

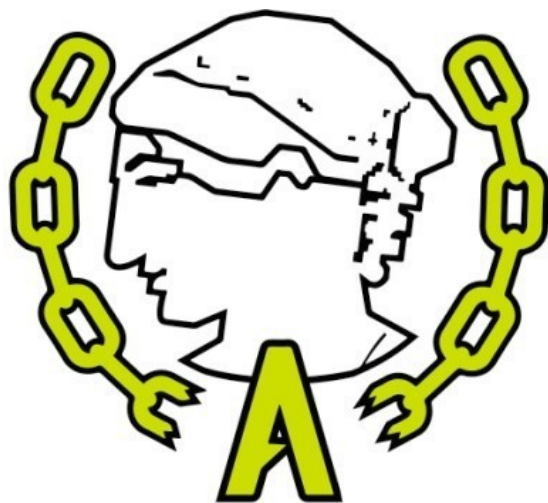
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**Have prisons learnt from Covid-19?
How the world has reacted to the pandemic
behind bars**



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N. 1/2020 HAVE PRISONS LEARNT FROM COVID-19? HOW THE WORLD HAS REACTED TO THE PANDEMIC BEHIND BARS

edited by Susanna Marietti and Alessio Scandurra

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BRAZIL - Covid-19 and prisons in Brazil: conditions and challenges

Bruno Rotta Almeida¹, Elaine Pimentel², Patrick Cacicedo³

1. Introduction

The reality in Brazil's penitentiary system constitutes a real humanitarian emergency situation. Prison is one of the places, if not the main one, of greater violations of human rights in Brazil. Prison overcrowding, unhealthy environment, violence, death and lack of care for the most basic human needs are some of the key contributing factors that may impose suffering in incarcerated individuals.

The spread of Covid-19 has exacerbated the situation of total collapse in Brazil's prison system. The contemporary context of epidemiological crisis reflects the condition of the inhuman in the country's prisons, magnified by the situation of mortality and exposure to the risk of death of the prison inmates and staff. The current situation affects not only individual's rights (e.g. life and physical integrity), but also social rights (e.g. health services and healthy environment).

Therefore, the article aims at describing the impact of Covid-19 and ways to cope with

this pandemic based on the understanding of the reality of the Brazilian penitentiary system.

2. Covid-19 and the condition of the inhuman in the Brazilian penitentiary system

This pandemic has definitely aggravated a very critical situation that has been affecting several countries for a long time. This normality of the exception (B. de Sousa Santos, 2020) can be observed in the constant degradation of the country's prison conditions, intensified by prison overcrowding and prison population growth.

Over the last 30 years, the number of prisoners in the federal and state prisons increased from 90,000 to 886,333⁴. There is, however, a deficit of around 312 thousand vacancies, according to a survey carried out in December 2019, with an occupancy rate of 171%⁵. Severe overcrowding can also cause or exacerbate mental health problems and consequently increase deadly outbreaks of violence and deaths among inmates (L.A.B. Chies, B.R. Almeida, 2019).

The current moment of the punishment system is another milestone in the history of systematic human rights violations. According to the weekly bulletin of the National Council of Justice on Covid-19⁶, until September 14, 2020, there were 34,961 confirmed cases of coronavirus in prisons. Of this total, 73.2% of the cases were inmates and 26.8% prison staff. A total of 192 new virus-related deaths were reported (57.2% of inmates and 42.8% of prison staff). It is worth mentioning that 51,221 inmates and 40,128 prison staff were tested for Covid-19. The contamination rate among inmates and prison staff reached 50% and 23.2%, respectively. The bulletin also reported an increase of Covid-19-related cases and deaths among individuals deprived of freedom in different regions of the country. Prisoners in Brazil do not have adequate access to health care services. In addition, the continuous and out-of-control prison population growth aggravates violations and hampers the distribution of human resources and legal services. In the prison setting, incarcerated people, their family members, and staff are exposed to a higher risk of Covid-19.

3. Impact and negative effects of the pandemic

The Covid-19 pandemic has directly affected the prison community which, according to Donald Clemmer (1940), consists of male and female inmates and public agents. The latter share their daily experiences within the prison secluded spaces, which makes them more vulnerable to infectious diseases, such as Covid-19, although incarcerated people are more likely to be infected.

The recommendations of the World

health organization (Who) on the importance of social distancing as a response to Covid-19 in prisons and jails are particularly challenging in Brazil, due to the confined conditions in which they live together for prolonged periods of time. As a result of the punitive culture, the prison capacity expansion (J.M. Silva Sanchez, 2013) that characterizes contemporary sociability, the worsening of already inhumane conditions in Brazilian prisons have become noticeable in recent decades due to lack of hygiene, inadequate ventilation, excessive heat, strong humidity and poor facilities.

The consequence of this scenario of human rights violation is the predominance of unhealthy spaces, which favor the spread of infectious diseases and others caused by insects and parasites.

The precarious structures of Brazilian prisons add to the state's daily omissions in providing basic provisions and health care to prisoners (provided for in the Criminal Enforcement Law N. 7.210/84), as was evident in the Adpf (*Arguição de descumprimento de preceito fundamental*, or Failure to comply with a fundamental precept) judgment 347/DF, which recognized the unconstitutional state of affairs of Brazil's prison system. Inadequate nutrition and no medical follow-up lead to poor health outcomes of most women and men deprived of liberty, making the prison community more vulnerable to Covid-19.

However, this vulnerability of male and female prisoners did not start in the spaces of punitive segregation, but preceded them, since mass incarceration (D. Garland, 2010) is a sociopolitical reality derived from the selective penal system,

sustained, above all, by the oppressions of race and class (J. Borges, 2018). Basically, the criminal state exerts pressures more upon peripheral and subaltern communities, made up of black men and with poor levels of education⁷, as can be confirmed by the data periodically released by the National penitentiary department (Depen) and the National council of justice (Cnj). Therefore, there is a high predominance of people with poor health due to preexisting diseases and malnutrition. Consequently, these factors can place individuals at higher risk of being infected by Covid-19.

The reality of the entire Brazilian prison system reveals a characteristic inherent to punitive practices that aggravate the vulnerability due to the structural and bio-political conditions of the prison setting: *power relations*. Such relations aim at silencing and making invisible those individuals who occupy punitive segregation environments, whether male or female prisoners or correction officers, usually in poor conditions, also putting them at greater risk of getting the virus. Far from external social control, the prison system is the scenario of many human rights violations on a daily basis, which are being intensified during the Covid-19 pandemic.

4. Health crisis and challenges

Covid-19 has exacerbated an already chaotic situation of the Brazilian prison system. The pre-existing humanitarian and health emergency reflects the inhumanity in the country's prisons, the situation of mortality, and the exposure of prisoners and staff to the risk of death. Therefore, it is of utmost importance to propose emergency measures in defense of

human rights.

In Brazil, however, the measures were timid and inefficient. So far, the President of Brazil or the Senate have not taken any specific measures to protect incarcerated people from this infectious disease. The Cnj issued Recommendation N. 62 (March 17, 2020), with the purpose of guiding the adoption of preventive measures for the spread of infection by the Covid-19 within the scope of the criminal and socio-educational justice systems, such as non-custodial measures, early release and limitation of pre-trial detention. However, because of its non cogent character, the Recommendation did not produce the expected outcome. Even considering the great actual risk associated with Covid-19 in the Brazilian prison system, the Recommendation N. 62 was not well received by the judges, who resisted calls to release large groups of incarcerated people. The Brazilian Supreme court has denied more than 80% of the requests for freedom filed on the basis of this document (Pompeu Ana, 2020).

Subsequently, with the change in the composition of the Cnj, the Recommendation, which was ineffective, was emptied with the exclusion of its scope of incidence for people who have been convicted of certain crimes, even though they belong to groups at risk of the virus⁸.

Dealing with the Brazilian penitentiary issue, particularly after the health crisis triggered by the Covid-19 spread, will necessarily involve the implementation of at least two sets of public policies: health in prisons and effective incarceration. Currently, Brazil's prison system is not able to provide adequate health care for

prisoners. In addition, the growth in incarceration rates exacerbates violations and hinders the distribution of human resources and legal services. Clearly, these policies are directly related and without them it is almost impossible to reduce the death rates in the Brazilian prisons. The first set of public policy exists at the normative level. A new Interministerial ordinance number 1 was published on January 2, 2014. It established that Pnaisp (*Política nacional para atenção integral à saúde da pessoa privada de liberdade no sistema prisional*, or National policy for comprehensive health care for the persons in prison) would ensure the effective and systematic access of the incarcerated population to health care. It is an advanced and well-planned policy. However, it needs to be effective after more than six years of validity. Conversely, a legal policy of incarceration should also be planned and put into effect (G.I. Anitua, 2020, p. 213 *et seq.*) to eliminate or reduce prison overcrowding, and therefore protect the human lives that are most at risk. Such a policy, although necessary and urgent, is far from being addressed in the three branches of the Brazilian Federal government - legislative, executive and judicial - although it receives support from some society organizations fighting for human rights².

5. Conclusion

The constant violations identified in the Brazilian prison system offend human dignity and the policies and practices such as those relating to the access to social rights that include health, education, work, protection of motherhood and childhood. The combination of the aforementioned violations and the alarmingly precarious conditions of the

prisons corroborates, in theory, the illegitimate imprisonment.

The challenge of the humanitarian crisis in Brazilian prisons, especially in fighting the Covid-19 pandemic, requires a radical change in the mass incarceration process experienced by the country in recent decades and the implementation of public policies guaranteeing fundamental rights in prisons. More specifically, the dignity of hundreds of thousands of individuals demands an urgent implementation of integrated public health policies in prisons as well as mass releases of people to reduce overcrowding.

Notes

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⁴ Conselho nacional de justiça, *Portal do Banco de monitoramento de prisões* <https://portalbnmp.cnj.jus.br/> (accessed 18 September 2020).

⁵ Statistical information system of the penitentiary system - InfoPen, *Levantamento de informações penitenciárias, 2019*, <http://antigo.depen.gov.br/DEPEN/>

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⁶ Cnj, Justiça Presente, <https://www.cnj.jus.br/sistema-carcerario/justica-presente/> (accessed 18 September 2020).

⁷ Statistical information system of the penitentiary system - InfoPen, *Levantamento de informações penitenciárias, 2019*, <http://antigo.depen.gov.br/DEPEN/depen/sisdepen/infopen/infopen> (accessed 18 September 2020).

⁸ Recommendation 78, September 15, 2020.

⁹ In Brazil, the *Agenda nacional pelo desencarceramento* has been signed by the Pastoral carcerária/Cnbb and by numerous human rights organizations (Pastoral carcerária, 2020).

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