

# EXECUTIVE SUMMARY



## Handbook on Handcuffs and Other Instruments of Restraint in Court Hearings



SERIES FAZENDO JUSTIÇA  
COLLECTION STRENGTHENING THE DETENTION CONTROL HEARING

**EXECUTIVE  
SUMMARY**

Handbook on  
Handcuffs and  
Other Instruments  
of Restraint in  
Court Hearings

## SUMÁRIO EXECUTIVO

Handbook on Handcuffs and Other Instruments  
of Restraint in Court Hearings

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**Handbook on Handcuffs and Other  
Instruments of Restraint in Court  
Hearings: Practical Guidelines for  
Implementation of the Binding Legal  
Precedent No. 11 of the Supreme  
Court by Judges and Courthouses**

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## Presentation

The Brazilian Constitution underpins our aspirations as a society grounded on the rule of law while promoting social advancement with respect to fundamental rights and human dignity. In this regard, it is the indelible duty of the institutions, especially the judiciary as guardian of our Magna Carta in the last instance, to ensure that our actions point to this civilizing north, not only repelling deviations, but acting already to transform the present that we aim for.

In 2015, the Federal Supreme Court recognized that almost 1 million Brazilians within our prisons live outside the protection that the Constitution provides, with unfortunate effects on the degree of inclusive development to which we commit ourselves through the UN 2030 Sustainable Development Agenda. It is for the definitive overcoming of this scenario that the Programme Fazendo Justiça works, in a partnership between the National Council of Justice (CNJ) and the United Nations Development Programme (UNDP), with the support of the Ministry of Justice and Public Security, represented by the National Penitentiary Department.

Even during the Covid-19 pandemic, the Programme has been carrying out structuring deliverables from collaboration and dialogue between different institutions across the federal level. There are 28 actions developed simultaneously for phases and needs of the criminal cycle and the socio-educational cycle, which include the facilitation of services, strengthening of the normative framework and production and dissemination of knowledge. It is in the context of this latter objective that this publication is inserted, now an integral part of a robust listing that gathers advanced technical knowledge in the field of accountability and guarantee of rights, with practical guidance for immediate application throughout the country.

The volume is part of the collection Strengthening the Detention Control Hearing, prepared by the Criminal Proportionality axis of the Programme Fazendo Justiça (Hub 1) to ground the entry point to the prison system on national and international standards and in light of CNJ Resolution No. 213/2015 and recent changes in the Brazilian Code of Criminal Procedure. Through partnership with UNDP and the United Nations Office on Drugs and Crime (UNODC), the CNJ promotes the legality of detentions, proportionality in criminal responses and social inclusion, aiming at reducing overpopulation and prison overcrowding.

This Executive Summary presents the core of the **Handbook on Handcuffs and Other Instruments of Restraint in Court Hearings: Practical Guidelines for Implementation of the Binding Legal Precedent No. 11 of the Supreme Court by Judges and Courthouses**, published in 2020. The publication seeks to contribute to the full realization of detention control hearings in a global way, with emphasis on the types of instruments of restraint and their mechanisms, the rights to be protected in the circumstances of their use, their application to specific groups, the command inscribed in the Binding Legal Precedent No. 11 of the Supreme Court and the international standards and practices for the use of such instruments.

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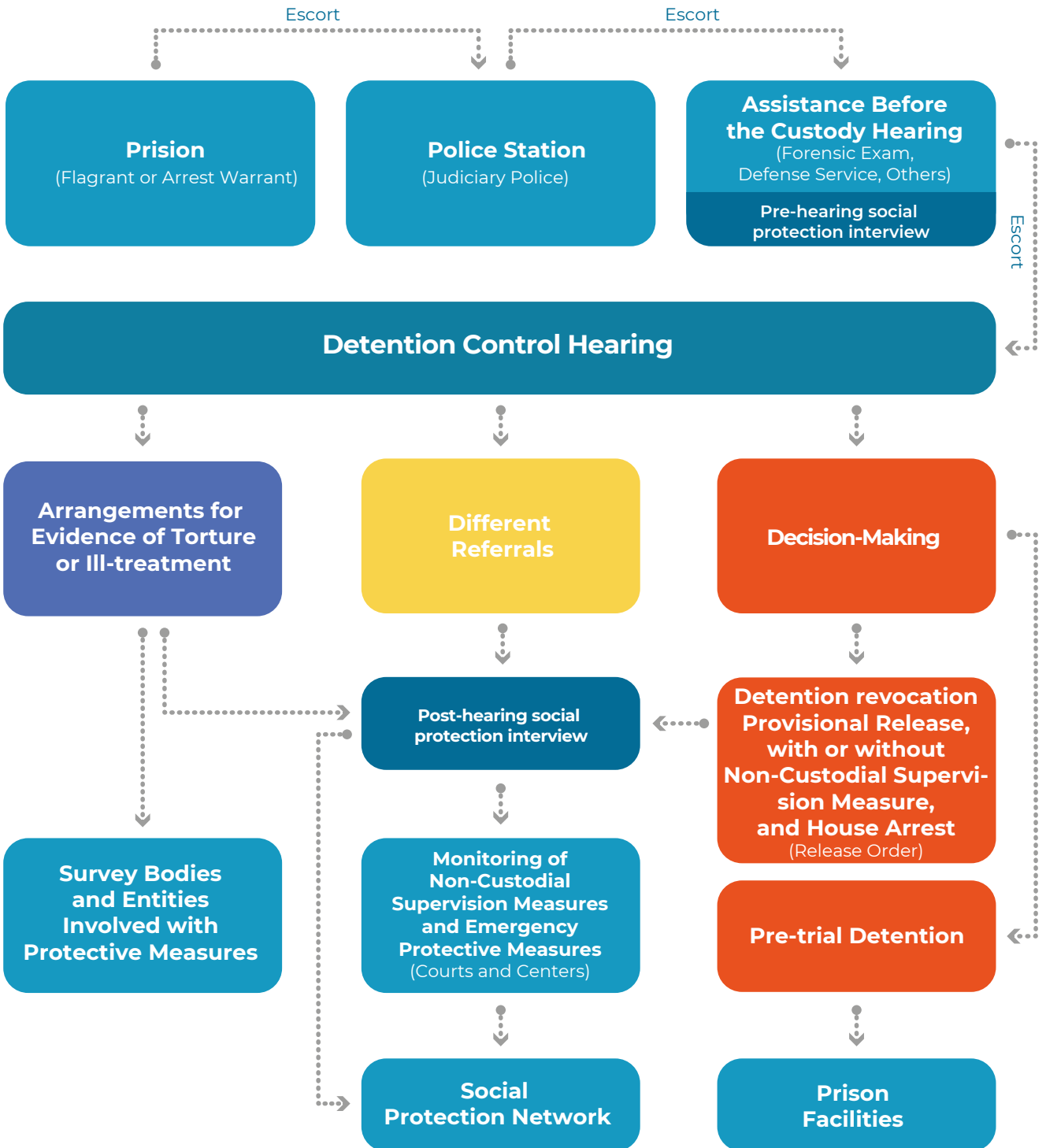
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## CENTRAL FLOWCHART OF THE DETENTION CONTROL HEARING



● Judicial and Non-Judicial Measures    ● Non-Judicial Measures    ● Judicial Decision



# INTRODUCTION

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This Executive Summary is composed of a set of actions of the Project Strengthening Detention Control Hearings, implemented by the United Nations Office on Drugs and Crime (UNODC) under the Programme Fazendo Justiça, an initiative of the National Council of Justice of Brazil (CNJ) in partnership with the United Nations Development Programme (UNDP) and the National Penitentiary Department of Brazil (DEPEN). In order to strengthen the detention control hearing, the Programme develops a national action in collaboration with the United Nations Office on Drugs and Crime (UNODC).

Its purpose is to disseminate and disclose nationally and internationally, the content of the **Handbook on Handcuffs and Other Instruments of Restraint in Court Hearings: Practical Guidelines for Implementation of the Binding Legal Precedent No. 11 of the Supreme Court by Judges and Courthouses**<sup>1</sup> from the collection Strengthening the Detention Control Hearing, which systematizes efforts and results of the Programme Justiça Presente, executed between 2019 and 2020 and whose initiatives since then, continue to be developed, expanded and deepened by the Programme Fazendo Justiça, with an important focus on strengthening detention control hearings.

Detention control hearing is the act in which the arrested person is presented before the judge for him/her to decide on the legality of the arrest, the need for precautionary measures, to collect evidence of torture or ill-treatment committed against the detainee and promote referrals related to social protection. Its rationale goes back to the American Convention on Human Rights (Pact of San José), the Covenant on Civil and Political Rights, the Code of Criminal Procedure and the CNJ resolutions, among which Resolution No. 213/2015 stands out.

The Handbooks constitute highly qualified and up-to-date material, which addresses, in a comprehensive and detailed manner, the public services and the most relevant topics for the detention control hearing: judicial decision-making, social protection, prevention and fight against torture, and the use of handcuffs and other instruments of restraint, according to national and international standards.

Before the challenges that reality imposes, this Executive Summary is an invitation for the public to know the new standards of the detention control hearing and follow its institutional strengthening and its definitive establishment as an institute capable of guaranteeing the safeguards of due process of law and the rights of persons submitted to State custody.

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<sup>1</sup> [https://www.cnj.jus.br/wp-content/uploads/2020/11/Handbook\\_de\\_algemas-web.pdf](https://www.cnj.jus.br/wp-content/uploads/2020/11/Handbook_de_algemas-web.pdf)

The **Handbook on Handcuffs and Other Instruments of Restraint in Court Hearings** was prepared by the Omega Research Foundation as part of a project co-financed by the European Union. It is an independent British organization that develops evidence-based projects, training and research on the use of force by state officials, as well as on the global process of production, trade and use of military equipment, prison security and police service.

This **Executive Summary** summarizes and offers information about the factors to be considered in the decision-making on the use of instruments of restraint, aiming to contribute to the maximum exceptionality of their use, to reduce inadequate habits and techniques and for the prevention of rights violation due to the use of handcuffs. It presents the national and international normative grounds, as well as the international practice, with the aim of providing important elements for judicial assessment in the context of criminal hearings in general<sup>2</sup>. It is a useful tool for citizens and, in particular, for the judiciary and other actors in the justice system.

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<sup>2</sup> In this document, whenever reading the terms judicial or criminal hearing it must be understood that the provisions herein also apply to hearings held in the Justice for Children and Youth.

# 1. INSTRUMENTS OF RESTRAINT AND LIMITATION OF THEIR USE

Instruments of restraint are **equipment applied to people's bodies to restrict or immobilize their movements**, such as handcuffs. Its use should be unusual, possibly considering its use in forensic environments, with the purpose of protecting the rights to life and safety of the criminal suspects or prisoners, as well as security officers, judges, other legal personnel and of the public in general. It is essential to point out that **any and all use of restraint must be exceptional and not routine**, and based on well-founded risks and always recorded in writing and within the law.

Some national and international documents provide baselines on their authorization and embargoes of use, and the following stand out:

## Brazil

- National Council of Justice, Resolution No. 213/2015, of December 15th, 2015.
- Federal Supreme Court, Binding Legal Precedent No. 11.
- Decree - Law No. 3.689, of October 3rd, 1941. Code of Criminal Procedure.
- Law No. 13.434, of April 12th, 2017.
- Presidential Decree No. 8.858, of September 26th, 2016.

## United Nations (UN)

- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment.
- Code of Conduct for Law Enforcement Officials.
- United Nations Rules for the Protection of Juveniles Deprived of Liberty (Havana Rules).
- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules).
- United Nations Standard Minimum Rules the Treatment of Prisoners (Nelson Mandela Rules).

## Organization of American States (OAS)

- American Convention on Human Rights.
- Principles and Good Practices on the Protection of Persons Deprived of Liberty in the Americas.

### Council of Europe

- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report for Serbia Government on the visit from May 26th to June 5th, 2015, CPT/Inf (2016) 21.

In accordance with the United Nations (UN) **Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment**<sup>3</sup>:

“It is forbidden the imposition of restrictions upon [a person arrested or detained pending investigation and trial] which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention”

Instruments of restraint have a double nature:

Criminal law enforcement tool

Means of coercion

Therefore, its use must comply with the highest standards of respect for human rights and the use of force, such as the principles<sup>4</sup>:

Legality

Necessity

Proportionality

Precaution

Accountability

From international references, the use of restraints must be strictly necessary due to the **insufficiency of other less intrusive methods** to contain the risk presented; adoption of **less intrusive restraint method necessary** for immobilization of the detainee, based on the level and nature of the risk presented; and **use for the shortest time required** <sup>5</sup>.

<sup>3</sup> UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, adopted by the General Assembly of the United Nations. Resolution 43/173 of December 9th, 1988, Principle 36 (2).

<sup>4</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, received by United Nations General Assembly Resolution 45/166.

<sup>5</sup> Principles and Good Practices on the Protection of Persons Deprived of Liberty in the Americas, approved by the Commission during its 131st regular session, held from March 3rd to 14th, 2008, Principle XXIII (2). UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), approved by the United Nations General Assembly on December 17th 2015 (UNGA Resolution A/RES/70/175).

## 2. RESTRAINT AND POTENTIALLY HINDERED RIGHTS

The use of instruments of restraint, at different times, can negatively impact the fundamental rights of the person. In the specific context of judicial hearings, among the potentially affected rights, are:

Right to a fair trial	Presumption of innocence	Right to be treated with humanity	Respect for dignity
Right not to undergo inhuman or degrading treatment	Right not to be subjected to torture	Right to communicate freely with the defender	Right to defend with equality of arms

For the United Nations Human Rights Committee, “Defendants shall not normally be chained up or held in jails/cells during trials or otherwise presented to the court in a manner that indicates that they may be dangerous criminals<sup>6</sup>”, under penalty of generating false criminal assumptions that will violate the presumption of innocence. The more severe the instrument of restraint or method used, the more likely it is to think that the detainee is effectively guilty<sup>7</sup>. Therefore, the **unnecessary use of instruments of restraint reinforces prejudices and stigmas and can influence judicial decision making**.

Instruments of restraint are intrinsically intrusive and have a **high probability of causing injury, pain and humiliation**, carrying the **risk of violation of the right to physical and psychological integrity<sup>8</sup>**.

It should be noted that these instruments can be used to deliberately inflict unnecessary pain or injury or for improper punishment, such as over-tightening the handcuffs. In that regard, the European Court of Human Rights has decided that the unjustified use of handcuffs on an accused person during public judicial hearings constitutes degrading treatment and a violation of the prohibition of torture and other ill-treatment<sup>9</sup>.

6 UN Human Rights Committee, General Comment No. 32, Article 14: Right to equality in trials and courts and to a fair trial (Ninetieth session, 2007).

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

8 Association for the Prevention of Torture (APT) and Penal Reform International (PRI), Instruments of Restraint: Addressing risk factors to prevent torture and ill-treatment, 2015, available at [https://www.apr.ch/sites/default/files/publications/factsheet-5\\_use-of-restraints-en.pdf](https://www.apr.ch/sites/default/files/publications/factsheet-5_use-of-restraints-en.pdf)

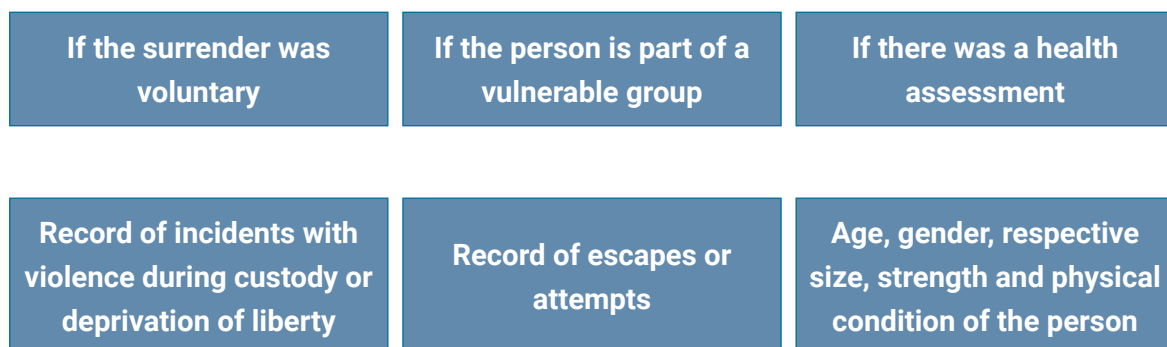
9 European Court of Human Rights, Gorodnichev Case v. Russia, May 24th, 2007.

### 3. ASSESSMENT OF THE USE OF RESTRAINT IN THE ACTUAL CASE

The judiciary **should consider multiple factors involving the actual case** when deciding whether or not to use handcuffs or other instruments of restraint in a criminal hearing room. The decision must be based on “a valid and serious reason for security”<sup>10</sup>. In this regard, the United Nations Committee Against Torture (UNCAT)<sup>11</sup> prescribes that

“[The] guiding principle in of restraint and enjoyment of rights general is **that the status, penalty, legal condition or disability of an individual cannot be a reason to automatically impose restraint**”. (emphasis added)

Among the factors that should be considered interrelated are:



In compliance with due process and presumption of innocence, the use of instruments of restraint cannot be based on a criminal charge that has not been proven in court.

As for the courtroom where the hearing will be held, one can consider the frequency of incidents involving physical violence, threats or escape attempts. **Other potentially less intrusive security means should always be prioritized**, such as the presence of adequately trained security officers without lethal weaponry and the architectural adequacy of the courtroom. Any **lack of security personnel or other shortcomings cannot be used to justify the use of handcuffs or other instruments of restraint**<sup>12</sup>.

<sup>10</sup> Report on the 2008 visit of the Subcommittee on Prevention of Torture (SPT) to Benin, 15 March 2011, CAT/OP/BEN/1, para. 107.

<sup>11</sup> UN Committee against Torture, “Observations of the Committee against Torture on the revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR)”, December 16th, 2013, UN doc. CAT/C/51/4, para. 36.

<sup>12</sup> United Nations Convention against Torture (UNCAT), “Observations of the Committee against Torture on the revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR)”, 16 December 2013, UN doc. CAT/C/51/4, para. 37

**It is for the judge and not the police or the security officers** to decide on the use of restraints and that decision may have serious implications for the principle of independence of the Judiciary Power.

Even if the use of restraint has been determined during a judicial hearing, **once the proceeding is finalized**, and ordered the release of the person, **the instruments of restraint must be immediately removed**.

## 4. THE USE OF RESTRAINT IN SPECIFIC GROUPS

International parameters were developed on the use of instruments of restraint in relation to specific groups. The principles of necessity, proportionality and non-discrimination require that, even where no explicit standard has been developed, **vulnerabilities of certain groups should be considered** in order to determine the level of risk presented and whether restraint will be required. In this regard, attention should be paid, in particular, to:

Children and adolescents	Pregnant women	Black persons	Persons with disabilities	Persons with mental illness	Persons living in the streets
LGBTI+ persons	Elderly persons	Sick and wounded persons	Migrants and refugees	Indigenous groups	Other minority groups

The use of instruments of restraint in adolescents should be exceptional. Its use must be authorized and detailed within the law and regulations<sup>13</sup> and may only occur **when all other means of control fail** and cannot cause humiliation and should be applied for the shortest possible time. The justification for use must be the **imminent risk of causing injury to oneself or others**<sup>14</sup>.

It should be noted that if the person is handcuffed and needs to use the bathroom, they will need assistance, which may prove to be a degrading situation, especially for women. Therefore, persons deprived of liberty should be **escorted by same-sex security officers, with particular attention to transgender persons, who should be asked about the gender preference of the driving officer.**

<sup>13</sup> United Nations Rules for the Protection of Juveniles Deprived of Liberty (Havana Rules), adopted by General Assembly Resolution 45/113 of December 14th 1990, Rule 64.

<sup>14</sup> United Nations Committee on the Rights of Child, General Comment No. 24 (2019) on the rights of the child in the juvenile justice system, UN doc. CRC/C/GC/24, paragraph 95 (f).



With regard to women and babies, the Bangkok Rules establish:

"Instruments of restraint shall never be used on women during labour, during birth and immediately after birth."

Although it is unlikely to present a woman in such situations before a judge, the judiciary and security officers should consider the needs and vulnerability of women in advanced stages of pregnancy or postnatal<sup>15</sup>.



Racial disparities in Brazil are a fundamental element in the practice of criminal justice and can be seen in evidence of **overrepresentation of black people in data related to lethal violence and deprivation of liberty**<sup>16</sup>. Therefore,

It is necessary for the judge to consider the racial issue in the decision on the use of handcuffs, with a view to ensuring the principle of non-discrimination and the presumption of innocence of black persons.

Although there are no international standards that define criteria for the use of instruments of restraint in other groups, it is important to consider their vulnerabilities.

<sup>15</sup> In Brazil, Law No. 13.434/2017 and Presidential Decree No. 8.858/2016 prohibited the use of handcuffs on pregnant women during medical and hospital preparatory acts for delivery and during labor, as well as in women during the period of immediate puerperium.

<sup>16</sup> <http://depen.gov.br/DEPEN/depen/sisdepen/infopen/relatorios-sinteticos/infopen-jun-2017-rev-12072019-0721.pdf>

[https://www.ipea.gov.br/portal/images/stories/PDFs/relatorio\\_institucional/180604\\_atlas\\_da\\_violencia\\_2018.pdf](https://www.ipea.gov.br/portal/images/stories/PDFs/relatorio_institucional/180604_atlas_da_violencia_2018.pdf)

<https://www.forumseguranca.org.br/>

[wp-content/uploads/2019/10/Anuario-2019-FINAL\\_21.10.19.pdf](https://www.forumseguranca.org.br/wp-content/uploads/2019/10/Anuario-2019-FINAL_21.10.19.pdf)

## 5. THE BINDING LEGAL PRECEDENT NO. 11 OF THE STF

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In Brazil, the Supreme Federal Court (STF) established standards for the use of instruments of restraint through the Binding Legal Precedent No. 11, of August 22nd, 2008. This is the main national normative basis on the use of handcuffs or other instruments of restraint in judicial hearings, police arrests, spaces of deprivation of liberty, among others.

In one of the precedents leading to the issue of the Binding Legal Precedent, the STF stressed that the use of handcuffs would produce **deleterious effects for the exercise of broad defense and contradictory** and established that: “To keep the accused handcuffed in the hearing without having demonstrated, based in previous facts, his/her dangerousness, **means placing the defense, in advance, at a lower level, as if the overall situation were not per se degrading.**”<sup>17</sup>

Binding Legal Precedent No. 11, whose content binds the actions of the Judiciary Power and the entire public administration, determines that:

“The use of handcuffs is only lawful in cases of resistance and well-founded fear of escape or danger to one's own or others' physical integrity, by the prisoner or third parties, the exceptionality being justified in writing, under penalty of disciplinary, civil and criminal liability of the agent or authority and the nullity of the arrest or the procedural act to which it refers, without prejudice to the civil liability of the State”.

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<sup>17</sup> STF. HC 91952, Rapporteur Justice Marco Aurélio Mello, Full Court, trial on 8.7.2008, DJe of 12.19.2008.

It can be divided into different parts in order to facilitate the understanding:

Criterion of lawfulness	Authorizing hypotheses	Subjective aspects	Formalization	Consequences of illicit use
It is only lawful to use in the authorizing hypotheses	Resistance cases  Clear fear of escape  Hazard to personal or other people's physical integrity	If the prisoner or third parties offer resistance or if there is clear fear of escape or danger to his or her own or other person's physical integrity	Motivation of the judicial authority to make the decision	Disciplinary, civil and criminal responsibility of the officer or authority  Nullity of detention or procedural document to which it relates  Civil responsibility of the State

For all authorizing hypotheses, proof is required from solid elements: previous or current acts of resistance, attempt to escape and, for example, support from health professionals or the multidisciplinary team of the Court.

It should be noted that the non-compliance with the Binding Legal Precedent may result in the nullity of the proceeding. In the field of judicial activity, nullity is particularly important and is also associated with the constitutional principle of the inadmissibility of “evidence obtained by illicit means” (art. 5<sup>th</sup>, LVI, Federal Constitution).

In exceptional cases where the judge considers it essential to enforce restraints, it is recommended that only frontal application of handcuffs be allowed and without any restraint of the abdominal or ankles. At the end of this Executive Summary, comparative tables may help in the identification of risks to health and rights in the use of different instruments of restraint and application techniques.

As for detention control hearings, it must be borne in mind that one of their main objectives is to identify cases of torture and other ill-treatment. This, combined with the high levels of police violence in the country<sup>18</sup>, makes this practice inadequate, due to the detrimental effect on the ability and willingness of the detainee to report acts of violence and abuse that may have been suffered. This inadequacy encompasses other acts and procedures within the detention control, such as the reserved interview with the defense and the interview with the psychosocial team.

<sup>18</sup> Brazilian Public Security Yearbook 2019. Brazilian Forum on Public Security. 2019. Available at: <http://www.forumseguranca.org.br/wp-content/uploads/2019/09/Anuario-2019-FINAL-v3.pdf>

## 6. INTERNATIONAL STANDARDS AND PRACTICES

International good practices point out that instruments of restraint should be used exceptionally during court hearings, grounded on the specific circumstances of the case. It then shows how the judicial authorities of other countries deal with this issue.

### South Africa

The High Court stated that the practice is “unsatisfactory undesirable and objectionable and must be depreciated and strongly disapproved” because it can indicate to a judicial authority that the accused is serving time as a result of a prior conviction, by placing effectively inadmissible evidence before the Court; it may influence a judicial authority to infer that the accused is dangerous, potentially inducing or seizure; it may induce a judicial authority to infer that the accused had previously attempted to escape from prison or gave reasons to believe that can try to escape; it violates the human dignity of the accused; and it potentially violates the dignity of the Court, which is “a civilized forum of rational analysis, and not a detention, punishment or torture cent” *S v Phiri (2033/05) [2005] ZAGPHC 38, [15]*.

### United States

The policy of applying wrist, ankle and abdominal chain handcuffs or transport belt to prisoners was declared unconstitutional, in respect of most cases not subject to the jurisdiction of US jury courts. This is because the policy does not meet the standard of “adequate justification of its need”, determining that the use of instruments of restraint constituted an “insult to the dignity and decorum of the proceedings” and risked interfering with the defendant’s constitutional rights. *United States v. Sanchez-Gomez, 798 F.3d 1204 (9th Cir. 2015), vacated en banc, 859 F.3d 649 (9th Cir. 2017), vacated, 138 S. Ct. 1532 (2018)*.

The U.S. Supreme Court has already consolidated the understanding that placing a defendant in instruments of restraint in a courtroom during its trial is an “inherently harmful practice that [...] should only be allowed when justified by an essential tate interest specific for each trial” *Holbrook v. Flynn, 475 U.S. 560 (1986), 568-569*.

The Supreme Court also stated that the use of “iron and gags” can significantly influence a jury and is “an insult to the dignity and decorum of court proceedings”, and greatly reduces the defendant’s ability to communicate with his/her lawyer. *Illinois v. Allen, 397 U.S. 337 (1970)*.

## European Union

The European Union Directive on Presumption of Innocence of 2016 states that “Member States should take appropriate measures to ensure that the suspect or accused person is not treated as guilty, in court or in public, use of physical restraint.”, which does not prevent the use of “physical restraint measures required for specific security-related reasons or to prevent the suspect or accused person from escaping or having contact with third parties”.

## Council of Europe

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), a body of the Council of Europe, establishes the guiding principles for the use of mechanical instruments of restraint in different contexts, namely: exceptionality of their use; minimum duration of their use; formal regulation for their use; detailed recording of episodes of their use; less harmful design of instruments; and subsequent health monitoring. Exceptionality should be the primary key in relation to judicial hearings, which is consolidated through individual evaluation in the specific case.

## England and Wales, in the United Kingdom

The judge may only grant a request for restraint use if: there is good reason to believe that the prisoner poses a significant risk of attempting to abscond from the Court (in addition to the alleged motivation of all prisoners to abscond) and/or risk of serious harm to those persons in the Court or the if an escape attempt is successful; and where there is no other viable means to prevent escape or serious damage. *Criminal Practice Directions, CONSOLIDATED WITH AMENDMENT NO.8 [2019] EWCA CRIM 495, CPD I General Matters 3L: SECURITY OF PRISONERS AT COURT, 3L.1 – 3L.2 – 3L.5.*

It is for the Court to decide whether additional security measures should be enforced on the basis of information submitted by the professional responsible for the security of the building where the person deprived of liberty is located. This current, specific and credible evidence that security measures are necessary and proportionate to the identified risk and that such risk cannot be managed” 58, and the defense should be given the opportunity to object to the request. *Criminal Practice Directions, CONSOLIDATED WITH AMENDMENT NO.8 [2019] EWCA CRIM 495, CPD I General Matters 3L: SECURITY OF PRISONERS AT COURT, 3L.6*

"The nature of the offense is not a reason to grant the request." *Court Management Directions Form in National Offender Management Service and HM Courts & Tribunals Service, Security of Prisoners at Court, June 2015, Annex E.*

### France<sup>19</sup>

French law punishes with high fines the media that disclose images of “identified or identifiable person who is the subject of criminal proceedings but who has not been convicted and appears to be wearing handcuffs or has been placed in pre-trial detention”.

### Ireland<sup>20</sup>

Instruments of restraint are not used in the courtrooms. The only action taken within the courtroom when there are security concerns is the placement of additional security officers. In fact, the damage caused by members of a jury seeing a defendant handcuffed outside the courtroom and the effect on the accused of being handcuffed were considered partial grounds for the nullity of a criminal conviction. *D.P.P. v. McCowan* 31/03/2003 [2003] 4 IR 349.

### Netherlands

In the Netherlands, the use of instruments of restraint is considered harmful to the presumption of innocence, although there is no jury. Its use is limited to cases where a psychological or psychiatric evaluation has determined that a defendant poses serious risks. It is also noteworthy that there are alarm devices in each courtroom, through which security officers who are outside the room can be called. *Justice, In the Dock: Reassessing the use of the dock in criminal trials, 2015, pp. 28-29*

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<sup>19</sup> Article 35-ter of the Law of July 29th, 1881 on freedom of the press.

<sup>20</sup> What's Up With the Blurred Or Pixelated Handcuffs In Japan, France And South Korea? , I'm A Useless Info Junkie, available at <https://theujunkie.com/pixelated-handcuffs-japan/>, accessed June 4th, 2020. p. 28.

## 7. INSTRUMENTS OF RESTRAINT

### IN THE JUDICIAL CONTEXT: TYPES OF INSTRUMENTS OF RESTRAINT

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**By itself, the use of handcuffs can cause injury**, trauma or other damage to the physical integrity of the person restrained. More than that, **its application can also aggravate injuries or physical and health conditions prior to or resulting from arrest**. The material from which the instruments of restraint are made of has relevance. **Every metal instrument of restraint presents a general risk of causing skin lacerations and abrasions**, which can result in long-term physical damage, particularly if used for prolonged periods, thus as neurological damage and even bone fractures. Where possible, metal instruments shall be replaced by non-rigid restraints.

For proper decision-making, the judge shall take these considerations into account on the basis of the information available and the account of the person deprived of liberty. If it is not possible to use non-rigid instruments, **handcuffs and other metal instruments must necessarily rely on chain - not hinged or rigid structures - and double-locking**, as they present lower risk than other types of metal.

## 8. FINAL REMARKS AND RECOMMENDATIONS

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**The use of handcuffs or other instruments of restraint can lead to serious risks of physical integrity and health violations.** Its incorrect use can generate chronic and permanent health conditions and, in extreme cases, lead to death, that is why its use must constitute an exception. It can also create other serious impediments to the exercise of fundamental rights in the field of due legal process.

The decision on its application in forensic environments and especially during judicial hearings will always remain under the responsibility of the judge. If the judge understands that this is an exceptional case, he/she should also be guided by **national and international parameters** on the use of mechanical instruments of restraint in all contexts:

Exceptionality of their use

Minimum duration of their use

Formal regulation for their use

Detailed recording of episodes of their use

Instruments with less harmful design

Subsequent health monitoring



In order to ensure the safeguarding of constitutional rights and the principles of equality of procedure and treatment, presumption of innocence and due legal process, **the Courts are recommended to:**

Train the security officers responsible for the escort

Check the frequency of incidents and methods in the room where the hearing will take place

Prioritize potentially less intrusive security means

Provide information to judges through the Higher Schools of Judiciary

Participation of other key actors in the process of building normative acts on judicial security

In turn, **it is recommended that the judge** always verify the information contained in the proceeding records and the circumstances of the judicial hearing in question, by adopting the following procedures:

Perform multifactorial, individualized and case-specific risk assessment

Analyze the lawfulness of the use of instruments of restraint

Limit exclusively to the authorizing hypothesis of Binding Legal Precedent No. 11


Provide information on the judicial act in detail to the person in custody, accused or convicted




Record the grounds of the decision on the use of instruments of restraint

Determine the immediate removal of the restraints after the release of the person

Refer the person for health follow-up after the use of the handcuffs

# 9. ANNEXES

COMPARATIVE TABLE BETWEEN TYPES OF INSTRUMENTS		
Type	Potential damage	Use in judicial hearings and forensic environments
Chain-link Handcuffs	<p><b>Physical:</b></p> <ul style="list-style-type: none"> <li>• They limit movements considerably.</li> <li>• If there is too much constriction or over-tightening, they can cause severe pain, damage to the skin, muscles, joints, and neurological structures on the hands and arms.</li> <li>• They cause pain, particularly when used as a lever for pulling or twisting.</li> <li>• They can injure the shoulder joint, especially after prolonged use.</li> <li>• They can limit blood circulation and oxygenation of tissues.</li> </ul> <p><b>To rights:</b></p> <ul style="list-style-type: none"> <li>• Damages to the due process of law.</li> <li>• The movement limitations imposed on the upper limbs hinder gesturing and non-verbal communication during the hearing, restricting the broad defense.</li> <li>• People in handcuffs also tend to be more easily perceived as guilty, which affects the presumption of innocence.</li> <li>• Where the person shows signs of torture, the handcuffs may make it difficult to expose marks and injuries to the judge and hinder the right to lodge a complaint.</li> </ul>	 <ul style="list-style-type: none"> <li>• If considered necessary, they should be used only by frontal application, by applying a double-locking and according to the appropriate adjustment to the person restrained.</li> <li>• Where possible, they should be replaced by non-rigid restraints.</li> </ul>

<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Hinged Handcuffs</p>	<p><b>Physical:</b></p> <ul style="list-style-type: none"> <li>• When used for long periods, they pose the risk of causing severe discomfort and pain in the wrists, forearms and shoulders.</li> <li>• They can cause the same physical damage as the chain cuffs.</li> </ul> <p><b>To rights:</b></p> <ul style="list-style-type: none"> <li>• They can cause the same damage to due process as chain-link handcuffs.</li> </ul>	 <ul style="list-style-type: none"> <li>• It is not recommended to use hinged handcuffs in controlled environments such as Court-houses.</li> </ul>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Rigid Handcuffs</p>	<p><b>Physical:</b></p> <ul style="list-style-type: none"> <li>• When used for prolonged periods, they can cause unnecessary discomfort and pain in these parts of the body.</li> <li>• They can cause the same physical damage as the chain cuffs.</li> </ul> <p><b>To rights:</b></p> <ul style="list-style-type: none"> <li>• They can cause the same damage to due process as chain-link handcuffs.</li> </ul>	 <ul style="list-style-type: none"> <li>• It is extremely not recommended to use them in controlled environments such as Courthouses.</li> </ul>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Irons/Ankle cuffs</p>	<p><b>Physical:</b></p> <ul style="list-style-type: none"> <li>• Metal immobilizers for the legs pose the risk of causing deep vein thrombosis and necrosis, when used for prolonged periods.</li> <li>• Restraints for ankles restrict the movement of the legs, posing the person at risk of falling and suffering secondary injuries.</li> <li>• The immobilized person should be escorted at close range by a trained security officer in order to reduce the risk of falls.</li> <li>• Risks to lacerations and other damage due to prolonged use of metallic instruments of restraint in general.</li> </ul> <p><b>To rights:</b></p> <ul style="list-style-type: none"> <li>• They can cause the same damage to due process as chain-link handcuffs.</li> </ul>	 <ul style="list-style-type: none"> <li>• They should not be used in court hearings and, if used, should be only for the shortest time necessary.</li> </ul>

**Physical:**



- They severely restrict movement.
- They imply an increased risk of falls and injuries due to the difficulty of the person restrained in using their hands to soften the fall.
- Short-length currents in relation to the height of the immobilized person may force him/her to lean while standing, which can be humiliating or degrading as well as posing additional risks of secondary injury due to falls.
- These injuries can affect the region of the neck and head, and may cause serious head and cervical trauma or even death.
- They can cause the same, if not greater, physical damage as the chain-link handcuffs.


**To rights:**


- They can cause the same, if not greater, damage to due process as chain-link handcuffs.



- It is extremely not recommended to use them in controlled environments such as Courthouses.

Belly chain cuffs/Transport belt	<p><b>Physical:</b></p> <ul style="list-style-type: none"> <li>• They imply additional risks of injuries from falls due to the difficulty the person has in using their hands and arms to soften the fall and protect himself/herself.</li> <li>• The restraint of the wrists near the waist of the immobilized person poses additional risks of secondary injuries due to falls.</li> <li>• These secondary injuries cause greater concern due to the likelihood of affecting the neck and head region, and may cause serious cranial and cervical trauma or even death.</li> </ul> <p><b>To rights:</b></p> <ul style="list-style-type: none"> <li>• They can cause the same, if not greater, physical damage and damage to due process as chain-link handcuffs.</li> </ul>	 <ul style="list-style-type: none"> <li>• They should be severely avoided in judicial hearings.</li> <li>• It is extremely not recommended to use them in controlled environments such as Courthouses.</li> </ul>
Plastic Handcuffs - Disposable	<p><b>Physical:</b></p> <ul style="list-style-type: none"> <li>• Most can only be tightened, but not loosened, which facilitates the restrained person to suffer severe pains and discomfort.</li> <li>• Most cannot be double-locked, which increases the risk of direct compression injuries caused by over-tightening.</li> <li>• They can easily penetrate the skin and internal tissues over time.</li> <li>• They can cause the same physical damage as the chain-link handcuffs.</li> </ul> <p><b>To rights:</b></p> <ul style="list-style-type: none"> <li>• They can cause the same damage to due process as chain-link cuffs.</li> </ul>	 <ul style="list-style-type: none"> <li>• It is extremely not recommended to use them in controlled environments such as Courthouses.</li> </ul>

Soft/Fabric Instruments of restraint	<p><b>Physical:</b></p> <ul style="list-style-type: none"> <li>• If they are tightened excessively or applied for prolonged periods, their use can cause physical damage similar to those caused by chain cuffs in general.</li> </ul> <p><b>To rights</b></p> <ul style="list-style-type: none"> <li>• They may imply the same damages to due process described for the other instruments.</li> </ul>	 <ul style="list-style-type: none"> <li>• If it is considered necessary to use an instrument of restraint, preference should be given to non-rigid instruments, which must have frontal application and as appropriate adjustment to the person restrained.</li> </ul>
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COMPARISON OF APPLICATION TECHNIQUES		
Type	Characteristics and potential damage	Use in judicial hearings and forensic environments
Frontal restraint application	<p><b>Characteristics:</b></p> <ul style="list-style-type: none"> <li>• It allows the person to maintain a certain degree of arm movement and decreases the risk of secondary injuries from falls.</li> <li>• They may allow the detainee to use body language to express themselves, albeit to a limited degree.</li> <li>• It can facilitate important procedural issues, such as the person's signature.</li> <li>• It allows the person to use the bathroom without needing assistance, avoiding degrading situations.</li> </ul> <p><b>Damages:</b></p> <ul style="list-style-type: none"> <li>• It can cause injuries, such as skin lacerations, visible in the image above, which can lead to greater complications if left untreated.</li> <li>• The technique does not exempt the risk of physical damage and to due process foreseen for containment instruments in general.</li> </ul>	 <ul style="list-style-type: none"> <li>• In general, it does not expose the person restrained to the same degree of vulnerability as other techniques.</li> <li>• Subjective factors will determine the degree of vulnerability of each person restrained.</li> <li>• It should be the preferred application technique, in exceptional cases where restraint is considered necessary by the judge.</li> </ul>

**Characteristics:**



- The use of handcuffs from behind is particularly susceptible to abuse.
- A simple track or pull up of the handcuffs could inflict severe pain on the restrained individual.

**Damages:**

- It causes the restrained person to curve his/her thorax forward and lower his/her head as a way of trying to reduce the discomfort of the position. This can lead to less eye contact with people and authorities and a limitation of body language, behaviors that can be easily interpreted as a sign of shame or guilt.
- There tends to be damage to the presumption of innocence and due process.
- It can make simple procedures such as signing minutes and documents impossible.
- In cases where torture or ill-treatment is suspected, it is difficult to gather information on the methods used by the alleged perpetrators, describe the injuries suffered, take photographs or audio-visual recording.
- If the person needs to use the bathroom, he/she would need assistance, which can create a degrading situation.
- The technique exacerbates the risk of physical damage and to due process foreseen for instruments of restraint in general.



- Due to the deleterious effects on physical integrity, to due process and the identification of ill-treatment and torture, it is strongly recommended that the back-up application of instruments of restraint be avoided in controlled environments such as judicial hearings and Courthouses.

<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Simultaneous Application</p>	<p><b>Damages:</b></p> <ul style="list-style-type: none"> <li>• Increased risk of injury from falls due to the level of restraint that can greatly restrict the person’s ability to soften the fall and protect himself/herself, particularly the head.</li> <li>• This risk increases significantly when the person’s hands are restrained behind his/her back.</li> <li>• The simultaneous use of restraint instruments on the wrists and ankles is particularly intrusive.</li> <li>• Severely exacerbates the risk of physical damage and to due process for instruments of restraint in general.</li> </ul>	 <ul style="list-style-type: none"> <li>• The simultaneous application of instruments of restraint should be avoided in controlled environments such as judicial hearings and Courthouses.</li> </ul>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Linked Application</p>	<p><b>Damages:</b></p> <ul style="list-style-type: none"> <li>• It increases the risk of falls and resulting injuries, as they may be unable to use their hands to soften the fall and protect themselves from injury.</li> <li>• If one of the restrained persons stumbles or falls, this can be dangerous for the other restrained person.</li> <li>• Handcuffs should not be used to handcuff someone to another person or to an object.</li> <li>• It makes it impossible to adopt sanitary measures to prevent the spread of contagious diseases.</li> <li>• It prevents defendants from sitting, signing documents and can be considered a violation of the principle of individualization of criminal responsibility.</li> <li>• It is inherently inappropriate and degrading, violating the dignity of each individual.</li> <li>• Severely exacerbates the risk of physical damage and to due process for instruments of restraint in general.</li> </ul>	 <ul style="list-style-type: none"> <li>• The simultaneous application of instruments of restraint should be absolutely avoided in controlled environments such as judicial hearings, Courthouses.</li> </ul>





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