São Paulo/Brazil, November 30, 2021.

Special Rapporteur on the right to adequate housing

Special Rapporteur on extreme poverty and human rights

Office of the United Nations High Commissioner for Human Rights, United Nations Office at Geneva, CH 1211 Geneva 10, Switzerland

CONECTAS DIREITOS HUMANOS, a non-profit association qualified as a Civil Society Organization of Public Interest, registered with the CNPJ/MF under no. 04.706.954/0001-75 headquartered at Avenida Paulista, 575, 19th floor, São Paulo – SP; the PUBLIC DEFENDER'S OFFICE OF THE STATE OF SÃO PAULO, permanent institution, essential to the jurisdictional function of the State, responsible for the promotion of human rights and the defense of individual and collective rights, in full and free of charge, to the needy (Article 134 of the Federal Constitution Brazilian Law and Complementary Federal Law No. 80/1994), through its Specialized Nucleus of Citizenship and Human Rights, with address for subpoena at Rua Boa Vista, No. 150; and INSTITUTO PRO BONO, a non-profit association qualified as a Civil Society Organization of Public Interest, registered with the CNPJ/MF under No. 04.613.118/0001-46, headquartered at Avenida Paulista, 575, 19th floor, cjto. 1901, City of São Paulo - SP, State of São Paulo, CEP 01311-000, respectfully come to the High Commissioner of the United Nations (UN) to present information on the criminalization of poverty in Brazil and its consequences.

# Poverty in Brazil

According to IBGE[[1]](#footnote-1), in 2018, Brazil had 13.5 million people in extreme poverty and 52.5 million people (a quarter of the Brazilian population) in poverty (less than R$420 per capita per month). The Synthesis of Social Indicators 2020 released by the IBGE[[2]](#footnote-2), referring to the year 2019 (pre-pandemic), showed that, although the proportion of people in poverty has fallen to 24.7%, Brazil has not reduced extreme poverty, which remained at 6.5% of the population.

In Brazil, the median per capita household income (that which up to half of the population has access to) was equivalent to about 60% of the average income and was R$ 861 (USD 152) in 2019, lower than the current national minimum wage that year (BRL 998 or USD 176). In 2019, benefits such as Bolsa Família and BPC accounted for 1/3 of the income of 12% of the population.

The Synthesis of Social Indicators shows that 11.8% of the Brazilian population in 2019 lived with up to ¼ of a monthly minimum wage per capita (about R$ 250 - USD 44) and almost 30% with up to ½ minimum wage per month. per capita (BRL 499 - USD 88).

**During the pandemic period, the impact on the population in poverty was identified more severely.** Survey conducted by FGV[[3]](#footnote-3), based on the second quarter of 2021, demonstrates that the average individual income of each Brazilian person, including those who work informally, unemployed and inactive, fell to -9.4% below the level at the end of 2019. the poorest half, this loss was -21.5% and the unemployment effect was -11.5%. Financial inequality has increased dramatically. "Researchers claim that the high levels of unemployment and the absence of public policies made access to income difficult, leading to the worst scenario of poverty in Brazil in the last ten years."[[4]](#footnote-4)

The following graph illustrates the fall in the usual per capita income from work in the poorest half of the population:



Also according to the FGV study, the evolution of poverty is another alarming indicator of the pandemic. At the beginning of 2021, the number of people living in poverty had multiplied 3.5 times compared to the previous six months. In other words, 25 million new people emerged in this situation. In general, there was an increase in extreme poverty in the country, and of the 27 capitals, 18 are in this situation.[[5]](#footnote-5).

Another factor that draws attention is that currently “[in] Brazil, the number of households using firewood to cook already surpasses the use of gas”, since “[since] January, the average price of a gas cylinder has risen almost 30%, according to the National Agency for Petroleum, Natural Gas and Biofuels (ANP), which is equivalent to five times the accumulated inflation in the period.”. Thus, "firewood is an income indicator because it replaces gas when there is no alternative for medicine or food."[[6]](#footnote-6).[[7]](#footnote-7)

It is also worth highlighting a racial aspect of poverty. In 2018, IBGE data show that poverty affects mainly the black or brown population, which represents 72.7% of people in poverty (in absolute numbers, 38.1 million people). Likewise, this population is the main clientele of the penal system. According to the Brazilian Yearbook of Public Security[[8]](#footnote-8), when it comes to prisons, in 2020, it was found that 66.3% of the prison population was black.

Even when there is some paid activity, the black and brown population is the least favored. In 2019, the presence of black and brown people is greater in agriculture and livestock (62.7%), in construction and domestic services (66.6%), activities that had incomes below the general average. On the other hand, information services, financial activities and other professional activities and public administration, education, health and social services, whose average income was much higher than the average, are the groupings of activities that had the highest participation of occupied people of color or race White.

In 2019, aged 18 to 24, a young white person was approximately twice as likely to attend or have completed higher education than a young black or brown person: 35.7% against 18.9%. The proportion of people of color or white race aged 25 years or more with higher education was 24.9%, while blacks or browns registered 11.0%. Furthermore, 17.0% of white youth and 25.3% of black youth (black or brown people) were neither studying nor working.

Part of the population that is currently in extreme poverty in Brazil is homeless. Brazilian demographic censuses collect data predominantly on a family basis. Thus, without housing, the homeless population is disregarded and invisible to the State and any quantitative - national survey about this population has to be received with reservation.

In 2015, the Ministry of Social Development and Fight against Hunger (MDS) with the cooperation of UNESCO, sought to characterize the homeless population and carried out a sample survey in a total of 71 municipalities in the country: Porto Alegre, São Paulo, Belo Horizonte and Recife. The results of the aforementioned survey identified a predominantly male population (82%) and composed of black people (67% - considering the sum of black and brown people), composed of workers in the informal market, with 52.6%, acting as recyclable material collectors (27.5%), rags (14.1%), in sectors of civil construction (6.3%) and cleaning (4.2%). Most of the homeless population has never had a formal contract or has not worked formally for a long time[[9]](#footnote-9).

Study by the Institute of Applied Economic Research (IPEA)[[10]](#footnote-10)estimated that in March 2020 there were 221,869 homeless people in Brazil - the same study shows that in September 2012 there were 92,515 people, an increase of about 240% in 8 years. Also, according to IPEA studies, the southeast region of the country concentrated more than half of this population, reaching 124,698 people in March 2020.

In January 2020, the City of São Paulo released the result of a Census carried out by a private company, containing data from 2019,[[11]](#footnote-11) estimating that more than twenty-four thousand people were living on the streets in the city of São Paulo, with less than 50% of them being sheltered in actions of the municipal government, such as the provision of meals.

Also in relation to the city of São Paulo, the State Movement of the Homeless Population estimates that, with the pandemic situation gone through, the number of homeless people in the city of São Paulo has tripled since 2019 and is approximately 66,000 (sixty). and six thousand) currently[[12]](#footnote-12).

The increase in the homeless population in Brazil has been aggravated by the practice of violent removals carried out by the Public Power with the objective of evicting public and private properties, especially in central regions of the country's cities, mainly to open spaces for real estate speculation and gentrification .

It is noteworthy that, according to the 2015 Census of Homeless Population, carried out by the City of São Paulo, 40% of the homeless population in the city of São Paulo during the survey period has already been through the prison system. In addition to this disastrous scenario, the access of this population to public policies and services is an enormous challenge, presenting barriers in the field of housing, employability, health and assistance.

# Food insecurity and the lack of public policies

 The picture of food insecurity in Brazil has worsened especially during the pandemic[[13]](#footnote-13), according to the results of the National Survey on Food Insecurity in the Context of the Covid-19 Pandemic in Brazil[[14]](#footnote-14), carried out in 2020 by the Brazilian Network for Research on Food and Nutritional Sovereignty and Security (PENSSAN Network): the combination of economic, social and health crisis caused serious damage to food security in the country[[15]](#footnote-15)

FAO data showed that 23.5% of the Brazilian population suffered from moderate or severe food insecurity between 2018 and 2020. In the period from 2014 to 2016, this share was 18.3%. In absolute numbers, the increase was from 37.5 million to 49.6 million people in this period[[16]](#footnote-16).

Throwing open the scenario indicated by the statistics, the press has reported appalling situations around the country. In September 2021, the newspaper “Extra” printed on its cover an image that traveled the country of people looking for bones, skin and fat left over from supermarkets in the city of Rio de Janeiro to feed themselves.[[17]](#footnote-17).

In October 2020, families were digging through the garbage to eat in the cities of São Paulo (SP)[[18]](#footnote-18)[[19]](#footnote-19)and Fortaleza (CE)[[20]](#footnote-20)due to the worsening of hunger, demonstrating that the search for leftovers became necessary for survival. “With food scarce and hunger growing, workers need to pick up food scraps from hotels in the upscale part of the city and take them home. This is called 'washing'. 'This food used to be destined for pigs, but now people select it and bring it into the house'”[[21]](#footnote-21).

In the month of November, it was announced that “[without] eating, people faint in lines at health centers in São Paulo and ask for food in consultations”[[22]](#footnote-22), according to the municipal secretary of Health, Edson Aparecido, cases of people seeking health facilities because of hunger began to appear three months ago and “the monitoring started in September shows that the situation is stable, that is, , in some corner of São Paulo, people go to the health center every day because of hunger”.

José Graziano da Silva, former minister and former director-general of the FAO (United Nations Food and Agriculture Organization) points out that “The reason for this rapid increase in hunger is the combination of lack of economic growth, which generated a high unemployment, with the dismantling of compensatory social policies for the poorest and of food and nutrition security policies, aggravated by the higher food and fuel inflation we have seen in the last decade.”[[23]](#footnote-23)

Maximo Torero, chief economist at FAO, also warns that “Hunger in Brazil increased exponentially in 2020 and emergency aid programs created by the government[[24]](#footnote-24)were unable to deal with the phenomenon” and “insists that the Brazilian government urgently needs to work to map the hunger pockets in the country and thus manage to respond to the crisis. The data, according to him, indicate a dramatic scenario. In 2019, less than 2.5% of the Brazilian population lived in a situation of severe hunger. At the end of 2020, the rate was 8%.”[[25]](#footnote-25)

Finally, a study by the Agenda 2030 working group presented to the Chamber of Deputies warns of setbacks by Brazil in the 17 sustainable development goals established by the UN in 2015. “Of the 169 goals, 54.4% are in retreat, 16% are stagnant, 12.4% threatened and 7.7% show insufficient progress, reveals Civil Society Light Report on the 2030 Agenda”[[26]](#footnote-26).

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### Hunger in São Paulo

The Popular Restaurant Program[[27]](#footnote-27) and the "Bom Prato Program"[[28]](#footnote-28) are part of one of the programs integrated into the Fome Zero network of actions and programs, a social inclusion policy established in 2003, and its objective is to expand the offer of nutritionally adequate meals, at affordable prices, to the population in a situation of food insecurity and nutritional[[29]](#footnote-29).

With the onset of the pandemic, the state government[[30]](#footnote-30)closed the restaurant rooms and started to distribute lunchboxes, offering in addition to breakfast and lunch, also dinner, every day of the week, including holidays. Subsequently, in response to a request made by social movements and various extrajudicial negotiations carried out by the State Public Defender's Office, the Union's Public Defender's Office and the Public Ministry[[31]](#footnote-31), the State Government started to offer free part of the meals offered by the Bom Prato chain, aiming to serve at least 15 thousand people/month on the streets registered by the City Halls, throughout the State.

However, on September 30, 2020, the Government of the State of São Paulo announced that the gratuity would be interrupted, which gave rise to the filing of Public Civil Action No. 1049641-77.2020.8.26.0053 in the Court of Justice of the State of São Paulo Paul, still without judgment.

In the city of São Paulo, based on data from the aforementioned CENSUS of the Homeless Population, carried out by the City Hall in 2019[[32]](#footnote-32), June 2020, adjusted for the delivery and distribution of 8,000 cards/gratuity at Bom Prato Restaurants. Subsequently, an additional 5,100 new gratuity cards were requested to be sent, in order to meet the entire demand of homeless people who are not sheltered. The request, however, was not granted by the Department of Social Development of the State of São Paulo - SEDS, (under justification that the measure would be inefficient given the difficulty of access for people due to the distance). No alternatives were waived.

During 2021, new complaints began to reach the Public Defender's Office, this time, from beneficiary persons alleging loss and lack of cards, and difficulty in accessing the free program at Bom Prato Restaurants.

In total, only 6,544 cards were made available and, according to a survey carried out in October 2021, only 3,559 of these were being used. Such circumstances, therefore, demonstrate the inefficiency and inefficiency in the management and implementation of the public policy of the card/gratuity agreement at Bom Prato Restaurants and the persistence of food insecurity problems, especially regarding the homeless population.

Also, due to the new flexibility measures adopted to fight the pandemic, the State Government informed about the closure of the distribution of meals on weekends, in 30 units of Bom Prato Restaurants, and the resumption of operation of all units of hybrid form (delivery of lunch boxes and lounge, observing the protocols), scheduled for the month of September 2021.

In October 2021, the Public Civil Action No. 1065676-78.2021.8.26.0053 was filed against the Municipality of São Paulo and the State of São Paulo, aiming at guaranteeing the human right to adequate food for homeless people through the effectiveness of free of charge of popular Bom Prato restaurants. On November 10, the requested relief was granted and remains in force. The action has not yet been judged on the merits.

In addition, during the Covid-19 pandemic, the Rede Cozinha Cidadã project was also implemented in the city of São Paulo.[[33]](#footnote-33), of an emergency nature and an initiative of the Municipal Secretariat for Human Rights and Citizenship (SMDHC) which began on April 23, 2020 with the objective of guaranteeing food and nutritional security for the homeless population of the city, with respect to sanitary rules , and promote the food and supply trade network in the city of São Paulo.

At the beginning of April 2021, the project distributed 10,000 lunchboxes a day. At the same time, the Rede Cozinha Cidadã Communities project was implemented, to deliver 20,000 lunchboxes a day to 31 needy communities in the city of São Paulo, in order to reach a vulnerable target audience other than people living on sidewalks. Despite the essential nature of the project to fight hunger, at the beginning of September 2021, the Municipality announced its decrease: within a month, only 800 lunchboxes/daily would be delivered and in just three points of the city.

In view of the suppression of this emergency program and the inexistence of a permanent public policy able to absorb the demand, the Public Ministry of the State of São Paulo and the Public Defender of the State of São Paulo filed a new Public Civil Action No. 1056892-15.2021 .8.26.0053 before the Court of Justice. On September 17, the pleaded injunction was denied and the plaintiffs are currently awaiting a deadline to file a reply.

## 1.2. Right to housing and removal policy

The International Covenant on Economic, Social and Cultural Rights (ICESCR)[[34]](#footnote-34), ratified in 1992 by Brazil, recognizes the right of every person to have adequate housing (article 11), the American Convention on Human Rights (Pact San José, Costa Rica) of 1962, ratified by Brazil in 1992, is expressed by prohibiting interference arbitrary and abusive in the private life of any human being, including his home[[35]](#footnote-35). Still with regard to the right to property, the Convention limits it, in its article 21, item 1, expressly stating that “every person has the right to the use and enjoyment of his property''. The law can subordinate this use and enjoyment to the social interest”. The Vancouver Declaration on Human Settlements, from 1976 at the United Nations Conference held in Vancouver, adds the perspective of human settlements to the right to housing, establishing proposals and general principles to be followed by States in order to improve the quality of life in these conglomerates, and settlements should be understood as an instrument and object of development.

 It is notorious that although the right to housing was explicitly affirmed in the constitutional text only in the 2000s[[36]](#footnote-36), had already been incorporated into the Brazilian legal system due to the ratification of the aforementioned international instruments.

In view of the international negotiations, ratified by Brazil, States must develop and implement policies and programs aimed at human settlements that aim to improve the quality of life of the population allocated in these locations, and should receive attention in the areas of health, education, employment, water drinking, food and housing or shelter.

 It so happens that the scenario in Brazil, when the Covid-19 pandemic arrived, was already one of profound socioeconomic vulnerability, with high rates of unemployment and precariousness in the world of work. The Brazilian scenario was already suffering from the consequences of economic policies, such as the approval in 2015 of Constitutional Amendment No. 95 (known as Spending Ceiling) which froze public investments in the social area for 20 years, meaning the withdrawal and absence of public and investments in the core areas of the social protection mantle.

 The situation takes on more dramatic contours as the current administration of the Federal Government adopts as a posture the destruction of programs in the scope of the right to housing and security of tenure - for example, the total veto of the President of the Republic draws attention[[37]](#footnote-37) to Bill No. 827/20[[38]](#footnote-38) which dealt with the suspension of evictions during the pandemic.

The presidential veto was overturned by the National Congress, giving rise to Federal Law No. 14.216/2021[[39]](#footnote-39) to suspend compliance with a judicial, extrajudicial or administrative measure that results in collective eviction or forced removal in private or public property, exclusively urban, and the granting of an injunction in an eviction action and to encourage the execution of agreements in lease relations.

The law considers collective eviction or forced removal the permanent or temporary removal of individuals, families or communities from the houses or land they occupy without the guarantee of another place for housing free from the threat of further removal. Among the communities foreseen in the project are indigenous peoples, quilombolas, riverside settlements and other traditional communities.

It is noteworthy that for removal to take place, the destination housing must contain basic items, such as communication services, electricity, drinking water, sanitation, garbage collection, not be in a risk area and allow access to usual means of subsistence such as work on the land or other sources of income and work.

In addition to the Federal Law, the housing social movements and the political party PSOL (Socialism and Freedom Party) proposed the Claim of Non-compliance with a Fundamental Precept (ADPF) No. 828 due to non-compliance with fundamental precepts and the consequent failure to implement, promote and protection of public health and housing in the midst of the worst pandemic scenario, with the clear intention of preventing removal and/or eviction measures from being carried out to the disadvantage of families that already live in a manifestly hypervulnerable condition.

In July 2021, the Federal Supreme Court (STF) issued a decision determining the suspension of removals of vulnerable individuals and families until December of the same year[[40]](#footnote-40).

Although there is legal and jurisprudential support against forced removals, many continue to occur in Brazil[[41]](#footnote-41). In addition, the legislation is in force only until December 31, 2021, while the pandemic's traces and the consequences of poverty and vulnerability in the country exceed this period.

As an example of concern, and non-compliance with the last decision of the Supreme Court, at the end of October 2021, still amidst the resurgence of the pandemic, families and people who lived in properties in blocks 37 and 38 of Cracolândia, Campos Elísios district of the central city from São Paulo, suffered forced evictions and did not receive any type of assistance or social and housing assistance.

Conectas Human Rights, in conjunction with the Public Defender of the State of São Paulo, forwarded a complaint against the Brazilian State to the Inter-American Commission on Human Rights (IACHR). the complaint[[42]](#footnote-42)it aims to protect, in the midst of the deepening socioeconomic and health crisis in the pandemic, the integrity of around 375 families. The municipality was also asked, in two other episodes, to comply in court with the sentence that impedes the project to re-urbanize the center.

These regions are the object of constant police interventions by the government, as well as urban projects, considered as urban redevelopment initiatives in run-down neighborhoods with a stimulus to real estate appreciation, but which provide little in the way of protecting their low-income residents and which occupy the streets of the region.

Systematic rights violations continue to occur in Cracolândia, as the residents continue to be in a precarious situation, suffering constant threats and constraints from the Public Power, without adequate housing assistance and with the risk of being removed at any time.

# Criminalization of poverty

The patrimonial character of Brazilian penal legislation has served as the foundation of practices that criminalize poverty and the black population throughout our history. Instead of implementing policies to combat inequalities, the Brazilian State focuses on criminal law as a control mechanism. That is, it criminalizes practices and behaviors aimed at subsistence in order to take responsibility for creating and managing public policies to face the conditions that condemn millions of people to an existence incompatible with minimally civilized standards.

The criminalization of poverty is directly related to the control of black bodies by the state and validates the lack of access to fundamental rights and guarantees for most Brazilians.

The right was a protagonist in maintaining the non-right of black people in the country. The criminalization of cults of African-based religions such as Umbanda and Candomblé, the prohibition of capoeira practices[[43]](#footnote-43) and the institution of the crime of begging and vagrancy[[44]](#footnote-44) these are some elements that outline the paths that are followed until today as a common practice in the maintenance of structural and institutional racism within the national context.

The evolution of the legal history of the black population in Brazil has always been placed in the perspective of repression, and the laws to repress discrimination, for the most part, have been created since the 1990s, a fact that demonstrates the tender debate related to equity in Brazilian legislative construction.

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## Criminalization of the homeless population and informal workers

Public security policies in force in Brazil since the Empire period have the characteristic of criminalization and repression of members of certain social sectors which, according to current norms, go against the precepts of good customs and value of work (capital-labour) . To this, one can go back to the criminalization of begging in the Criminal Laws of the Empire and in the Republic, on the eve of the abolition of slavery, since then gaining entire chapters in the penal codes.

And it is in this tradition of public policies that we can cite the Delegate Operation, instituted from an agreement signed between municipalities and State Governments. The Agreement establishes that military police officers work, in their spare time, in uniform and armed under the command of the Military Police, taking on unforeseen municipal responsibilities for carrying out their duties. The counterpart is that the City Hall, as it is a municipal assignment, pays bonuses to volunteer police officers.

This operation has a certain invisibility, since information on the control, distribution and use of existing personnel is kept confidential through an ordinance of the Military Police Command[[45]](#footnote-45). However, it is possible to affirm that the Delegated Operation takes place in regions with a large movement of people and a high concentration of street vendors.

Some studies (Silva, 2014), which analyzed the Operation Delegate, presented as their main motivation the “Free City of Piracy and Informal Commerce” program, started in 2010 and coordinated by the National Commission to Combat Piracy, a body submitted to the Ministry of Justice[[46]](#footnote-46). The program, despite not having any reference to FIFA and the holding of mega-events in the country, is directly related to such mega-events (despite the adoption by the government during the period prior to the 2014 World Cup, when the Brazil had already been chosen (in 2007) as the country that would host the event and it was only in 2009 that the host cities were announced.

Although the fight against street vendors in São Paulo is quite old, it is necessary to recognize that the policies adopted to restrict this activity in the city, especially in recent years, have an elective affinity with the holding of mega-events in the country and the preservation of commercial and economic interests that derive from them. In other words, there is a mutual attraction and influence in the interaction between the policies to combat street commerce in the city and the actions promoted as a result of the mega-events, such as the Delegate Operation - which lasts until today and has been extended to other cities.

Since its adoption, Operation Delegate has had a series of reports of abuses and violations of the rights of people who work in the informal trade in the Capital of São Paulo. In a scenario of rising unemployment and growing underemployment, with an index of approximately 40% of informal workers and an increase in the homeless population[[47]](#footnote-47), that Brazil maintains the tradition of policies of criminalization of poverty, ostensibly punishing those who live on the streets (subsistence) and on the (homeless)[[48]](#footnote-48).

The homeless population reveals this inequality/abnormality within the socioeconomic system. This social inequality that places them in a condition of vulnerability (which would be a condition of guardianship), stigmatizes them, passing on the view of criminality in the penal system itself, which sees unequally according to the hierarchy of socioeconomic interests.

### Criminalization of hunger: theft out of necessity

The intensification of inequalities in Brazil, combined with the precariousness of welfare and income distribution policies, aggravate social tensions. Faced with the economic crisis scenario, low-income families struggle to consume the most basic elements of subsistence - meat, noodles, instant noodles, diapers, chocolate, drinking water, among others

This conflict between the right to food and the right to property has demanded an automatic response from the penal State, privileging property and safeguarding the status quo.

 Current data expose the worsening of this reality: news[[49]](#footnote-49)about people arrested for theft of food, energy or water has gained more and more pages of newspapers. In recent weeks, a woman was arrested accused of stealing discarded food - in the trash - from a restaurant. In Minas Gerais, a woman, mother of a 5-year-old child, accused of stealing (public) water was imprisoned for more than 100 days under the justification of being a recidivist in the crime of theft.[[50]](#footnote-50).

Family theft or by necessity has occupied the agenda of the Superior Courts of Brazil[[51]](#footnote-51). A STJ Minister recently cited the growth in the volume of cases faced by the Court: from 84,200 received in 2017 to 124 thousand in 2020. For 2021, the forecast is up to 131,000 cases.

For these cases to reach the Federal Supreme Court and the Superior Court of Justice, it is necessary that several instances are aware of and collude with the criminalization of poverty. The Courts of Justice of the States have refused to apply the principle of insignificance or recognize the exclusion of guilt in cases of family theft or trifles. Members of the Public Ministry also continue not only denouncing, but also appealing the few decisions that at first or second instance absolved the accused person.

One of the most used grounds for not applying the principle of insignificance in lower courts is the recurrence of the crime (or the mere existence of previous cases of theft), although the understanding of the Federal Supreme Court does not demand priority - after all, hunger and the state of need has been recurrent in the life of the poor population in the country.

The absence of express provision of the principle of insignificance or the mode of familial theft in Brazilian legislation is also used in the speech of magistrates and members of the Public Ministry, even in the face of non-offensive conduct, no social danger of the action, very low degree of reprobability of the behavior and inexpressiveness of the legal damage caused.

Since 2019, on the initiative of the Executive Branch, bills have been processed in the National Congress[[52]](#footnote-52)which aim to prohibit the granting of parole and guarantee the aggravation of the sentence and its execution for those with conduct considered “repeated habitual criminal or professional”. If approved, this project will be another tool for criminalizing hunger and need.

## 2.3. Criminalization of people who use drugs

Brazil appears in last place - with the title of country with the worst drug law - in ranking*[[53]](#footnote-53)*which compares drug policy in 30 countries. The study was conducted by the Harm Reduction Consortium, a global initiative that brings together 190 organizations focused on harm reduction and drug policy. The ranking shows how closely drug policies and their implementation align with the UN principles of human rights, health and development. Brazil obtained a score of 26, with a global average of 48 points.

In that study, the columns related to harm reduction and health continue to draw attention, which Brazil obtains a score of 9 out of 100. The evaluation found that Brazil bases its drug policy not on health care and care, but on incarceration mass, police lethality and compulsory detention.

Despite the official reasoning, which maintains the prohibition of certain psychoactive substances today, being the defense of public health, what happens in reality is that the criminalization of drugs has caused individual and collective harm greater than those resulting from their own use. of psychoactive substances. Increased crime, the emergence of new synthetic drugs and, at times, more aggressive ones, people who use drugs in situations of vulnerability and without assistance are some of those damages that prohibition does not repair, on the contrary, it deepens.

The Drug Law (Law No. 11.343 of 2006) in force in the country started to differentiate "user" from "trafficker" by decriminalizing the conduct of personal use (Article 28)[[54]](#footnote-54), not fitting in theory the term of imprisonment for people who use drugs. However, the law lacks regulation, since there are no criteria to differentiate between subjects (“user” and “trafficker”) or distinguish whether the drug carried was intended for commercial activity or for personal consumption purposes. The article determines highly subjective criteria for such a distinction, such as “the social and personal circumstances” and the “place and conditions in which the action took place”. In the end, the filtering task is at the discretion of police officers at the time of approach and the police authority in the criminal framework: white people and middle class are "users" and black, poor and peripheral people are read as "traffickers"[[55]](#footnote-55).

Such criteria facilitate greater criminalization of those with low incomes, especially those residing in poor and peripheral neighborhoods, as they are always in a suspicious situation in the eyes of the police forces and the judiciary, including the Public Ministry. For state bodies, the existence of drugs in these locations will always have a presumption of commercial purpose. Thus, reports of people arrested for a tiny amount of drugs are not common.

In Brazil, according to data from Amnesty International and the Brazilian Public Security Forum[[56]](#footnote-56), we have the most lethal police in the world. This despite the fact that in the country the death penalty is prohibited, except in the case of declared war. And this is where the War on Drugs and its ostensible and selective policy comes in, legitimizing selective imprisonment, torture and killing of people and not of drugs[[57]](#footnote-57), as in Rio de Janeiro in November this year.

Whether in Rio de Janeiro, São Paulo, large metropolises and other regions on the Brazilian periphery, the arm of the State arrives in the form of repression and criminalization. In São Paulo, in the Sufoco operation, managers in conjunction with the state government used police repression as an instrument to disperse people who use drugs in the region known as cracolândia (the same region that is the object of forced removals and where several people in situations of road). The expulsion actions consisted of torture tactics against these people, since, for example, they wet the earth to make staying in the place unbearable due to the cold, generating despair in people.

At the time, the Public Prosecutor's Office of the State of São Paulo filed a Public Civil Action No. 0023977-42.2012.8.26.0053, which resulted in the granting of an injunction preventing the police from carrying out vexatious, degrading or disrespectful actions to people circulating in the territory, that prevented them from remaining on the streets or constrained them to move to other public spaces.

Conectas Human Rights and other entities have already denounced the police action at drug use scenes to the Inter-American Commission on Human Rights (IACHR)[[58]](#footnote-58). and to the United Nations (UN), for reporting in the areas of health, arbitrary detention, housing and torture, requiring clarification from the Government. One of the complaints is the Inter-American Commission and the Regional Office for South America of the United Nations High Commissioner for Human Rights (OHCHR)[[59]](#footnote-59) issued a joint Press Release, released on May 27, 2017, highlighting rights violations in the region.

Despite the international visibility and local litigation, the practice of criminalization and violence continues to occur, even in times of pandemic.

In 2017, the City of São Paulo started an action aimed at compulsory psychiatric hospitalizations of people who use drugs, violating the rights to freedom, individual autonomy, integrity and dignity of the human person. To avoid such a setback, civil society organizations appealed to the Judiciary and obtained a favorable decision from the Court of Justice of the State of São Paulo (Interlocutory Appeal No. 0027727-41.2017.8.26.0000).

It so happens, however, that the public policy aimed at people who use drugs continues to be based on the deprivation of freedom, either by the criminalization of people who use drugs, black and poor, framing them as drug dealers, or on the use of hospitalizations, so-called volunteers, in hospitals or Therapeutic Communities.

We have observed in Brazil, hospitalization as the most common treatment for dependents, taking place in private services, with long-term hospitalizations, most with religious orientation, and some of them depriving the use of medication[[60]](#footnote-60)and other psychosocial therapies, using work and prayer as a form of 'treatment', in addition to other violent practices. People living on the streets have been the preferential victims of these actions, considered to be of a hygienist nature.

Even with all the international guidelines established by the Ministry of Health for care to take place in community-based services (and not in hospitals or clinics), public investments have not been made to expand the Psychosocial Care Network (in the Alcohol Psychosocial Care Centers and drugs (CAPS AD) and other care resources, such as the Consultórios na Rua, public policies belonging to the Unified Health System and Social Assistance System), but rather brought back to support Therapeutic Communities[[61]](#footnote-61).

It is known that investments in care and treatments as an alternative to hospitalization are still insufficient. However, it should not justify the growing number of clinics and religious therapeutic communities that receive private and public resources to offer treatments without proven efficacy and that often involve ill-treatment, forced labor and even torture.

The criminalization of poverty in Brazil also guides practices such as federal intervention with the use of military force in popular communities in Rio de Janeiro or collective search and seizure warrants in the favelas of São Paulo, not detailed in this report. Under the pretext of fighting drug trafficking, entire communities are placed under suspicion, countless homes are invaded and depredated, accused of involvement in criminal activities.

## Fine penalty

The Brazilian Federal Constitution, in its Article 5, item XLVI, establishes the penalties of deprivation or restriction of liberty; loss of assets; traffic ticket; alternative social provision; and suspension or disqualification of rights. Brazilian criminal law, replicating the provisions of the Constitution, provides for three types of penalty: custodial, restrictive of rights and fine. The latter can be applied in isolation – as the only applicable penalty, replacing the deprivation of liberty or applied in an alternative way – or cumulatively, when provided for in certain crimes, to be paid with the fulfillment of the custodial sentence.

With regard to the penalty of fine, the Brazilian Penal Code determines that it consists in the payment of an amount in money - determined in the condemnatory criminal sentence - to the national or state penitentiary fund. The value can vary according to some legally established parameters. The measure adopted to calculate the penalty of fine consists of “fine days”. Fine days can be seen as any other unit of measure, so they serve to estimate fines.

As determined by the Penal Code in its article 49, each fine day will have a value to be determined by the judge responsible for the judgment of the specific cases, which must be done bearing in mind the economic and financial situation of the defendant. Thus, each fine day may vary between 1/30 (one thirtieth) of the highest minimum wage in force at the time of the fact - which, in 2021, would be equivalent to approximately R$ 36.66 - and may reach 5 (five ) times the value of that salary - that is, BRL 5,500.00 in the year 2021. However, if the magistrate understands that, given the conditions of the convict, this amount will not be sufficient to disapprove of the crime committed, it may also multiply such amount for up to three times, reaching, in 2021, a total of BRL 16,500.00.

However, this amount is only the cash conversion of each fine day. This means that, in reality, for each situation, a calculation must be carried out in which the circumstances of the commission of the crime, the personal circumstances of the perpetrator and the circumstances concerning the victim are considered - which is called dosimetry of the penalty – which, in the end, will determine how many fine days the individual must pay.

For offenses provided for in the Penal Code that stipulate the penalty of a fine, its variation may be a payment of 10 to 360 days-fine - which is equivalent, under current parameters, to a maximum variation between R$ 366.66 and R$ 5,940 .000.00. However, other criminal laws may establish different minimum and maximum amounts for payment. For example, for the crime of drug trafficking, provided for in article 33 of Law 11.343/2006, the fine will vary from 500 to 1,500 fine days - in 2021 values, equivalent to a variation between R$ 18,333.33 and BRL 24,750,000.00 - or, for the crime of association with trafficking, provided for in article 35 of the same Law, the payment of 700 to 1200 days-fine - variation from BRL 25,666.66 to BRL 19,800,000 .00.

Beside that, it is necessary to pay attention to the recent changes in the jurisprudential understanding on the nature of the fine penalty operated by the STF in the year 2018.

Until 2019, the majority was the understanding that the fine would be a debt of value, to be executed before the Public Treasury. In other words, if an individual were sentenced to a deprivation of liberty and payment of a fine, when he finished serving his corporal sentence, his punishment would be extinguished.

However, in 2018, in the judgment of Direct Action of Unconstitutionality No. 3,150, the STF decided, by majority vote, that the penalty of a fine would have a criminal nature and that the jurisdiction for its execution would belong to the Public Prosecutor's Office - which was reaffirmed with the entry into force of Law 13.964/2019. From the decision of the Federal Supreme Court (STF) in ADI 3150 and the amendment to art. 51 of the Penal Code by Law n. 13,964/19 (Anti Crime Package), for example, impacts were observed on the penalty of fine, becoming one more among the numerous obstacles faced by the population deprived of liberty for the full exercise of citizenship rights after serving the sentence custodial

**As of 2019, as long as the incarcerated individual does not pay his fine, even if the custodial sentence is fully complied with, his punishment would not be extinguished; that is, he would remain with the fulfillment of his sentence open, for non-payment of a debt**.

According to Infopen 2017, 31.88% of men in Brazil are convicted of robbery, 29.26% of drug trafficking, 14.15% of theft and 12.19% of homicide. Among women, 64.48% of convictions are for drug trafficking, 15.72% for robbery and 8.47% for homicide. That is, for the crime of robbery alone, 31.88% of men and 15.72% of women will have to pay a minimum penalty of R$ 366.66, while 29.26% of men and 64.48% of women women, for serving sentences for the crime of drug trafficking, will be subject to the payment of a minimum penalty of R$ 18,333.33. Even if sentenced to privileged trafficking - normally people who use drugs, primary, the maximum reduction of the penalty applicable for this offense applies -, even so, this minimum value will be R$ 6,111.11.

In general, based on the wording of article 51 of the Penal Code[[62]](#footnote-62), it is understood that the statute of limitations for the fine will be regulated by the rules relating to the active debt of the Public Treasury, so that, if it is not paid, the Public Ministry may file an execution action within a maximum period of five years, under the terms of article 8 of Law 6830/80.

Thus, the conclusion reached, in short, is that even with the deprivation of liberty being served, a large number of individuals will continue with their sentence open for not having the financial resources to pay off a debt. Considering that the people sent to the penal system are those with the most fragile socioeconomic conditions, the payment of this debt will be difficult to reach.

It is also necessary to consider that leaving prison represents a moment of special socioeconomic vulnerability for the newly released person. In addition to the existing stigmatization in relation to prisoners, the insufficiency of specific and structured public policies for this group, with attention to education, access to employment, documentation, legal and social assistance, among others, further aggravates this situation of vulnerability.

In addition to what was mentioned above, the consequence of not finishing the sentence, due to poverty, has several concrete effects on the citizen's life: maintenance of the status of repeat offender, with his sentence increased in case of a new conviction; the non-recovery of political rights and, consequently, the impossibility of accessing various documents such as Voter Registration, Individual Taxpayer Registration (CPF, essential for opening bank accounts and obtaining a work card), difficulty in accessing social benefits and public funding or private, difficulty in entering as a visitor in penal establishments, among others.

Until November 2019, the majority understanding of the Superior Court of Justice was that financial impossibility would not be sufficient reason to rule out the penalty of fine[[63]](#footnote-63). And with the advent of ADI 3,150 of the STF and of Law 13,964/19 (Anti-Crime Package), the STJ started to understand the penalty of fine as an obstacle to the extinction of punishment. The STJ, however, did not make any distinction in relation to the execution of the fine of weak or insolvent convicts. By disregarding the obstacles arising from the execution of fines related to crimes intrinsically related to poverty, such as trafficking, robbery and theft, the Court once again highlighted the super punishment of poverty in its multiple faces.

In this month of November 2021, however, the STJ[[64]](#footnote-64)reformed its thesis, establishing that the non-payment of a fine by the convict who proves that it is impossible to do so does not prevent recognition of the extinction of the punishment. The decision was made, but it is too early to understand if it will be accepted by the State Courts of Justice, as well as the proof of impossibility of payment being interpreted.

It is not mere rhetoric to assert that linking the extinction of punishment to the fulfillment of the fine penalty means the institution of an unconstitutional life sentence for poor convicts. The State that should "eradicate poverty and marginalization and reduce social and regional inequalities", in addition to "promoting the good of all, without prejudice of origin, race, sex, color, age and any other forms of discrimination", passes to create even more obstacles for the effective exercise of citizenship and for the social reintegration of graduates.

## Suspension of political rights: jettisoning the democratic process

The Brazilian Constitution of 1988 is widely known as the Citizen Constitution, not only for having been enacted after a long period of civil-military dictatorship, but also for bringing in its text a large list of fundamental rights applicable to all Brazilian citizens.

With regard to political rights, it is common to find the assertion that their maximum expansion was guaranteed, as there is no exclusion in their text due to income, gender or even literacy, thus allowing everyone to be considered able to vote.[[65]](#footnote-65) However, little is said about a restriction on political rights that remained in the constitutional text and, in the current scenario, prevents a large number of Brazilian citizens with well-defined characteristics from having access to the ballot boxes in electoral elections: in its article 15, item III, the suspension of the political rights of those who have a final and unappealable criminal conviction is foreseen, while its effects last.

This means that those who are in prison and permanently sentenced will not be able to vote, but also those who are serving their sentences in an open regime, in the form of restrictive rights or who have benefited from probation and parole.

Until the beginning of the 20th century, the requirement of literacy as a criterion for exercising the right to vote was responsible for the exclusion of a huge number of citizens from electoral processes (which only changed with Constitutional Amendment No. 25 of 1985, responsible for the expansion the right to vote for the illiterate). It can be said that this single restriction on political rights reshaped the exclusion model, but kept the same affected population.

Although, in theory, all those who enter the criminal justice system must have preserved all rights that are not affected by their sentence, it seems that, despite the Brazilian redemocratization initiated in the 1980s, the right to vote for inmates is a non- -question.

According to Infopen data from 2017, in 1990 the Brazilian prison population was approximately 90 thousand people, with an incarceration rate of approximately 61 individuals per 100 thousand inhabitants; and, in consultation with data from the Information System of the National Penitentiary Department (SISDEPEN), in December 2020 this prison population would have been 811,707 people for a total of 545,060 places, which represents an increase of approximately 801.896% in relation to the year of 1990, with a rate of 383.32 prisoners for every 100,000 inhabitants.

The number of people whose political rights are suspended cannot be established in a direct line with those in the prison system. As seen, in Brazil, by virtue of the wording of article 15, III, of the Constitution of the Republic, the suspension of political rights of inmates occurs in a general and unrestricted manner, therefore, not only for those who are in custody, but also for those who are in an open regime, in compliance with penalties that restrict their rights or who have been granted the benefits of probation and parole. Thus, based on data obtained from the Superior Electoral Court (TSE), it is estimated that in 2018, the date of the last presidential election, a total of 788,700 individuals were unable to vote due to having a final and unappealable criminal conviction.[[66]](#footnote-66)However, the number of people who effectively fail to turn up at the polls for reasons related to the criminal justice system is much higher.

It so happens that, despite the fact that provisional prisoners have the right to vote, few measures are taken to exercise it. In the same year 2018, according to data from the Information System of the National Penitentiary Department in a report for the period from July to December 2018, a total of 242,133 people were in custody without a definitive conviction, while, according to the aforementioned data from the TSE, only 9,331 of these were able to exercise their right to vote in the first round of elections and 8,594 in the second round, which allows, in the end, to conclude that in the presidential elections of the year 2018 at least 1,021,000 people stopped voting for, of somehow, be involved with the penal system.

But an effective analysis of the people who have their right to vote restricted goes, certainly, through an observance of their profile and the conditions to which they are submitted within the prison system – about which they are prevented from manifesting themselves politically in search of improvements.

According to Infopen 2017 and data from SISDEPEN, between 2000 and 2017 there was an average growth of the prison population of 7.14% per year, and in 2000, the deficit of vacancies was 97,045, changing to a deficit approximately 266,647 places in 2020. When we look at the age group of the prison population, we see that 29.95% of them are between 18 and 24 years old, 24.11% between 25 and 29 and 18.33% between 30 and 34 years, which demonstrates, in short, that the prison population is essentially young. Thinking about the race of those deprived of liberty, it appears that, while in the Brazilian population there is a total of 43.6% whites, 46.8% browns and 8.6% blacks, in the prison system the percentage of whites drops. to 35.48%, being 46.27% brown and 17.37% black. With regard to education, 51.35% of the prison population has incomplete primary education,

In addition to a large number of votes from a specific population regarding their age, racial and educational profile, it should be noted that individuals who enter the prison system are not evenly distributed within the regions that make up the large urban centers.

Taking the city of São Paulo as an example, through data from the survey Vale a Pena?, by Instituto Sou da Paz[[67]](#footnote-67), it is seen that, in view of the information provided by provisional prisoners to the Public Defender of the State of São Paulo, it is possible to estimate from which regions of the capital of São Paulo the individuals who enter the prison system come from and, consequently, go through a great chance of having their political rights suspended while the effects of their sentence last.

While some administrative districts recognized for the good socioeconomic conditions of their inhabitants - such as Moema, Jardim Paulista, Perdizes and Alto de Pinheiros - have an imprisonment rate of about 10 individuals per 100,000 inhabitants for the years 2016 and 2017, in the districts in Jardim Ângela, Brasilândia and Capão Redondo, the rate exceeds 50 individuals per 100,000 inhabitants. In the districts of Brás and Sé - where the Cracolândia region mentioned in this report is located, in 2017, the imprisonment was, respectively, of 177.9 and 192.6 people per 100,000 inhabitants, and it should also be noted that , in the 10 administrative districts with the highest absolute numbers of provisional arrests, one fifth of the population of São Paulo is concentrated.

Considering only the above data, among many other equally contrasting ones that appear in the Map of Inequality, there is another major problem with the removal of the right to vote from those who are sent to the prison system: it removes the potential to vote from people of certain and well-being. demarcated regions of the city of São Paulo (which, of course, can be extended to other large national urban centers), in which the most fragile socioeconomic conditions are present.

In the end, criminal law ends up removing the right to political expression from a huge group with very well demarcated characteristics, being prevented from electing representatives who will pay attention to the needs and interests of specific communities, as well as the needs they face within the system. prison.

The effects of the suspension of voting rights arising from criminal convictions fall on specific individuals and communities. In the 2018 elections, approximately 1,021,000 people withdrew from voting because they had final convictions or were in prison awaiting trial. These have a clearly demarcated profile: most of them are young people, brown or black, from communities with more fragile socioeconomic conditions. It is what prison survivors call a political death.

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30. Decree No. 64,897, of March 31, 2020 (complemented by SEDS Resolution No. 8, of 4/1-2020). Available in: <https://www.al.sp.gov.br/repositorio/legislacao/decreto/2020/decreto-64897-31.03.2020.html> [↑](#footnote-ref-30)
31. Available at: https://www.imprensaoficial.com.br/DO/BuscaDO2001Documento\_11\_4.aspx?link=%2f2020%2fexecutivo%2520secao%2520i%2fmaio%2f28%2fpag\_0005\_e3eff6ce774b0b40fd8/05/72068&pd\_datapacaden> 20I&pageordenacao=100005 [↑](#footnote-ref-31)
32. Source: [www.capital.sp.gov.br/noticia/prefeitura-de-sao-paulo-divulga-censo-da-populacao-em-situacao-de-rua-2019](http://www.capital.sp.gov.br/noticia/prefeitura-de-sao-paulo-divulga-censo-da-populacao-em-situacao-de-rua-2019) [↑](#footnote-ref-32)
33. Rede Cozinha Cidadã distributes 2 million lunchboxes to the homeless population. Action was created to ensure food and nutrition security for the homeless population in the city. Available in:<http://www.capital.sp.gov.br/noticia/rede-cozinha-cidada-distribui-2-milhoes-de-marmitas-a-populacao-em-situacao-de-rua> [↑](#footnote-ref-33)
34. Decree No. 591, of July 6, 1992. Available at: <<http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/d0591.htm>> (accessed on: 11/2021) [↑](#footnote-ref-34)
35. Pact San José of Costa Rica. Article 11 - Protection of honor and dignity (...) 2. No one may be the object of arbitrary or abusive interference in his private life, family, home or correspondence, nor of illegal offenses to his honor or reputation. [↑](#footnote-ref-35)
36. Federal Constitution 1988 - Chapter II - Social Rights. Art. 6 The social rights are education, health, food, work, housing, transport, leisure, security, social security, protection of maternity and childhood, assistance to the destitute, in the form of this Constitution. [↑](#footnote-ref-36)
37. Veto No. 42/2021. Available at: <<https://www.congressonacional.leg.br/materias/vetos/-/veto/detalhe/14485>> (accessed on: 11/2021) [↑](#footnote-ref-37)
38. Bill No. 827 of 2020. Available at: <[https://www25.senado.leg.br/web/tividade/materias/-/materia/148656](https://www25.senado.leg.br/web/atividade/materias/-/materia/148656)> (accessed on: 11/2021) [↑](#footnote-ref-38)
39. Federal Law No. 14.216/2021. Available in:<https://www.in.gov.br/en/web/dou/-/lei-n-14.216-de-7-de-outubro-de-2021-351591984> [↑](#footnote-ref-39)
40. Luís Barroso, STF, suspends evictions of vulnerable individuals and families. Available at: <[https://www2.camara.leg.br/tividade-legislativa/comissoes/comissoes-permanentes/cdhm/noticias/luis-roberto-barroso-do-stf-suspende-despejo-de-individuos-e-familias-vulneraveis](https://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-permanentes/cdhm/noticias/luis-roberto-barroso-do-stf-suspende-despejo-de-individuos-e-familias-vulneraveis)> (accessed on 11/2021) [↑](#footnote-ref-40)
41. See: [https://www.bing.com/videos/search?q=a%c3%a7%c3%a+of+eviction+pandemic&docid=608014519993653293&mid=25B95319DCE3974985CE25B95319DCE3974985CE&view=detail&FORM=VIRE](https://www.bing.com/videos/search?q=a%c3%a7%c3%a3o+de+despejo+pandemia&docid=608014519993653293&mid=25B95319DCE3974985CE25B95319DCE3974985CE&view=detail&FORM=VIRE)
[https://www.brasil247.com/regionais/southeast/justica-autoriza-despejo-de-450-familias-no-acampamento-marielle-vive-do-mst-em-valinhos-sp](https://www.brasil247.com/regionais/sudeste/justica-autoriza-despejo-de-450-familias-no-acampamento-marielle-vive-do-mst-em-valinhos-sp) / <https://ohoje.com/noticia/cidades/n/1360212/t/vinte-idosos-de-abrigo-em-jaragua-correm-risco-de-serem-despejados-advogado-denuncia-acao-sem-autorizacao/> [↑](#footnote-ref-41)
42. Withdrawal of residents from properties in Cracolândia at the worst stage of the pandemic becomes an international complaint. Available in:[https://www1.folha.uol.com.br/cotidiano/2021/03/retirada-de-moradores-de-imoveis-na-cracolandia-em-pior-fase-da-pandemia-vira-denuncia-internacional. shtml?origin=sheet](https://www1.folha.uol.com.br/cotidiano/2021/03/retirada-de-moradores-de-imoveis-na-cracolandia-em-pior-fase-da-pandemia-vira-denuncia-internacional.shtml?origin=folha) [↑](#footnote-ref-42)
43. Criminal Code. DECREE NUMBER 847, OF OCTOBER 11, 1890. Chapter XIII, On vagrants and capoeiras in Art. 402. To exercise agility and bodily dexterity known by the name Capoeiragem in the streets and public squares: running in a hurry, with weapons or instruments capable of produce bodily harm, causing turmoil or disorder, threatening a certain or uncertain person, or instilling fear of some harm. Penalty: Cellular imprisonment for two to six months. Single paragraph. It is considered an aggravating circumstance to belong to capoeira to a band or gang. To the chiefs or heads, the penalty will be imposed in double. [↑](#footnote-ref-43)
44. Criminal Misdemeanor Law (Decree-Law n. 3.688/41): institutes vagrancy as a criminal misdemeanor. [↑](#footnote-ref-44)
45. CMT G Ordinance No. PM6-002/30/13, of 10/11/2013. Available at: <[https://www.imprensaoficial.com.br/DO/BuscaDO2001Documento\_11\_4.aspx?link=/2013/executivo%2520secao%2520i/outubro/17/pag\_0026\_AC6KU3RDU0EOSeFF071BNM1VD1M.pdf&pagina=26&data=17/10/Executivo%20en](https://www.imprensaoficial.com.br/DO/BuscaDO2001Documento_11_4.aspx?link=/2013/executivo%2520secao%2520i/outubro/17/pag_0026_AC6KU3RDU0EOSeFF071BNM1VD1M.pdf&pagina=26&data=17/10/2013&caderno=Executivo%20I&paginaordenacao=100026)> (accessed on 11/2021) [↑](#footnote-ref-45)
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49. 20% of arrests in Goiás are for food theft, denounces the Public Defender's Office. <https://diariodoestadogo.com.br/20-das-prisoes-em-goias-sao-por-furto-de-alimentos-denuncia-defensoria-publica-de-goias-131644/> / Hunger: 92 people have been arrested for food theft in Bahia since the beginning of the pandemic. [https://www.opovo.com.br/noticias/brasil/2021/11/28/fome-92-pessoas-foram-presas-por-furto-de-comida-na-bahia-desde-o-inicio- pandemic.html](https://www.opovo.com.br/noticias/brasil/2021/11/28/fome-92-pessoas-foram-presas-por-furto-de-comida-na-bahia-desde-o-inicio-da-pandemia.html) / MP asks Justice to convict defendants acquitted for theft of food won in RS. [https://g1.globo.com/rs/rio-grande-do-sul/noticia/2021/10/27/defensoria-tenta-absolver-reus-por-furto-de-queijo-presunto-e-outros- food-expired-discarded-by-market-on-rs.ghtml](https://g1.globo.com/rs/rio-grande-do-sul/noticia/2021/10/27/defensoria-tenta-absolver-reus-por-furto-de-queijo-presunto-e-outros-alimentos-vencidos-descartados-por-mercado-no-rs.ghtml) / Homeless person is released after arrest for stealing chicken, vegetables and pots. <https://noticias.r7.com/sao-paulo/morador-de-rua-e-solto-apos-prisao-por-furtar-galinha-vegetais-e-panela-05082021> / Hungry, a mother of five is arrested for stealing ramen and soda. <https://ponte.org/com-fome-mae-de-cinco-filhos-e-presa-por-furtar-miojo-e-refrigerante/> [↑](#footnote-ref-49)
50. Woman who has been imprisoned in MG for water theft since July will be released after Alexandre de Moraes' decision at the STF [https://g1.globo.com/mg/triangulo-mineiro/noticia/2021/11/18/mineira-que-esta-presa-por-furto-de-agua-desde-julho-sera-solta-apos- decision-of-alexandre-de-moraes-no-stf.ghtml](https://g1.globo.com/mg/triangulo-mineiro/noticia/2021/11/18/mineira-que-esta-presa-por-furto-de-agua-desde-julho-sera-solta-apos-decisao-de-alexandre-de-moraes-no-stf.ghtml) [↑](#footnote-ref-50)
51. Thefts due to hunger or despair overload courts and generate debate in the judiciary - Jornal O Globo. [https://oglobo.globo.com/brasil/furtos-por-fome-ou-desespero-sobrecargam-tribunais-geram-debate-no-judiciario-25249326](https://oglobo.globo.com/brasil/furtos-por-fome-ou-desespero-sobrecarregam-tribunais-geram-debate-no-judiciario-25249326) [↑](#footnote-ref-51)
52. See the Preliminary Bill of Law 3/2021 arising from the Public Security Submission of the Committee on Constitution and Justice and Citizenship of the Chamber of Deputies, which has a similar text to the bill known as the "Anti-Crime Package" presented in 2019 by the then Minister Sérgio Moro - Bill No. 1864 of 2019 of the Federal Senate and PL 882/2019 of the Chamber of Deputies). The text was initially rejected (PL 882/19), but has been replicated in new bills.( [↑](#footnote-ref-52)
53. The global drug policy index. Available at: <<https://static.poder360.com.br/2021/11/global-drug-polcy-index.pdf>> (accessed on Nov. 11, 2021) [↑](#footnote-ref-53)
54. Chapter III, Law 11.343 of 2006. Art. 28. Anyone who acquires, stores, has in storage, transports or brings with them, for personal consumption, drugs without authorization or in disagreement with legal or regulatory determination will be subject to the following penalties: I - warning on the effects of drugs; II - provision of services to the community; III - educational measure of attendance at an educational program or course. [↑](#footnote-ref-54)
55. See “Provisional Prison and Drug Law: a study on drug trafficking incidents in the city of São Paulo” (Nucleus for the Study of Violence - USP and Open Society Institute, 2011). [↑](#footnote-ref-55)
56. Data Brazilian Public Security Forum. Available at: <<https://forumseguranca.org.br/anuario-brasileiro-seguranca-publica/>> (accessed on Nov. 11, 2021) [↑](#footnote-ref-56)
57. Slaughter in the São Gonçalo RJ Complex. Available at: <[https://www.bbc.com/english/brasil-59382177](https://www.bbc.com/portuguese/brasil-59382177)> (accessed on Nov. 11, 2021) [↑](#footnote-ref-57)
58. Available at: http://www.forumjustica.com.br/wp-content/uploads/2012/01/Apelo-Urgente.pdf. [↑](#footnote-ref-58)
59. (...) on May 24, several people were injured in the region known as Cracolândia, in the city of São Paulo, during a security operation to remove drug addicts from the streets. According to the information received, the operation would have included the demolition of a building that was occupied, the eviction of residents and merchants from Cracolândia and the use of gas bombs and rubber bullets to repress them. [↑](#footnote-ref-59)
60. See the Report of the National Mechanism to Combat and Prevent Torture in Therapeutic Communities - https://site.cfp.org.br/wp-content/uploads/2018/06/Relat%C3%B3rio-da-Inspe%C3%A7 %C3%A3o-National-in-Communities-Terap%C3%AAuticas.pdf [↑](#footnote-ref-60)
61. See Bill of Law approved in November 2021 that grants tax exemption to the Therapeutic Communities..<https://www.viomundo.com.br/blogdoazenha/adilson-silva-e-leonardo-pinho-projetos-no-congresso-drenam-mais-dinheiro-publico-para-comunidades-terapeuticas.html> [↑](#footnote-ref-61)
62. Art. 51. Once the condemnatory sentence is final, the fine will be executed before the judge of criminal execution and will be considered a debt of value, applicable to the norms related to the active debt of the Public Treasury, including with regard to interruptive and suspensive causes of prescription [↑](#footnote-ref-62)
63. HC 298.169/RS, Rel. Minister NEFI CORDEIRO, SIXTH PANEL, judged on 10/11/2016, DJe 10/28/2016. [↑](#footnote-ref-63)
64. Fine does not prevent the extinction of punishment for convicts who cannot pay. Available in:[https://www.stj.jus.br/sites/portalp/Paginas/Comunicacao/Noticias/24112021-Multa-nao-impede-extincao-da-punibilidade-para-o-condenado-que-nao-pode-pagar. aspx](https://www.stj.jus.br/sites/portalp/Paginas/Comunicacao/Noticias/24112021-Multa-nao-impede-extincao-da-punibilidade-para-o-condenado-que-nao-pode-pagar.aspx) [↑](#footnote-ref-64)
65. For example: CARVALHO, José Murilo de. Citizenship in Brazil: the long way. 22nd ed. Rio de Janeiro: Brazilian Civilization, 2016. p. 202; NICOLAS, Jairus. Elections in Brazil: from the Empire to the present day. Rio de Janeiro: Zahar, 2012. p. 125-126; BRESSER-PEREIRA, Luiz Carlos. The political construction of Brazil: society, economy and State since Independence. 3. ed. São Paulo: Editora 34, 2016. p. 299. [↑](#footnote-ref-65)
66. Data contained in the Register of Voters under code ASE 337, which is an approximate number due to retroactive entries and inactivations at later dates. [↑](#footnote-ref-66)
67. I AM OF PEACE INSTITUTE. It is worth it? Costs and alternatives to prison in the city of São Paulo. São Paulo, June 17, 2019. Available at: <http://www.soudapaz.org/upload/pdf/vale\_a\_pena\_final\_online.pdf>. [↑](#footnote-ref-67)