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MASS IMPRISONMENT AS A HUMAN RIGHTS ISSUE IN BRAZIL

Mariana Pabis Balan¹ and Murilo Basso²

ABSTRACT

The Brazilian prison system is defined by overcrowding and selectivity. By using data about imprisonment in the country, this article tries to analyze the ramifications of mass imprisonment in the country in the scope of Human Rights. For this purpose, the relationship between the high index of imprisonment in national prisons and Human Right violations is reflected and the impact that the policy to fight the crime adopted here in Brazil has about those violations. In addition, the burden of punishing anti-drugs policies that contributes to this scenario is analyzed. Thus, the conclusion is that the Brazilian State adopts policies to fight crime which has a prohibitionist, punishing and incarcerating. These policies ignore the origin of the crime and, that is why they fail in minimizing the crime indexes in the country, especially when considering the drug crimes. Finally, it is concluded that the solution is in the adoption of political-institutional and restorative, pacific and decriminalizing alternatives, that respect the Human Rights of all social classes' layers, consider the crime origin as a social issue and open space to the know-how crossing and dialogued and sensitive practices among police authorities, adults and youth who are suspects of drug dealing or use of drugs, their relatives, and the whole affected community.

KEYWORDS

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Criminal Policy; Human Rights; Imprisoned Youth; Mass Imprisonment.

1. INTRODUCTION

Imprisoned Individuals are, in many societies, a blind spot in protecting Human Rights. Although international conventions such as Universal Declaration of Human Rights foresee that those rights are inherent to all human beings, the concrete reality shows a different scenario, in which determined social layers are dehumanized and, therefore, prevented from Human Rights. In Brazil, the common sense of public opinion sees the prison population and other social marginalized layers as people who do not deserve Human Rights. According to this opinion, the Human Rights are a form of “defending bad guys” and should not be considered during punishment period. The result is the normalization of punishment and the mass imprisonment, which increase the prison population each year, which constantly suffers with the Human Rights violations.

The scenario is even more dramatic in the drug dealing crimes. The Brazilian legislation criminalizes the trafficking, not their use. What happens is that the parameters to differentiate the trafficking and the use are obscure, and the public security officers are the ones who see the difference during the police approach according to subjective criteria. Thus, the individuals are categorized in different ways according to the subjective evaluation of each officer, suffering a social influence, racial biases, and other subjectivities.

With the trafficking crimes and drug dealing association significantly contributing to the increase of the imprisonment population in Brazil, this imprisonment is a matter of Human Rights, while criminality is a social issue – being the last one defined as a set of political, social, and economical problems that define the social inequalities.

Baring this in mind, the present article tries to analyze the mass imprisonment when the Human Rights are broken, reflecting about the

index of imprisonment in crimes which are related to drugs and their relationship with selectivity of the Brazilian penal system as a form of social control, as well as the relation among prohibitionist and punishing policies and Human Rights in the Brazilian scenario.

2. MASS IMPRISONMENT AND HUMAN RIGHTS

The most recent version of the National Penitentiary Information Survey (NPIS), of the Ministry of Justice³, released in February 2020 with first semester data of 2019, indicates that Brazil has 758,6 thousand guarded people in the national penitentiary system 95,1% (721, 5 thousand) are men, and 4,9% (37, 1 thousand) are women. It is the third biggest imprisoned population of the world in absolute numbers, only behind The United States of America and China.

It is highlighted that the deficit is nearly of 297,6 thousand vacancies in the prison units. The State Maximum Security Prison in Piraquara, in the metropolitan region of Curitiba, in Paraná State, can shelter 723 prisoners. To supply the Brazilian deficit, it is necessary to build around 412 similar prisons around the country.

By analyzing the NPIS, it is verified that there is a high number of temporary prisoners 33,4% (253,9 thousand people) of the total of prisoners were not really charged with their crimes.

The prisons in the act, preventive, administrative, procedural, the prison resulting of condemnatory challengeable sentence and temporary prison, this last one is regulated by Law 7.960/89 are all provisional. Thus, as its own name suggests, the procedural prison does not happen from the in-transit conviction res judicata, it cannot be definite, baring in mind the presumption of innocence and the proper legal prosecution that preside the verification and the accused judgement. Many times, only at the end of the

³ Ministério da Justiça e Segurança Pública (2020), *Levantamento Nacional de Informações Penitenciárias (INFOPEN) - Fevereiro de 2020*, (2020), <http://depen.gov.br>.

trial, in the higher court, it is possible to prove the innocence of that one who was charged improperly or by mistake. If this innocent individual had to pay for their charged mistake, even before the final judgement, we would have an irreparable injustice. That is why, the previous conviction is exceptional and temporary⁴.

The official data show that prisoners in Brazil committed 772,2 thousand crimes, what means that there are individuals who were charged with more than one offense. The women are responsible for 3,9% of the crimes while 96,1% are men.

Both between men and women, most crimes are against estate, specially mugging and robbery, and the behavior defined by The Drugs Law (Law n° 11.343, from the 23rd of August 2006), considering drug dealing, trafficking, and international drug trafficking. 37,1% of the crimes committed by men who are arrested in Brazil are against the estate, while 38,7% are connected to narcotics. On the other hand, among the women in prison, 26,6% are crimes against the estate and 56,1% are offenses related to the Drugs Law. We can point out that, therefore, it is the Brazilian prison universe is not a universe of extremely violent people, rapists, and bloodthirsty murderers. It is said that:

(...) nowadays, the country is facing a “hyper incarceration” moment (GARLAND, 2001), that has some characteristics as the focus of imprisonment about specific social groups or, still, the punishment in more strict way in some crimes. The penal selectivity joined with the mass imprisonment is the common conclusion both for the international scholars (GARLAND, 2001; WACQUANT, 2001) and Brazilian scholars (SINHORETTO, SILVESTRE e MELO, 2013; SINHORETTO, SILVESTRE e SCHLITTLER, 2014) that dedicated to the study of the dynamics of the criminal justice system (...) Thus, the penal selectivity unfolds in a punishing

⁴ José de Ribamar Barreiros Soares, *A prisão provisória no direito brasileiro*, 51 CADERNOS ASLEGIS 79, 81 (2014).

*system which focuses some social segments and other types of offenses (such as estate crimes and drug dealing), at the same time, for other offenses and their criminals, homicide for example, the flows of justice are slow and even blocked*⁵.

When we observe only the women who are in jail in Brazil, we see that the vulnerabilities “are joined in the creation of a context that determined activities, in spite of being criminalized, appear as an important support way in the context in which these women are placed”.⁶

Since the enactment of the Drugs Law, in 2006, the number of imprisoned women in Brazil increased alarmingly. Between 2000 and 2016, the female imprisonment grew 698% in the country. In the beginning of the century, there were 5,6 thousand women in prison nationally. A decade and a half later, this number reached 44,7 thousand⁷. It is not much to say that, consequently, many of these imprisoned women were in the middle of the whirlwind of a real drugs’ war that befalls the country, as they were the enemy that needs to be fought.

What happens is the adoption of a mass incarceration policy, being this said to be a practice that prioritizes strict and unproportionate punishments to crimes that could, in other approaches, to be addressed with preventive actions or the rehabilitation of the criminals⁸. The most evident face of the mass imprisonment in Brazil are crimes which are linked to the Drugs Law, once, as seen before, crimes committed by the biggest part of the prison population in the country.

⁵ BRASIL, MAPA DO ENCARCERAMENTO: OS JOVENS DO BRASIL 12-13 (Presidência da República 2015).

⁶ Instituto Terra, Trabalho e Cidadania, *mulheresemprisão: desafios e possibilidades para reduzir a prisão provisória de mulheres*, (2017), <http://ittc.org.br>.

⁷ Felipe Pontes, Helena Martins, *População carcerária feminina cresce 700% em dezesseis anos no Brasil*, AGÊNCIA BRASIL (Aug. 26, 2017, 3:13 PM BRT), <https://agenciabrasil.ebc.com.br>.

⁸ Mona Lynch, *Mass incarceration, legal change, and locale: Understanding and remediating American penal overindulgence*, 10 CRIMINOLOGY & PUBLIC POLICY (2011).

In the penal Brazilian system, the imprisonment policy is evident when considering the great quota of individuals in jail by nonviolent crimes, especially the related to narcotics. In this system, both the user and the drug dealer are victims of a penal prohibitionist control, that confirms what Oliveira and Ribeiro define as an “inhuman conception of social control that fills up the prisons of the country with young people in its biggest number, poor and black”⁹, as we will see better over this research.

The disproportionate capacity of the prisons with young black people and poor is the result of a selective action the public security forces against these groups. As Ramos and Musumeci¹⁰ pointed out, in the Brazilian reality, a black poor young person walking in a middle class is seen by the police as a probable mugger or drug dealer, and they become a possible criminal in a violent approach, while a white young person with a middle- or higher-class appearance, in a ca, inside or next to a slum, will be faced as a possible drug user buying drugs, and they became a possible criminal to police extortion. Once the Brazilian legislation criminalizes only trafficking, and not the use of drugs, the selective police approach leads to disproportionate imprisonment of black poor young and peripheral people.

The focus in the Drugs Law occurs because, although the criminal practice in the contemporary societies is multifaceted, the situations related to narcotics signalize the most visible face of violence and the apparatuses functioning of penal control of the Brazilian State. Under the military-war point of view, the rhetoric of organized crime serves as a fundamental to punishing approach and police action. The own existence of organized crime as a legitimation speech of the punishing practices, but it is

⁹ Lucas Lopes Oliveira, Luziana Ramalho Ribeiro, *A criminalização das drogas como motor do (super) encarceramento nacional: um olhar a partir dos direitos humanos*, IX SEMINÁRIO INTERNACIONAL DE DIREITOS HUMANOS DA UFPB, 18 (2016).

¹⁰ SILVIA RAMOS; LEONARDA MUSUMECI, *ELEMENTO SUSPEITO: ABORDAGEM POLICIAL E DISCRIMINAÇÃO NA CIDADE DO RIO DE JANEIRO* (Civilização Brasileira/Cesec 2005).

engendered in unconstitutional practices that legitimate it¹¹.

Such institutional violent practices are common with the poor communities and their respective housing places¹², which, almost always, are the basis of the drug dealing pyramid. This basis, according to Salla and Texeira¹³, not usually is the most organized part of crime. In an interview to the EL País Newspaper, in 2016, the British journalist specialized in organized crime networks Misha Glenny highlighted that the greatest leaders of trafficking do not live in the slums. According to Glenny, they are middle class people and high-class people who have legitimate businesses, generally in transport areas and linked to agri-business, and who work in the “wholesale trafficking” and supply the narco-trafficking in Brazil¹⁴.

Although, under the influence of media apparatus, it is common to show the idea that there is a “Parallel Power” working against the State. This statement is far from producing a consensus due to the complexity associated to the structure of the functioning control of the crime industry in the Brazilian urban reality. In many situations, in spite of what the media shows in the drugs’ world, it is not possible to talk about a “Parallel Power” to the official State, but it is possible to talk about an intersection of interest among both of them.

Morais points out that the trafficking maintenance is submitted to a great number of dark interests, both the State and the social classes which guide it, to maintain the *status quo* and social pacification, especially if a great

¹¹ Maurício Stegemann Dieter, Reflexões sobre o Crime Organizado como figura de linguagem e suas funções no Discurso do Poder (2005) (paper, Universidade Federal do Paraná).

¹² Luiz Antonio Machado da Silva, Márcia Pereira Leite, *Violência, crime e polícia: o que os favelados dizem quando falam desses temas?*, 22(3) SOCIEDADE E ESTADO 545 (2007).

¹³ Fernando Salla, Alessandra Teixeira, *O crime organizado entre a criminologia e a sociologia: limites interpretativos, possibilidades heurísticas*, 32(3) TEMPO SOCIAL 147 (2020).

¹⁴ Gil Alessi, *Misha Glenny: “Os grandes traficantes brasileiros não moram nas favelas”*, EL PAÍS BRASIL (Jun, 27, 2016, 3:45 PM BRT), https://brasil.elpais.com/brasil/2016/06/24/politica/1466791253_323836.html.

part of retail trafficking increases in the slums and in the poor neighborhoods of the cities¹⁵. At the same time, the biggest presence of police actions occurs in the poorest inhabited neighborhoods jeopardized in the illicit drugs 'approach, because the trafficking, use of drugs and alcohol emphasizes the cruel association between low scholarship and low economic power and geographical configuration that shelters some invasion areas and slums. With drug trafficking rooted in the poor layers of society, with these layers establishing some dependence relations with such practice to have access to certain income, a feedback cycle is created, and the social structures are maintained.

In this way, the tendency of naïve legitimization of the anti-drugs policies, several times, can instigate practices of violence, arbitrariness, and Human Rights Violations, which came from the own old state structure, against poor communities.

3. SELECTIVITY IN THE BRAZILIAN PRISON SYSTEM

The Census Data of 2010¹⁶, of IBGE (Brazilian Institute of Geography and Statistics), a federal institution with some attributions connected to geoscience, social statistics, demographics, and economics, showed that 47,7% of Brazilian population is white and 50,7% is black, the sum of black and brown people, as the organization agrees it. When the look is at the slums, however, the percentage increases to 68,3% of black against 30,5% of white. A new census should be carried out in 2020, but because of the corona virus pandemic it was postponed.

56,2% (426,4 thousand) of the people in custody in the Brazilian prison system are black according to NPIS. The number, therefore, can be bigger, since there is no information about the color of the skin/race/ethnicity of

¹⁵ Marcelo Navarro de Moraes, *Uma análise da relação entre o Estado e o tráfico de drogas: o mito do "poder paralelo"*, 5(8) CIÊNCIAS SOCIAIS EM PERSPECTIVA 117 (2006).

¹⁶ Instituto Brasileiro de Geografia e Estatística, *Censo 2010*, (2010), <https://censo2010.ibge.gov.br/>.

around 14,9 of people in jail in the country. It means that when the referring data is analyzed only the prisoners with this color element of skin/race/ ethnicity available (645 thousand prisoners), it is verified that 66% are black.

It is convenient to highlight that most individuals who are in Brazilian prisons for that matter did not complete the fundamental school. 41,8% finished high School (42% of men and 37% of women), while 11,2% finished that phase (11,1% are men and 11,5% are women) and 13,4% has not yet finished high school (13,3% of men and 14,2% of women). Considering the age, 61,6% of prisoners are between 18 and 34 years old (62% of men and 54,4 of women).

It is about the same profile when the data relate to lethal violence are analyzed in Brazil. The edition of 2020 of Brazilian Annual Report of Public Security¹⁷, document that was done by the Brazilian Forum of Public Security (FBSP, in Portuguese), points out that in 2019 47,7 thousand violent deaths were registered intentionally in the country, including murders, muggings, corporal injuries followed by the death and deaths that happened because of police intervention. 74,4% of the victims were black people. The document has as its basis some information provided by State public security secretariat, by the National Treasury, by the civil police, military and federal, among other official sources of Public Security.

The survey also demonstrates that only 13,9% of victims of violent intentional death in 2019 have only Complete High School education level or University Level – both complete and incomplete. What the data show is that the schooling would consist in a crucial factor to move the risk of being victims of this kind of death away in Brazil, responding to the idea that educational policies would be an important strategy of prevention this type of crime. The youngest people are also the main targets of violent

¹⁷ Fórum Brasileiro de Segurança Pública, *Anuário brasileiro de segurança pública 2020*, (2020), <https://forumseguranca.org.br/anuario-brasileiro-seguranca-publica>.

intentional death in the country, highlighting to the in the age group from 15 to 19 years old (13,5% of total of victims), from 20 to 24 years old (20,2%), from 25 to 29 years old (16,2%) and finally, from 30 to 34 years old (13,5%).

Observing the data, we verified that, historically, the prisoned population of the country has a very similar profile to the homicide victims. In general, they are young men, black and low education level.

It is still possible to say that there is in Brazil, a real necropolitics, a concept which was developed by the Cameroonian philosopher Achille Mbembe, applied to black population, poor and a little educated. For him, the sovereignty is expressed predominately with the right to murder, living is not a dominating exercise, but death becomes the protagonist, following a “*to make someone die or let them live*”. In necropolitics, the State administrates the individuals that must die in order that the others can live¹⁸. Having in mind that they must defend the society, more than exert a control about the life of individuals that should succeed in a model of humanity drawn by society, it is necessary to conduct who should die – and how. Besides, regarding the State racism, Foucault explains that:

With effect, what is racism? It is the first mean to introduce after all, in this domain of life that the power took charge of it, a section: the section between what should live and what should die. In the biological continuous of human species, the emergence of the races, the hierarchy of races, the qualification of certain races as good ones and other, the contrary, as inferior ones, all of these will be a way to fragment these biological field that the power took charge of; a way of leaving it behind, in the interior of population, some groups in relation to others¹⁹.

Here, it is important to quote the studies of Silvio Luiz de Almeida about

¹⁸ Achille Mbembe, *Necropolítica*, 32 ARTES & ENSAIOS 122 (2016).

¹⁹ MICHEL FOUCAULT, EM DEFESA DA SOCIEDADE 304 (Martins Fontes 2005).

the theme of racism. While the human Beings classification, the race consists of a notion built in modernity, a moment when the men became a study scientific object of the fields of biology and physics, says the author. These areas, point out the philosopher, use biological and geographical characteristics of individuals to develop explanations about the intellectual capacities, psychological and moral ones that differentiate the races. Thus, biological attributes and ethnic-cultural characteristics would determine the people's potentials, putting them into a hierarchy. Almeida claims:

(...) a person is not born black or white, but they become from the moment when their body and their mind are connected to a network of senses shared collectively, whose existence antecedes the formation of their conscience and their effects²⁰.

The philosopher remembers that the space of power, as the Legislative, Judiciary, Public Ministry, of extreme interest for this paper, are dominated by white men, who make the access to black people and women difficult in these positions. The racism, in this scenario, happens because of the social structure that tries to normalize and conceive standards and rules anchored in discriminatory principles of race as the truth standard. This is on historic process, political and social that contemplates some mechanisms which allow the systematic discrimination of people or individual groups.

What the data showed in this research about the prison system demonstrated that when people talk about the Brazilian imprisoned population it is well defined who the target it is the one who will be punished: black peripheral people, with low level of education, as those lives were disposable. The Brazilian prisons are an instrument to the undesirable management, occupying today the role that the slavers 'ships

²⁰ SILVIO LUIZ DE ALMEIDA, O QUE É RACISMO ESTRUTURAL? 53 (Letramento, 2018).

and the slave quarters a one day did.

Ana Flauzina explains that the obsession to control the black bodies and the project of killing that composed the political agenda of the Brazilian State after the slavery abolition are the “mastered vectors that still today delimit the action of the penal system”²¹. The racism, according to the scholar, is the central variable of the national system of criminal Justice, justifying in the violence and production of deaths. It is a standard that was already instituted in the colony society and did not break yet, it is the stereotype of the image of the black person linked to delinquency on of the most fundamental factors in the current police action and State repression.

4. BEYOND THE IMPRISONMENT POLICIES

The current policies to beat crime, the most focused in imprisonment, are a form of assist a public feeling of punishment as the prison was meant for the prisoners ‘best, punishing that relegate in the background the fighting to crime in their origins²². Such approach fails to face the Brazilian crime in their complexities of factors. To make the police measures work, these should be followed by efficient preventive policies, because these polices can stop the increase of violence, and in that way, lead to a future reduction of the necessity to employ repressive methods²³.

Although the Brazilian State develop some initiatives related to mitigation of imprisonment policies in the country, as Law 9.099, 29th September, 1995²⁴, there are legal and cultural challenges for the setting of public

²¹ Ana Luiza Pinheiro Flauzina, *Corpo negro caído no chão: o sistema penal e o projeto genocida do Estado brasileiro* 138 (2006) (dissertation, Universidade de Brasília).

²² David Garland, *As contradições da “sociedade punitiva”: o caso britânico*, 13 REVISTA DE SOCIOLOGIA E POLÍTICA 58 (1999).

²³ Haroldo Pereira Duarte, *Educação formal e prevenção da criminalidade: uma análise do caso brasileiro* (2010) (paper, Universidade Federal de Minas Gerais).

²⁴ A Lei 9099/95, sancionada pelo então presidente Fernando Henrique Cardoso (1995-2003), em 26 de setembro de 1995 é um instrumento normativo que institui e disciplina o funcionamento dos Juizados Especiais Cíveis e Criminais.

contention policies and control of crime aligned to the defense and promotion of Human Rights.

In the face of the expansion of criminal jailed policies and, in many situations, which infringe the Human Rights, the United Nations (UN) is pressing countries like Brazil to direct the public investment that prioritize prevention solutions of conflicts and more democratic, participative and humanizing political-institutional alternatives, as it is the case of restorative justice practices, a process in which the victim and the offender - and when applicable, any other individuals or members of community that are affected by a crime - participate in an active way in the resolution of questions that came from a crime, generally with the help of a facilitator. This model of solution of conflicts is configured as a set of practices that avoids establishing the division between academic knowledge and common sense and calls on the dialogue and everybody's participation who are involved in the situation of conflicts as a strategy of avoiding the repressive and expensive intervention of the police State.

Such model takes into consideration the relations between criminality and social issue, considering the dimension of social vulnerability in the formation of the most affected people by the crimes. In relation to the vulnerability, the concept taken of the Human Rights was characterized, developed by Mann²⁵ in the context of the AIDS epidemic in Public Health during de decades of 1980 and 1990. Despite the original conception, the vulnerability concept has been applied in the last decades to widen the field of reflections besides de individual behavior, understood as a product of interaction of multiple social, economic, cultural, and political factors. Summing up the vulnerability is about determined conditions and reversive circumstances, caused by marginalization, exclusion, lack of access to education, and health, which prevent the individuals to have

²⁵ JONATHAN MANN ET AL., A AIDS NO MUNDO (Relume-Dumará/ABIA/IMS-UERJ 1992).

resources to draw up their choices to their own lives²⁶.

Thus, an approach centered in the comprehension of the vulnerability of the subject implies the recognition of the use of narcotics as a social question and not only criminal, once the psychoactive substances “not illicit themselves; they are classified as illicit according to programs and policies which are established by the power instances”²⁷. In this way, it is important to reflect about the relation between the anti-drugs policies and Human Rights.

To do such, the Human Rights comprehension becomes the focus of western deals and conventions established after the World Wars, being understood as rights of all, recognized by all, and protected by the universality character, inalienability, inviolability, imprescriptibly, historicity and limitability²⁸.

Thus, an approach about drugs and criminality that englobes the respect to Human Rights does not bear the current system of “war on drugs” based on imprisonment policies. Moreover, what inserts the matter of Human Rights violation is, still, a controversy points in the public opinion, because the fight for the protection of Human Rights of imprisoned people is confused with a supposed defense of impunity.

As Siqueria Junior²⁹ points out, the expansion of “Human Rights” still has in its Brazilian collective imagination, a negative burden and even a pejorative sense and of injustice, many times confused with impunity, act of “defending criminals” or “the bad guy’s rights”. This conception does not

²⁶ Maria Angela Silveira Paulilo, Leila Solberger Jeolás, *Jovens, Drogas, Risco e Vulnerabilidade: aproximações teóricas*, 3(1) SERVIÇO SOCIAL EM REVISTA 39 (2000).

²⁷ Carlos Alberto Cardoso Cerqueira Jr, *Entre a garantia e violação de direitos humanos: análise dos discursos do sujeito coletivo sobre a internação compulsória de usuários de substâncias psicoativas no estado da Bahia* 127 (2016) (dissertation, Universidade Federal do Recôncavo da Bahia).

²⁸ DIRLEY DA CUNHA JÚNIOR, *CURSO DE DIREITO CONSTITUCIONAL* (Editora Juspodivm 2014).

²⁹ PAULO HAMILTON SIQUEIRA JÚNIOR, MIGUEL AUGUSTO MACHADO DE OLIVEIRA, *DIREITOS HUMANOS E CIDADANIA* (Editora Revista dos Tribunais 2007).

correspond to reality, because the Human Rights are inherent to all society. Besides being a “criminals’ defense”, this defense would not be at the scope of Human Rights, because all individual, independently of their social condition or life circumstances, it is the subject of such referred protection list of those rights. Even though the classification of “criminals” is questionable in this context, once there is high contingent of prisoners that still wait for trial, as it was seen previously, and therefore, are presumably innocent – it is important to emphasize that the presumption principle of innocence is one of the penal rights foundations, preventing somebody from being considered guilty until the final judgment and the penal condemnatory sentence.

Even if the penal punishment becomes the main measurement to hold the criminality, punishing systems, as checked In the Brazilian one, are against the social premise of penal punishment, which also incorporates the re-education and reinsertion of the individual in society. This premise is not a reality of Brazilian penal system, though: 42,5% of people wit more than 18 years old that had some lawsuits registered in 2015, returned to the prison system until December 2019³⁰.

It is important to point out that the freedom deprivation as the main mechanism of punishment is a recent unfolding: in the early days, the prisons did not have punishing characteristic, but only a custody mechanism of prisoners during the trial as a way of guarantying the application of the sentence, and such punishment was a physical one³¹.

In any way, punishing systems fail because they are based on the articulation of interests of different social actors, with different burden in

³⁰ Dados do relatório “Reentradas e reiterações Infracionais — Um olhar Sobre os Sistemas Socioeducativo e Prisional Brasileiros”, desenvolvido pelo Departamento de Pesquisas Judiciárias do Conselho Nacional de Justiça e o programa Justiça Presente em 2020. Available at: <https://www.conjur.com.br/dl/panorama-reentradas-sistema.pdf> [Accessed 19 August 2021].

³¹ MICHEL FOUCAULT, VIGIAR E PUNIR: HISTÓRIA DA VIOLÊNCIA NAS PRISÕES (Vozes, 1987).

their influences in decision which are dictated by power dynamics. Such punishing is centered in the symbolic acting of the State, which develops some laws with punishments disproportionately hard to assist a popular cry by security³². This desire by security at any cost is a fertile land which fosters and strengthen the punishing. As Garland³³ highlights, in contemporary society the punishing is based on the comprehension of fear of crime as a problem itself, different of the problem of crime, leading to the development of specific policies that foresee to reduce the levels of fear, instead of reducing crime.

At the same time, the creation of a prohibitionist system, with strict penal control about the illicit drugs that International Conventions impose, does not lead to the eradication of the illicit drugs production, neither to the reduction of consumption, although the imprisonment indexes by drug crimes are high and growing. Without reaching the expected results, it is necessary to question such anti-drugs repressive policies based on prohibition, punishing and imprisonment.

5. CONCLUSION

The mass imprisonment verified in Brazil is the expression of the dramatic and criminalizing that reoccurs on many adults and marginalized young in the country, due to the criminal selectivity, the punishing culture and, still in the case of police approach in relation to the drugs, the absence of objective criteria to distinguish the drug dealers from users. The combination of these factors favors the punishing criminalizing State to address itself preferentially against socioeconomic and racial sectors that are vulnerable, specifically back young people, poor and with low education level.

³² Edimar Edson Mendes Rodrigues, *A cultura punitiva na modernidade tardia: Um estudo das racionalidades legislativas do sistema penal brasileiro* (2016) (thesis, Universidade Federal de Pernambuco).

³³ DAVID GARLAND, *A CULTURA DO CONTROLE: CRIME E ORDEM SOCIAL NA SOCIEDADE CONTEMPORÂNEA* (Revan 2008).

The effect of such policies is the legitimization of speeches and prohibitionist practices, besides the strengthening of police conviction that believes the only way to fight against crimes and drugs is through penal repression, raising a manacheistic and sacrificial war of the police (representing the law) *versus* offenders (representing the crime). This imaginary war, arbitrary prisons, deaths, and violence are means to an end sanctioned by the imaginary in group.

To minimize the effect of these practices, it is necessary reformulate the criminal fight policies, trying to face the root cause while it is a social issue. The way to do this is to have decriminalizing and pacific practices.

The decriminalizing approaches challenge the society and the institutions of prevention and control of crime to search for political and institutional alternatives that are favorable to socially inclusive lawsuits. These lawsuits should also be educational, participative and deliberative in a way to mitigate not only the increase of imprisonment but invert the perverse logic of the political-legal criminalizing and violating structures of Human Rights. When these structures and their criminalizing agents take their actions and select their target public with the precarious social layers, converting these vulnerable lives into an object of repressive and imprisoned action of the State. The change of the punishing paradigm which orbits around the know-how and social-legal penalizing practices and that operates based on the prohibition-prison binominal, as it is the case of the drugs, demands some thinking and some treatment of this problem as a social issue and a public health problem.

In the Brazilian context, political-institutional decriminalizing alternatives could open room to the know-how and practices dialogued and sensibilized among police authorities, adults and young who are suspected of trafficking or use drugs, their relatives and the affected community, aiming the practical and repairing resolution, and not imprisoning of problems related to drugs.

The formation of this community widened of know-how and practices of conflict solutions would help to avoid that many adults and young straightly involved, and the reference community itself, were interpreted and submitted to the monopoly of penal abstract rules and their respective experts and bureaucratic institutions, as these set of rules, know-hows and official centralizing institutions constituted the only way to utter the justice, almost always, followed by reprimands, prohibitions and retributive actions that failed in minimize the criminality and the inequalities that nourish this problem.