

March 23, 2021
Washington D.C.

To the Honorable President of the Brazilian Federal Senate, Mr. Rodrigo Pacheco:

Praça dos Três Poderes s/n, Brasília,
DF, Brasil – CEP 70165-900
– Senado Federal, Anexo 2 –
Ala Teotônio Vilela – Gabinete 24

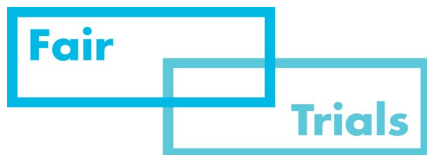
Dear Senator Pacheco,

I am pleased to write to you on behalf of Fair Trials, an international human rights organization that monitors criminal justice systems around the world and fights for the right to a fair trial for all human beings.

It has come to our knowledge the current debate in Brazil regarding the status of Presidential Veto n. 56/2019 in the Brazilian National Congress. As you know, this relates to the regulation of the supervisory judge (*Juiz de garantias*) and the prohibition of the use of videoconference in custody hearings. We recognize the great importance of this topic for the protection of fundamental rights in criminal proceedings and, consequently, for the strengthening of the Rule of Law in the country. For these reasons, we urge the Federal Senate to promptly grant it due attention.

As you know, the creation of custody hearings was based on the framework of two international treaties to which Brazil has been a signatory since 1992: the American Convention on Human Rights and the International Covenant on Civil and Political Rights. In Brazil, the custody hearings were first implemented in the country in 2015, through the National Council of Justice's Resolution n. 213. However, it was not until 2019, and with the enactment of Federal Law n. 13.964/2019, that custody hearings were effectively inserted in the Brazilian criminal procedural legislation.

Article 3-B, 1st paragraph, of that law, which assigned the supervisory judge the competence to hold custody hearings and prohibited the use of videoconference in those hearings, has been subject to Presidential Veto n. 56/2019, item 003, and such veto has been forwarded to the Brazilian National Congress for examination. We have received news that, on March 17 2021, the House of Representatives has decided to override the veto, thus assuming a favorable position for the institution of the supervisory judge and for the prohibition of videoconference in custody hearings. Now, the decision is up to the Federal Senate, which has, however, removed the topic from the agenda of its next session.



We understand that it is urgent and essential that the senators immediately address the issue. Therefore, I write to you to manifest Fair Trials' support and to request that the topic be included in the agenda of the Brazilian Senate's coming session. Furthermore, we urge the senators to reinforce the decision of the House of Representatives and override Presidential Veto n. 56/2019, item 003, thus establishing the figure of the supervisory judge in the criminal procedure legislation of Brazil and ascertaining the explicit prohibition of the use of videoconference in custody hearings.

Remote justice has proved to be gravely ineffective in the combat of the use of torture, especially against detainees – not only in Brazil but also around the Latin American region. Detection of torture is greatly aided by the physical presentation of the arrested person before a defense lawyer and a judicial authority, as well as by in-person access to an independent medical examination. Therefore, to have the National Congress reassure the prohibition on the use of videoconference in custody hearings would represent a great step on the fight towards a more democratic justice system, especially in Brazil, whose history has been gravely marked by episodes of state violence against citizens. It would also position Brazil as an international leader on the maintenance of procedural safeguards even in the face of the pandemic's challenges to criminal legal systems.

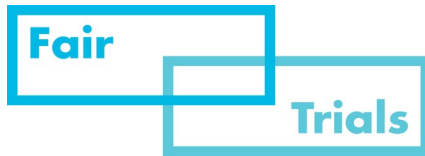
The report "*O Fim da Liberdade: A urgência de recuperar o sentido e a efetividade das audiências de custódia,*"¹ published in 2019 by the *Instituto de Defesa do Direito de Defesa* – IDDD, our local partner in the country, has shown that one out of four people taken to custody hearings in Brazil told the judge they had been subject to torture while detained. The rate is concerningly high, though even this figure may be a serious underestimate. Despite the progress that custody hearings have brought to the fight against torture in Brazil, torture is still under-addressed in custody hearings, due to the presence of police officers inside the courtroom, which discourages people in custody – who are already in a situation of vulnerability – from reporting abuses perpetrated by law enforcement officers.

During the pandemic, official data in Brazil shows that the rates of police violence have risen, but the rate of allegations of torture in custody hearings have dropped dramatically. The National Council of Justice indicates that claims of torture have decreased 83% during the pandemic,² whilst the Brazilian Forum for Public Safety reports that, in the São Paulo state alone, there has been a 53% increase in the number of deaths caused by police violence in April 2020 compared to April 2019.³ The bottom line is simple: the practice of torture (largely committed by state agents) is a reality that

¹ Available on: < https://iddd.org.br/wp-content/uploads/2020/09/ofimdaliberdade_completo_final.pdf>.

² Available on: <<https://www.cnj.jus.br/tribunais-retomam-audiencias-de-custodia-regulares-com-protocolos-de-saude/>>.

³ Available on: < https://forumseguranca.org.br/wp-content/uploads/2019/10/Anuario-2019-FINAL_21.10.19.pdf>.



has not been overcome, and the weakening of custody hearings signifies an enormous setback in the fight against torture.

In this sense, Fair Trials vehemently affirms that custody hearings must occur in person to fulfil their purpose and to preserve the most fundamental guarantees established in the Brazilian and international legal frameworks. We thereby urge the Senate to include the appreciation of Veto 56/2019, item 003 on the agenda of the Federal Senate's coming session, and to request the express override of the presidential veto to the figure of the supervisory judge and the reassurance of the prohibition on the use of videoconference in custody hearings, as decided by the House of Representatives on March 17 2021. This position strengthens the fight for fundamental rights and for the construction of a more democratic State, deserving our support and recognition.

Sincerely,

Rebecca Shaeffer

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Legal Director, Americas

Fair Trials International