AGENDA NACIONAL PELO DESENCARCERAMENTO 2014

pastoral_carceraria_PT_ing.indd 1 25/05/15 17:02

pastoral_carceraria_PT_ing.indd 2 25/05/15 17:02

Organizations:

Associação Nacional de Defensores Públicos Federais – ANADEF (National Association of Federal Public Defenders)

Centro de Direitos Humanos e Educação Popular do Campo Limpo – CDHEP (Center for Human Rights and Popular Education of Campo Limpo [suburb of São Paulo])

DDH - Instituto de Defensores de Direitos Humanos

Grupo de Amigos e Familiares de Pessoas em Privação de Liberdade – MG (Group of Friends and Parents of Persons Deprived of Liberty, State of Minas Gerais)

Instituto Práxis de Direitos Humanos (Institute Práxis of Human Rights)

Justiça Global (Global Justice)

Mães de Maio (Mothers of May)

Margens Clínicas (Clinical Limits)

Núcleo Especializado de Situação Carcerária da Defensoria Pública do Estado de São Paulo (Specialized Nucleus in the Prison Situation at the Public Defender's Office of the State of São Paulo)

Pastoral Carcerária Nacional – CNBB (National Prison Pastoral – National Conference of Brazilian Bishops)

Pastoral da Juventude – CNBB (Youth Pastoral – National Conference of Brazilian Bishops)

Programa de extensão CULTHIS/UFMG: espaço de atenção psicossocial ao preso, egresso, amigos e familiares (Extension Program of CULTHIS/Federal University of the State of Minas Gerais: space of psychosocial attention to prisoners, former convicts, friends and relatives)

Rede 2 de outubro (Network October 2nd)

Sociedade Sem Prisões (Society Without Prisons)

pastoral_carceraria_PT_ing.indd 3 25/05/15 17:02

pastoral_carceraria_PT_ing.indd 4 25/05/15 17:02

FOR A NATIONAL PROGRAM TO END MASS INCARCERATION AND OPEN PRISONS TO SOCIETY

It is well-known that Brazil occupies the not so honorable ranking of third place among countries with the largest prison population in the world (losing only to the USA and China), with more than 700.000 imprisoned people. Between 1992 and 2012, the Brazilian prison population jumped from 114.000 to approximately 550.000 imprisoned people: an aggravation of 380% *(DEPEN; National Penitentiary Department [Departamento Penitenciário Nacional]).* In the same period, the Brazilian population grew 30% *(IBGE; Brazilian Institute of Geography and Statistics [Instituto Brasileiro de Geografia e Estatística]).*

Hand in hand with this process of mass incarceration *comes the* worsening of the prison system, *substantiated in the violation of the most basic rights of the prison population: only 10% have access to some form of education; only 20% carry out a paid activity; health services are manifestly fragile, with a meager staff and several cases of serious illnesses and even deaths due to negligence; prison units are overpopulated: Brazil has the highest rate of prison occupation (172%)*[1] *among the countries considered "emerging"; torture and ill treatment flourish, with the complicity of the authorities responsible for the inspection of prison units.*

In addition to the fact that incarceration happens on a massive scale in Brazil, there is also the selective character of the criminal law system, *as demonstrated in the type of goods protected and and the persons targeted.*

1 Numbers dating to December, 2012. LONDON. King´s College, International Centre for Prison Studies. Available at: <http://www.prisonstudies.org/>.

For one, in spite of hundreds of different possible criminal offenses, approximately 80% of the prison population is detained because of crimes against patrimony (and congeners) or petty drug trafficking. *And secondly, in spite of the ethnic and social diversity of the Brazilian population, the* people most subjected to the prison system have nearly always the same skin color and come from the same social class and groups of people historically left at the margins of Brazilian society: they are young, poor, from the outskirts, and black.

The selectiveness of the penal system has still another aspect, even more serious and violent: the criminalization of women. *Albeit the number of imprisoned women corresponds to approximately 8% of the total prison population, we know that in the* last ten years there was approximately a 260% increase of women in prison compared to an approximately 105% increase of men in prison.

The patriarchal character of the criminal law system *shows extremely cruel trends, which are symptomatic of the strong influence of "machismo."*

This huge increase in the female prison population is due to the rise of hundreds of thousands of poor women (nearly always black) to positions of precarious and dangerous work in the commercialization of psychotropic drugs, making women the main target of the crude war against drugs. *As such, women are always more exposed and vulnerable.*

It is worth noting that the huge majority of women detained for drug trafficking are petty drug dealers or even sometimes simply drug users (a phenomenon also observed among men) and that it is not rare that these women are violently and illegally separated from their children.[2] *In addition, a large number of cases exist in which women who are detained during pregnancy lose their baby because of lack of medical assistance or give birth handcuffed! It is important to also mention the injustice suf-*

2 This aspect requires the close control of the implementation of Law 12.962, of April 8th, 2014, concerning the guarantee that imprisoned mothers and fathers can live together with their children, and the guarantee of a due legal process in extreme cases of destitution of the family power.

pastoral_carceraria_PT_ing.indd 6 25/05/15 17:02

fered by female relatives of prisoners. Visitors often undergo invasive body searches, which are shamefully sanctioned by the State to punish, torture and humiliate relatives, generally women. When they are not dissuaded by the prisoners themselves to undergo this degrading practice, these relatives often travel long distances to visit a loved one in jail

As we can see, the reality of the penal system shows that there is clearly a process of patriarchal criminalization of maternity and of women who occupy public space.[3]

To all of these ills, we must add one more: the systematic violation of the fundamental right to presumption of innocence. Nobody can ignore that, in legal terms, a person can only be considered guilty after being formally accused of committing a crime and given recourse to a fair trial, a proper defense and the possibility for appeals before the sentence becomes final. In reality, though, what prevails is anticipated punishment, *embodied in the real pandemonium of provisional detention centers:* about 43% of the Brazilian prison population still hasn't received a conviction! In other words, nearly half of Brazil's prison population is legally innocent!

The panorama here presented synthesizes somewhat the horrors of the Brazilian prison system, but it is insufficient to show what only direct contact with its reality can teach: jail is not a place for human beings.

The former president of the Federal Supreme Court [STF, Supremo Tribunal Federal], His Excellency Mr. Cezar Peluso, criticized Brazil's prison system in March 2011 and went so far as to compare some prisons with "medieval dungeons": "This is a crime committed by the State against Bra-

3 Concerning this reality, an indispensable research is *Dar à Luz na Sombra – Pensando o Direito e as Reformas Penais no Brasil: Condições atuais e possibilidades futuras para o exercício da maternidade por mulheres em situação de prison* [Give birth in the Shadow – Considering the Law and the Prison Reforms in Brazil: Present conditions and future possibilities for the exercise of maternity by women in prison situation], coordinated by Ana Gabriela Braga (*Universidade Estadual Paulista – Unesp/Franca*) and Bruna Angotti (*Universidade Presbiteriana Mackenzie*). See part of the report at: <http://participacao.mj.gov.br/pensandoodireito/garantia-de-convivencia-familiar-lei-em-vigor-e-pesquisa/>.

pastoral_carceraria_PT_ing.indd 7 25/05/15 17:02

zilian citizens", he said, during a seminar on public security.[4]

Brazil's Minister of Justice himself recognized this fact in public, not long after assuming the office he still occupies: "If I had to serve many years in one of our jails, I would prefer to die", he said during a meeting with São Paulo businessmen, making the same allusion to the character of Brazilian jails as "terrible medieval dungeons".[5]

Given the clearly selective, classist and racist character of the Brazilian penal system and, furthermore, the evidently crime-causing character of prison,[6] *people who seek to assume some, however small, commitment to the popular classes, the most humble and exploited people of this country, must employ all their efforts to revert the process of mass incarceration and put an end to punitive measures.*

It is urgently necessary to close the gates of prisons and stop the "open veins" of the prison system*, by adopting effective measures to end mass incarceration, open prisons to society and mitigate damage while prisons still exist.*

Therefore, we propose the construction of a solid and integrated NATIONAL PROGRAM TO END MASS INCARCERATION, OPEN PRISONS TO SOCIETY AND REDUCE HARMFUL EFFECTS OF IMPRISONMENT, composed of the following directives:

4 See <http://www.reporternews.com.br/noticia.php?cod=317240>.

5 See <http://jornaloexpresso.wordpress.com/2012/11/13/ministro-da-justica-diz-que-prefere-a-morte-as-nossas-prisoes/>.

6 This crime-causing character that induces recidivism was explicitly admitted in 1984 by the Legislator in Item 20 of the Exposition of Motives for the Lei of Sentence Execution [*Exposição de Motivos da Lei de Execução Penal*]: "This hypertrophy of punishment not only violates the measure of proportionality, it also becomes a powerful factor of recidivism, due to the formation of the crimogenic focusses it propitiates".

pastoral_carceraria_PT_ing.indd 8 25/05/15 17:02

1. Abrogation of the national program of support to the prison system and suspension of any funds directed to the construction of new prisons

The core of the National Program of Support to the Prison System [Programa Nacional de Apoio ao Sistema Prisional], inaugurated in the middle of the second semester of 2011, is the investment of approximately one billion and one hundred million reais (1.100.000.000 reais, about 400 million dollars) for the construction of new prisons all over the country. The Program's two main goals are: "to eliminate the deficit in available cells for women and to reduce the number of detainees in police stations, transferring them to public jails".

This Program, nevertheless, is manifestly misguided*. Even if the aims of the Program (construction of 42.5 thousand new cells) were achieved, this would not provide enough cells. For example, in the State of São Paulo the prison cell deficit was around 90.000 cells in 2012. The average number of people detained monthly was 10.000 whereas the approximate number of people released each month was 6.000.*

*Overcrowding is not caused by an absence of policies supporting prison construction (*in the last 20 years, Brazil leaped from 60.000 to 306.000 prison cells*). Instead, as we reiterate here, overcrowding is caused by abusive, illegal and discriminatory detention, committed against the poorest citizens of this country and by the* exaggerated investment in repressive policies to the detriment of social policies*.*

The construction of more penitentiaries is not only incapable of alleviating overcrowding in prisons, but it also serves to encourage more detentions*. According to David Ladipo, researcher of the U.S. prison system, "when prisons are overcrowded, there is more pressure on*

pastoral_carceraria_PT_ing.indd 9 25/05/15 17:02

judges to be more selective in imposing sentences. When prison capacity increases, this pressure diminishes".[7]

It is imperative to immediately terminate any policies that support prison construction and instead, prioritize policies that, as explained below, can balance out the principal problems plaguing the prison system.

The National Program of Support to the Prison System is a mistake and needs urgently to be discontinued. If not, it will continue to contribute to the expansion of the prison system and the prison population.

2. Republican pact for the development of a multi-year plan to reduce the prison population and the harm caused by imprisonment

Instead of a program aimed at the construction of penitentiaries, we propose a republican pact between the three branches of government and between the Federal entities, for the development of goals *to reduce* the prison population and its accompanying ills, *and for the* implementation of policies in favor of social support for former young and adult convicts.

Concerning the reduction of the prison population and the harm inflicted*, we must remember that the Federal Government counts on an important means to promote the reduction of the prison population:* pardon*. This is a constitutional prerogative attributed to the Presidency of the Republic (according to Art. 84, XII of the Brazilian Constitution) which should be amply utilized to confront mass incarceration. An example of this power was the courageous proposal made some time ago by the*

7 LADIPO, David. O Retrocesso da Liberdade: Contabilizando o Custo da Tradição Prisional Americana. In: C*adernos de Pesquisa, 25*. December 2000, Universidade Federal de Santa Catarina (UFSC).

pastoral_carceraria_PT_ing.indd 10 25/05/15 17:02

Italian President who released 24.000 prisoners from the equally overcrowded Italian prison system.[8]

Also of extreme importance is the inclusion of the prison system among the priorities in policies to expand educational opportunities and increase the number of medical doctors in poor neighborhoods, including contracts with more foreign professionals within the Unified Health System (Sistema Único de Saúde, SUS) and the Program "More Doctors" (Mais Médicos).

As for the IMPLEMENTATION OF POLICIES OF SOCIAL SUPPORT FOR FORMER YOUNG AND ADULT CONVICTS *we suggest that the development of goals be guided by the following points highlighted by the Prison Pastoral*[9]*:*

1) *preliminary and detailed survey of the reality, the necessities and difficulties met by former convicts, along with democratic consultations and participative development of policies for this population;*
2) *implementation of consciousness raising within the community, aimed at overcoming the detrimental effects caused by imprisonment;*
3) *integration of diverse territorial components into a network;*
4) *integral program of individualized attention to former convicts, considering the distinct social groups, and with policies for minorities;*
5) *respect for the specific needs in assisting former convicts who are females;*
6) *guarantee of prompt attention for former convicts, preferably already on the eve of their release;*
7) *adequate training for police officers and other public security agents, to enable them to work with this population;*
8) *ongoing monitoring of and generation of data on the implemented policies.*

8 See: <http://www.conjur.com.br/2013-out-09/presidente-italia-propoe-soltar-24-mil-presos-resolver-superlotacao>.

9 See: <http://carceraria.org.br/wp-content/uploads/2014/08/Projeto-de-Reinser%C3%A7%C3%A3o-social-de-egressos-do-sistema-prisional.pdf>.

pastoral_carceraria_PT_ing.indd 11 25/05/15 17:02

Also in reference to policies related to former convicts, we wish to present an important statement of the above cited document:

> *This is a question which may not be neglected by the "Youths Alive Plan" [Plano Juventude Viva], which seeks to reduce the indices of vulnerability and, consequently, of mortality of the young and afro-Brazilian population in the Brazilian cities, as passing through the prison system increases a person's vulnerability and, more than this, withdraws his or her dignity and citizenship.*

The MULTI-YEAR PLAN TO REDUCE THE PRISON POPULATION AND THE HARM CAUSED BY IMPRISONMENT (*Plano Plurianual de Redução da População Prisional e dos Danos Causados Pela Prisão*) *here proposed could be agreed upon and readjusted annually. At that time, we could observe the ongoing monitoring of the policies of assistance to former convicts and the realization of group visits to all Brazilian prison units, with the guarantee of the broad participation of society. As such, we can evaluate adherence to the guidelines outlined above, promote the release of illegally detained persons, and identify, investigate and remedy possible violations of legal rights..*

3. Changes in legislation for a maximum limitation on the application of pretrial prison

As already stated, Brazilian legislation includes the constitutional principle of the presumption of innocence, but about 43% of the prison population is detained without a definitive sentence. The efforts undertaken by the National Council of Justice [Conselho Nacional de Justiça, CNJ] have repeatedly shown the excessive number of illegal and abusive detentions.

In this context, it is fundamentally important that the Government and the National Congress make all efforts to prioritize legislative changes which foresee, at least:

pastoral_carceraria_PT_ing.indd 12 25/05/15 17:02

a) *the exclusion of various hypotheses of preventative detention orders "as guaranteeing public or economic order", "in view of the extreme gravity of the fact" and "due to the repeated practice of crimes by the same author" (the latter two hypotheses are regressions included in the Senate Bill 156/2009 [Projeto de Lei do Senado, PLS];*

b) *amplification in number of cases in which the order of preventive detention is prohibited;*

c) *reduction of the maximum term for preventive detention fixed in the draft of the Code of Criminal Procedure [Código de Processo Penal] being discussed in the National Congress [PLS 156/2009] and according to which preventive detention could last up to 720 days.*

4. Struggle against the criminalization of drug use and drug trade

In the Federal Government's "Agenda to Confront Violence in Urban Peripheries" [Agenda de Enfrentamento à Violência nas Periferias Urbanas] we find the following allegation in defense of the Program "Crack can be overcome" [Crack é Possível Vencer]: "Although urban violence is not an exclusive result of drug abuse and drug trafficking, it is intimately connected to this agenda."The assertion is partially correct. The truth is that urban violence is not intimately connected to drug use and drug trade, but more precisely to the criminalization of drug use and drug trade.

*According to Maria Lúcia Karam*10*, the criminalization of drug trafficking, far from inhibiting it, brings to society the by-product of violence: be it in confronting repression or in resolving conflicts with competitors, drug dealers find in the use of violence the means necessary to guarantee their business.*

10 KARAM, Maria Lúcia. *Proibições, Riscos, Danos and Enganos: As Drugs Tornadas Ilícitas*. Lumen Juris, 2009.

pastoral_carceraria_PT_ing.indd 13 25/05/15 17:02

From another perspective, the politics of a "war on drugs" has an immense impact on the prison system and is a determining factor in the development of a career in crime for poor youth living in urban outskirts.

The number of persons detained on the charge of drug-trafficking more than tripled between 2005 and 2011, going up from 31.520 to 115.287.

The current model (which in legal form is Law 11.343/2006) obviously does not meet the objective of preventing narcotic use. It actually aggravates the problem given that people imprisoned for drug trafficking are normally those who act at the bottom of the hierarchy of narcotics trade. They are poor people (generally first offenders) living on the outskirts, and often dealing drugs to pay for their own drug habit.

As already pointed out, the politics of the fight against drugs is still more cruel when it involves women: more than half of the female prison population is composed of women charged with the crime of drug trafficking.

The time has come to break from the deleterious U.S. war on drugs (and, in indirect ways, the war against poor neighborhoods) and deal with the harmful effects of drug use as a public health and education issue.

5. Maximum reduction of the penal system and openess to horizontal justice

According to Luigi Ferrajoli, at its minimum Criminal Law is that which is "maximally conditioned and limited" and "corresponds not only to the maximum degree of protection of the citizens' liberty with regard to decisions on punishment, but also to an ideal of rationality and certainty".[11]

Therefore, adopting the parameter of a minimum Criminal Law means to establish the narrowest roads for the Brazilian system of crimi-

11 FERRAJOLI, Luigi. *Direito e Razão: Teoria do Garantismo Penal*. RT, 3rd ed., 2010.

pastoral_carceraria_PT_ing.indd 14 25/05/15 17:02

nal law*, in such a way that it does not pass over the constitutional and legal limits whose application could serve the function of restraining the punitive impulses of the public security agencies.*

In this context, due to the existence of two drafts for a renewed Penal Code which are being debated in the two Legislative Houses, and due to the necessity to restrain the punishment of imprisonment to the lowest number of cases possible, we appeal to the Brazilian Government and National Congress to commit themselves to the abolition of imprisonment in the cases of lesser offenses, crimes punished with detention, crimes of criminal prosecution of private initiative, crimes of abstract danger, and nonviolent and nonthreatening crimes.

Moreover, there is an urgent need for changes in the general rule expressed in Art. 100 § 1 of the Brazilian Penal Code *[Código Penal], according to which, except in cases with a willingness to the contrary (which are very rare), criminal prosecution is public and unconditioned.*

With regard to "Community Justice" [Justiça Comunitária] as outlined in the "Agenda to Confront Violence in Urban Peripheries" [Agenda de Enfrentamento à Violência nas Periferias Urbanas] issued by the Federal Government, the stated aim is to "stimulate communities to construct their own ways to achieve Justice in a pacific and mutual manner".

Nevertheless, as long as the general rule of Penal Code Art. 100 § 1 is in force, in the majority of cases, the victim and his or her community will play irrelevant roles in the institutional process of holding somebody responsible for his or her deeds. At the most, they will serve as testimonial evidence that their wills and needs are negligible in the criminal justice process.

Aiming to minimally clear the spaces largely occupied by the criminal justice laws in force, the formulation of Penal Code Art. 100 § 1 should be changed, inverting the general rule: criminal prosecution should become public and conditioned, except where there is a willingness to the contrary. In this manner, the injured party could renounce the right to criminal charges when he or she feels that the conflict can be settled by other means.

The same reasoning applies to the juvenile criminal justice system. Although there are provisions that have already opened relative space for

pastoral_carceraria_PT_ing.indd 15 25/05/15 17:02

the application of restorative practices (Art. 126 of the Statute for Children and Young Youths [Estatuto da Criança and do Adolescente] and Art. 35 of the National System of Socio-educative Attention [Sistema Nacional de Atendimento Socioeducativo]), procedures depend on the discretion of the Prosecutor's Office and do not show any horizontal or communitarian elements. The Prosecutor's Office is still institutionalized and thus subject to the weight and verticality of jurisdiction.

It would be better if the process of investigating an infraction depended equally on the declared will of the injured party. Thus, when the injured party is given the choice to decide to file or not file criminal charges for the prosecution of a crime or an infraction, there is the possibility to open community channels for consensual and non-punitive resolution of the conflict.

Obviously, when charges are filed, whether for an adult or a juvenile, the accused person, now facing the State's power to punish, must be given all the fundamental guarantees of due process.

Still in the area of possible alterations to the Penal Code, it is necessary to strengthen the repudiation of the current attempts to characterize the crime of terrorism*, with their tendency to criminalize social movements. In this case, we give our full support to the "Manifesto of repudiation of proposals to characterize of the crime of Terrorism" [Manifesto de repúdio às propostas de tipificação do crime de Terrorismo], signed by more than 130 organizations and social movements.*[12]

12 See: http://www.correiocidadania.com.br/index.php?option=com_content&view=article&id=9380:manifesto-de-repudio-as-propostas-de-tipificacao-do-crime-de-terrorismo-para-as-mobilizacoes-socais&catid=33:noticias-em-destaque>.

pastoral_carceraria_PT_ing.indd 16 25/05/15 17:02

6. Amplification of the guarantees under the law for the execution of sentences

The Law for the Execution of Sentences (LES, Lei de Execution Penal, LEP) also demands reform, especially to adapt it to the Constitution of the Brazilian Republic.

In this context certain aspects should be considered: legalization of all procedures relative to compliance with a sentence; regulation of body searches of prison visitors, with explicit prohibition of the so called "intentionally invasive body searches" and of any practice that violates the visitors' dignity*; amplification of the use of* house arrest*, making it an* instrument to combat the violation of the imprisoned persons' rights*; abrogation of differentiated confinement; reduction of the time lapses and exclusion of the (arbitrary) subjective requisite ("good prison conduct") for the change in type of confinement and for the concession of parole; strengthening of the judicial power to interdict prison units; and detailing of the judicial responsibility (Art. 66, VII) for the investigation of torture, ill treatment and other severe violations of the fundamental rights of the imprisoned person.*

Furthermore it is necessary to make changes in the LES to guarantee the fundamental rights to contradiction and ample defense, as stated in Guideline I, Item 11, of the "Agreement on Cooperation for Improvement of the Prison System" [Acordo de Cooperação para Melhoria do Sistema Penal].[13]

13 See: <http://www.justica.gov.br/noticias/poderes-assinam-termo-de-compromisso-para-reduzir-deficit-carcerario>.

pastoral_carceraria_PT_ing.indd 17 25/05/15 17:02

7. Also concerning the les: opening of prisons and creation of mechanisms for popular control

Currently the access to a prison is practically reduced to activities of religious assistance and, in a totally precarious and inconsistent manner, to academic and humanitarian activities, always dependent on authorization from the Executive Power.

Art. 4 of the Law for the Execution of Sentences reads: "The State will appeal to the cooperation of the community in the activities of sentencing and security measures".

When interpreted on the basis of the constitutional principles and the fundamental objectives written in Articles 1 and 3 of the Brazilian Constitution, the expression "cooperation of the community" *must be understood as* an openness for involving the community in the balance of the damages caused by the conflict and harm caused by a prison sentence, *with the possibility to reestablish the ties of the imprisoned person with his or her community while serving the prison sentence.*

There are two instruments in the LES which could also be applied for opening the prisons to society:

1) *in Art. 23,VII, the duty "to orient and shelter, when necessary, the family of the imprisoned or detained person, and of the victim" conferred upon social assistance services, offers sufficient basis for the engagement of social service teams to create opportunities for encounters between the imprisoned and the injured person;*
2) *Art. 64,I opens up the possibility for the National Council of Criminal and Prison Policy [Conselho Nacional de Política Criminal e Penitenciária, CNPCP] to establish a norm that regulates and extends society's access to the prisons.*

pastoral_carceraria_PT_ing.indd 18 25/05/15 17:02

It is fundamental, however, to introduce in the LES reforms that lead to the increased opening of prisons to society, with the

1) *inclusion of* humanitarian assistance *in the text of Art. 11;*
2) regulation of prison visits by society*;*
3) reformulation of the community councils*, transforming them into prison monitoring instruments directly controlled by relatives and friends of imprisoned men and women;*
4) *creation of* Outside and Independent Ombudsmen*, headed by members who are not in public careers and chosen among the civil society.*[14]

8. Restrictions on the privatization of the prison system

Any form of delegation of the administration of the prisons to the private sector is intolerable, absolutely intolerable.

First of all because it is unconstitutional*: for one, the punitive function of the State cannot be delegated because it is tied to the monopoly of structural force of the Republic and therefore a part of it.*

As José Luiz Quadros de Magalhães states very well: "To privatize the State and its essential functions, privatizing for example, sentencing, we would need to write a new Constitution".[15]

Secondly, punishment is not an economic activity, and it is not ad-

14 In spite of their inclusion in Aim 3 of the Master Plan of the Penitentiary System [*Plano Diretor do System Penitenciário*], 2008, and recommended by Resolution 3/2014 of the CNPCP, the Extern and Independent Complaints Offices of the prison system are being established only in a few States.

15 MAGALHÃES, José Luiz Quadros de. *Privatizar o sistema carcerário?* In: OLIVEIRA, Rodrigo Tôrres; MATTOS, Virgílio de (ed.). *Estudos de execução Criminal: Direito e Psicologia*. 2009, p. 73/76.

pastoral_carceraria_PT_ing.indd 19 25/05/15 17:02

missible to be one. The commercialization of a person's liberty fulminates, at its limits, the constitutional base of the human being's dignity (Art. 1,III of the Brazilian Constitution).

Beyond the unconstitutionality and the patent immorality expressed in the attempts to transform prisons into businesses, it is a fact that, also from an administrative perspective, the privatization is an extremely bad option*, except for the private sector which is most interested in gaining high dividends from the restriction of someone else's liberty.*

It seems quite obvious that the private sector would not exploit the prison system (or any other "branch" that the State would allow it to exploit) without being permitted to extract a good rate of profit, and this, as all indications show, would increase the costs of imprisonment.

In the same sense, the recent warning of Antônio Carlos Prado, Executive Editor of the journal Isto É, in an article published in the this journal, is very instructive:

> *What could seem, at a first sight, a solution for the chaotic Brazilian penitentiary system has some pitfalls. Studies done in Brazil show that privatization would raise the monthly costs for each imprisoned person to an average of 4.000 reais [about US$ 1.300] – that's the amount the governments would have to pay to the companies. Not even in the Principality of Monaco, where they offer champagne for breakfast (that's not a joke, it's the truth), does a inmate cost that much. Doesn't it seem that the inmate in Brazil is already being overpriced? If this is the amount necessary to sustain him or her, how do we explain that the Government of the State of São Paulo, during the last year, spent monthly only 41 reais per capita? Why would the administrators of the public coffers, being so economical on the issue of prisons, become so generous when the private sector enters the stage?*[16]

It is manifest that in spite of the promising arguments of the supposed "better administrative practices in the private sector", there is only one in-

16 See: <http://www.istoe.com.br/colunas-e-blogs/coluna/330364_ARMADILHAS+NA+PRIVATIZACAO+DE+PRESIDIOS >.

pastoral_carceraria_PT_ing.indd 20 25/05/15 17:02

terest at play for those who defend privatization (including the "PPPs"[Public-Private Partnerships], we have to stress): the profit of private investors. The examples of other countries are sufficient not to doubt the inescapable ineptitude of the private sector to turn the prison system into something less indecent than it is.

Both in the USA and in England (as evidenced in the doctoral thesis of Laurindo Minhoto[17]), the indicators of privatized prison units point to the continuation of the very defects that they promised to combat: constant escapes, deaths caused by negligence, complaints of torture and ill treatment, riots, among others, have been and are being registered frequently in U.S. and British private penitentiaries.

The current experiences of privatization in Brazil are not different. The best known example is from Roberto Requião, the former Governor of the State of Paraná and today a Senator of the Republic, who spoke out and criticized privatization categorically.

In a Senate session, rejecting the bill in support of privatization of penitentiaries, the Senator stated that he encountered a series of privatized penitentiaries when he took over the office as Paraná's Governor in 2003.

According to him, they were "penitentiaries sui generis which practically required an entrance exam, similar to universities, to admit a prisoner. It was a kind of Elizabeth Arden Circuit for prisoners extremely cherished by the system. Only inmates who could get on a list to go to heaven or for inclusion in the saints' pantheon could enter, and the remuneration that these prisoners received was an exemplary lesson on the idea of added value. Of course, the model did not work, and under my administration the State took these

It is worth mentioning the opinion of Paul Krugman, winner of the Nobel Prize in Economics. In an article written in the newspaper Folha of São Paulo, motivated by a series of articles published in the New York Times on the privatized prison system in New Jersey, Krugman states:

17 MINHOTO, Laurindo Dias. *Privatização de Presídios e Criminalidade: a gestão da violência no capitalismo global*. São Paulo: Max Limonad, 2000.

pastoral_carceraria_PT_ing.indd 21 25/05/15 17:02

> *The private operators of penitentiaries only manage to save money by reducing the staff and the benefits paid to them. Private penitentiaries save money because they employ fewer guards and pay them less. And the result is horror stories about what happens in the prisons*[18]

We complete this evaluation with an example from Brazil: the Private Penitentiary of Ribeirão das Neves in the State of Minas Gerais, the latest attempt to promote the private model (here in the "innovative" modality of the "Public-Private Partnership", PPP), was masterfully exposed in an article published by the Agência Pública de Jornalismo, with the suggestive title "More prisoners, more profit".[19] *According to the article:*

> *In a public penitentiary, an inmate "costs" each month approximately 1.300,00 reais, an amount that can rise to 1.700,00 reais, according to the State. In the PPP of Neves, the consortium of companies receives from the State Government each month 2.700,00 reais for each inmate and owns the concession of the penitentiary for 27 years, with the possibility of an extension for up to 35 years.*
>
> *[...] the consortium's interest is not only to have more prisoners each day, but also that the present ones are kept for more time. One of the contract clauses of the PPP of Neves establishes as one of the "government obligations" the guarantee "of a minimum demand of 90% of the prison facility's capacity during the contract". In other words, during the 27 years of the contract, at least 90% of the 3336 cells must always be occupied. The logic is as follows: if the country changes a lot in three decades, stops imprisoning people and has each day less prisoners, people will have to be imprisoned just to meet the quota established between the State and its private sector partner.*

18 See: <http://www1.folha.uol.com.br/colunas/paulkrugman/1109013-prisoes-privatizacao-e-padrinhos.shtml>.

19 See: <http://apublica.org/2014/05/quanto-mais-presos-maior-o-lucro/>.

pastoral_carceraria_PT_ing.indd 22 25/05/15 17:02

Also in this article, one of "tricks" to maximize the company's profits *is highlighted: "In the Neves facility, the prisoners have three minutes to shower, and those who work have three and a half. Inmates complain that the water in the cells is frequently cut off during some hours of the day".*

Therefore, the inescapable conclusion is that there is a total lack of reasoning (and constitutionality and morality) in any attempt to privatize the prison system. Such a measure, far from bringing about real solutions for inmates and their relatives, in reality would cause a repugnant harassment of the Legislative Power in the search of more prison sentences, more prisons and therefore more profits.

In the real interest of society, any investment in prisons has to reject the private sector and demand the liberation of Federal grants exclusively for the implementation of improvements in already existing prison units completely run by the State.

9. Prevention and combat of torture

A result of efforts organized by civil society is the Law 12.847/2013 which instituted the National System of Prevention and Combat of Torture (Sistema Nacional de Prevenção e Combate à Tortura) and established the National Committee of Prevention and Combat of Torture (Comitê Nacional de Prevenção e Combate à Tortura), as well as the National Mechanism of Prevention and Combat of Torture (Mecanismo Nacional de Prevenção e Combate à Tortura). However, it still needs to be implemented.

Given the occurance of systematic torture in the prison system, as shown in several reports (see, for example: Parliamentarian Commission of Inquiry on the Prison System 2008 [CPI – Comissão Parlamentar de Inquérito do Sistema Carcerário], Prison Pastoral 2010, Prison Task Force of the National Council of Justice 2012 [Mutirão Carcerário do CNJ]), it is urgent that effective implementation of the National Mechanism of Preven-

pastoral_carceraria_PT_ing.indd 23 25/05/15 17:02

tion and Combat of Torture take place, guaranteeing full independence and autonomy, with members chosen among and by civil society, without Government interference.

Besides the Mechanism of Prevention of Torture it is necessary to establish, as already stated above, a normative rule for the specification of the actions carried out by the organs responsible for sentencing (especially by judges who pass sentences) in the duty to investigate torture, ill treatment and other violations of fundamental rights.

Moreover, in the intention to tirelessly fight against torture, an atrocious practice dating back to the Portuguese invasion of Brazil, it is elementary to make all efforts for the fast approval of Bill 554/2011, cited in the "Agenda to Confront Violence in Urban Peripheries" [Agenda de Enfrentamento à Violência nas Periferias Urbanas], which proposes the realization of the so called "arraignment hearing". The approval of said bill would adapt Brazilian legislation to the Treaty of San José de Costa Rica, with the requirement of presenting the arrested person to the court within 24 hours. This would promote not only the possibility of rapid access to justice, but above all reduce the practice of torture.

10. Demilitarization of the police forces* and of public administration

Last but not least, we point to the urgent need of measures for the demilitarization of the Brazilian police forces and public administration.

The military logic is guided by war politics in which the poor, nearly always black and nearly always from the outskirts, are chosen as enemies and transformed into exclusive targets of the police weapons and handcuffs.

The militarization of the Brazilian police forces was brutally expanded under the civil-military dictatorship. It is steadily growing and is a determining factor in the high rate of lethalness of the police, and also for the

pastoral_carceraria_PT_ing.indd 24 25/05/15 17:02

process of mass incarceration, to such a point that even the UN has recommended that Brazil demilitarize its police forces.[20]

Regarding the necessity to promote the demilitarization of police forces, Túlio Viana states:

> *The militarized training of the Brazilian police is reflected in its huge number of homicides. The Military Police of the State of São Paulo killed nearly nine times more people than all the U.S. police forces together, which are exclusively trained by civilians. According to a research by the newspaper Folha de São Paulo, released in July of this year, "between 2006 and 2010, 2.262 persons were killed in supposed conflicts with São Paulo police officers. In the same period, according to numbers published by the FBI, there were 1.963 'justified homicides' in the USA, nearly the same number as the cases of resisting arrest followed by death in the State of São Paulo". In this State, 5,51 deaths in every 100.000 inhabitants were due to police killings, while in the U.S. the index is 0,63. The difference is quite significant, but it is obvious that it cannot be explained exclusively by the militarization of the police. Regardless of other factors that have to be taken into account, however, it is correct that the military training and philosophy of the Brazilian Military Police are responsible for a great part of these homicides.*[21]

The deconstruction of the war model intrinsic to militarization is fundamental for the construction of broad policies to reduce the punitive character of the State, because this model expresses a violent and authoritarian structure with high incidence of violence in the more vulnerable communities.

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20 * Translator's note: In Brazil, the police force is a branch of the military and organized by Federal States. Therefore, the name "***Polícia Militar***" [PM, literally: Military Police, MP] refers to the common police and not, as in other countries, to the policing of soldiers and other military members. See: <http://g1.globo.com/mundo/noticia/2012/05/paises-da-onu-recomendam-fim-da-policia-militar-no-brasil.html>.

21 Desmilitarizar e unificar a polícia. Article published on the webpage of the ***Revista Fórum***, on January 9th, 2013: <http://revistaforum.com.br/blog/2013/01/desmilitarizar-e-unificar-a-policia/>.

pastoral_carceraria_PT_ing.indd 25 25/05/15 17:02

However, it is necessary to affirm that the adoption of measures for demilitarization must go beyond simple measures:

1) extinction of the Military Police *and must include also broader measures of contention of the police forces and of demilitarization of the public administration, giving priority to;*
2) extinction of the National Force of Public Security *[Força Nacional de Segurança Pública] and* prohibition of the constitution of "elite forces"*;*
3) extinction of the Military Justice [*Justiça Militar*] *and construction of* popular control mechanisms of the police forces*, like, e.g., ombudsman and external disciplinary boards;*
4) obligatory use of negotiation instruments *before adopting coercive measures for the execution of judicial orders, especially in cases of enforcement orders for repossession and of other means that affect poor communities;*
5) freezing of and gradual reduction of the permanent police personnel*, with transfer of the resources to social policies for the reduction of inequalities;*
6) prohibition to carry arms *for public agents (including prison agents) and agents of private security,* gradual disarming *of the police forces and* clearer and more restrictive regulation*, by means of Federal norms, for carrying and using firearms and the so called "not lethal weapons" by police agents;*
7) prohibition of "stop and search"*;*
8) rejection of proposals to transform the career of prison agents into "prison police"*, in the clear attempt to distort the official function of protect (and not of repress) the prison system's cadres.*

pastoral_carceraria_PT_ing.indd 26 25/05/15 17:02

Reversion of the mass incarceration as the central focus of this proposal

The main focus and, at the same time, the aim of the Program here proposed is undoubtedly the reversion of mass incarceration, and therefore the gradual and substantial reduction of Brazil's prison population.

All the other measures are not exhaustive and compose a broad politics which has, after all, only two goals: to reduce the prison population and to grant imprisoned persons and their relatives a minimum of dignity and sociability, in spite of prison.

For a life without bars; for less inhumane bars

In favor of a world without bars and of bars less inhumane, we claim, categorically and united to the companions present at the 1st National Meeting of the Community Councils [I Encontro dos Conselhos da Comunidade][22]: NOT ONE MORE PRISON CELL!

22 Realized on October 6th and 7th, 2012. See: <http://carceraria.org.br/nenhuma-vaga-a-mais.html>.

pastoral_carceraria_PT_ing.indd 27 25/05/15 17:02

We hope that the proposal here presented may become the starting point for solid policies, without compensations, which are able to combat the big sore that the prison system represents for the masses of our fellow citizens who are marginalized in the peripheries of this country.

In memory of the at least 111 convicts who died by the hand of the State in the Massacre of Carandiru (prison in São Paulo), on October 2nd, 1992, and of the hundreds of other detained persons killed in the everyday prison massacres, we are firm in our demand for an integral policy for the reversion of mass incarceration and of prison degradation.

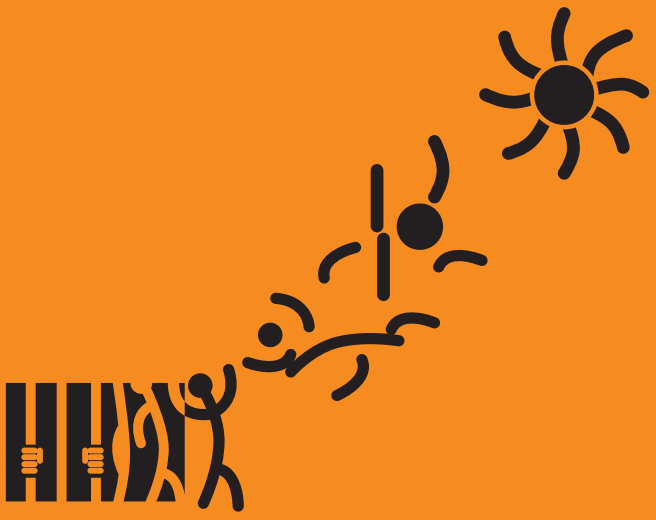
SIGNED BY:

- *Associação Nacional de Defensores Públicos Federais – ANADEF (National Association of Federal Public Defenders)*
- *Centro de Direitos Humanos e Educação Popular do Campo Limpo – CDHEP (Center for Human Rights and Popular Education of Campo Limpo [suburb of São Paulo])*
- *DDH - Instituto de Defensores de Direitos Humanos*
- *Grupo de Amigos e Familiares de Pessoas em Privação de Liberdade – MG (Group of Friends and Parents of Persons Deprived of Liberty, State of Minas Gerais)*
- *Instituto Práxis de Direitos Humanos (Institute Práxis of Human Rights)*
- *Justiça Global (Global Justice)*
- *Mães de Maio (Mothers of May)*
- *Margens Clínicas (Clinical Limits)*
- *Núcleo Especializado de Situação Carcerária da Defensoria Pública do Estado de São Paulo (Nucleus Specialized in the Prison Situation at the Public Defender's Office of the State of São Paulo)*
- *Pastoral Carcerária Nacional – CNBB (National Prison Pastoral – National Conference of Brazilian Bishops)*

pastoral_carceraria_PT_ing.indd 28 25/05/15 17:02

- *Pastoral da Juventude – CNBB (Youth Pastoral – National Conference of Brazilian Bishops)*
- *Programa de extensão CULTHIS/UFMG: espaço de atenção psicossocial ao preso, egresso, amigos e familiares (Extension Program of CULTHIS/Federal University of the State of Minas Gerais: space of psychosocial attention to prisoners, former convicts, friends and relatives)*
- *Rede 2 de outubro (Network October 2nd)*
- *Sociedade Sem Prisões (Society Without Prisons)*

pastoral_carceraria_PT_ing.indd 29 25/05/15 17:02



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pastoral_carceraria_PT_ing.indd 30 25/05/15 17:02