

CONDITIONS OF PRISONS, PREVENTION AND COMBATING TORTURE AND THE JUSTICE SYSTEM IN BRAZIL

PARLIAMENTARY OBSERVATORY OF THE UNIVERSAL PERIODIC REVIEW*

RECOMMENDATIONS TO BRAZIL

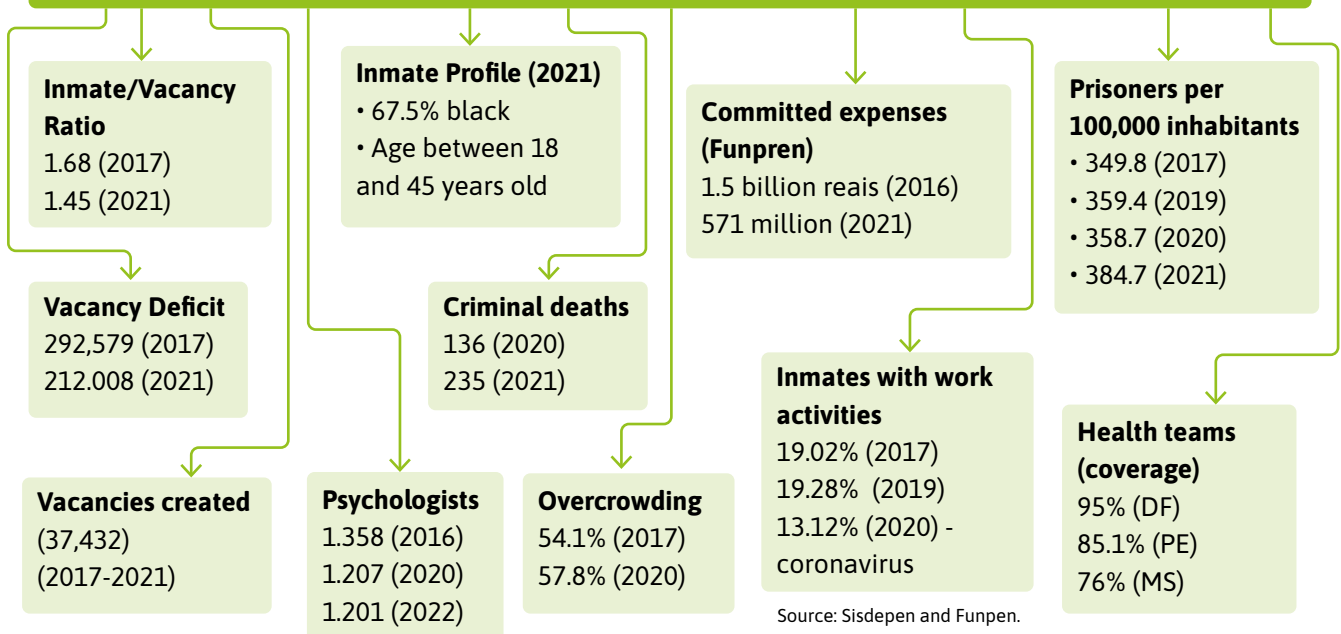
3RD CYCLE OF THE UNIVERSAL PERIODIC REVIEW (2017-2021)

37 RECOMMENDATIONS RECEIVED BY BRAZIL



827,290 people are in State custody
(August/2022)

BRAZILIAN PRISON SYSTEM IN NUMBERS



* The Observatory is a government mechanism to monitor the effectiveness of the recommendations made to Brazil in order to improve our human rights situation. It is a partnership between the House of Representatives and the United Nations in Brazil (UN Brazil)

RELEVANT TOPICS

Brazil does not have a clear concept on what defines a "vacancy" in the prison system

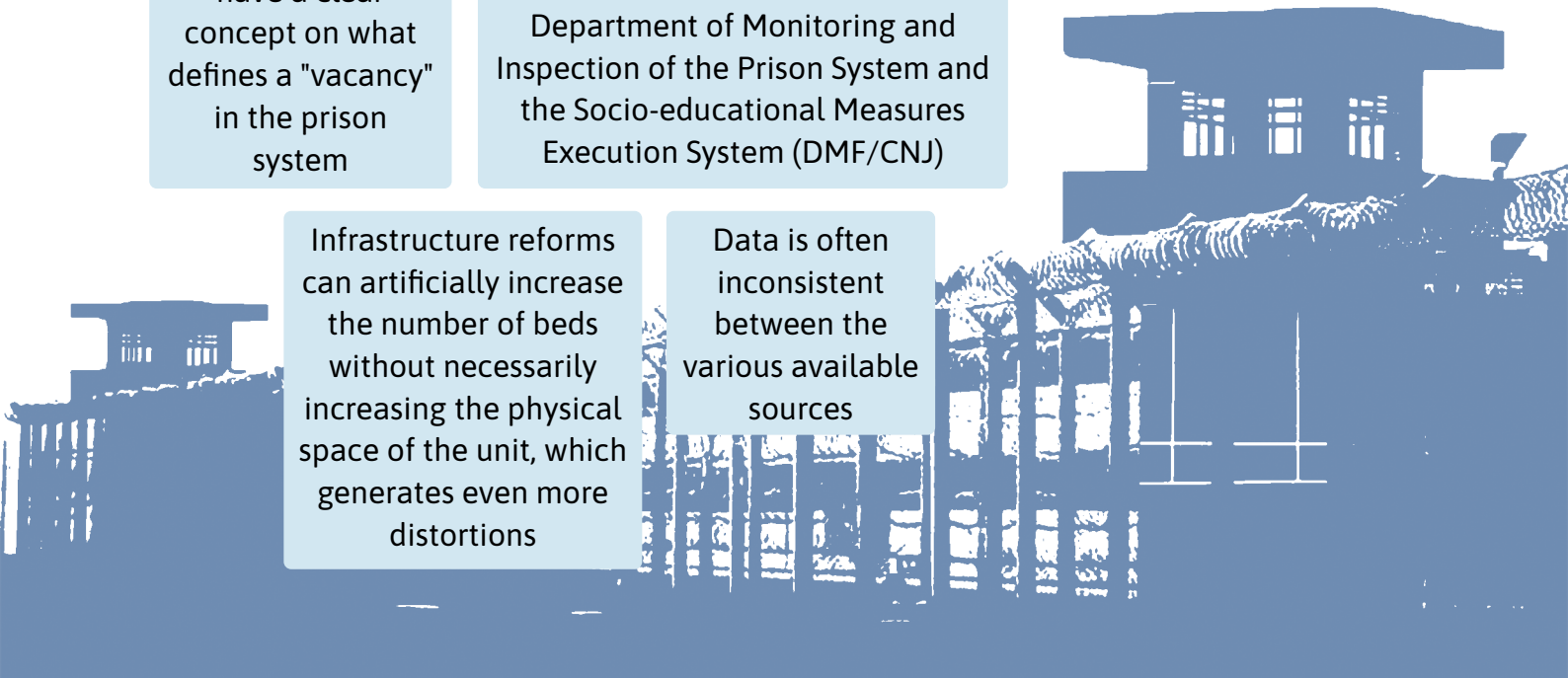
Actions led by the National Council of Justice (CNJ):

Department of Monitoring and Inspection of the Prison System and the Socio-educational Measures Execution System (DMF/CNJ)

There is no apparent consistent strategy to reduce overcrowding in Brazilian prisons

Infrastructure reforms can artificially increase the number of beds without necessarily increasing the physical space of the unit, which generates even more distortions

Data is often inconsistent between the various available sources



POSSIBLE ACTIONS

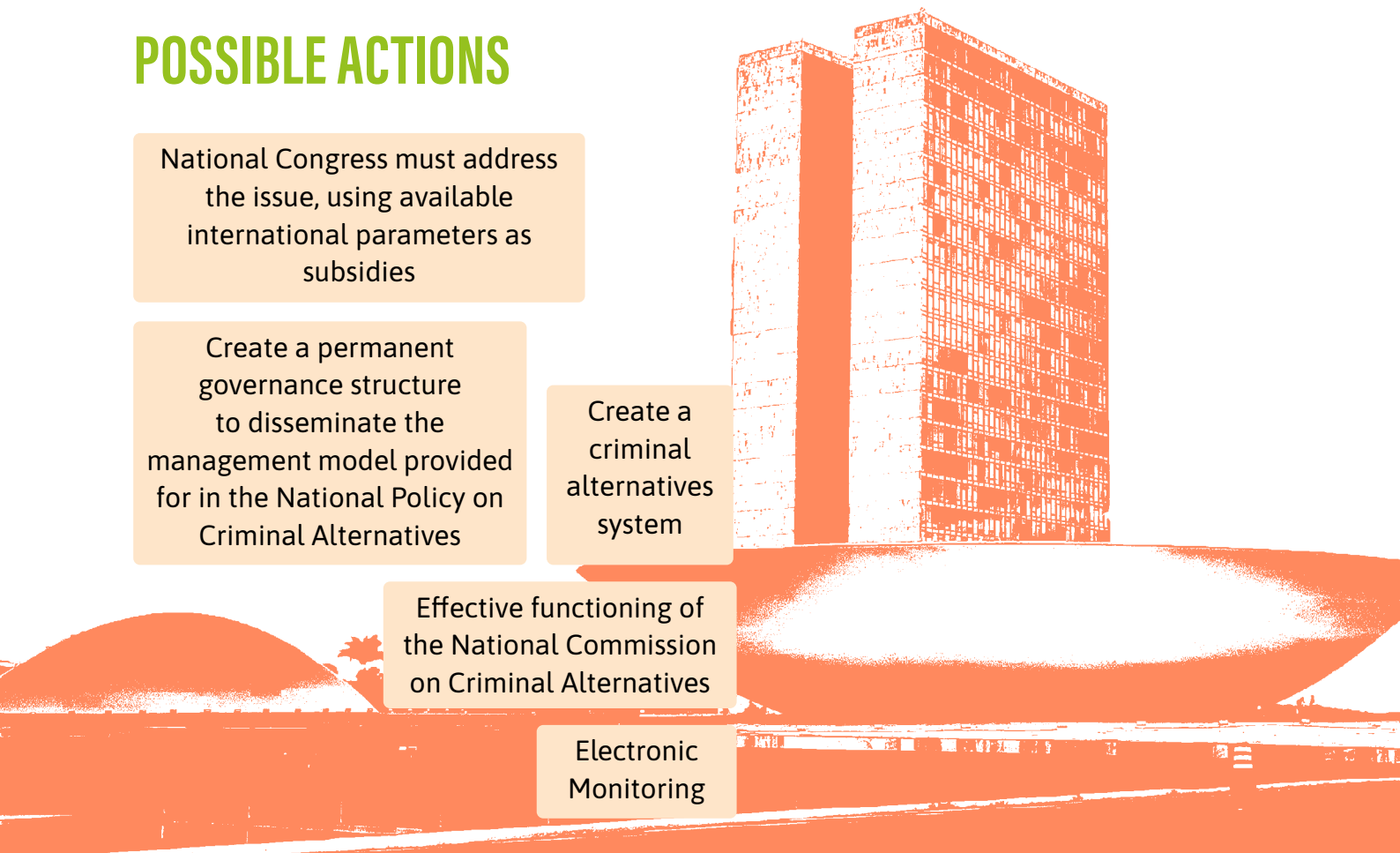
National Congress must address the issue, using available international parameters as subsidies

Create a permanent governance structure to disseminate the management model provided for in the National Policy on Criminal Alternatives

Create a criminal alternatives system

Effective functioning of the National Commission on Criminal Alternatives

Electronic Monitoring



RELEVANT DECISIONS



Claim of Noncompliance with Fundamental Precept (ADPF) No. 347/2015 - Unconstitutional State of Order in the Penitentiary System

- STF recognizes the massive and persistent violation of fundamental rights
- Ordered the "de-contingency of the accumulated balance of the National Penitentiary Fund"



TCU Judgment No. 1.542/2019

- Lack of preliminary feasibility studies and prison master plans in the states
- States' insufficient operational capacity
- Insufficient Depen technical staff
- Inadequacy of previous Depen controls



Habeas corpus No. 143.988 of the STF

numerus clausus

- Limits the entry of adolescents in the Inpatient Units at a level higher than the capacity of projected vacancies in the socio-educational system

RELATED RULES

National Policy on Criminal Alternatives (MJ Ordinance No. 495/2016)

Objective of developing actions, projects and strategies aimed at combating mass incarceration, while expanding applications of criminal alternatives to prison, with a restorative approach, instead of deprivation of liberty.

Management Model for Electronic Monitoring of Persons in Brazil

- Application of other legally less burdensome measures
- Use of monitoring as a resource to contain the number of provisional prisoners
- Implementation of the measure in the criminal investigation phase
- Containment of punitive power and criminal control

Anti-Crime Package (Bill No. 882/2019)

Law No. 13.964/2019

- Hardened the rules for regime progression



SITUATION OF CUSTODY HEARINGS¹

Included in the Brazilian Code of Criminal Procedure, by virtue of Law No. 13.964/2019

Are still the target of resistance from Justice system bodies

More than 1 million custody hearings were held until September 2022

The hearings contributed to prisons not absorbing more than **273 thousand people**, which represents almost a third of the current occupation, fostering a more rational occupation of the system

They generated potential savings of R\$13.7 billion to public coffers

The hearings are attributed part of the merit for a reduction in the percentage of provisional prisoners in the incarcerated population

| 2017 | 2021 |
|--------|--------|
| 35.41% | 27.24% |

Data should be relativized, considering, among other factors: provisional freedom may be granted even in the absence of a custody hearing; the arrested person may also benefit from leniency from the prison in the absence of the custody hearing. As we know, however, it is not uncommon for these measures to be determined, and when they do, they may come after months or even years of waiting.

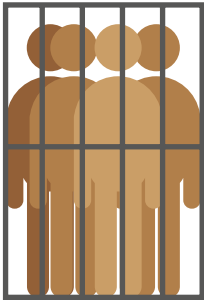


¹ BRASIL. National Council of Justice. **Custody hearings: 6 years later**. Brasília: CNJ, [2021]. Available at: <https://www.cnj.jus.br/wp-content/uploads/2021/09/relatorio-6-anos-audiencia-custodia.pdf>. Accessed on: 9/1/2022.

RESPECT, PROTECTION AND PROMOTION OF THE RIGHTS OF PERSONS DEPRIVED OF LIBERTY



There is, in general, no actual progress in the country to highlight relating to the protection and promotion of the rights of persons deprived of their liberty



There are no comprehensive policies from the Branches of the Republic to deal with the protection and promotion of the rights of persons deprived of liberty

- Policy on the generation of employment opportunities
- Policy for generating educational opportunities
- Policy on the application of alternative penalties
- Policy for the generation of prison vacancies



The Ministry of Justice and Law Enforcement stated that **there is no national data collection** on access to water and sanitation in the prison system

- Only 5 states (AL, DF, GO, MS, SC) declared to provide drinking water and water for hygiene in full time for incarcerated persons



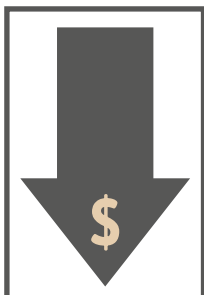
The state goals **were not found** on the Depen website, nor were the goals in relation to the National Labour Policy within the scope of the Prison System, in relation to federal prisons



State and federal goals for the implementation of the Strategic Education Plan within the Prison System **were not found** on the Depen website.



Consistent practices beyond individual parliamentary initiatives **were not found** with regard to the Legislative Branch. Most of the bills presented by Brazilian parliamentarians follow the logic of “criminal efficiency”, postulating an increase in penalties or hardening of criminal enforcements, as a rule, without any appeal to evidence and an absence of analysis of human, political-criminal or budgetary impact in the proposed measures



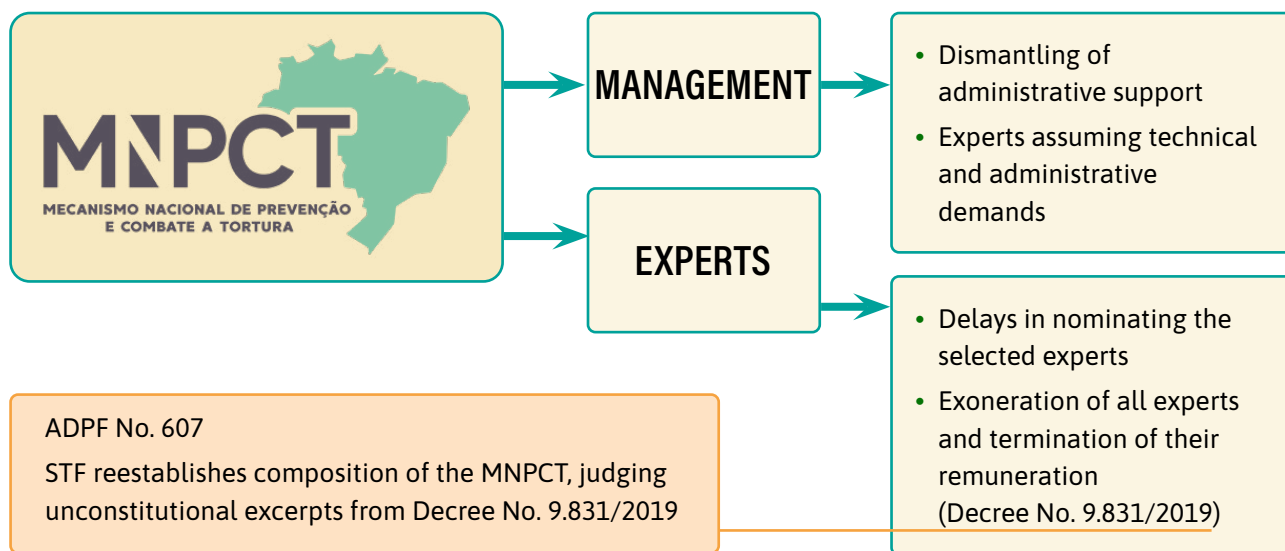
Very low amounts are invested in food for people deprived of their liberty in some states, as well as **precarious** spending on basic materials

- Pernambuco spends less than R\$6 per day (about U\$1.17) with food per person deprived of their liberty
- Alagoas indicated spending approximately R\$11 (about US\$2.15) on a monthly basis, with hygiene and cleaning materials, clothing and mattresses per person deprived of their liberty



There is, within the scope of the Judiciary, a Programme called Doing Justice (Fazendo Justiça). Conducted by CNJ, in partnership with UNDP Brazil and support from Depen, it aims to improve the monitoring of prison custody and, therefore, prison conditions, and promote the socioeconomic insertion of those leaving spaces of deprivation of liberty

FIGHT AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT



- **State of institutional regression in the fight against torture in the country**
- There was a delay of more than 8 months for the appointment of civil society members in the National Committee for the Prevention and Combat of Torture (CNP-CP)
- Representatives from human rights bodies and civil society entities reported other encumbrances to the Committee's functioning that should have been promoted, according to these stakeholders, by the federal government
- Recently, federal universities and federal teaching and research entities have been prevented by the government from participating and sitting on the National Committee for the Prevention and Combat of Torture
- In the National Criminal and Penitentiary Policy Plan (2020-2023), in charge of the CNP-CP, it is clear that the fight against torture is not a priority for the Council

SITUATION OF THE RIGHTS OF WOMEN DEPRIVED OF LIBERTY



United Nations Set of Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders

The incorporation of the Bangkok Rules in Brazil was limited to health policies that have very low coverage in the prison population

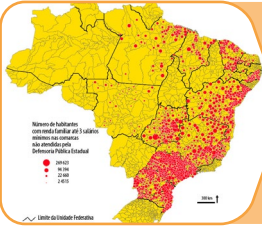
- Granting of collective *Habeas corpus* (HC No. 143.641) to determine replacements, throughout national territory, of pre-trial detention for house arrest of women deprived of their liberty who are pregnant or are mothers of children up to 12 years or of people with disabilities.
- **THERE WERE NO** comprehensive legislative or public policy changes found that ensure the exercise of extra-wall maternity or to mitigate the effects of imprisonment on children,



BRAZILIAN PUBLIC DEFENCE SYSTEM



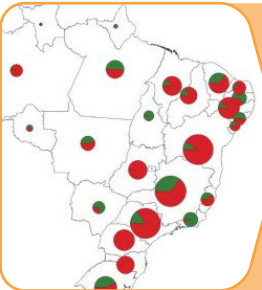
Pursuant to art. 98 of the Transitional Constitutional Provisions Act, the number of public defenders in a judicial unit will be proportional to the effective demand for the service of the Public Defender's Office and the respective population. In addition, within 8 years, that is, until 2022, the Union, the states and the Federal District should have public defenders in all jurisdictions. During this period, the capacity of public defenders should occur primarily in the regions with the highest rates of social exclusion and population density.



The percentage of districts not served by public defenders remains quite high: 1,600 counties = 58% of the total

Currently, the curve is trending downwards, since the previous level was 72%.

The national deficit of defenders is estimated to be approximately 3,000.



The presence of public defenders in the districts is very different in every state, for example:

- Ceará, Rio Grande do Norte, Bahia, Sergipe, São Paulo, Paraná, Santa Catarina and Goiás: 70% or more of the districts were not served by the DPEs.

- Rondônia, Acre, Roraima, Amapá, Tocantins and Rio de Janeiro: the DPEs were present in all districts.



The national average in 2020, was 0.55 defenders for every 15 thousand low-income inhabitants.

Considering this as the criterion, the deficit is approximately 4,700 defenders in the country.

Despite the high deficit rate, there has been an improvement in comparison with the 1st Map of the Public Defender's Office in Brazil from 2013, which pointed to a deficit of 5.9 thousand defenders based on the same criteria.



The Federal Public Defender's Office (DPU) is present in less than 30% of the places where the Federal Justice is established. This reveals a rather precarious situation with regard to the universalization of a public defence system.

LEARN MORE

Full report – Conditions of prisons, prevention and fight against torture and Justice System in Brazil

- [Public Hearing held on 09/02/21](#)
- [Report on the hearing](#)
- [Parliamentary Observatory of the Universal Periodic Review](#)