

Brazilian Justice response to protect the prison population from Covid-19

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Dear Editor,

Since the confirmation of the first case of Covid-19 in Brazilian territory, on February 26, 2020, all government agencies have sought to develop strategies to contain the progress of the pandemic in the country¹. As of April 16, 2020, there are already 30,425 confirmed cases and 1,924 deaths caused by the disease in the country, with daily growth².

An additional concern related to Covid-19's entry into Brasil's criminal justice system. The Brazilian prison population is the third largest in the world and undergoing intense growth, behind only the US and China, first and second places, respectively. There are more than 760,000 individuals deprived of their liberty, confined in prison units without the minimum infrastructure capable of guaranteeing resocialization, expressing a clear violation of human rights³. Overcrowding [over 150%], associated with the profile of the prison population [*characterized by the high prevalence of risk factors for Covid-19, such as*

cardiovascular, respiratory, metabolic and immunosuppressive diseases, drug use and unhealthy lifestyle habits, as well as of elderly individuals, pregnant women and other vulnerable groups] and the context of violation of the most basic rights generate a high risk scenario for the spread of the coronavirus^{3,4}. On April 17, 2020, the first death of an individual deprived of liberty, a 73-year-old elderly man who was serving time at the Cândido Mendes Penal Institute, in the state of Rio de Janeiro, was registered. The criminal institution is aimed at the elderly population and has a capacity for 246 prisoners, but it houses 305⁵.

MEASURES ADOPTED BY THE BRAZILIAN JUSTICE

In order to reduce the risk of Covid-19 entering the prison system in Brasil and considering the responsibility of the Brazilian Justice with regard to the

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protection of life and the guarantee of the dignity of this population, the National Council of Justice (CNJ) issued recommendation 62, of March 17, 2020, with the purpose of guiding the adoption of preventive measures for the spread of infection by the new coronavirus within the scope of the criminal and socio-educational justice systems⁶.

The measures adopted by the criminal justice system may have an impact on reducing the epidemiological risk of spreading the virus in the community deprived of liberty, with benefits extended to the entire Brazilian population. Such recommendations are in line with global guidelines and based on solid scientific evidence. For educational purposes, we have grouped these recommendations into five interdependent categories: a) Recommendations focusing on risk groups; b) Reduction of population gatherings; c) Maintain social distancing and/or social isolation; d) Management measures; e) Acting on suspected cases.

a) Recommendations focusing on risk groups:

Considering the risk groups for Covid-19^{7,8}, CNJ recommended the re-evaluation of provisional prisons giving priority to *pregnant women, nursing mothers, mothers or persons responsible for children up to twelve years old or for people with disabilities, as well as elderly, indigenous, people with disabilities or are part of the risk group* (Article 4). For this same population group, early exit from closed and semi-open regimes was allowed.

b) Reduction of population gatherings

With the purpose of reducing population gatherings, an essential condition for the reduction of community contagion⁹, it was recommended to reevaluate provisional prisons and to grant early exit from closed and semi-open regimes, giving priority to people arrested in criminal institutions who:

- *are over-occupied;*
- *do not have a healthcare team assigned to the institution;*
- *are under an interdiction order, with precautionary measures determined by an organ of the international jurisdictional system or;*
- *have facilities that favor the spread of the new coronavirus.*

In addition, it recommended the maximum exceptionality of new preventive detention orders and the preparation and implementation of a contingency plan within the scope of visitation rules, providing for a

change in the regime of visits and delivery of items to persons deprived of their liberty, mandatory cleaning of visitation spaces and provision of masks and individual protection items to visitors, prohibiting the entry of visitors with fever or respiratory symptoms associated with Covid and priority adoption of fractionation of visitation at different days and times.

c) Maintain social distancing and/or social isolation

In line with the international guidelines on the importance of social distancing and/or isolation^{9,10} in the containment of the Covid-19 pandemic, the main recommendations are:

1- Suspension of the duty of periodic presence to the court of persons in provisional liberty or conditional suspension of the case, for a period of 90 (ninety) days;

2- Granting of house arrest in relation to all persons imprisoned while serving sentences under an open and semi-open regime, subject to conditions to be defined by the judge responsible for enforcement;

3- Temporary suspension of the duty of regular presentation in court of persons under sentence in the open regime, house arrest, penalties restricting rights, suspension of enforcement of the sentence and conditional release, for a period of ninety days;

4- Possibility of house arrest for people arrested for alimony debt;

5- Rescheduling of hearings in cases where the defendant is released and held by videoconference in the event that the person is deprived of liberty.

6- Possible extension of the return period or postponement of the temporary exit benefit. In the event of postponement, rescheduling of the temporary exit must be guaranteed after the end of the sanitary restriction period.

d) Management Measure

In the component of the criminal system management, the following recommendations stand out:

1- Preparation and implementation of a contingency plan by the local Executive Branch, including health education actions, screening of suspected cases at the time of admission to the prison unit, preventive hygiene measures, supply of medicines and supplies, guarantee of uninterrupted water supply, measures to avoid the collective transport of persons deprived of their liberty, equipment for professionals and planning in case of professionals showing symptoms;

2- Allocation of financial penalties decreed during the public health emergency period for the purchase of cleaning, protection and healthcare equipment.

e) Acting on suspected cases

Faced with a suspected case of Covid-19, it is recommended:

1- The isolation of a person with symptoms compatible with Covid-19 and immediate referral for the implementation of a health treatment protocol, as recommended by the Ministry of Health;

2- The immediate referral for treatment at a reference healthcare facility for people who have severe breathing difficulties associated with Covid-19. In such cases, it is possible to replace the prison in a closed environment by a non-custodial measure, particularly in the absence of adequate isolation space or healthcare staff.

FINAL NOTES

Even considering the CNJ's efforts to face the pandemic and to protect the population deprived of liberty in Brasil, an effort by the public authorities

to guarantee sufficient resources to implement these recommendations is necessary. The criminal system, for decades, has suffered a chronic crisis [*not only financial but also in its moral and legal foundations*], the solution of which goes far beyond public policy or the injection of financial resources¹¹.

Finally, there are reasons to believe that, despite all the recommendations, the entry of the new coronavirus in the Brazilian criminal justice system will further deepen the double crisis (health and criminal procedure) the country is facing. If based on the evidence on the characteristics of the virus (infectivity, pathogenicity, virulence and lethality) and the very historical context of the penitentiary system, there is a predictable and announced tragedy, the consequences of which will reach the entire Brazilian people.

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PALAVRAS-CHAVES: COVID-19. Infecções por coronavírus. Saúde pública. Sistema de Justiça. Prisioneiros.

REFERENCES

1. Brasil. Ministério da Saúde, Secretaria de Vigilância em Saúde. Situação epidemiológica da COVID-19: doença pelo coronavírus 2019. Boletim Epidemiológico 09 do Centro de Operações em Emergência em Saúde Pública. 2020. [cited 2020 Apr 14]. Available from: <https://portalarquivos.saude.gov.br/images/pdf/2020/Abril/12/2020-04-11-BE9-Boletim-do-COE.pdf>
2. Brasil. Ministério da Saúde. COVID 19: painel coronavírus. [cited 2020 Apr 14]. Available from: <https://covid.saude.gov.br/>
3. Brasil. Ministério da Justiça. Conselho Nacional do Ministério Público. A visão do Ministério Público sobre o sistema prisional brasileiro. Vol. 3. Brasília: Conselho Nacional do Ministério Público; 2018. [cited 2020 Apr 14]. Available from: https://www.cnmp.mp.br/portal/images/Publicacoes/documentos/2019/BOOK_SISTEMA_PRISIONAL.pdf
4. Brasil. Ministério da Justiça. Conselho Nacional do Ministério Público. A visão do Ministério Público brasileiro sobre o sistema prisional brasileiro. Brasília: Conselho Nacional do Ministério Público; 2016. [cited 2020 Apr 14]. Available from: https://www.cnmp.mp.br/portal/images/Publicacoes/documentos/2016/Livro_sistema_prisional_web_7_12_2016.pdf
5. Barbon J. Brasil registra primeira morte de presidiário por coronavírus. 2020. [cited 2020 Apr 17]. Available from: <https://www1.folha.uol.com.br/cotidiano/2020/04/brasil-registra-primeira-morte-de-presidiario-por-coronavirus.shtml>
6. Brasil. Ministério da Justiça. Conselho Nacional de Justiça. Recomendação nº 62, de 17 de março de 2020. Recomenda aos Tribunais e magistrados a adoção de medidas preventivas à propagação da infecção pelo novo coronavírus – Covid-19 no âmbito dos Sistemas de Justiça Penal e Socioeducativo. [cited 2020 Apr 14]. Available from: <https://www.cnj.jus.br/wp-content/uploads/2020/03/62-Recomenda%C3%A7%C3%A3o.pdf>
7. Kwok KO, Li KK, Chan HHH, Yi YY, Tang A, Wei WI, et al. Community responses during early phase of COVID-19 Epidemic, Hong Kong. Emerg Infect Dis. 2020;26(7): 10.3201/eid2607.200500. doi:10.3201/eid2607.200500.
8. Guan WJ, Ni ZY, Hu Y, Liang WH, Ou CQ, He JX, et al.; China Medical Treatment Expert Group for Covid-19. Clinical characteristics of coronavirus disease 2019 in China. N Engl J Med. 2020;382(18):1708-20.
9. Remuzzi A, Remuzzi G. COVID-19 and Italy: what next? Lancet. 2020;395(10231):1225-8.
10. Ghinai I, Woods S, Ritger KA, McPherson TD, Black SR, Sparrow L, et al. Community transmission of SARS-CoV-2 at two family gatherings - Chicago, Illinois, February-March 2020. MMWR Morb Mortal Wkly Rep. 2020;69(15):446-50.
11. Brasil. Ministério da Justiça. Conselho Nacional do Ministério Público. Meta 2: a impunidade como alvo. Diagnóstico da investigação de homicídios no Brasil. Brasília: Conselho Nacional do Ministério Público; 2012. [cited 2020 Apr 14]. Available from: https://www.cnmp.mp.br/portal/images/stories/Enasp/relatorio_ensasp_FINAL.pdf

