

São Paulo, March 20, 2020

Official Letter 29/2020

Mr. Secretary of the São Paulo Penitentiary Administration
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Copying:

Mr. President of the São Paulo State Court of Justice
Former Mr. Attorney General of the State of São Paulo

Ref. Request for action to combat the COVID-19 / coronavirus pandemic in prisons in the State of São Paulo, with the aim of safeguarding the health of persons deprived of liberty, public representation, and general public services.

1. Context of the extreme urgency and gravity of the circumstances:

On March 11, 2020, the World Health Organization published a decree recognizing the spread of COVID-19 / coronavirus infections as a pandemic. In addition, several public authorities have taken precautions to contain the disease's proliferation rate¹, which, as already demonstrated by scientific evidence, is extremely high.

In this conjuncture that has impacted well-being and social dynamics on a global scale, the unconstitutional state of the Brazilian prison system, already recognized by the E. Supreme Federal Court, ominously exposes health and dignity to an even greater risk, but even more so, of prisoners. The National Council of Justice, in its Recommendation No. 62/2020, highlights the fact that given the high rate of transmissibility of the novel coronavirus, there is a significant increase in the risk of contagion in prison establishments, "in view of factors such as the crowding of people, the unhealthiness of these units, the difficulties in ensuring compliance with the minimum hygiene procedures and rapid isolation of symptomatic individuals, insufficient health teams."

The reality of Brazilian prisons - overcrowding, confinement, humidity, low exposure to sunlight, poor and unhygienic sanitary conditions - does a disservice to public health and presents severe conditions for the proliferation of infectious diseases. As a result, the prison population is even more vulnerable and susceptible to these diseases. According to INFOPEN data from 2019, there are 8,600 cases of tuberculosis and 7,700 people living with HIV in the country's prison mass.

In an open letter released on March 13, 2020, the Pastoral Carcerária reveals that tuberculosis has:

...an incidence 30 times greater in prisons than in society in general. Other health problems persistently affect prisoners: in January this year, for example, about 240 inmates at the Monte Cristo Agricultural Penitentiary (Pamc), located in Roraima, were diagnosed with a skin disease caused by bacteria. According to the latest data from the Ministry of Justice, 62% of deaths of prisoners and inmates are caused by diseases such as HIV, syphilis and tuberculosis.²

The scenario is very serious. The Ministry of Health has already recognized that there is community transmission of the virus in the cities of São Paulo and Rio de Janeiro and, in a few days, the same should occur in other states. When there is community transmission, the number of cases increases exponentially and the ability to identify the source or person transmitting is lost³.

On March 17, 2020, the first case of death by coronavirus in the country - in the State of São Paulo⁴ was confirmed. As the newspaper *The Intercept* reported, there are already 4 suspected COVID-19 cases in prisons in the state of Rio de Janeiro⁵.

Without immediate efforts to reverse, or at least minimize, these conditions, certainly the lethality of COVID-19 will be catastrophic among people deprived of their liberty. As the Institute for the Defense of the Right of Defense (IDDD) emphasized to the E. Supreme Federal Court in a request in the records of the Non-compliance with Fundamental Precept No. 347:

...it is possible to predict, without room for misunderstanding, the death of thousands of people inside the chains. The risk of decimation of the prison population is enormous. Remaining inert, in addition to the neglect of the health of the prison masses, already so vulnerable by the very condition of the prison, will mean the execution of death sentences that were not determined by the condemnatory edict, not least because the extreme punishment between us is impossible in the face of constitutional prohibition contained in article 5, XLVII, a, of the 1988 Charter.

Recommendation 62/2020 of the National Council of Justice reiterates that “the maintenance of the health of persons deprived of their liberty is essential to guarantee collective health.” In this sense, a scenario of large-scale contamination within the prison system “produces significant impacts on the safety and public health of the entire population, extrapolating internal limits of the establishments.” After all, prison is not, nor can it be, an isolated environment, separated from the rest of the world (it would be unconstitutional if it were).

However, when it comes to caring for the health of those who are there, not only the life of the population deprived of liberty (although these are the most threatened targets of COVID-19), but

also the prison officers themselves and other employees. It is also essential that the Executive Branch immediately adopt measures to safeguard the health of the more than 111,000 employees who work in Brazilian prisons.

Furthermore, precisely because the prison is not an isolated environment from the rest of the world, the care taken by public authorities in relation to prison officers must take into account the general public. Once contaminated, these agents become vectors for transmitting the virus to other people. Even more, preexisting comorbidities can lead to a worsening of the general health status from contagion.

Again, the National Council of Justice Recommendation follows this same line, emphasizing the:

...need to establish procedures and rules for the purpose of preventing infection and the spread of the novel coronavirus particularly in confined spaces, in order to reduce the epidemiological risks of transmission of the virus and preserve the health of public agents, persons deprived of their liberty and visitors, avoiding large-scale contamination that may burden the public health system.

The extrication is also recommended by the National Council of Justice. On March 18, 2020, the Public Defender of the State of Ceará also made a request for the release of prisoners who are in the COVID-19⁶ risk group.

Incidentally, the attempt to isolate prisons has proved to be a counterproductive strategy. The latest rebellions in the State of São Paulo as a result of the suspension of the temporary departure during the Easter holiday⁷ are more recent examples that the policy of isolation has brought fewer solutions and more problems.

International examples reinforce this diagnosis. In Italy, where the outbreak of COVID-19 has already reached darker dimensions such as Brazil may soon face, a series of riots followed after the prohibition of visits to prisons, including resulting in six deaths⁸.

In Iran, more than 54,000 prisoners have been released as a drastic measure against the spread of the disease⁹. In the United Kingdom, it is being studied as an indispensable health measure¹⁰. In the United States, the state of Ohio also promoted the release of prisoners¹¹. It cannot be ignored that the right to health is a fundamental constitutional guarantee and ratified by article 14 of the Criminal Execution Law. In view of this, and considering the horror scenario that has spread, the signatory entities require the taking and immediate implementation of urgent measures to preserve the health of persons deprived of their liberty and of the professionals working in the prison system. The signatory entities demand rapid improvement of sanitary conditions, health and hygiene within prisons, as well as reduced over-incarceration, the reduction of which has been shown to be a duty not only in matters of fundamental rights, but also in public health.

2. Call to Action

In view of the above, and in light of the recommendations of the National Council of Justice in its Recommendation 62/2020, The State Secretariat for Penitentiary Administration, the Court of Justice and the Public Ministry must make maximum efforts, to the extent of their powers, to take the necessary steps to ensure the adoption and implementation of these concerns by applying swift measures to prevent and protect against COVID-19/coronavirus in units, including:

- Grant parole to persons incarcerated aged 60 or over, under the terms of Article 1 of Law No. 10,741, of October 1, 2003;
- Institute house-arrest to people seropositive for HIV, diabetics, people with tuberculosis, cancer, respiratory, cardiac, immunosuppressive or other diseases susceptible to aggravation from contagion by COVID-19;
- Institute house-arrest to pregnant women, nursing mothers and mothers of children up to 12 years old, in accordance with Law No. 13,257, of March 8, 2016 - Legal Framework for Early Childhood;
- Institute house-arrest to people arrested for crimes committed without violence or serious threat;
- Replace custodial sentences with restrictive sentences of the right of persons sentenced to less than 4 years;
- Suspend the duty of regular presentation in court, providing services to the community and paying for basic food supply for people in prison under the open regime, house arrest, restrictive rights, suspension of sentence execution (sursis) and release conditional, or as a precautionary measure other than imprisonment, while the pandemic decree is in force;
- Suspend the duty to provide services to the community and to pay for people's basic food supply in compliance with restrictive rights penalties, while the pandemic decree is in force;
- Substitute provisional arrest for an alternative measure due to crimes committed without violence or serious threat;
- Apply alternative measures to people caught in the act of committing crimes without violence or serious

threats;

- Grant the progression of sentence to those who, having met the temporal criterion, await a criminological examination;
- Grant the advance progression of sentence to people submitted to the semi-open regime;
- Ensure immediate medical care, ensuring house arrest when isolation or outpatient treatment is necessary, with adequate transportation to reduce the risk of contamination, with items such as gloves and masks.

For people who remain in prison, considering the unhealthy conditions of the prison units, it is essential to immediately adopt health and hygiene measures, such as:

- Increase time in the yard and sunbathing, considering that the cells are dark and badly ventilated and contact with the sun increases immunity;
- Ensure access to basic cleaning / sanitizing products such as soap, tissues and clean clothes. With visits suspended, making these supplies available becomes even more critical;
- Suspend the disciplinary measure that consists of the isolation of persons deprived of their liberty in unhealthy, isolated and unventilated spaces, including the Differential Disciplinary Regime;
- Guarantee access to unrestricted water for prisoners (drinking and hygiene), considering that, in many units, there is water rationing;
- Promote hygiene in all spaces of the prison unit with a hospital hygiene product capable of keeping the environment clean for longer against the COVID-19 virus;
- Watch over the health of prison officers and other employees, providing basic hygiene and safety supplies, such as masks and alcohol gel. Make masks also available to prisoners and, if possible, thicker surgical masks for employees;
- Ensure that employees over 60 and those at risk - diabetics, hypertension and those with kidney failure or

chronic respiratory disease - are removed from work;

- Ensure that employees who show any symptoms of COVID-19 are immediately removed from work;
- Ensure basic health staff in all prisons so that inmates who show any symptoms of COVID-19 are seen immediately;
- Ensure ambulances and escorts in all prison units for the emergency transport of prisoners for hospital care;
- Ensure transparency in communications with family members and the public;
- Ensure contact between prisoners and their families.

Finally, the signatory entities emphasize that such measures are important, but they are not enough - only the reduction of the prison population can have a considerable impact in reducing the effects of the proliferation of COVID-19 in the prison system, otherwise there is a serious risk of an unprecedented tragedy.

We take the opportunity to renew the votes of confidence and consideration and make ourselves available to schedule any meetings or whatever else is necessary.

Sincerely,

Carolina Ricardo, Sou da Paz
Marina Dias, Instituto de Defesa do Direito de Defesa
Denise Blanes, ITTC
Edna Jatoba, GAJOP
Hugo Leonardo, Institute of Defense of the Right of
Defense
Patrícia Villela Marino, Humanitas360 Institute

Isabel Lima, Global Justice
Taiguara Souza, DDH
Juana Kweitel, Conectas Human Rights
Wagner Moreira, IDEAS
Julita Lemgruber, CESeC

Footnotes:

¹ As examples, the following stand out: Resolution 663/2020 of the Supreme Federal Court, of March 12, 2020; Recommendation 62/2020 of the National Council of Justice, of March 17, 2020; the World Health Organization's Public Health Emergency Declaration of 30 January 2020; the Public Health Emergency

Declaration of National Importance - ESPIN, via Ordinance No. 188 / GM / MS of February 4, 2020; and Law no. 13,979 of February 6, 2020, which establishes measures to deal with the public health emergency of international importance resulting from the new coronavirus.

² <https://carceraria.org.br/combate-e-prevencao-a-tortura/carta-aberta-da-pastoral-carceraria-nacional-sobre-coronavirus-nas-prisoas>

³ <https://www.infectologia.org.br/admin/zcloud/125/2020/03/a592fb12637ba55814f12819914fe6ddbc27760f54c56e3c50f35c1507af5d6f.pdf>

⁴ <https://g1.globo.com/sp/sao-paulo/noticia/2020/03/17/estado-de-sp-tem-o-primeiro-caso-de-morte-provocada-pelo-coronavirus.ghtml>

⁵ <https://theintercept.com/2020/03/18/coronavirus-presidios-rio-witzel/>

⁶ <https://www.conjur.com.br/dl/defensoria-ce-soltura-presos-conter.pdf>

⁷ <https://g1.globo.com/sp/sao-paulo/noticia/2020/03/16/presidios-de-sao-paulo-tem-fugas-e-rebelioes.ghtml>

⁸ <https://veja.abril.com.br/mundo/italia-rebeliao-em-prisao-deixa-seis-mortos-apos-medidas-por-coronavirus/>

⁹ <https://www.bbc.com/portuguese/internacional-51727015>

¹⁰ <https://news.sky.com/story/coronavirus-prisoners-could-be-released-early-if-covid-19-spreads-to-staff-and-inmates-11957813>

¹¹ <https://www.washingtonexaminer.com/news/ohio-jail-releases-dozens-of-inmates-due-to-coronavirus->