

**CRIMINAL AND PENITENTIARY POLICIES AND STRATEGIES TO EVERCOME PRISON IN BRAZIL: CONSEQUENCENS, IMPACTS AND DILEMMAS****Bruno Rotta Almeida**

Pontificia Universidade Católica de Rio Grande do Sul, Brasil

The presentation is to analyze the consequences, impact and dilemmas generated by the penal and penitentiary policies with respect to overcoming prison in Brasil during the last twenty years. The questions it places are the following: Which models of criminal and penitentiary policies destined to overcome prison have been implemented in Brasil during the last 20 years? Which were the consequences? Which impacts were observed in the arrested population? The answers to these questions show the dilemmas which are frequently veiled and hidden by official organisms.

During the first semester of 2014, the number of persons deprived of freedom in Brasil went beyond the mark of 600 thousand. According to data of the National Council for Justice (CNJ), in 2014 close to 147.937 persons were in house arrest. If we add to this the prison popultion registered by the Infopen, the number of persons deprived of freedom in Brasil is that of 775.668 persons. At present, there are 300 prisoners per each one hundred thousand habitants in the country. The number of prisoners is considerably higher than the capacity of the penal system (377.000), with a deficit of 231.062, and a rate of average occupation of 161%. In other words, in a space conceived to guard 10 persons there are more or less 16 individual imprisoned.

Some date are quite emblematic with regard to the violation of fundamental rights in Brazilian prisons. We are talking about intentional mortality, understood as death by homicide, suicide and unknown causes. 556 deaths were registered in the penal units during the first semester of 2014 (without data from São Paulo and Rio de Janeiro). Close to half of these deaths can be considered violent intentional deaths – excluding the deaths caused by health reasons. The rate of intentional deaths in the penal system is 8,4 deaths per each ten thousand prisoners per semester, which would mean 167,5 intentional deaths per each one hundred thousand persons deprived from freedom per year. This value is more than six times higher than the rate of intentionl lethal verified in Brasil in 2013. The images of the interior of many of the prisons in Brasil prove the severe violations of human rights and synthesize much of the controversial

character regarding prisons. There is a clear set out of violence in general and a complete absence of the State regarding security and control. Several Brazilian prisons have received denunciations and notifications of violation of human rights due to mistreatment, overpopulation, abuses, homicides, lack of hygiene, assistance, etc. Some of these were notified by the Interamerican Commission of Human Rights of the Organization of American States (OAS).

In this context, the rights of arrested persons should be observed beyond the simple limitation and rationalization of prison (place of suffering and deterioration). The real imposition is the overcoming of prison, not its limitation or rationalization. Some models of criminal and penitentiary policies were presented as ways to overcome prison. The Law n. 9.099 from 1995 has introduced in the legal system alternative measures/punishments and mutually agreed resolution of conflicts. In 2006, the Law n. 11.343 is innovative in the penal treatment in relation to consumption of drugs. The article 28 of the Law withdrew the prison punishment in the case of consumption of drugs for own use. At the same time, the Law n. 12.258 from 2010 has introduced the possibility for Brazilian judges to utilize electronic monitoring and surveillance devices with the convicted in the execution of sentence in substitution of imprisonment. The Law n.12.403 from 2011 is characterized by the creation of preventive measures different from prison. In this law, prison is considered as having a character of *ultima ratio*. The guard audience appeared as well as an attempt to minimize the damage caused by imprisonment.

It happens that the prison population is 6,7 times higher in 2014 than in 1990. Since the year 2000, the prison population grew by average 7% per year, with a total growth of 161%, a value ten times higher than the total growth of Brazilian population, which presented an increase of just 16% in the same period, with an average of 1,1% per year. Of the total of persons deprived from freedom in Brazil, approximately four in ten (41%) are arrested without trial. In 2011 the rate of prisoners without sentence was 33%. There is, nevertheless, an expansion of the penal control by the State, as well as a distribution of criminal policies which have not shown results in the overcoming of prison. These policies did not achieve either to change the mindset of the actors of the political and judicial system. On the contrary, they are products of ambiguous and contradictory discourses.