

ARTICLE

Prison Management and the Ultra-Right in Brazil: Social Struggles in the Context of the Covid-19 Pandemic

Gestión carcelaria y ultraderecha en Brasil: luchas sociales en contexto de Pandemia de Covid-19

Fernanda Kilduff¹

Federal University of Rio Janeiro, Brazil.

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Abstract

This article analyses the prison management of the extreme government in Brazil. It highlights the main strategies triggered by the Human Rights movements of people deprived of liberty in the face of the denialism that characterised Bolsonaro's government during the Covid-19 pandemic. This qualitative investigation of a bibliographic and documentary type traces the author's experiences (professional and academic) of articulation with these movements in Rio de Janeiro. The main results show that, despite the initiatives of social movements tending to incarceration, this government, in a pandemic context, ratified central incarceration, ignoring international recommendations.

Keywords:
prison
management;
extreme right;
pandemic;
Human Rights
movements

Resumen

Este artículo analiza la gestión carcelaria del gobierno de extrema derecha en Brasil y traza las principales estrategias accionadas por los movimientos de Derechos Humanos de personas privadas de libertad, frente al negacionismo que caracterizó el gobierno de Bolsonaro, durante la pandemia de Covid-19. Se trata de una investigación cualitativa de tipo bibliográfica y documental que trae las experiencias (profesionales y académicas) de articulación de la autora con estos movimientos, en el Estado de Rio de Janeiro. Los principales resultados muestran que, a pesar de las iniciativas de los movimientos sociales tendientes a la excarcelación, este gobierno, en contexto pandémico, ratificó las políticas de gran encarcelamiento, ignorando las recomendaciones internacionales.

Palabras Clave:
gestión carcelaria;
ultraderecha;
pandemia;
movimientos
de Derechos
Humanos

Introducción

(...) Instead of building houses, they throw the homeless into prison. Instead of developing the educational system, they throw the illiterate into prison. They imprison the unemployed because of deindustrialisation [and] the globalisation of capital (...). Please get rid of them all. Remove that population dispensable to society.

Angela Davis (2019)

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This article reflects on the appropriation of rights² in the Brazilian prison system during the Covid-19 pandemic. With an emphasis on the debate on the particularity of the situation of prisons in the State of Rio de Janeiro, it considers the fundamental traits of the penal policy in the extreme right-wing management deployed by the former army captain and member of the executive, Jair Bolsonaro, during the health emergency.

Thus, considering the social struggles in Brazil, we also bring to this analysis the leading strategies and responses of organisations and movements linked to the defence of the human rights of persons deprived of liberty in the face of the denialism that characterised this government.

The methodological design is based on bibliographical and documentary research, with analysis of reports issued by the National Council of Justice (CNJ), the Criminal

² For Boschetti (2018, p.10), "the destruction, or reduction of social rights in capitalism, suppresses from the working class the possibility of accessing part of the wealth socially produced and appropriated by the state in the form of public funds and reduces the participation of the state (...) in the reproduction of the workforce and their families, a situation that forces [the class that lives off labour] to submit to the most barbaric forms of exploitation or to remain unemployed".



Information System and newspaper articles that contain the leading positions and arguments in the public debate on prison management in the period in question. The author's own experience with institutional links through the Human Rights Commission of the Professional Association of Social Workers of the State of Rio de Janeiro and Extension Projects articulated with social movements of Human Rights, which positioned themselves, once again, in a pandemic context, in defence of guarantee policies aimed at the release of prisoners and the monitoring, denunciation and follow-up of cases in which the violation of the rights of the prison population in the State of Rio de Janeiro was verified, was also used for this elaboration.

The article is divided into three parts: first, a characterisation of the previous context and the Bolsonaro government itself; then, the reflection focuses on prison management and specifically on the situation of appropriation of the rights of the prison population in the state of Rio de Janeiro; the third section focuses on the strategies of resistance implemented by the leading human rights organisations in this context.

Far right: reflections on Bolsonaro's (mis)federal government

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Analysing the Brazilian process, Demier (2017) observes that the days of popular struggles in 2013 in the central Brazilian capitals for transport, health and education were decisive for the process of erosion of the Petista project that had governed the country since 2007, considering the lack of openness of this government to negotiate and improve the living conditions of the suffering working class, after twenty years of civil-military and business dictatorship (1964-1984), and since the return to formal democracy in 1985, the harmful consequences of successive neoliberal policies, mainly implemented in the country since the beginning of the 1990s.

On the other hand, in the context of the capitalist crisis³ that has worsened since 2008, part of the Brazilian bourgeoisie gradually abandoned its alliances with the PT government, giving rise to the growth of ultra-conservative expressions, which had also led these 2013 mobilisations, contradictorily, alongside the legitimate demands of workers against the so-called fiscal austerity policies, during the third government of the Workers' Party (PT), whose president, at that time, was Dilma Rousseff (2011-2016).

³ Mészáros (2009), in a direct interlocution with Marx, analyses the global capitalist crisis that began in the 1970s/1980s. In this sense, the Hungarian philosopher observes that, among the main responses of capital to its own crisis, is the expansion of the financial sphere, especially of fictitious capital, which occupies a leading position in the dynamics of contemporary capitalism.

Thus, the structural crisis is characterised by being endemic, cumulative, chronic and permanent; and its main manifestations are structural unemployment, environmental destruction and permanent wars. In this sense, according to Demier (2017), the crisis of bourgeois democracies (formal and liberal) is an expression of the structural crisis of capital, with this form of government finding it increasingly difficult to legitimise itself and provide the answers demanded within the framework of the contradictions also exacerbated by the same crisis of capital.



At this juncture, fertile ground was created for the legal-parliamentary and media coup carried out against the aforementioned PT president and her government in 2016. With the illegitimate government of former president Michel Temer, the offensive against social policies, attacks on labour rights and social protections related to formal employment were accentuated, causing an accelerated increase in the generalised precariousness of the living and working conditions of the Brazilian working class.

Thus, as Braz (2017, p.87-88) analysed, “the interests of big capital in contemporary Brazil required a genuinely bourgeois government, capable of not ceding the least to the workers and withdrawing from them the little they had won”.

In the same vein, Soares (2018) explains the diversified and innumerable measures taken by Michel Temer that demonstrate the acceleration of the coup government’s process of appropriation of public resources: authorisation for privatisation of aquifers, advancement of the privatisation process of the state oil company, PETROBRÁS, alteration of labour legislation, proposed reform of the pension system and approval of Constitutional Amendment No. 95, which, in 2016, created a new tax regime; extension of the so-called Decoupling of Union Resources (DRU), which had an impact on the national budget and channelled resources intended to finance the public pension system, education and health policy, for the formation of primary surpluses, guaranteeing more resources for the payment of foreign debt amortisation and interest. In addition to this, the coup government implemented a series of measures to liberalise the national patrimony, such as the sale of ELETROBRÁS, handing over the exploitation of Pré-Sal (the name given to the presence of gas and oil in deep rocks located on the Brazilian continental shelf of the Atlantic Sea) to companies other than PETROBRÁS, among many other measures contrary to the interests of the Brazilian working class and which, at the same time, express an intense acceleration of the process of expropriation by private capital of the state public fund.

In Soares’ (2018) hypothesis, these policies were not simply an adjustment programme but an austericide whose project and objective was to fully integrate the country into the contemporary capitalist order under the domination of interest-bearing capital.

In this sense, and according to Vasques (2020), the coup radicalised the neoliberal



model based on the control of sectors of the working class and ideologically based on moral panics, starting with the repeated discourse of corruption, which was socially cemented by *anti-scepticism*, as well as the so-called gender ideology, the drug problem, *urban violence* and various other scapegoats associated with centre or centre-left governments.

Thus, these discourses constructed by the extreme right legitimised the escalation of pre-emptive violent repression against the working class to discipline the progressive social forces that had expressed themselves forcefully in the mobilisations of 2013 and which, until the coup of 2016, had been on the rise.

With the above, it is made explicit that Bolsonaro's electoral triumph in 2018 did not happen overnight; on the contrary, it was built in light of historical, political and economic processes that demonstrate the growing adherence to extreme right-wing ideas in the context of permanent capitalist crisis, and in turn, the channelling of popular discontent by far-right governments as a trend, not only in Brazil but also in several countries in the world.⁴

Thus, the government of former army captain Jair Bolsonaro, since coming to executive power, has continued and deepened Temer's austerities, rigorously fulfilling the ultra-neoliberal agenda demanded by international finance capital, headed by the orthodox policy of his economy minister (Paulo Guedes), which has made public resources for social policies increasingly scarce, while keeping untouched the demands for financing the reproduction of capital. Among other policies, according to Magalhães and Osório (2023), he launched a new wave of privatisations and new attacks on natural resources, with the dismantling of institutions for environmental preservation and control, while at the same time accentuating the logic of indigenous genocide, seeking to oust lands demarcated for native peoples, among many other policies aimed at the destruction of life and public patrimony.

Regarding the context of the COVID-19 pandemic in Brazil, Raichelis and Arregui (2020, p.138) highlight that: "the emergence of the new coronavirus, in the profound structural crisis of capital, exponentially accentuated its ongoing systemic traces,

⁴ Bonnet (2023, p.63) analyses the international political scenario consolidated after the financial crisis of 2007-2008, "marked by a notorious rise of extreme right-wing organisations or political parties, which even ascended to state power. A few examples suffice: D. Trump in the United States, Le Pen in France, Vlaams Belang in Belgium, Vox in Spain, V. Orbán and Fidesz in Hungary, among others." The tendency of the extreme right to take root and grow can also be seen in Latin American countries, as, for example, in Argentina, with the electoral victory of Javier Milei in December 2023.

articulating in a contradictory totality its economic, political, social and health dimensions”.

According to the same authors, in the particularity of the country, the rapid proliferation of this virus was related to the structural inequality caused by the private appropriation of socially produced wealth and the appalling living conditions imposed on the majority of the working class. Recent data produced by the Oxford Committee for Famine Relief, OXFAM, show that “63% of Brazil’s wealth is concentrated in 1% of the population, while the poorest 50% hold only 2% of the country’s wealth” (Instituto Conhecimento Liberta, ICL, 2024). It should be noted that, according to Garcia (2024), the same OXFAM document warns of another ongoing trend in the country: the gap between the richest and the poorest continues to grow due, among other determinations, to the existence of a regressive tax system, which exempts the super-rich from paying taxes proportional to their income and property.

Immersed in this reality, during the pandemic period, the Brazilian working class faced high rates of unemployment, underemployment and precarious working conditions. As Castro Sousa (2023) points out, during the COVID-19 pandemic, Brazil’s unemployment rate reached alarming levels. In the first semester of 2021, this rate reached 14.9%; in other words, the lack of formal employment affected more than 15.2 million people.

In turn, considering that more than 40% of the economically active population in this country lives in the informal sector, according to Costa (2020), beyond the health crisis, one of the consequences of the pandemic, in addition to the increase in unemployment, was the rise in informal work, outsourced, subcontracted, flexible and part-time workers who were the first to suffer the consequences of the pandemic because they live in precarious areas, receive low and irregular wages and have no labour rights.

In addition to these labour market conditions, the far-right Bolsonaro promoted disobedience campaigns with systematic boycotts of international recommendations on restricting human contact and using masks. Furthermore, as was widely reported, this government omitted and delayed the purchase of vaccines when they were already available, costing the lives of at least 95,000 Brazilians who would have been immunised in time, according to the BBC-News Brasil news agency.⁵

⁵ Magenta (2021, 28 May).

Moreover, counting on his propaganda machine, Bolsonaro convinced many of his voters and followers not to be immunised because, even though on the day before one of his first declarations (22 March 2020) 3159 new deaths were registered in the country in 24 hours, the former president himself declared on the National TV and Radio network: “[...] because of my history as an athlete, in case I were contaminated with the virus, I would not need to worry. I wouldn’t feel anything, or I would be attacked by a bit of cold [...]”⁶.

Thus, the depreciation of the severity of the pandemic and the late purchase of vaccines, as well as its campaign on the ineffectiveness of immunisation and the proven lack of investment in public health policy, contributed to the deaths of more than 700,000 people⁷(not counting under-reporting).

It should be noted that this was compounded by Bolsonaro’s repeated public positions calling for the quarantine not to be respected. The former president himself, according to Brettas (2020, p.13), declared: “Do not stay at home, continue working; the country and the economy cannot stop” (2020, p.13).

Similarly, in analysing the federal government’s commitment to the rentier sector, Miranda (2020) highlights the delay and bureaucratic hurdles for workers who lost their income due to the pandemic to receive the so-called Emergency Aid of 600 reais. Meanwhile, the then Minister of Economy, Paulo Guedes, was quickly transferring 1.2 trillion reais to the financial market.

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⁶ Lima (2021, 24 March).

⁷ Data from the Ministry of Health confirm that, in April 2023, one month after the World Health Organisation (WHO) decreed the end of the health emergency, 701,400 deaths from Covid-19 were recorded in Brazil. Henrique (2023, 10 May).

With these preliminary considerations, we seek to analyse what happened during the pandemic, particularly with the prison population, with emphasis on the debate about the reality of the state of Rio de Janeiro. Thus, in the context of the pandemic, the deterioration of the already appalling and inhumane conditions of detention in the Brazilian prison system was undeniable, mainly due to the decision not to release prisoners in the proportions required by the health emergency, as we will see in the following section.

Prison management in the Bolsonaro (mis)government

Among the initial guidelines given by the World Health Organisation (WHO) and the United Nations (UN), one of them was the indication that national states should implement measures for a drastic reduction of the prison population.

Since then, several countries around the world, under various political trends, have significantly reduced the number of detainees in prisons:

Table 1: Countries that reduced their incarcerated populations during the first year of the pandemic (13 countries where data were available are presented). Source: World Prison Brief, 2020. ⁸

Country ↵	Percentage reduction ↵	Pre-COVID-19 prison population ↵	Number released ↵	Dates data collected ↵
Afghanistan	33%	30,748	10,000	2018 & 3/26/20
Turkey	31%	286,000	90,000	2019 & 4/14/20
Iran	29%	240,000	70,000	2018 & 3/17/20
Myanmar	26%	92,000	24,000	2018 & 4/17/20
South Sudan	20%	7,000	1,400	2019 & 4/20/20
The Gambia	17%	691	115	2019 & 4/26/20
Indonesia	14%	270,387	38,000	3/31/20 & 4/20/20
France	14%	72,000	10,000	3/2020 & 4/15/20
Ireland	13%	3,893	503	2018 & 4/22/20
Italy	11%	61,230	6,500	2/29/20 & 4/26/20
Kenya	9%	51,130	4,500	2018 & 4/17/20
Colombia	8%	122,085	10,000	2/29/20 & 3/31/20
Britain	5%	83,189	4,000	3/27/20 & 4/4/20

Thus, without the intention of establishing a direct relationship between extreme right-wing governments and the lack of reduction of the prison population during the Covid-19 pandemic, we intend to show in this article how, in the particularity of a country like Brazil, governed by the extreme right, there was an open campaign against the release of prisoners, despite international recommendations, and as we will see

⁸ Wagner and Widra (2020, 1 May).

later, also national guidelines issued by the Judiciary with the same objective, related to the reduction of the percentage of the incarcerated population. As a highlight, the Bolsonaro government carried out open campaigns to discredit policies aimed at the release of prisoners and their relationship with the prevention of contagion and deaths from the SARS-CoV-2 virus.

To demonstrate the above, according to Macedo (2020), the former Minister of Justice and Security, Sergio Moro, publicly declared in March 2020: “the lack of official data that would justify taking any decision in this sense, [to release from prison]”. Similarly, the director at the time of the National Penitentiary Department (DEPEN), Fabiano Bordignon, criticised the pro-guarantee positions that tended to understand the absolute incompatibility between large-scale imprisonment, prison overcrowding and the prevention of COVID-19, and ironically labelled this defence as a ‘*solturavirus*’.

Thus, both Moro and Bordignon attacked sectors of civil society and the judiciary that defended the release of prisoners as a way to prevent contagion and deaths in prisons. It was noted that, despite their subsequent departure from the Ministry of Justice and Security in April 2020, along with its former director, both figures played a prominent role in the dissemination of false events associating acts of ‘release’ of alleged dangerous persons and serious crimes linked to arms and drug trafficking.

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These ideas spread rapidly and permeated the majority of the decisions from the judges, who, under the (liberal and abstract) argument of the defence of society against crime, denied release and let people die from Covid-19, with imprisonment remaining the rule. It was not uncommon to find in the sentences arguments denying the highly precarious conditions in the detention units, arguing that, both inside and outside the prisons, it would be “the same situation” in the face of a virus unknown to “everyone” (MEPCT/RJ, 2020b).

It should be noted that effective measures with some degree of forcefulness to prevent the proliferation of contagion in prisons were not identified at any time during the health emergency; on the contrary, the three main characteristics of prison management, from the beginning of the pandemic, according to Silva and Sinhoretto (2023), were: 1) a policy of secrecy and disinformation oriented by the low quality of data and public information; 2) under-reporting of cases allied to the poor application of tests; 3) generation of deaths by omission and negligence, once people with legal possibility of obtaining freedom by progression of regime or re-evaluation, remained in prison.



In addition to these policies, the Brazilian state violates the human rights of its detainees. According to Kilduff (2020), with prison overpopulation ranking third in the world in terms of incarceration (in 2020, there were more than 600,000 prisoners in the whole country), Brazil produces and reproduces terrible conditions of detention. The prison system is characterised by overcrowded spaces, precarious structures, limited and poor quality food, lack of or restricted access to drinking water, recurrent power cuts, shortages of hygiene products and other personal items and high rates of torture and cruel, dehumanising and degrading treatment.⁹

The precarious health care of prisoners due to lack of medicines and professional care, the existence of pre-existing diseases such as tuberculosis and HIV, which are responsible for more than 60% of deaths, the scarcity (and always dubious quality) of food, forced inactivity, intense emotional suffering (high rates of suicides are recorded in prisons), the lack of beds, mattresses and drinking water in overcrowded and inadequately ventilated detention units, among other factors, created favourable conditions for the rapid proliferation of this type of coronavirus, including the structural impossibility of establishing “social distancing” in prisons (National Mechanism to Combat and Prevent Torture, MNCPT, 2022).

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It is worth noting that the Brazilian prison system has 436,000 beds for a population that, in March 2024, will reach 839,700 prisoners. According to Mello (2020) and the Network of Security Observatories, the proportion of prisoners in available places varies in each state. The states with the highest overcrowding are Ceará, 173%; Pernambuco, 172%; and Rio de Janeiro, with more than 70% of prisoners without available beds.

When looking in particular at the initial period of the health emergency, the State Mechanism to Prevent and Combat Torture in Rio de Janeiro (MEPCT/RJ, 2020a) found an ordinary reality throughout the prison complex of this state: lack of testing, under-notification of cases, inadequate medical assistance in cases of suspicion or confirmation of Covid-19, lack of access to hygiene materials and drinking water, lack of guidance to prisoners about the virus, denial of information to family members about treatment, flows and health conditions of their detained loved one, and prohibitions of visits and communication with family members, under the pretext of guaranteeing the health measure of social distancing.

⁹ According to the Convention Against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment (UNCAT) adopted by the UN General Assembly in 1984, in its article 1: “the term torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession; punishing him for an act which he or a third person has committed or is suspected of having committed; intimidating him or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by a public official or other person acting in an official capacity (...)” (Simas, 2020, p.132).



Thus, as can be verified from the data of the National Penitentiary Department (DEPEN) about the preventive measures adopted regionally in the State of Rio de Janeiro, among other actions, the interruption of visits by public defenders and lawyers was maintained, with no alternative form of communication (virtual or telephone) being offered to guarantee the right to information about their own processes and criminal situation.¹⁰

This pattern of repeated violations of rights mobilised complaints and demanded responses from the State. As we will see below, institutions and organisations linked to the defence of life, specifically the Frente Estadual por el Desencarcelamiento/Regional Rio de Janeiro, together with the Mechanism to Combat and Prevent Torture in Rio de Janeiro (MEPCT/RJ), during the pandemic, in a national articulation, gave public visibility to the severe conditions of detention and presented proposals for the release of prisoners.

Actions by human rights organisations

The Frente Estadual por el Desencarcelamiento/RJ was created in January 2017, following the initiative of several human rights organisations, in response to the massacres that have taken place in prisons in the states of Amazonas, Roraima, and Rio Grande do Norte. The human rights organisations that the Front brings together denounce the Brazilian state for the dehumanising conditions to which it subjects people in its custody. The lack of drinking water, beds, clean clothes, personal hygiene items, medical care and interdisciplinary teams, and adequate food, among other precariousness, is recurrent in the Brazilian prison system.

Thus, this state front for the release of prisoners, which also responds to a national organisation, the National Agenda for the Release of Prisoners, articulates various institutions, collectives and regional social movements to build a typical programme capable of reducing the prison population in the country. Alternatives such as these, among others, are essential to guarantee the right to life of persons deprived of their liberty.

In the particularity of Rio de Janeiro, the Frente Estadual, together with the MEPCT, during the pandemic period, demanded that, within the State Courts of Justice, Recommendation n°62 of the National Council of Justice (CNJ, 2020)¹¹ be implemented to make the release from prison effective.

¹⁰ National Survey of Prison Information, INFOPEN (2019).

¹¹ National Council of Justice (2020, 17 March) and Brazil (2020).

Through this recommendation, the National Council of Justice (CNJ) issued guidance to courts and magistrates throughout the country to adopt preventive measures against the spread of SARS-CoV-2 in the prison system. In this regard, the Front and the Mechanism identified the need not only for groups considered at risk to leave the system but also for there to be a reduction in the number of prisoners at what is known as the “gateway to the system”, i.e. to reduce new prison sentences drastically. There was also a need for the release of pre-trial (i.e. unconvicted) prisoners, who constitute approximately 40% of the total prison population in the country.

In this regard, the re-evaluation of pre-trial detention was indicated, especially in the case of pregnant women, people with disabilities and indigenous people, or when the prison was overcrowded and without medical care. It was also suggested that pre-trial detention for more than 90 days for less serious crimes should be reviewed and that new detention orders should respect “maximum exceptionality”. Similarly, CNJ Recommendation No. 62 offered magistrates the option of reversing open regime imprisonment to house arrest or where there were symptoms of COVID-19, as well as the suspension of mandatory reporting for trial in applicable cases.

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It is worth noting that the increase in house prisons (with and without electronic bracelets) during the peak of the health emergency, according to Silva and Sinhoretto (2023), is shown as a national trend. This reality was a conquest of the social movements of Human Rights that pressured effective compliance with Recommendation n°62 of the CNJ.

However, what was verified in the courts of the State of Rio de Janeiro was, in general terms, the non-application of this recommendation, in line with the position of Sergio Moro, who “did not see the need for release in the pandemic”. It is worth noting that, as we have shown, the former Minister of Justice and Security publicly attacked these positions with false information and accused those who defended the application of this resolution of irresponsibility.

In this regard, and by way of example, between 17 and 18 April 2020, and within less than 24 hours of each other, two detainees died in the prison system of the state of Rio de Janeiro, with suspicion of COVID-19, one of them being a 73-year-old person. Being considered a risk group and protected by Recommendation No. 62, the Court of Justice of Rio de Janeiro (TJRJ) could have granted house arrest to avoid this contagion and, subsequently, this death. Así, al constatar su incumplimiento, partidos



y organizaciones. Thus, upon noting their non-compliance, political parties and human rights organisations, in the process of collective organisation, demanded the approval of a bill (Law n°978 of 2020) authored by federal deputy Glauber Braga and federal deputy Talíria Petrone, both from the Socialist and Liberty Party of Rio de Janeiro (PSOL/RJ), which sought to reduce the number of people in prison as an urgent measure to prevent the spread of Covid-19, both in the prison system and in the socio-educational system, where young people and adolescents in conflict with the criminal law are detained.

In an official note of support, human rights organisations highlighted their support for Bill No. 978/2020, which proposed concrete measures to reduce the prison population and the number of adolescents undergoing socio-educational internment measures, in line with Resolution No. 62 of the National Council of Justice.

The bill above (which was not approved but was annexed to other similar bills by the Federal Chamber of Deputies) proposed the substitution of custodial sentences by house arrest/internment or other alternative precautionary measures rather than imprisonment for persons in risk groups, elderly, pregnant women, nursing mothers and mothers or carriers of pre-existing diseases, also including cases that do not involve violence or severe threat and sentences of less than four years, to avoid exposing people under the protection of the state to a greater risk of contamination and aggravation of the disease.

It should be noted that the bill was drafted based on international recommendations, such as the one issued in April 2020 by the Inter-American Court of Human Rights. In this regard, this global organisation suggested that member states commit themselves to: 1) Reduce overpopulation; 2) Establish protocols or action plans for the prevention of contagion; 3) Provide pregnant women with free access to sexual and reproductive health care services, as well as maternity care services and facilitate access to adequate health services for young people and adolescents in the socio-educational system; 4) Promote sufficient food and access to drinking water; 5) Adopt measures to ensure natural ventilation, maximum cleanliness, disinfection and waste collection to prevent the spread of disease; 6) Distribute free of charge masks, gloves, alcohol, disposable towels, toilet paper and waste bags, among other items, both for the population in detention and for custodial staff and health teams; 7) Enable access to health care services for all detainees, as well as to the health care system; 8) Facilitate access to mental health services for people who require it, considering anxiety or other pathologies that could be generated by the fear caused by the possible contagion.



Thus, despite the importance of international guidelines (WHO, UN and Inter-American Court), in general terms, in Brazil, these norms have not materialised strongly in real life.

This observation links to the reflections of Marx and Engels in “Critique of the Gotha Programme” (1985), when they discuss bourgeois law as unequal, i.e. formal equality of laws and natural or material inequality. If the capitalist state is not a neutral arbiter above and outside class interests, the laws are not equal for all and do not defend all interests; in this sense, their application responds to criteria of class selectivity.

According to Kilduff (2010, p.246):

Despite the liberal concept of equality before the law being deeply rooted in society, the profound selectivity that runs through differences from access, application, and enforcement allows us to demystify the bourgeois idea of the equality of all before the law.

Thus, even if all these orientations exist on the level of bourgeois legal formality, they have not been realised on the level of real life, or when applied, they often respond to the ruling class’s interests.

Having said this, in the particularity of Rio de Janeiro, human rights organisations, noting the difficulties for family members and public human rights organisations to monitor the violations of rights in prisons, organised themselves with the aim of weaving strategies to reverse this reality.

This situation mobilised the Frente por el Desencarcelamiento/RJ and the MECPT/RJ, in June 2020, to create and launch the so-called: “Plataforma Desencarcela ¹²”, a virtual tool that allowed anonymous complaints (mainly by prisoners and family members), during the pandemic, to be made, facilitating monitoring, communication and relevant referrals to public agencies, also considering the prohibition of entry to prisons of the State Mechanisms to Combat and Prevent Torture, to verify conditions of detention and access to health of those in custody during this pandemic period.

In this way, through this platform, these organisations, protected by Recommendation No. 62, managed to free (or reverse the sentence to house arrest) some prisoners, considering the criteria set out in the recommendation, as well as to guarantee access to health treatment (in the detention units and also outside the prisons), enable

¹² Lucius (2020, 08 June).



communication with family members and defenders and obtain authorisation, in critical cases, to bring food, personal hygiene items, medical care and access to medicines into the prisons, in the face of the State's omission.

Final considerations

Denialism was a part and expression of the project of the ultra-right in Brazil and claimed the lives of thousands of Brazilians. During the pandemic, the violation of rights in the penal system was not only maintained as a rule but also worsened with the argument of exceptionality, serving as a pretext to suppress and expropriate the rights of prisoners, in line with the ultra-neoliberal project, in favour of significant capital and to the detriment of the lives of the working class.

According to Kilduff (2018), state violence against the subaltern classes is not a new or recent phenomenon in Brazil, on the contrary, it is structural to its social formation; the implementation of the neoliberal programme, as noted in the introduction to this article, initiated in the 1990s, brought with it a redirection of the penal system, necessary to respond to the growing manifestations of the social question associated with the growth of inequality, unemployment, job insecurity and poverty.

Thus, the policy of large-scale imprisonment, its maintenance, and the violations of rights in places of deprivation of liberty are not realities exclusive to the government analysed here. In this sense, right-wing or progressive governments that have governed the country since the beginning of the implementation of the neoliberal project have historically participated in and been responsible for the growing incarceration since the start of the 1990s and, with overpopulation, the intensification of all kinds of rights violations.

Thus, we conclude that Brazil, having gone through the whole pandemic governed by the extreme right and considering its long history of neoliberal consolidation and over-incarceration for more than 30 years, distanced itself from any possibility of adapting its policies with any degree of seriousness and systematicity, to confront the pandemic, on the understanding that, in the penal field, de-incarceration (seriously) was a possible alternative to avoid contagions and deaths in the country's penitentiary complexes.

Thus, ignoring the dramatic effects of the proliferation of the SARS-CoV-2 virus in a



prison system that is already overcrowded, precarious, unhealthy and responsible for all kinds of human rights violations is part of a silent strategy of the Brazilian state to continue (and deepen) a policy of elimination of subjects, from the point of view of capitalist ideology, considered “undesirable” and “disposable”.

It is worth noting that although the profile of prisoners in Brazil is fundamentally made up of unemployed and precarious people, this population also participates in the extended mechanisms of reproduction and accumulation of capital since, for example, large capitals profit from the provision of various services linked to public-state and private prison management.

As a result of this research, we verified that the number of people incarcerated in prison units during the pandemic showed a slight downward trend as a result of pressure from social organisations and movements for the application by magistrates of Recommendation No. 62, which in turn also demanded improvements in detention conditions; however, this did not mean a reduction in the deprivation of liberty as the primary form of punishment in the country, a situation that confirms as a rule (and not as an exception) the policy of large-scale imprisonment.

Bibliographical references

Audi, A. (16 April 2020). Presidente do Banco Central diz a investidores que reduzir mortes por coronavírus é pior para a economia. *The Intercept Brasil*. <https://theintercept.com/2020/04/16/banco-central-presidente-coronavirus-economia/>

Baratta, A. (2004). *Criminología crítica y crítica del Derecho Penal*. Siglo XXI editorial.

Brazil (2016). Emenda Constitucional nº 95, de 15 dezembro de 2016. https://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc95.htm

_____. (2020). Conselho Nacional de Justiça. Recomendação nº 62, de 17 de março de 2020. <https://www.cnj.jus.br/wp-content/uploads/2020/03/62-Recomenda%C3%A7%C3%A3o.pdf>

Bonnet, A. (2023). Neo-fascism? Democracy and neoliberalism in Latin America. In I. Boschetti, S. Granemann, F. Kilduff and M. Mendes (Eds.), *Os Direitos não cabem no Estado: Trabalho e Política Social no capitalismo* (pp. 63-91). Using editorial.



Borges, R. (15 January 2017). Rebelião em presídio do Rio Grande do Norte deixa ao menos 26 mortos. *El país newspaper*.

https://brasil.elpais.com/brasil/2017/01/15/politica/1484515933_103479.html

Boschetti, I. (2018, Ed.). Expropriação de direitos e reprodução da força de trabalho. In *Expropriação e Direitos no capitalismo* (pp.101-131). Cortez editorial.

Braz, M. (2017). O golpe nas ilusões democráticas e a ascensão no conservadorismo reacionário. *Revista Serviço Social e Sociedade* (128), 85-103. DOI <https://doi.org/10.1590/0101-6628.095>
<https://www.scielo.br/j/sssoc/a/J74WJRdJH6sHMHC9MhSDc8Q/?format=pdf&lang=pt>

Brettas, T. (2020). Defender a vida é preciso, a economia não. In E. Moreira, R. Gouveia, J. Garcia, L. Acosta, M. Botelho, M. Rodrigues, M. Krenzinger, T. Brettas (Eds.), *Em tempos de pandemia: propostas para a defesa da vida e de direitos sociais* (pp. 11-19). UFRJ editorial.
<https://pantheon.ufrj.br/handle/11422/12346>

Carvalho, L. (10 March 2024). População carcerária cresce nos EUA e no Brasil. *Poder 360 newspaper*. <https://www.poder360.com.br/seguranca-publica/populacao-carceraria-cresce-nos-eua-e-no-brasil/>

Castro Sousa, G. (11 October 2023). A taxa de desemprego é 3,1 menor que antes da pandemia no Estado de São Paulo. *USP Journal*. <https://jornal.usp.br/atualidades/taxa-de-desemprego-e-31-menor-que-antes-da-pandemia-no-estado-de-sao-paulo/>

Costa, S. (2020). Pandemia e desemprego no Brasil. *Revista de Administração Pública*, 54(4), 969-978. DOI <https://doi.org/10.1590/0034-761220200170>
<https://www.scielo.br/j/rap/a/SGWCFyFzjrDwgDJYKcdhNt/?format=pdf&lang=pt>

Davis, A. (2019). *A democracia da abolição: Para além do Império, das prisões e da tortura*. Difel Editorial.

Demier, F. (2017). *Depois do golpe: a dialética da democracia blindada no Brasil*. Mauad X editorial.

Garcia, G. (14 January 2024). Desigualdade: 63% da riqueza do Brasil está nas mãos do 1% da população diz relatório da OXFAM. *CNN Newspaper*.
<https://www.cnnbrasil.com.br/internacional/desigualdade-63-da-riqueza-do-brasil-esta-nas-maos-de-1-da-populacao-diz-relatorio-da-oxfam/>

Henrique, L. (10 May 2023). Fin da pandemia de Covid-19: entenda a declaração da OMS. Politize. <https://www.politize.com.br/fim-da-pandemia/>

Instituto Conhecimento Liberta (15 January 2024). Oxfam: 63% of Brazil's wealth is in the hands of 1% of the population; 50% of the poorest are only 2%. <https://icleconomia.com.br/oxfam-63-da-riqueza-do-brasil-esta-nas-maos/>

Kilduff, F. (2010). O controle da pobreza operado através do sistema penal. *Revista Katálysis*, 13(2), 240-249. <https://www.scielo.br/j/rk/a/6hQGPZ5GczQCzZySM5MZb4C/?format=pdf&lang=pt>

Kilduff, F. (2018). Penal State and Marxist Critique. *Revista Escenarios*, ISSN: 2683-7684, (27), 1-13. <https://revistas.unlp.edu.ar/escenarios/article/view/8083/7000>

Kilduff, F. (2020). Sistema prisional brasileiro em contexto da pandemia da COVID-19. In E. Moreira, R. Gouveia, J. Garcia, L. Acosta, M. Botelho, M. Rodrigues, M. Krenzinger, T. Brettas (Eds.), *Em tempos de pandemia proposta para a defesa da vida e dos direitos sociais* (pp. 103-111). UFRJ Editorial. <https://pantheon.ufrj.br/bitstream/11422/12346/1/EMoreira.pdf>

Legislative Assembly of the State of Rio de Janeiro (2020). Mechanism to Combat Torture launches an online platform to receive complaints during the pandemic. <http://www.alerj.rj.gov.br/Visualizar/Noticia/48866?AspxAutoDetectCookieSupport=1>

Lima, S. (24 March 2021). Há um ano Bolsonaro chamava COVID de gripezinha em rede nacional; relembre. *Diário Estado de Minas*. https://www.em.com.br/app/noticia/politica/2021/03/24/interna_politica,1250005/ha-um-ano-bolsonaro-chamava-covid-de-gripezinha-em-rede-nacional-relembre.shtml

Lucius, L. (08 June 2020). Mecanismo de Combate a la Tortura lanza plataforma on-line para recibir denuncias durante la pandemia. Legislative Assembly of the State of Rio de Janeiro. <http://www.alerj.rj.gov.br/Visualizar/Noticia/48866?AspxAutoDetectCookieSupport=1>

Macedo, F. (31 March 2020). Prisões, coronavirus e 'soluravirus'. *Jornal Estadão*. <https://politica.estadao.com.br/blogs/fausto-macedo/prisoes-coronavirus-e-soluravirus/>

Magalhães, J. and Osório, L. (2023). Brasil sob escombros: desafios do governo Lula para reconstruir o país. Boitempo editorial.

Magenta, M. (28 May 2021). Vacinas teriam salvo 95 mil vidas se governo Bolsonaro não tivesse ignorado ofertas, calcula pesquisador. BBC NEWS BRASIL. <https://www.bbc.com/portuguese/brasil-57286762>

Mandel, E. (1982). O capitalismo tardio. Abril Cultural editorial.

Marx, K. and Engels, F. (1985). Crítica do Programa de Gotha. Progresso editorial.

Mello, K. (31 March 2020). O sistema prisional brasileiro no contexto da pandemia de COVID-19. Portal Conexão UFRJ. <https://ufrj.br/noticia/2020/04/01/o-sistema-prisional-brasileiro-no-contexto-da-pandemia-de-covid-19>

Mészáros, I. (2009). A crise estrutural do capital. Boitempo editorial.

Miranda, F. (09 April 2020). Bancos e bilionários primeiro: a operação resgate do governo do capitão. Site EOL. <https://esquerdaonline.com.br/2020/04/09/bancos-e-bilionarios-primeiro-operacao-resgate-do-governo-do-capitao/>

National Council of Justice (17 March 2020) . Covid-19: CNJ emite recomendação sobre sistema penal e socioeducativo. CNJ News Agency. <https://www.cnj.jus.br/covid-19-cnj-emite-recomendacao-sobre-sistema-penal-e-socioeducativo/>

National Mechanism to Combat and Prevent Torture (2022). Relatório Bienal 2020-2021: a prevenção e o combate à tortura durante a pandemia. <https://mnpctbrasil.wordpress.com/wp-content/uploads/2022/05/relatoc81rio-bienal-2020-2021-versao-final-3.pdf>

Raichelis, R. and Arregui, C. (2020). O trabalho no fio da navalha: a nova morfologia no Serviço Social em tempos de devastação e pandemia. Serviço Social e Sociedade, 134-152. DOI <https://doi.org/10.1590/0101-6628.242> <https://www.scielo.br/j/ssoc/a/MVGcWc6sHCP9wFM5GHRpwQR/abstract/?lang=pt>

_____. (20 April 2020). Entidades assinam nota de apoio a PL que propõe redução de população prisional. Site Migalhas. <https://www.migalhas.com.br/quentes/324853/entidades-assinam-nota-de-apoio-a-pl-que-propoe-reducao-da-populacao-prisional>

Rodrigues, N. (n.d.). Governo Lula. Site InfoEscola. Nagevando e Aprendendo. <https://www.infoescola.com/mandatos-presidenciais-do-brasil/governo-lula/>



Silva, R. and Sinhoretto, J. (2023). Disputas sobre a gestão da pandemia de Covid-19 nas prisões brasileiras. *Revista de Estudos Empíricos em Direito*, (10), 1-32. DOI 10.19092/reed.v10.753. <https://reedrevista.org/reed/article/view/753/464>

Simas, F. (2020). A tortura no superencarceramento brasileiro: Estado e criminalização na crise estrutural do capital [Doctoral Thesis, University of the State of Rio de Janeiro]. https://sucupira.capes.gov.br/sucupira/public/consultas/coleta/trabalhoConclusao/viewTrabalhoConclusao.jsf?popup=true&id_trabalho=9380180

Sistema Nacional de Informações Penais (2024). Relatório de Informações Penais. 15º ciclo SISDEPEN período de julho a dezembro de 2023. SISDEPEN, Brasília. <https://www.gov.br/senappen/pt-br/servicos/sisdepen/relatorios/relipen/relipen-2-semester-de-2023.pdf>

Soares, R. (2018). Governo Temer e contrarreforma na política de saúde: a inviabilização do SUS. *Argumentum*, 10(1), 24-32. <https://doi.org/10.18315/argumentum.v10i1.19496>
<https://periodicos.ufes.br/argumentum/article/view/19496>

Stabile, A. (17 April 2020). Primeira morte de preso pela Covid-19 no Brasil é registrada no Rio de Janeiro. *Página Ponte Org*. <https://ponte.org/primeira-morte-de-preso-pela-covid-19-no-brasil-e-registrada-no-rj/>

State Mechanism to Prevent and Combat Torture of Rio de Janeiro. (2020a). Boletim COVID-19 no sistema prisional. <http://mecanismorj.com.br/relatorios/>

State Mechanism to Prevent and Combat Torture of Rio de Janeiro (2020b). Nota técnica sobre Comunicação e Cartas durante a pandemia de COVID-19. <http://mecanismorj.com.br/wp-content/uploads/Nota-T%C3%A9cnica-sobre-Comunica%C3%A7%C3%A3o-e-Cartas-durante-a-pandemia-de-COVID-MEPCTRJ.pdf>

State Mechanism to Prevent and Combat Torture of Rio de Janeiro (2020c). Relatório parcial sobre os impactos do COVID-19 no sistema prisional do Rio de Janeiro. <http://mecanismorj.com.br/wp-content/uploads/Relat%C3%B3rio-Parcial-do-MEPCTRJ-sobre-o-COVID19-no-sistema-prisional-atualizado-09.08.pdf>

Vasques, T. (07 June 2020). O genocídio como atividade essencial do Estado. *Portal do PCB*. <https://pcb.org.br/portal2/25661/o-genocidio-como-atividade-essencial-do-estado/>

Wagner, P. and Widra, E. (01 May 2020). While jails drastically cut populations, state prisons have released almost no one. *Prison Policy Initiative*. <https://www.prisonpolicy.org/blog/2020/05/01/jails-vs-prisons/>

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Author's biography

Fernanda Kilduff

has a degree in Social Work from the National University of La Plata (UNLP, Argentina). She holds a Master and PhD in Social Service from the Graduate Program in Social Service of the Federal University of Rio de Janeiro (PPGSS, UFRJ). Currently, she is Associate Professor at the Department of Social Policy of the School of Social Service, Federal University of Rio de Janeiro (DPS/ESS/UFRJ, Rio de Janeiro, Brazil).

Correo electrónico: profa.nandakil@gmail.com

ORCID ID: <https://orcid.org/0000-0001-7090-7052>

