



The Massive Incarceration Of Women In Brazil: A Cycle Of Violence And Exclusion



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TABLE OF CONTENTS

1. INTRODUCTION
2. LEGISLATIVE FRAMEWORKS FOR THE RIGHTS OF INCARCERATED WOMEN
3. THE IMPRISONMENT OF WOMEN IN BRAZIL
4. THE REALITY OF PREGNANT AND POSTPARTUM WOMEN IN THE BRAZILIAN PRISON SYSTEM
5. PATHS AND POSSIBILITIES FOR GUARANTEEING RIGHTS
6. CONCLUDING REMARKS

INTRODUCTION

The growing trend of female incarceration is present all over the world, with 740,000 women currently in prison, a 17 percent increase from 2010. According to the report *Global Prison Trends* issued by Penal Reform International in 2021, the rise is related to an incarceration policy characterised by laws that criminalise possession of small amounts of drugs and the punishment of women who commit offenses in the contexts of violence, poverty, or discrimination. The report demonstrates that gender inequality causes women to benefit less from acquittals or releases than men, even when they are considered low risk (GIFE, 2021; Penal Reform International & Thailand Institute of Justice, 2021).

Indeed, female incarceration is an urgent problem in Brazil, which, according to the *World Female Imprisonment List*, is the fourth country in the world with more women in prison, behind only the United States, China, and Russia. Furthermore, the *National Survey of Penitentiary Information* shows that, among the countries that incarcerate the most women, Brazil had a 455 percent increase in the imprisonment rate between 2000 and 2016, while Russia, for example, had a 2 percent reduction (INFOPEN Women et al., 2018; Institute for Criminal Policy Research et al., 2017).

This article aims to explore the structural reasons behind the massive incarceration of women in Brazil, present the reality of incarcerated women, and the implications of this scenario in the scope of human rights guarantees.

LEGISLATIVE FRAMEWORKS FOR THE RIGHTS OF INCARCERATED WOMEN

At the international level, there are several devices created that relate to the rights of the incarcerated population in general, including the Universal Declaration of Human Rights (1948), the United Nations Standard Minimum Rules for the Treatment of Prisoners (1955) the American Declaration of the Rights and Duties of Man (1948), the Pact of San José de Costa Rica (1969), and the United Nations Conventions against Torture and Other Cruel, Inhuman, and Degrading Treatment (1984). These documents form the basis of the guarantee of rights for prisoners in all signatory countries (Borges, 2019).

More specifically, the primary reference for the guarantee of rights for incarcerated women is The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules), adopted by the United Nations General Assembly in December 2010, which establish criteria and parameters to meet the specific and particular demands of this population. The rules refer to the admission processes for women prisoners, health care, humanitarian treatment, search procedures, and even the rights of children accompanying their mothers in prison, as well as the agents and entities responsible for their implementation. The guidelines in the document guide UN Member States to prioritise non-custodial measures for women facing criminal proceedings or convicted of a crime. The basic principle of the Bangkok Rules is the need to consider the particular needs of women prisoners, both in penal execution and in the prioritisation of measures to prevent women from entering the prison system. The Brazilian government actively participated in the negotiations for the drafting and approval of the document (Borges, 2019; Sousa, 2019).

At the national level, the Constitution of the Republic establishes the principle of equality, according to which everyone must be treated equally, and the presumption of innocence, a constitutional guarantee of liberty according to which no one can be considered guilty before a conviction. In the Brazilian system, no one can be imprisoned without conviction for more than 120 days and, if this period is exceeded and there is no conviction decision, everyone is entitled to provisional freedom, regardless of the crime he or she is accused of having committed. In this sense, the Constitution guarantees freedom as the rule and prison as the exception.

Furthermore, the Constitution also guarantees the right of prisoners to be with their children during the breastfeeding period and the right to receive visits from partners, relatives, and friends. Therefore, penal establishments must have environments for these visits. Besides, the Constitution determines that the State must guarantee broad access to justice for all, including those without financial means, through the Public Defender's Office. It is the role of the Public Defenders, in this sense, to provide legal guidance and

defend the needy in all judicial phases.

Moreover, the significant increase in female incarceration in Brazil in recent years has had repercussions on the demands of civil society and, consequently, on public security policies and policies to combat gender inequality. As a consequence, three other legislative devices have been developed to guarantee the rights of imprisoned women: the Penal Enforcement Law of 2009, which determines that the security of the internal premises of women's prisons must be done exclusively by women, in addition to establishing the mandatory nursery and daycare in women's penal units; the Legal Framework for Early Childhood, of 2016, and the collective Habeas Corpus granted by the Supreme Court in 2018, which granted the right to home detention for pregnant women and mothers of children up to 12 years old who respond to crimes without violence (GIFE, 2021; Rezende & Santos, 2020; Sousa, 2019).

The national legislative set, as well as the determinations of the Bangkok Rules, of which Brazil is a signatory, establishes the right to prenatal care for pregnant prisoners, who must be transferred to a prison unit that has medical staff and structure for monitoring from the moment the pregnancy is discovered. Also, the birth must necessarily take place in a hospital unit of the public health network (SUS) or the Secretariat of Penitentiary Administration (SAP). Similarly, women have the right to postnatal care and must be in a prison unit that has a nursery and a health team prepared for the care and monitoring of the mother and baby, who must have access to essential exams and tests. Nevertheless, every female prison must have a health team, as well as access to medication, and hygiene products appropriate to their demands, in addition to having a medical examination upon entry and a comprehensive evaluation to determine the need for basic care and the diagnosis of diseases (Borges, 2019; Núcleo Especializado de Situação Carcerária, 2018; Sousa, 2019).

Finally, the institutions must facilitate the contact between women and their families, including their children. In this regard, women prisoners should be placed in prisons close to their family environment, given assistance in contacting relatives, and access to legal assistance before, during, and after imprisonment. Also, in case of sexual abuse or other forms of violence, the institution must inform the imprisoned woman of her right to appeal to the judicial authorities and, even if she has no interest in legal action, the institution must ensure that she has immediate access to specialised psychological counseling or support (Borges, 2019; Sousa, 2019).

THE IMPRISONMENT OF WOMEN IN BRAZIL

Despite the legislative framework, the reality of incarcerated women in Brazil faces serious rights violations. In terms of the profile of Brazilian women in prison, the National Survey of Penitentiary Information reveals a pattern: the majority are young, black, single, with low education levels, and with children.¹ Many of them have already been victims of physical, sexual, or psychological violence, living in a context of vulnerability and exclusion, having a history of substance abuse and mental health issues. Moreover, 35 percent of the women deprived of their liberty had not yet been tried and sentenced. Finally, it is important to highlight that 62 percent of these women committed crimes related to drug trafficking and that, of this total, 77 percent affirm that they entered the world of crime through the influence or induction of their husband, boyfriend, or partner, according to data from the National Penitentiary Department (Depen) (GIFE, 2021; INFOPEN Mulheres et al., 2018; Institute for Criminal Policy Research et al., 2017).

The drug trafficking aspect is central because the vast majority of women involved in these systems are responsible for trafficking small amounts of substances so that they can be strategically reprimanded and a larger amount of drugs go unnoticed by the authorities. In this way, they are part of a manoeuvring mass for larger-scale transports and crimes. This shows that the gender division is not limited to the formal labour market, but is also present in the organisation of trafficking, where women also occupy vulnerable positions (Borges, 2019; Campos & Isaac, 2019; ITTC, 2018).

Considering this, the growth of the female prison population in Brazil is directly linked to the current Drug Law (Law 11.343/2006), promulgated in 2006, which, although decriminalising the user, hardened the penalties for drug dealers and left it up to the judicial authority to define the number of drugs that constitutes trafficking and use. Still, the police officer has a central role in defining the legal framework of the offence, opening the margin for abuse of authority. Thus, even though women are not at the top of the hierarchy of trafficking they are brutally affected by this legislation, since in the great majority of cases, judges opt for imprisonment even when it is not necessary, instead of applying alternative sentences. Before the enactment of the Law, 13 percent of prisoners in the state of São Paulo served sentences for trafficking, while today this contingent is 60 percent in women's jails (Borges, 2019; Campos & Isaac, 2019; Conectas Human Rights, 2018).

1. Of all the women deprived of freedom in Brazil, 62% are black, 45% have incomplete elementary school education, and 50% are young people between the ages of 18 and 29. In states such as Acre, Ceará, Maranhão, Piauí and Tocantins, more than 90% of the female population deprived of freedom is black. In addition, 62% of these women are single (INFOPEN Women et al., 2018).

Thus, although crimes related to the Drug Law do not involve violence or serious threat, legislative loopholes directly impact the increase in female incarceration, without taking into consideration that involvement in illegal activities by women is often related to the influence of their partners and their context of social vulnerability. Moreover, upon being convicted, these women no longer play the social role that the sexist and patriarchal society imposes on them, i.e., the role of mother and caretaker of the home, causing them to be extremely stigmatised and suffer abandonment by their partners and family members, constituting a double punishment (GIFE, 2021).

Once inserted into the prison system, gender disparities become increasingly deeper. The universalisation of this system, initially created by men and for men, does not meet the differentiated demands and needs of women prisoners. In general, the particularities of women's incarceration as a unique category are not recognized and, historically, the prison context is seen from a male perspective, with the prevalence of penal services and policies directed to men and neglecting the female prison reality. Indeed, this negligence is reflected in the great deficiency of data and indicators about women in detention in official government databases, which contributes to the invisibility of the needs of these people (Borges, 2019; Campos & Isaac, 2019; Rezende & Santos, 2020).

In general, Brazilian prisons, whether they are female, male, or mixed, face problems related to overcrowding, which worsens the spread of contagious diseases, causes trauma, exacerbates mental disorders, which at the end lead into the chronic degenerative diseases among prisoners. In some institutions, the cells are improvised as infirmaries and there is a shortage of equipment and qualified professionals. In women's prisons, specifically, the lack of police escort makes it difficult for inmates to be taken for treatment in reference hospitals (Sousa, 2019).

According to the report *Giving Light in the Shadow*, by the Instituto Terra, Trabalho e Cidadania (2015), more human rights violations occur in women's prisons and not in men's establishments, mainly about sexual and reproductive rights and access to specialised health care, being a place of social exclusion and propagation of violence. In Brazil, there is a deficit of almost 15 thousand spaces for women, and the exclusively female prisons have an occupation rate of 156.7 percent, that is, for every 10 vacancies available, 16 women are imprisoned. In mixed establishments, the occupancy percentage increases to 254 percent, that is, 25 people imprisoned for every 10 vacancies. Still, 60 percent of women with disabilities are not in adapted units (Borges, 2019; Conectas Human Rights, 2018; ITTC, 2015).

Thus, family life, which has proven to be fundamental for the recovery and social reintegration of prisoners, is severely undermined. Women prisoners live in a context of extreme loneliness, as they are

generally abandoned by their husbands, relatives, and friends, which adds to the reality that the State is unable to guarantee appropriate visiting facilities. Furthermore, the number of social visits highlights the difference in the treatment of families towards women and men in prison. In 2016, each male prisoner received an average of 7.8 visits, while women received 5.9. Restrictions on the exercise of the right to intimate visits also contribute to the distancing from the family, a consequence of discrimination regarding the expression of female sexuality. In this sense, only 41 percent of female units have a specific place to receive intimate visits (Borges, 2019; Conectas Human Rights, 2018).

THE REALITY OF PREGNANT AND POSTPARTUM WOMEN IN THE BRAZILIAN PRISON SYSTEM

When it comes to the specific issues of pregnancy and maternity for imprisoned women in Brazil, the scenario is even more critical. In all stages of the criminal process, maternity is not considered or is even used to punish women even more for not fulfilling the social role expected by society. In this context, the structural faults of prisons become even more evident, considering that 84 percent of the prison units do not have cells or dormitories for pregnant women. This results in the lack of prenatal care during pregnancy and the difficulty of access to health care during and after birth, generating profound consequences not only for the mothers but also for the children. In this way, being pregnant in prison inevitably means being exposed to a risky pregnancy (Borges, 2019; Conectas Human Rights, 2018; GIFE, 2021).

Currently, 74 percent of the entire population of incarcerated women are mothers. More than half of the women in prison are single mothers and about 25 percent are responsible for supporting the family. In the case of pregnancy during incarceration, the lack of adequate conditions to meet the demands of pregnant women results in a traumatic experience. The women suffer from the lack of escorts for medical examinations and childbirth, and with the abuses suffered in the hospital environment due to ingrained prejudices. The deliveries, often carried out without the presence of a family member, without medical assistance, or with the mother handcuffed,² not to mention the lack of prenatal care, lead to the transmission of diseases such as syphilis, in addition to brain malformation, blindness, lack of oxygenation in the brain due to delivery delays, and other complications that can lead the child to death (Borges, 2019; Campos & Isaac, 2019; GIFE, 2021).

After birth, according to the law, the prison establishment is responsible for offering adequate space for the woman deprived of liberty to remain with her child during the breastfeeding period. However, nationwide, only 14 percent of women's prison units have a nursery or reference centres for maternity. For children over two years old, the percentage of prisons that receive them drops to 3 percent. In the case of older children, they cease to be under their mother's guardianship and begin to move between family homes or adoption shelters, and the consequences of the interruption of this contact remain present for generations in the family nucleus (Borges, 2019; GIFE, 2021).

According to the Legal Framework for Early Childhood (Law 13.256/2016), women who are provisionally imprisoned and who are pregnant, mothers of children up to 12 years old, or whose

2. The law banning the use of handcuffs on women in labour was not sanctioned until 2017 (Sousa, 2019).

children are disabled have the right to home detention. However, this right is not guaranteed in practice, due to a strong resistance from the judiciary to apply alternative ways of serving the sentence. According to the Instituto Terra, Trabalho e Cidadania, about 80 percent of the potential beneficiaries have their rights denied. Behind the denials are strong moral arguments, without a legislative basis, which delegitimise maternity due to the crimes committed by women, considering that they are less deserving of protection and of maintaining the bond with their children. The punishment, therefore, is more intense because it considers that the woman has not only broken the law, but also the ideal of maternity promoted by society (Boehm, 2019; Dolce, 2019).

However, the vulnerable conditions that these women face due to their social, racial, ethnic, and cultural origins make them face denied opportunities and resources at all times since they are not supported by a series of public policies and social rights such as health, education, and employment. Given this, the judiciary's decisions rarely take into consideration the social context of women deprived of their liberty. According to Marina Dias, executive director of the Institute for the Defense of the Right to Defense (IDDD), this scenario reflects the conservatism of the Brazilian judiciary and its punitive culture, which uses imprisonment as a way to deal with conflicts, in addition to a systematic violation of the principle of presumption of innocence (Boehm, 2019; Dolce, 2019).

PATHS AND POSSIBILITIES FOR GUARANTEEING RIGHTS

As demonstrated by the information presented, the existence of laws at the national, regional, and international levels to guarantee the rights of women prisoners does not necessarily mean that they are put into practice. Despite the participation of the Brazilian government in the negotiations for the elaboration of the Bangkok Rules, so far, they have not been translated into consistent public policies in the country, signalling the failures in the process of implementation and effective internalisation in Brazil of the norms of international law and human rights in its legal system (Borges, 2019; Sousa, 2019).

As such, there is a worrying lack of structure both concerning women's penal units and in the tools of law enforcement by magistrates, often unprepared to deal with the gender dimension in incarceration debates, which is reflected in their reproduction of sexist, patriarchal, and deeply punitive prejudices. In general, the Brazilian judiciary reinforces the already existing social and racial exclusion and there is a systematic non-compliance with constitutional rules and the international commitment made by Brazil, resulting in serious human rights violations (Borges 2019; Sousa, 2019).

Selectivity and racism mark the criminal justice system throughout its processes, considering that the prison population is formed mostly by black, young, and poorly educated women. With a public security policy focused on excessive policing, which invests little in the investigation for the dismantling of crime, many women are arrested with a small number of drugs and, upon entering the prison system, end up being inserted into a more complex criminal network that feeds an endless vicious cycle. Contrary to the high incarceration rates, crime levels have not decreased. On the contrary, mass incarceration occurs in parallel to the strengthening of criminal organisations and the increase in violence, which proves the inefficiency of a system guided by a punitive and racist logic that disrespects the individual guarantees of presumption of innocence, due legal process, and ample defence (Borges, 2019; GIFE, 2021).

Moreover, the Brazilian prison system is not effective in resocializing the individual deprived of freedom. In fact, the prison sentence accentuates the cycle of violence, further weakens the social fabric and brings serious consequences for the entire community. In the case of women, prejudices and social stigmas make it difficult for female prison inmates to find jobs and housing. Thus, the vast majority of women, who are imprisoned for trafficking crimes related to the need for subsistence, the responsibility of supporting their children, and the low level of education that interferes with their

access to legal professional activities, end up in a vicious cycle that forces their involvement with illegality. Besides this, going to prison also impacts social and family relations, leaving these women helpless. That is, when a woman goes through the prison system, her vulnerabilities tend to worsen due to the accentuation of stigmas, a process reinforced by the police and the judiciary (Borges, 2019; GIFE, 2021).

Considering this, combating mass incarceration fundamentally involves combating the racism and machismo that are at the base of Brazilian society. To this end, affirmative policies are needed in the institutions of the justice system and the strengthening of alternative sentencing policies, so that the penalty of deprivation of liberty in prison ceases to occupy the central place in the system. Furthermore, it is necessary to think and strengthen restorative justice initiatives that counteract the culture of revenge and follow a perspective of accountability and reparation of damages. Likewise, following the principles of the Bangkok Rules, it is important to approach the problem from the perspective of reducing women's provisional incarceration, and the use of penal alternatives to incarceration should be prioritised in cases where there is not yet a conviction decision (Borges, 2019; GIFE, 2021).

Finally, it is essential to combat structural prejudices, such as overcoming racism. Besides the numbers showing greater imprisonment of black women, they also suffer different treatment in prison, with violations of rights and the use of physical and psychological violence with a racist bias. Added to this are other structural problems, such as social inequality and lack of access to education, which have as a consequence the economic marginalisation of women and the lack of access to basic rights such as housing, education, health, and food, in addition to the lack of access to a quality criminal defence (Borges, 2019; GIFE, 2021).

CONCLUDING REMARKS

In summary, the incarceration of women is cyclical and involves social exclusion, poverty, and oppression in a sexist, racist, punitive, and exclusionary society. As a result, the woman, socially subordinated, sees crime and drug trafficking as a solution to guarantee her subsistence and that of her family. As the most vulnerable subject of organised crime, she is also more likely to enter the prison system, which is not able to meet her basic needs. In turn, the system represents an environment of violations of rights and a lack of basic structure, a situation that worsens when we consider pregnant women and women who have recently given birth, especially black women, who make up the majority of the female prison population.

Thus, it can be concluded that despite the international commitments to human rights and the rights of persons deprived of liberty and the national legislative system, the Brazilian justice structure and penal system categorically fail to respect and guarantee the dignity and basic rights of the incarcerated female population, being urgent the accountability for the violations observed and the effective application of existing public policies.

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