as well as those of their families and anyone else nearby, are suffering from the effects of the widespread crisis. Factors such as overcrowding and the poor structural conditions of prisons and juvenile detention facilities contradict the biosecurity recommendations of technical health agencies, accentuating the vulnerability of populations such as LGBTI people.

For this reason, recommendations such as those of the IACHR must be adapted to the reality of the Brazilian criminal and juvenile justice systems, **considering the particularities related to gender, as well as to the other markers of social difference,** in decisions, judicial acts, implementation of contingency plans, modification of regimes, and other pandemic management measures adopted by judges and Courts of Justice.

As an example, the judges can **supervise compliance with** visitation rules and the delivery of food, medicine and other essential items, such as hygiene, in prisons and juvenile detention units. They may also **demand the provision of services** such as those offered by the Integrated Centers for Penal Alternatives, Monitoring Centers, and the Service of Attention to Egressed Persons, with a focus on ensuring the integrity, safety, and health, both physical and mental, of the LGBTI population and those close to them.

In addition, magistrates should primarily look after the lives and welfare of self-declared LGBTI people who are deprived of their liberty during the period of the health crisis, **with special attention to**

21 Reiterating the provisions of art. 15 of CNJ Resolution n.º 348/2020, the availability of psychological and psychiatric care must be extended to adolescents and youth apprehended, processed for committing an infraction or serving a juvenile justice measure who self-determine that they belong to the LGBTI population, as well as to their visitors.

**those in the risk group for Covid-19 contamination**. Elderly people, pregnant women, and people with chronic, immunosuppressive, respiratory, and other pre-existing comorbidities that can lead to a worsening of the general health condition from the contagion, such as diabetes, tuberculosis, kidney disease, HIV, and co-infections, **must have priority in health care and other demands quickly evaluated by the judge**.

The judges should also **prioritize alternative measures to imprisonment and internment in all phases of criminal proceedings or compliance with juvenile justice measures: (i)** CNJ Recommendation n.º 62/2020; **(ii)** CNJ Recommendation n.º 91/2021; **(iii)** IDH Court Declaration n.º 01/2020; **(iv)** IACHR Resolution n.º 01/2020; **(v)** IDH Court Resolution n.º 04/2020, which deals with the human rights of people with Covid-19; and **(vi)** Joint Recommendation n.º 1, of September 9, 2020, which deals with the management of the pandemic in the juvenile justice system.

All other recommendations from national and international bodies, such as the United Nations (UN) and the World Health Organization (WHO), must also be **verified, respected, and, whenever possible, complied with**.

## 5.2. Religious assistance

According to the provisions of art. 11, II, of CNJ Resolution n.º 348/2020, a self-declared LGBTI person is guaranteed the right to religious assistance, **conditioned to their express consent**, under the terms of Law n.º 9,982/2000, of art. 24 of Law n.º 7,210/1984 (Criminal Execution Law) and of other norms that regulate the subject. As this is indispensable, if the consent cannot be expressed by the person deprived of liberty, it may be expressed by spouses, companions, or other family members, as recommended by Technical Note n.º 9/2020/DIAMGE/CGCAP/DIRPP/DEPEN/MJ.

Furthermore, freedom of religion and worship will be guaranteed to the LGBTI population **under equal conditions**, as well as the possibility of objecting to receiving a visit from a religious representative or priest, or to participating in religious celebrations of any kind. It is recommended to inquire, during screening or classification in the prison system, whether self-identified LGBTI individuals have any religious beliefs and if they wish to receive related assistance, such as visits from representatives and participation in religious celebrations. The same questioning applies to adolescents and young people in compliance with juvenile justice measures who declare themselves LGBTI and should be asked at the appropriate time.

It should also be noted that **religious practice can never be used against the will of self-declared LGBTI people**. Such conduct would constitute a serious violation of rights, which could be classified as torture, and is contrary to the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).

## 5.3. Access to work, education, and other policies offered in prisons and juvenile facilities

CNJ Resolution n.º 348/2020 establishes the duty of judges to guarantee **non-discrimination and the offering of opportunities, under equal conditions, in all initiatives carried out within the prison or juvenile facility**. In this sense, eventual isolation or accommodation in differentiated living spaces, such as specific wards, cells or lodgings, **cannot represent any impediment to the offer of jobs and opportunities**, such as study, learning, and work.

The magistrate must ensure that the self-declared LGBTI person deprived of liberty has equal **access to and continuity of educational and professional training, offered under the responsibility of the state**. Such care must value the physical, psychological and moral integrity of the self-declared LGBTI person, and **humiliating or stigmatizing work due to gender identity and/or sexual orientation is** forbidden[22]. To this end, individual demands must be met, with **monitoring of access and compliance**, acting in retaliation for cases of any type of aggression.

### 5.3.1. Access to work

In the realm of **professional training**, it is suggested that the judge informs itself about the possibilities of offering training and work openings in the workshops linked to the Program for **Professional Training and Implementation of Permanent Workshops - PROCAP**, providing them to the LGBTI detainee population, in order to enable their integration into the labor market while still inside the prison system. It is also recommended to **consult about the availability of quotas for vacancies** in PROCAP, financed workshops or other labor insertion initiatives inside prison units.

These provisions are in line with the Mandela Rules, which provide for the duty to ensure that all prisoners and convicted prisoners have the opportunity to work (rule 96). It is responsibility of the judge to **demand the inclusion of self-declared LGBTI detainees in professional training, work, and income generation opportunities offered by the National Penitentiary Department**, aiming at their reintegration into the labor market when they are out of prison[23].

As for **juvenile justice**, the Havana Rules state that "all national and international standards of protection applicable to child labor and young workers should apply to young people deprived of their liberty" (rule 44); extending, of course, to adolescents and self-declared LGBTI youth.

As provided for in the 2nd paragraph of art. 429 of the Consolidation of Labor Laws (CLT), establishments of any kind are obliged to **offer apprentice positions to adolescents who are users of the National System for Juvenile Justice Care (SINASE)**, under the conditions to be laid down in cooperation instruments signed by the establishments and the managers of the local Juvenile Justice Care Systems.

22 It is important to point out that in Brazil, as a general rule, child labor is **forbidden** for those who have not turned 16 yet, and is allowed from the age of 14 when performed as an apprentice. This prohibition can be extended until the age of 17, depending on the type of activity.

23 According to instructions presented by Technical Note n.º9/2020/DIAMGE/CGCAP/DIRPP/DEPEN/MJ.

### 5.3.2. Access to education

According to the Criminal Execution Law, the right of access to education for all prisoners is **universal**. This is what is stated in the law:

> *Art. 17. Educational assistance will include schooling and training professional of the prisoner and internee.*
>
> *Art. 18. Primary school education will be compulsory, being integrated into the school system of the Federative Unit.*
>
> *Art. 18-A. High school, regular or supplementary, with general education or high school professional education, will be implemented in prisons, in obedience to the constitutional precept of its universalization.*

It is responsibility of the Judiciary to ensure the universality of this right. That said, it is suggested that judges demand that **the state and municipal education system, the state justice system, or the prison administration**[24] offer all self-declared LGBTI people access to formal study vacancies, whenever necessary. Under equal conditions, it is also recommended that magistrates seek the opportunity for all self-declared LGBTI people in prison to have **access to reading, with the objective of not only ensuring knowledge, but also the remission of the sentence,** according to the CNJ Resolution n.º 391 of May 10, 2021, which establishes procedures and guidelines to be observed by the Judiciary for the recognition of the right to remission of sentence through social educational practices in units of deprivation of liberty.

In the juvenile justice system, the Havana Rules state that each young person of compulsory school age must have **the right to an education suited to their needs and abilities**. Education should be provided, whenever possible, **outside the juvenile facility, in schools in the community** and, in any case, by qualified teachers through programs integrated in the educational system of the country; so that after release, adolescents and young people can continue their studies without difficulty (rule 38).

Specific to the Brazilian reality, the National Plan for Juvenile Justice Care, prepared in 2013 with guidelines and operational axes for SINASE, in addition to providing for the **guarantee of the right to sexuality and reproductive health** of young people and adolescents under juvenile justice measures, with express respect for gender identity and sexual orientation, also presents criteria on **access to quality education** that must be safeguarded by the competent judge.

It is the duty of magistrates to guarantee the offer and access to quality education, professionalization, sports, leisure, and cultural activities in the juvenile justice care unit and in the articulation of the network, in open and semi-liberty, inclusive to gender aspects and **under the responsibility of the State**. The right to education must also be ensured for **all adolescents and young people in the performance and post fulfillment of juvenile justice measures**, considering their unique condition as students and recognizing schooling as a fundamental element of the juvenile justice system.

24 Competence attributed by the 1st paragraph of art. 18-A of the Criminal Execution Law.

In this line of thinking, **it is responsibility of the judge to make it possible for adolescents and young people who self-declare LGBTI to be offered study and training opportunities under the same conditions as all other people serving a juvenile justice measure**, especially if they are interned in the same place, without any kind of discrimination and in accordance with CNJ Resolution n.º 348/2020**.**

## 5.4. Self-determination and dignity

The Joint Resolution of the National Council for Criminal and Penitentiary Policy and the National Council for Combating Discrimination CNPCP/CNCD/LGBT n.º 01 of 2014 provides, in art. 5, about the use of clothing, maintenance of long hair and secondary characters in conformity with the gender identity of transsexual and transvestite people.

In this sense, CNJ Resolution n.º 348/2020 guarantees **transsexual and transvestite women** the right to (i) wear **clothes socially read as female**; (ii) keep their **hair long**, including with fixed hair extension, such as mega hair, and (iii) controlled access to hair removal **tweezers, makeup products, and cosmetics.**

For **transsexual men**, the right to use **clothing socially considered as masculine and accessories for breast compression**, such as blinders or toppers, as a tool to maintain their gender identity and, whenever possible, receiving qualified instructions on how to use them, is ensured.

Furthermore, **intersex people** should be guaranteed the right to wear clothing and controlled access to utensils that **preserve their self-recognized gender identity**. And it is prohibited to impose practices that seek to conform the appearance of self-declared LGBTI people to the understanding of others, such as requiring them to cut their hair, undergo depilatory procedures or wear uniforms that differ from their expressed gender.

It is important to emphasize that these guarantees must be additional to, and not exclusive of, all other people who are entitled to them, and that maintaining access to such items is **independent of the unit** where the person is deprived of liberty, whether male or female. It should also be made explicit that not only the guarantee of use must be ensured, but also the **entrance and access inside penal and juvenile justice establishments**.

In view of these provisions, it is responsibility of the competent judges to **ensure the effective access of the LGBTI population to all the secondary characters** listed in CNJ Resolution n.º 348/2020, as well as any other that, according to the security criteria established by the penitentiary or juvenile administration, is demanded by the person. **Respect for the expression of self-declared gender identity**, regardless of the facility where the person is in custody, is fundamental to the **mental health of** the LGBTI population deprived of liberty.

## 5.5. Visits

The Criminal Execution Law (LEP) states, in item X of art. 41, that the prisoner has the right to be **visited by their spouse, partner, relatives and friends**. Thus, the competent judge may establish special rules for visitation, considering the prisoner's needs and the national commemorative dates, as well as logistics and infrastructure issues of the prison units. And for the right to "social visits" to be guaranteed, the establishments must have an environment, other than a courtyard or cell, where visits and other social activities can take place.

As far as adolescents and young people are concerned, the right to family and community life is enshrined in art. 227 of the Federal Constitution, as well as in art. 4 of the ECA. Thus, the strengthening of family and community ties is also one of the central axes of the execution of the juvenile justice measure, as established in SINASE and in different international standards (for example, in Havana Rules 8 and 59 to 62). In this sense, to achieve the objectives sought with the juvenile justice measure, the participation of the family and the community is a central element during its execution.

The right to visit is very relevant, as it provides contact with the outside world, enabling, among other things, points of support when leaving the environment of deprivation of liberty, and is important for mental health, as well as contributing to social reintegration and non-recidivism, added to other factors such as access to rights and public policies. In the case of the LGBTI population, visitation must be encouraged and not obstructed, given the absence or scarcity of family and community support, often experienced still at large as a result of prejudice and discrimination.

Among the right to social visitation is the **right to the exercise of private visits**, defined by Resolution n.º 01 of 1999, the National Council on Criminal and Penitentiary Policy (CNPCP), as "the reception by the prisoner, national or foreign, man or woman, of a spouse or other partner, in the prison where he/she is held, in a reserved environment, whose privacy and inviability are ensured".

The definition was updated by Resolution n.º 4 of 2011, also of the CNPCP, which revoked the previous one and now provides that the reception by the prisoner, "man or woman, of a spouse or other partner" is **assured "to heterosexual and homosexual relationships" (art. 1), as well as that the right to private visits is guaranteed "to prisoners married to each other, in a stable union or in a homosexual relationship"** (art. 2).

This update occurred in line with the "Criminal and Penitentiary Policy Plan" seen at the time, which stated the duty to respect differences in order to generate equal rights and assumed that "sexual conditions must be considered even in the criminal and penitentiary fields", **guaranteeing private visits also to the LGBTI population.**

Another document that directed the change introduced by Resolution n.º 4 of 2011 was the report of the "Interministerial Working Group for Reorganization and Reformulation of the Female Prison System" (2008), edited by the Special Secretariat of Policies for Women of the Presidency of the Republic. This document established the need to "guarantee in all prisons the **right to intimate visits for women prisoners (heterosexual and homosexual)**. In addition, the Bangkok Rules provide that "where intimate

visits are allowed, women prisoners must have access to this right in the same manner as men" (rule 27), without any reservations about the type of affection allowed.

However, despite these provisions, the exercise of the right to visits, especially intimate ones, is subject to many limitations, such as those determined by the infrastructure of penal and educational establishments. To minimize these obstacles, CNJ Resolution n.º 348/2020 ensures, in the art. 11, section V, that **the social visitation takes place in an appropriate space, respecting the integrity and privacy of the persons**, and should be avoided in pavilions or cells**.**

It also prevents the discrimination of visits based on gender identity or sexual orientation, extending the possibility to **all socio-affective relationships declared by the persons concerned**, without restricting them to those officially recognized, and including other social circles, such as friendships. Furthermore, the LGBTI population must be guaranteed the **right to all formats of visits under equal conditions**, in accordance with the aforementioned Ordinance n.º 1,190/2008, of the Ministry of Justice, and Resolution n.º 4/2011, of the CNPCP, **including in relation to spouses or partners in custody in the same prison establishment**.

In this sense, **the judge must guarantee access to visits, including intimate ones, for all people deprived of liberty**, such as those self-declared LGBTI, observing the criteria updated by CNJ Resolution n.º 348/2020, such **as the lack of certificates or any formal document to enable the right**.

It is responsibility of the judge to ensure that visits with LGBTI people **occur on the same dates and with the same frequency as the others, and it is forbidden to classify them as "special visits"**, as observed in many correctional and juvenile facilities. Besides this, we reiterate the need to **guarantee health supplies also during the visits**, such as the availability of condoms and lubricants to all people, ensuring a real isonomy in the access to this right.

# SUPPORT STRUCTURE

TO THE COURTS AND JUDGES IN DEALING WITH THE LGBTI POPULATION IN CONTACT WITH THE CRIMINAL OR JUVENILE JUSTICE

# 6 SUPPORT STRUCTURE TO THE COURTS AND JUDGES IN DEALING WITH THE LGBTI POPULATION IN CONTACT WITH CRIMINAL OR JUVENILE JUSTICE

According to the report "LGBT in prisons in Brazil: Diagnosis of institutional procedures and incarceration experiences", the key point regarding the incarceration experience of LGBTI people and the institutional procedures aimed at this population "is the emergence of the creation of a set of rules and regulations that have the function of guiding prison administrations, as well as prison unit workers" (BRASIL, 2020, p. 126).

Aware of the need to also **inform and mobilize** the institutions of the Judiciary, the National Council of Justice prepared CNJ Resolution n.º 348/2020 to strengthen the composition of a set of rules whose institutional weight contributes to minimize the specific vulnerability experienced by the LGBTI population when in contact with the criminal and juvenile justice systems.

To this end, judicial proceedings that address the demands of self-declared LGBTI persons deprived of their liberty must have, at any judicial stage, the support of a **multidisciplinary team** to, at a minimum, ensure a broad understanding and attention to the complex subjective and social nuances of the issue, without this representing any conditionality or patronization of the demands presented by the LGBTI population. The support of the multidisciplinary team aims to provide **technical subsidies**, aiming at the access to programs, services, and public policies concerning the rights of the LGBTI population.

The magistrates may request the support of the multidisciplinary teams for psychosocial assistance from the courts, districts, judicial sections and subsections at any time during the criminal procedure, **from the detention control hearings to the stages of execution of the sentence.** The same applies to the juvenile justice structure, with the support of multidisciplinary teams available at any stage of the respective procedure, that is, **from the process of verification of the infraction to the end of the execution of the juvenile justice measure**.

The self-declared LGBTI person will be guaranteed, when complying with penal alternatives or electronic monitoring measures, the respect to the specificities listed in the CNJ Resolution n.º 348/2020, at the **first and throughout the compliance with the judicial determination, in all spheres of the Judiciary and services for monitoring the measures.** In that sense, the judge may seek **support from services** such as the Integrated Centers for Penal Alternatives, Electronic Monitoring Centers, or partner institutions where the applied measure is carried out.

Within the **juvenile justice** system, judges may require the support of an **interprofessional team to assist the juvenile justice system**, as provided for and regulated in arts. 150 and 151 of the Child and Adolescent Statute. If the magistrate's locality does not have the aforementioned support structure, the Courts of Justice **must adopt the necessary measures to implement interprofessional teams,** either their own or through agreements with university institutions, that can assist the courts in cases related to children, adolescents, and young people, as established by CNJ Recommendation n.º 2/2006.

In order to better support and instruct actions involving self-declared LGBTI people in prison, the **courts must keep a register of establishments with information on the existence of units, wards, cells, or specific accommodations for this population,** in order to direct the judges, when necessary, to the operability of the provisions set forth in CNJ Resolution n.º 348/2020.

It is also recommended the promotion of **courses for the qualification and functional updating of magistrates and servants about the guarantee of rights of the LGBTI population**. The courses and training should be offered to, but not limited to, those who work in Detention Control Hearings Centers, Criminal Courts, Special Criminal Courts (JECrim), Courts for Domestic and Family Violence against Women, Criminal Execution Courts and Courts for Children and Youth, contemplating the application of CNJ Resolution n.º 348/2020 to LGBTI people in custody, defendants, accused, convicted, deprived of liberty, in compliance with penal alternatives or in electronic monitoring.

It is commendable if the development of such initiatives occurs **in collaboration with the schools of magistrates, or even in partnership with sectors or organs of professional updating and technical improvement of members of the other entities of the justice system**, such as Public Prosecutor's Offices and Public Defender's Offices, both Federal and state, also seeking interaction with the players of the prison system and penal policies in general.

Finally, it is reiterated that the judges must **include in the inspections and supervision carried out in penal and juvenile justice** establishments, based on the Criminal Enforcement Law (LEP) and the National System of Juvenile Justice Care (SINASE), **criteria for observance of the guarantee of rights, general and specific, provided for the LGBTI population,** with special attention to the safeguards given in CNJ Resolution n.º 348/2020.

# PRECEDENTS, PARADIGMATIC DECISIONS, AND GOOD PRACTICES

# 7 PRECEDENTS, PARADIGMATIC DECISIONS, AND GOOD PRACTICES

According to the definition adopted by the National Council of Justice in institutional initiatives, a **"good practice "** is an activity designed, based on the use of a set of actions, to achieve a desired, proven, recommended and approved result. Moreover, with the greater value that **precedents** have received since the advent of the 2015 Code of Civil Procedure, the act of deciding generates an impact that goes beyond the specific case, becoming a component of a legal heritage. Decisions about **issues with socio-political relevance**, such as the rights and guarantees of the LGBTI population, gain an **extra-procedural dimension**, and may become **paradigmatic** and, consequently, **guide the conduct of society**.

To collaborate in the **substantiation and instruction** of all types of actions involving the LGBTI population, especially in contact with the criminal and juvenile justice systems, **precedents, paradigmatic decisions and national and international** "good practices" will be listed below, in order to **highlight and ensure the operability of the provisions** set forth in CNJ Resolution n.º 348/2020.

I) **Supreme Court (STF) decisions:**

ADPF 347 MC/DF, Justice Rapporteur. Marco Aurélio;

HC 143,988/ES, Justice Rapporteur Edson Fachin;

MC in ADPF 527/DF, Justice Rapporteur Luís Roberto Barroso;

ADI 4275/DF, Justice Rapporteur Marco Aurelio;

HC 152,491/SP, Justice Rapporteur Luís Roberto Barroso;

HC 143,641/SP, Justice Rapporteur Ricardo Lewandowski;

RE 670422/RS, Justice Rapporteur Dias Toffoli.

II) **Decisions of the Superior Court of Justice (STJ):**

HC 497,226/RS, Justice Rapporteur Rogério Schietti Cruz.

III) **Decisions of the Inter-American Court of Human Rights (IACHR):**

Advisory Opinion OC-24/7, November 24, 2017, in Costa Rica;

Resolution of November 28, 2018, handed down in the Provisional Measures decreed in the case of the Curado Penitentiary Complex in Recife/PE.

IV) **United Nations documents:**

Glossary and "Free & Equal" campaign;

Report of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment, with a gender focus (2016).

V) **Resolutions of the Federal Council of Psychology (CFP):**

Resolution CFP 01/99 (on the inapplicability, to Psychology professionals, of offering any kind of sexual reversion therapy, since homosexuality is not considered a pathology, according to the World Health Organization (WHO);

CFP Resolution n.º 01/2018 (establishes norms of action for psychologists in relation to transsexual and transvestite people).

**Resolution of the Federal Council of Social Service (CFESS):**

CFESS Resolution n.º 845, dated February 26, 2018 (disposes on the professional performance of the social worker in relation to the transsexualization process).

VII) **Document "LGBTI persons deprived of their liberty: parameters for preentive monitoring", prepared by Penal Reform International (PRI) and the Association for the Prevention of Torture (APT).**

VIII) **Technical Note DEPEN n.º 9/2020/DIAMGE/CGCAP/DEPEN/MJ.**

IX) **Report 2021 about Human Rights in Brazil, by the Inter-American Commission on Human Rights (IACHR).**

X) ***Informe sobre Personas Trans y de Género Diverso y sus derechos económicos, sociales, culturales y ambientales,* 2020, from the Inter-American Commission on Human Rights (IACHR).**

XI) **Public Note from the National Council on the Rights of Children and Adolescents - CO- NANDA, published on September 14, 2017.**

XII) **Manual for the Qualification of LGBTI+ Care in Criminal Justice from the Passages Project, prepared by Somos — Communication, Health and Sexuality, Series: Criminal Justice, Public Security and LGBTI+ Population, Volume 1.**

XIII) **International manuals on the impacts of the Covid-19 pandemic on the LGBTI population: World Health Organization — WHO, United Nations Office on Drugs and Crime or United Nations Office on Drugs and Crime — UNODC and Joint United Nations Programme on HIV/AIDS - UNAIDS.**

XIV) **Norms, guidelines and monitoring actions developed by the DMF/CNJ in partnership with the Courts and the UNDP, through the Program *Fazendo Justiça*.**

## REFERENCES


ASSOCIAÇÃO NACIONAL DE TRAVESTIS E TRANSEXUAIS. ***Como acessar o SUS para questões de transição?*** 27 jul. 2020. Available at: *https://antrabrasil.org/2020/07/27/how-to-access-your-us-for-transaction-quests/*.

BARBERET, Rosemary; JACKSON, Crystal. "UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders (the Bangkok Rules): A Gendered Critique". *In:* **Papers. Revista de Sociologia,** [s.l.], v. 102, n. 2, pp. 215-230, 27 mar. 2017. Universitat Autonoma de Barcelona. Available at: *http://dx.doi.org/10.5565/rev/papers.2336*.

BRAGA, Ana Gabriela Mendes. "Entre a soberania da lei e o chão da prisão: a maternidade encarcerada". *In:* **Revista Direito GV**, São Paulo, v. 11, n. 2,, pp. 524-525, Dec. 2015.

BRAZIL. ***LGBT nas prisões do Brasil:*** Diagnóstico dos procedimentos institucionais e experiências de encarceramento. Ministry of Women, Family and Human Rights. National Secretariat for Global Protection, Department for the Promotion of LGBT Rights. Director: Marina Reidel. Consultant: Amilton Gustavo da Silva Passos. Brasília, 2020.

CANHEO, Roberta Olivato. ***"Puxa pro Evaristo"***: produção e gestão da população LGBT presa na cidade do Rio de Janeiro. Master's Dissertation: UFF, 2017.

CARLEN, Pat. "Women's imprisonment: an introduction to the Bangkok Rules" *In:* **Revista Crítica Penal y Poder**, n. 3, 2016, Observatorio del Sistema Penal y los derechos Humanos, Universidad de Barcelona.

COLLINS, Patricia Hill; BILGE, Sirma. *Intersectionality*. Cambridge, UK; Malden, USA: Polity Press, 2016.

CORRÊA, Sonia. "O percurso dos direitos sexuais: entre margens e centros". *In* **Bagoas - Estudos gays**: gêneros e sexualidades, v. 3, n. 04, 27 Nov. 2012.

CRENSHAW, Kimberlé. "Documento para o Encontro de Especialistas em Aspectos da Discriminação Racial Relativos ao Gênero". *In* **Estudos Feministas**, n. 01, 2002, pp. 171-263.

FERREIRA, Guilherme Gomes. ***Travestis e Prisões:*** Experiência social e mecanismos particulares de encarceramento. Curitiba: Multidéia, 2015.

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. *Human rights situation in Brazil*. 2021. Available at: *https://www.oas.org/pt/cidh/relatorios/pdfs/ Brasil2021-en.pdf*. Report on trans and gender diverse people and their economic, social, cultural and environmental rights. 2020. Available at: *https://www.oas.org/es/cidh/informes/pdfs/ PersonasTransDESCA-es.pdf*.

MELLO, Luiz *et al*. "Políticas de saúde para lésbicas, gays, bissexuais, travestis e transexuais no Brasil: em busca de universalidade, integralidade e equidade". *In* **Sexualidad, Salud e Sociedad**, Rio de Janeiro, n. 9, pp. 728, Dec. 2011.

MENEZES, Moisés Santos; SILVA, Joilson Pereira. *Serviço Social e homofobia:* a construção de um debate desafiador. **Rev. katálysis**, Florianópolis, v. 20, n. 1, pp. 122-129, Apr. 2017. Available at: *http://www.scielo.br/scielo.php?script=sci_arttext&pid=S1414- 49802017000100122&lng=en&nrm=iso.*

UNITED NATIONS ORGANIZATION. ***Free & Equal Glossary***. Available at: *https://www.unfe.org/en/definitions/.*

PADOVANI, Natália Corazza. "No olho do furacão: conjugalidades homossexuais e o direito à visita íntima na Penitenciária Feminina da Capital". In **Cadernos Pagu**, vol. 37, 2011.

PENAL REFORM INTERNATIONAL & ASSOCIATION FOR THE PREVENTION OF TORTURE. **LGBTI people deprived of their liberty:** parameters for preventive monitoring. London: 2nd ed., 2015.

PULGARÍN, Mauricio Pulecio. *Teoría y práctica de los principios de Yogyakarta en el derecho internacional de los Derechos Humanos. In:* ***Revista Análisis Internacional*****,** n. 3, v. 11, pp. 239-259, 2015.

RAMOS, André de Carvalho. ***Teoria Geral dos Direitos Humanos na Ordem Internacional****.* São Paulo: 5th ed., Saraiva, 2015.

RIOS, Roger Raupp. "Notas para o desenvolvimento de um direito democrático da sexualidade". *In:* RIOS, R. R. (Org.). **Em defesa dos direitos sexuais.** Porto Alegre: Livraria do Advogado, pp. 13-38, 2007.

SESTOKAS, Lucia. ***Breve relatório sobre pessoas LGBTI privadas de liberdade no Brasil.*** Instituto Terra, Trabalho e Cidadania, São Paulo, Oct. 2015. Available at: *http://ittc.org.br/ wp-content/uploads/2017/12/breve-relatorio-sobre-pessoas-lgbt-privadas-de- liberdade-no-brasil.pdf.*

SOMOS – Comunicação, Saúde e Sexualidade. ***Manual para a Qualificação do Atendimento de LGBTI+ na Justiça Criminal.*** Projeto Passagens. Série: Justiça Criminal, Segurança Pública e População LGBTI+, v. 1, 2021.

SOUZA, Raissa Carla Belintani de. ***Normas "universais" em um universo de mulheres****:* Trajetórias, trânsitos e fronteiras entre as Regras de Bangkok e as prisões dos corpos desviantes. Dissertation (Master's Degree). Faculdade de Filosofia, Letras e Ciências Humanas da Universidade de São Paulo, 2019.

SOUZA, Simone Brandão. ***Sistema prisional e direitos sexuais das mulheres lésbicas.*** Estudos e políticas do CUS Grupo de Pesquisa Cultura e Sexualidade/Leandro Colling e Djalma Thürler (organizadores), Salvador: Edufba, 2013.

TRANSGENDER EUROPE. **TMM *Update Trans Day of Remembrance 2019***. Available at: *https://transrespect.org/en/tmm-update-trans-day-of-remembrance-2019/*.

UNITED NATIONS OFFICE ON DRUGS AND CRIME. ***Handbook on prisoners with special needs***. New York: United Nations Publication, 2009. Available at: *https://www.unodc.org/pdf/criminal_ justice/Handbook_on_Prisoners_with_Special_Needs.pdf.*

UNITED NATIONS OFFICE ON DRUGS AND CRIME. Handbook on Women and Imprisonment. 2nd edition, Vienna: United Nations Publication, 2014. Available at: *https://www.unodc.org/documents/justice-and-prison-reform/women_and_imprisonment_-_2nd_edition.pdf.*

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- Guia de Formação em Alternativas Penais III – Medidas Cautelares Diversas da Prisão (English and Spanish translation)
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- Manual de Proteção Social na Audiência de Custódia: Parâmetros para o Serviço de Atendimento à Pessoa Custodiada (executive summaries in Portuguese / English / Spanish)
- Manual de Prevenção e Combate à Tortura e Maus Tratos na Audiência de Custódia (executive summaries in Portuguese / English / Spanish)
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- Sumário Executivo – Guia sobre orçamento público e captação de recursos na política estadual de atendimento socioeducativo
- Censo Nacional de Práticas de Leitura no Sistema Socioeducativo
- Centrais de Vagas do Socioeducativo – Relatório Anual
- Manual Resolução CNJ 77/2009 – Inspeções Judiciais em Serviços e Programas de Atendimento Socioeducativo (Meio aberto)
- Manual de Orientação Técnica para Preenchimento do Cadastro Nacional de Inspeções em Programas/Serviços Socioeducativos (Meio aberto)
- Guia para Preenchimento do Cadastro Nacional de Inspeção em Unidades e Programas Socioeducativas (Cniups) - (Meio Aberto)
- Diagnóstico da Emissão de Documentos Básicos no Sistema Socioeducativo: Atendimento Inicial e meio fechado
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- 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
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- Manual de organização dos processos formativos para a política nacional de atenção às pessoas egressas do sistema prisional
- Caderno de Gestão dos Escritórios Sociais IV: Metodologia de Enfrentamento ao Estigma e Plano de Trabalho para sua Implantação
- Guia Prático de Implementação da Rede de Atenção à Pessoa Egressa do Sistema Prisional – Raesp
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