Attention to the health of people deprived of their liberty

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Abstract
The right to health, guaranteed by the current Constitution, has not yet been implemented for persons deprived of their liberty. Only in the last years did government actions aim at the social reintegration of these people, through education, work and health. This is a qualitative study to verify the accomplishment of consultation and guidance on health service at the time of admission to a penitentiary in the State of Minas Gerais, Brazil. Twenty-one people in this situation were interviewed. The majority reported an absence of consultation at admission, and the lack of guidance on the functioning of the prison health unit as well as on the situations in which they would be referred for extramural care. There were also reports of difficulties in being attended to, dissatisfaction with therapeutic conduct, and concern with intra-institutional transmission of diseases. Considering that the lack of consultation and guidance at the time of admission can cause irreparable damage, this study, based on Bioethics, sought to reflect on State negligence regarding inmates in a vulnerable situation.

Keywords: Bioethics. Health services accessibility. Health care (public health). Prisoners. Prisons.

Resumo
A atenção à saúde de pessoas privadas de liberdade
O direito à saúde, assegurado pela atual Constituição, ainda não foi efetivado para as pessoas privadas de liberdade. Somente nos últimos anos ocorreram ações governamentais visando reintegrar socialmente essas pessoas pela educação, trabalho e saúde. Trata-se de estudo qualitativo para verificar a realização de consulta e orientação sobre serviço de saúde no momento do ingresso em uma penitenciária de Minas Gerais, Brasil. Foram entrevistadas 21 pessoas nessa situação, e a maioria referiu ausência de consulta no ingresso e inexistência de orientação sobre funcionamento da unidade de saúde prisional e sobre as situações nas quais são encaminhadas para atendimento extramuros. Ainda foram relatadas dificuldade para atendimento, insatisfação com conduta terapêutica e preocupação com transmissão intrainstitucional de doenças. Considerando que a falta de consulta e orientação nesse momento podem gerar danos irreparáveis, buscou-se, com base na bioética, refletir sobre a negligência do Estado para com o custodiado em situação de vulnerabilidade.


Resumen
Atención de la salud de personas privadas de libertad
El derecho a la salud, garantizado por la actual Constitución, aún no se ha efectivizado para las personas privadas de libertad. Solo en los últimos años tuvieron lugar acciones gubernamentales destinadas a la reinserción social de estas personas, a través de la educación, el trabajo y la salud. Se trata de un estudio cualitativo para verificar la realización de consultas y orientaciones sobre el servicio de salud en el momento del ingreso a una penitenciaría de Minas Gerais, Brasil. Se entrevistaron 21 personas en esta situación, y la mayoría hizo referencia a la falta de atención en el ingreso y a la inexistencia de orientación sobre el funcionamiento de la unidad de salud de la prisión, y a las situaciones en las que se deriva a la atención extramuros. Además, reportaron dificultades en la asistencia, insatisfacción con el enfoque terapéutico y preocupación por la transmisión intrainstitucional de enfermedades. Considerando que la falta de atención y orientación en este momento puede causar daños irreparables, se buscó, sobre la base de la bioética, reflexionar sobre la negligencia del Estado hacia el custodiado en situación de vulnerabilidad.


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The social rights provided by the Federal Constitution were not put into practice for the Brazilian population at the same time. The right to health is a right of all Brazilians and a duty of the State, guaranteed by Article 196 of the Constitution and by the Law 8080, which established the Sistema Único de Saúde - SUS (Unified Health System), and the Law 8142, which provides for community participation in the management of the SUS. But that right was not guaranteed to persons deprived of their liberty. It was just in recent years that Government measures were taken to fulfil the State’s duty to assist detainees through education, work and health, as provided by the Law 7.210, the Lei de Execução Penal - LEP (Criminal Execution Law). The objective of the measures is to guide detainees’ social reintegration.

Regarding health, the Portaria Interministerial do Ministério da Saúde/Ministério da Justiça (MS/ MJ) 1.777/2003 (Inter Ministerial Decree of the Ministry of Health / Ministry of Justice) which instituted the Plano Nacional de Saúde no Sistema Penitenciário - PNSSP (National Health Plan in the Penitentiary System) was published after years of discussions. It emphasised the need for a specialised public health policy. Assuring transfer of resources, this policy should have justice, ethics, citizenship, human rights, equality and participation in the democratic process of rights and social control as its main basis. There are great distortions in the implementation of the right to health for a significant part of the Brazilian population, which includes persons deprived of their liberty (PDTL).

The PDTLs in the country have greater social vulnerability due to their position in society, with restricted access to goods and services and few opportunities. They are prisoners in prisons, living under unfavourable housing conditions, health and access to health actions. As a result, these people may have a more compromised physical and mental health when compared to the general population.

The PNSSP has been considered a landmark in health care in the Brazilian's prison context by establishing the logic of basic care for health care teams in the system. However, even though the PNSSP was not implemented in a homogeneous and simultaneous way in all units of the country’s penitentiary system, the Política Nacional de Atenção Integral à Saúde das Pessoas Privadas de Liberdade no Sistema Prisional (National Policy for Comprehensive Health Care of Persons Deprived of their liberty in the prison system) was established under the SUS in 2014. The Interministerial Decree MS / MJ 1/2014 outlines the conditions for adherence to this policy and the agreement to provide basic health care in the prison system.

Citizens are considered as inserted in social relations in Brazil; however, this does not guarantee that vulnerable people have their needs and rights fulfilled. According to Sarmento, it is in the process of universalisation that we can glimpse at the most pathological aspect of the process of affirmation of human dignity in Brazil. The economic factor is related to the creation of inequality, but other factors interfere in the definition of those that will be affected. The poor are stigmatised and, in specific circumstances, other vulnerable groups such as blacks, indigenous people, women, homosexuals, prisoners and people with disabilities, each group being stigmatised in their own way.

It is responsibility of the State to protect the rights of the individual, especially those who are unable to fully exercise them. While there are international or regional legal frameworks, it is observed that the difficulties that prevent vulnerable people from fully exercising their rights are still present, on its own particular way in each state. These difficulties assume a greater proportion in regard to prisoners in several aspects such as access to education, to work and also to health care.

There are currently eight international treaties that seek to guarantee human rights in patient care. These treaties are binding on States that have ratified them, but have moral and political force even in countries that have not ratified them. The United Nations (UN) oversees treaties compliance by States and may receive and examine denunciations of violation of human rights. One of these treaties is the International Covenant on Civil and Political Rights, ratified by Brazil in 1992.

There are also international instruments that do not have the binding force of a treaty but help to interpret the rights of the patient. Among them and closely related to the topic under study, is the set of principles for the protection of all persons subjected to any form of detention or imprisonment. These guidelines provide, in the 24th principle, that a proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary.

Considering that it is responsibility of the State to protect the rights of citizens and that people
in vulnerable situations have more difficulties in guaranteeing their rights, it is attempted, through bioethics and human rights, to find conducts based on the essential values of society that meet the needs of these individuals for harmonious coexistence and adequate conditions of life. The references of bioethics proposed by Hossne can be a means for discussion and reflection, so that the voice of the other is always present when defining priorities and adopting measures to achieve equality, through the identification, recognition and analysis of inequalities, their causes and possible consequences.

There are few studies on health conditions of persons deprived of their liberty. The general objective of the research carried out by Valim was to know their problems and their health care needs, in the light of bioethics, in order to ensure human dignity. This study is based on that research and had the objective to verify if prisoners are attended by prison health teams when they enter a penitentiary located in the state of Minas Gerais, Brazil, and if they receive guidance on the operation of the health facility on the location.

Method

This is a qualitative, descriptive and exploratory study conducted in January 2016 in a penitentiary located in the state of Minas Gerais, designed to house prisoners of both sexes who were not sentenced and who were sentenced to prison in closed or semi-open regimes. 24 prisoners of both sexes participated in the study. These individuals had been trained as health agents between 2012 and 2014 and were incarcerated at the time of the study. The choice of working with prisoners who had been trained as health agents is justified by their participation in activities in which the SUS organisation was presented, mainly regarding health promotion actions and prevention measures that should be provided by the prison health team.

After its acceptance by the direction of the penitentiary, the research was registered in the Plataforma Brasil and approved. The administration of the penitentiary carried out the survey of which persons deprived of their liberty who had been trained as health agents were still prisoners. Once the survey was completed, the order of the invitations, the schedule of the interviews and the place for their execution were defined together with the direction of the penitentiary because of logistics and security. Conditions that ensured privacy were considered in order to choose the location of the interviews.

Participation in the survey was not compulsory, and the confidentiality of the information provided was guaranteed. Only those prisoners who, after clarification, freely agreed to participate and signed the free and informed consent form were interviewed. The interviews were individual, semistructured and recorded in audio.

All speeches were transcribed and typed, and each was checked and compared with their audios to verify and correct any errors in the understanding of the speeches. In order to ensure confidentiality, in some sections the lines were suppressed, replaced by reticences between parentheses. Pauses in the interviewee’s speech were marked with continuous reticence in the text. A continuous line was used in the parts where it wasn’t possible to understand what had been said. People who were interviewed will be identified only as “participants” and their profiles will not be displayed in order to protect their identity. Thus, in the transcribed excerpts from interviews, “P” was used for participant and “I” for interviewer.

Results

All prisoners contacted to participate in the study were receptive. No emotional discomfort was detected during the interviews, which took place in pleasant atmosphere. Twenty-one people freely agreed to participate. Just one participant informed, after clarification, that he or she did not want to be included. Two people were not consulted because they were in a semi open regime and worked in a service external to the institution. In order to be able to approach these prisoners for invitation, clarification and possible participation in the study, it would be necessary for them to be absent from their work, due to the time of return to the institution, which is around 4pm. It would also be impracticable to schedule the interviews shortly after the return of the prisoner, due to the administrative routines of closing regular daily activities and the proximity of the times of team changing at the security sectors of the penitentiary. As a result, we opted to exclude those two prisoners from the study.

The reports obtained in the interviews were not edited. Data analysis was performed according to Bardin content analysis approach, culminating
in the definition of the following categories and sub-categories: 1) entry into the prison system; 2) access to the health service; 2.1) existence of a previous health problem; 2.2) development of health problems after imprisonment; and 3) access to health care in the light of bioethics.

This work is a part of the research with emphasis on the entrance in the prison system, in which the initial consultation and orientation about the functioning of the health service will be approached. Participants’ reports suggest that there is no standardised procedure for initial consultation and guidance on the functioning of the health service in the last ten years, since the time of detention of eighteen prisoners interviewed ranged from two to ten years and nine months and only three persons deprived of their liberty were detained less than a year ago. The apparent contradiction between a detention time of less than one year and the health agent training period from 2012 to 2014 is due to the fact that the prisoners were detained during the training period as health agents, then they left the prison and returned to it as a result of sentence or new unlawful act. Of the 21 persons deprived of their liberty who participated in the study, five mentioned health care during the admission, as reported:

“When we arrive, about three or four days later, they come to the infirmary and they ask if you have any health problem, if you used to take some medicine ... controlled ... these things, but tests are not done, no” (P);

“That did not ask for exams, no. Just asked if there was any problem, these things “(P).

It was not possible to identify, from the survey on the time of detention, in which years there were regular health consultations at the time of admission. Likewise, it was not possible to associate the number of prisoners and the capacity of the penitentiary to verify if overcrowding led to an increase in demand for the prison’s health unit and, as a consequence, the failure to carry out consultations upon entry into the institution. One can, however, consider the hypothesis.

Two participants mentioned the accomplishment of the health service, one of them due to the occasional need: “No, sometimes, so sometimes, when we don’t feel well, sometimes they take you, right? (...) No. No. Only. I went only when I was sick “(P). One participant reported that he / she was only attended near the release of the prison, upon being received by the Comissão Técnica de Classificação - CTC (Technical Classification Commission): “No. No, I did not. Never asked. Only when you go through the CTC in order to leave “(P). Attention is also drawn to the speech of a prisoner which allows us to infer that exams are not routine - rather, they are only done in specific situations: “No, no. I went straight to the cell. The right would be to do exams, right? To do some exams, right? To see if we have HIV, see if there are other types of disease. That would be the right thing. But it was not what happened “(P).

Regarding the second question, all 21 participants reported that they did not receive guidance from the prison’s administration on the functioning of the existing health service or on the types of care that may be provided by the local health unit team or in which situations the team would refer to care in other units of the public municipal health network.

Three detainees reported having received health information, but only during participation in training activities to form health agents. One participant reported that he or she frequently passes the orientation to other prisoners in the prison block where he or she is. When a person deprived of their liberty requires care, the information on health care in the institution is obtained from the inmates of the blocks where the new prisoners are housed, with the “cell-free” or with prison security agents. This informal communication is carried out by “ticket”, internally called “talk to me”, which is given to a certain inmate, the “free cell” who performs internal activities in the gallery, that is, not restricted to the prisoner’s own cell, as can be seen in the following speech:

“No, usually when we arrive, we ask for assistance, just the same, the agents tell us ... we have to wait! Because everything is through appointment! That is a thousand and so much prisoner, for two doctors, so we have to wait for our turn. “(P)

“So, but someone told you so ... if you need to see someone, what do you have to do, who do you look for?” (I)

“No, we do a talk with me, hand it over to the agent, they bring it down here ... Then when there’s a vacancy for us, the doctor books and calls.”

“So it’s the ‘talk to me’ that you ...” (I)

“Yeah, ‘talk to me’. “(P)
“... You deliver to the agent?” (I)

“We deliver to [the] free cell, [the] free cell delivers to the agent and they bring them down here and call us to the care. Or if you get sick too, scream, make a noise and you get to see the doctor too! And then they take them too. If it’s a more serious case, right?” (P)

“But who told you? This is what I wanted to understand, who explained ...” (I)

“Who told me?” (P)

“Yeah, who told you that you had to do the ‘talk to me’?” (I)

“No, that’s when you get here in jail. When you have just been arrested. “(P)

“Right.” (I)

“You’re here, you’re not feeling well. A cellmate in the cell is already aware of your problem, he or she is going to tell you, what is so bad? He or she will call the agents. If it’s one minor thing, let’s do ‘talk to me’, pass to them so they’ll give you assistance. “(P)

“So it is your colleagues who ...?” (I)

“You always get there, someone gives you an orientation.” (P)

“But here, of the health service, no one told you, thus, on one who works in the penitentiary; the person who gives information is usually another inmate? “(I)

“Yes, but a partner there.” (P).

In the following report, there is a difficulty that may arise from the absence of guidance on the type of care provided by the health team of the institution and the services that are performed outside the walls:

“It was only like that, on the day I went felt unwell, that I wanted them to call, to talk to Dr. (...) I spoke with (...), with (...). Book a doctor for me if Dr. (...) can not answer. Then he or she said: ‘You are going to pay?’ I said, ‘I can not pay!’ Then he or she [turned] like this: ‘then there is no way, there is no way to book it. Because to be able to book an appointment it has to be paid’. Because it did not work in the State, and only they could book “(P).

In addition, it is possible to observe in the following report, besides the absence of orientation, the non-attendance and the dissatisfaction due to the therapeutic conduct and the internal transfer of a prisoner with suspected tuberculosis:

“Do not pay any attention, just keep us there. (...) It’s always the same. The service there is really difficult. They take their time to go there. (...) They do not bring anything. They never bring medicine (...) But sometimes it’s there, just like tuberculosis, there are people coming from other blocks that never _____ there, they put them together with you ... Tuberculosis, that never happened here so you could see what it is. (...) They come from the street, then the prison guards put them with you and you end up catching tuberculosis. Then you ask to go to the health unit, there’s no way, you have to book first _____. (...) We are going to ask to bring the attendance here, the agents say that it has to book. (...) Then, if you go and forward your name, it is never scheduled, that is when you have to make agitation in the block “(P).

Discussion

The reports obtained from the interviews suggest an irregularity in the accomplishment of the minimum protocol for the health diagnosis established in the PNSSP, which aims to develop health promotion actions and the prevention of aggravations upon the entry of the prisoner in the System.

Observance of the UN body of principles to protect persons subject to detention ensures that they are subjected to medical examination to detect any need for care and treatment, thus avoiding the occurrence of health problems. Similarly, the American Convention on Human Rights from November 22, 1969, known as the Pact of San Jose, Costa Rica and promulgated only in 1992 by the Brazilian government, assures to everyone respect for life and their physical, mental and moral integrity. It further guarantees to all persons deprived of their liberty respect for their dignity as a human being.

In a recent publication, the Inter-American Court of Human Rights ruled on the situation of persons deprived of their liberty in the countries under their jurisdiction. It highlighted contentious cases, decisions and measures proposed to fulfil the obligations of the State regarding the conditions of detention, including sanitary conditions and medical care. In cases submitted to the Court, there were facts that constituted a disrespect for the rights of the persons deprived of their liberty, in...
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In its article 2º, DUBDH states that the community, that is, persons deprived of their liberty must also be treated with humanity and dignity. And, omitting to offer health care to persons deprived of their liberty, the Brazilian State violates articles 6º and 10 of the International Covenant on Civil and Political Rights promulgated in 1992 and article 4º and section 2 of article 5º of the American Convention on Human Rights.

The analysis of the population of inmates of the penitentiary where the survey was carried out revealed that in the year following its inauguration, the prison population was 1.59 times greater than the occupancy capacity. Four years after the inauguration, the capacity was increased by 75%. The following year, the prison occupation reached 1.38 times the capacity and, in 2016, reached double the capacity, that is, it is in disagreement with the provisions of the state legislation in force.

A similar trend is observed in the state of Minas Gerais in general, seeing that in 2007, 37,354 people were detained in institutions with a capacity for 24,876 people. In 2010, the situation continued to worsen: 46,296 prisoners for 30,905 vacancies, reaching, in 2014, 61,392 people for 36,685 vacancies. Overcrowding is a reality in Minas Gerais as well as in the whole country, although, comparatively, there are states where the units are in worse conditions either because of deterioration of physical infrastructure or overcrowding itself.

The detention in overcrowded cells, in degrading conditions, disrespects human dignity. Overcrowding and lack of evaluation for the adoption of uninterrupted health care, prevention and promotion measures directed at persons deprived of their liberty may aggravate past illnesses and develop diseases, as well as to facilitate the intra institutional transmission of infectious diseases. Tuberculosis represents an important health problem in the country. The risk of tuberculosis in more vulnerable populations is high compared to the Brazilian population in general. The risk observed in the homeless population in the city of São Paulo was 56 times higher. The risk for the indigenous people was three times higher and the risk for people with HIV / AIDS and in persons deprived of their liberty was 28 times higher than in the general population. The problem is recognised in prisons, but its scale has not yet been determined due to the lack of regular case detection and treatment of patients.

In discussing the endemicity of tuberculosis in prisons, Larouzé et al. draw attention to the misconception that the justification for this situation is attributed to the characteristics of

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persons deprived of their liberty— that is, people from disadvantaged classes, HIV carriers and drug users. The transmission of tuberculosis within these institutions is a reality, so it is not appropriate to attribute the high numbers to the predominant characteristics of the incarcerated population. The irregularity in the accomplishment of the minimum protocol at the moment of entry can generate risks of intra institutional transmission of several diseases, among them tuberculosis. In addition, seclusion in overcrowded, poorly ventilated cells can lead to the spread of this disease, creating risk for both persons deprived of their liberty and their families, prison staff, and even communities to where prisoners will return after their release from prison.

Both in UN regulations and in the Lei de Execução Penal - LEP (Criminal Execution Law), preventive and curative health care is assured to prisoners. It is observed in published works about health care in the prison system of the country, which, in most cases, actions are emergency care, which repercutes in the efficiency of the health care, that is, the emergency care doesn’t deal with prevention of injuries and integral care, and therefore is not complying with the provisions of the LEP.

It is important to emphasise that the Plano Nacional de Saúde no Sistema Penitenciário - PNSSP (National Health Plan in the Penitentiary System) institution sought to harmonize the provisions of the LEP and the SUS, so that the persons deprived of their liberty were less invisible in the public health policy in force in Brazil. In turn, the PNAISP is focused on the expansion of health actions in the system, besides the concern with its financing. Although one of the objectives of PNSSP was the access of prisoners to health care, via SUS, it is observed in the penitentiary where this study was carried out that the accomplishment of this objective is still distant. PNAISP sought to ensure progress, if compared to PNSSP conditions, but several institutions in the country’s prison system have not yet fully adhered to this policy. Thus, it can be concluded that much remains to be done to reverse the current situation.

The care that the prisoner needs and to what he or she is entitled can be guaranteed only if he or she is evaluated at the time of his or her entry in the prison system or, if it is not possible, during the first days of imprisonment. If this evaluation does not occur, the continuation of the treatment of a prisoner who already enters the prison with health problems is not possible. This condition was also observed by Minayo and Ribeiro, in a study carried out in the prison system of Rio de Janeiro.

The lack of evaluation of health conditions in this initial situation, coupled with the lack of guidance on access to the health service located in the prison, certainly causes harm to these people. The damages compromise human dignity and can have irreparable consequences. Therefore, it is necessary to strive to comply with the provisions of specific legislation and related policies, seeking to modify the current framework. Therefore, it is imperative that those involved are truly committed, willing, without prejudices and guided by bioethics references in order to address the situation and adopt the necessary conduct, considering that not only duties and rights should be promoted, but also values, concepts and commitments.

Currently, in Brazil, social relations are still permeated by the difference between people, which affects access to rights. It is essential to universalise human dignity: in addition to recognising the inequalities that stigmatise vulnerable groups, our society must be willing to reverse this situation. It is then necessary to reflect and act in order to identify directions to overcome the existing challenges.

Final considerations

It is essential to observe the international standards of UN and WHO’s initiatives, as well as legislation relating to the prison system, in order to ensure the health care of persons deprived of their liberty. Likewise, it is fundamental to regularly follow the minimum protocol for the health diagnosis of persons deprived of their liberty at the moment when they are admitted into the prison system and to effectuate the orientation regarding the access to health actions inside the prison and the kinds of health care available outside the prison through the SUS. It is necessary to change the current perspective, which has led to disrespect and discrimination, and to consider human dignity through the critical refexion made possible by bioethics.

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Referências


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25. Costa BEC. Secretaria de Estado de Defesa Social. Parecer de aprovação de projeto e emenda CEP-UFTM [Mensagem pessoal recebida 29 nov 2016].


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Participation of the Authors
Edna Maria Alves Valim conceived and designed the study, and collaborated in the collection, analysis and interpretation of data and writing of the article. Ana Maria Lombardi Daibem contributed with the analysis and interpretation of the study’s data as well as the writing of the article. William Saad Hosseini participated in the conception and design of the study and contributed to the analysis of the data.