

## **Contributions to the Report on Legal Empowerment of the United Nations Special Rapporteur on the Independence of Judges and Lawyers**

**Margaret Satterthwaite**

The Institute for the Defense of the Right to Defense (IDDD) is a civil society organization of public interest formed by criminal lawyers and human rights defenders and which, since its founding in 2000, has worked for the democratization of access to justice, respect for the right of defense, transformation of the criminal justice system, end of over-incarceration and strengthening of a democratic state governed by the rule of law.

Within our lines of action, we have worked with the agenda of legal empowerment since 2010. The institute's oldest project in this area, Education for Citizenship in Prison<sup>1</sup>, aims to promote meetings between its associates and people deprived of liberty in different prison units, providing discussions on the functioning of the state, fundamental rights and the stages of the criminal process. In expanding repertoires based on exchanges between the project's two main audiences, the prison population and the institute's associates, the project trains multiplier agents inside and outside prisons.

Another project that works on legal empowerment is the Defense of Human Rights Defenders<sup>2</sup>, started in 2021, which consists of forming a collective of human rights defenders and lawyers to face the criminalization of social activism in the state of São Paulo. Its purpose is to build networks of trust, protection and defense among human rights defenders threatened with criminalization due to their actions in defense of rights in their territories, communities and causes.

Based on these experiences, this document aims to bring contributions on the following subjects:

---

<sup>1</sup> More on this initiative can be found on: <https://iddd.org.br/projetos/educacao-para-cidadania-no-carcere/>.

<sup>2</sup> More on this initiative can be found on: <https://iddd.org.br/projetos/formacao-defesa-de-defensores-de-direitos-humanos-redes-de-empoderamento-legal-incidencia-e-protecao/>.

**(i) Shortcomings of the existing judiciary or other systems, which illustrate the value of an empowering legal approach, such as systemic discrimination, exclusion and harm caused by legal systems**

IDDD's experience based on dialogue with people deprived of their liberty shows that their lack of access to clear information about their criminal processes reinforces the scenario of exclusion to which the prison population is subjected. There is no political will to provide these people with knowledge of their procedural situations, so that they may seek to assert their rights by questioning their defenders, whether public or private, or by directly resorting to the judges (who should assess the compliance with penalties with certain constancy, respecting the legal deadlines for granting the established guarantees).

Also, the very lack of knowledge of the laws – invariably elaborated with technical language – keeps all citizens outside the comprehension of their scope and effects.

Brazil has the third largest prison population in the world, in absolute numbers. It is mostly made up of young, black people with low education level and income. According to SISDEPEN<sup>3</sup> data, by June 2022, 43% of the prison population was made up of people aged between 18 and 29 years old; 68% are black (52% mixed-race and 16% black), while 30% are white; and 56% did not complete elementary school. The vast majority of these people have their technical defense represented by the Public Defender's Office or by court-appointed lawyers who act as the Defender's Office in regions where such entity still does not exist.

It so happens that there is, in Brazil, a deficit of public defenders<sup>4</sup> in relation to the number of people in vulnerable situations – which also includes those deprived of liberty –, which reveals the lack of access to justice in Brazil. This reality makes legal empowerment strategies even more important for people targeted by the criminal justice system and their family members, in order to enable incidences in their defenses, somehow expanding access to justice.

---

<sup>3</sup> Information available on:

<https://app.powerbi.com/view?r=eyJrIjoiNWQ0ODM1OTQtMmQ2Ny00M2lyLTk4YmUtMTdhYzI4N2ExMWM3liwidCI6ImViMDkwNDIwLTQ0NGMtNDNmNy05MwYyLTRiOGRhNmJmZThlMSJ9>. Accessed on May 2<sup>nd</sup> 2023.

<sup>4</sup> A study published in 2021, which brings data from 2019 and 2020 on state public defenders, points out that 58% of Brazilian Judicial Districts do not have a Public Defender's Office. In some states, as in the case of São Paulo – the largest Brazilian state – the data show that around 70% of the Districts are not assisted by public defenders. The report can be consulted on:

<https://www.conjur.com.br/dl/pesquisa-mostra-dificuldades-defensoria.pdf>. Accessed on May 2<sup>nd</sup> 2023.

A survey carried out by IDDD on the criminalization of human rights defenders – whose report has not yet been published – shows that there are several defense strategies adopted by people criminalized or threatened with criminalization, in addition to the search for technical-legal defense, as a way of filling gaps in access to justice. Among these strategies, we could observe the networking with social movements, the publicizing of cases in conjunction with information vehicles, and the engagement of third sector entities and organizations or legislators close to the agendas defended by criminalized groups.

**(ii) The contribution of legal empowerment and other people-centred approaches to achieving equal and effective justice for all, in line with Sustainable Development Goal 16**

The promotion of a democratic state governed by the rule of law and the guarantee of equal access to justice go through the absolute necessity of guaranteeing isonomy in the treatment given by the Justice. Hence, the Brazilian Constitution provides as some of the fundamental objectives of the Federative Republic of Brazil the reduction of social inequalities and the promotion of the well-being for all without any form of discrimination.

It so happens that in a country of continental dimensions, as is the case of Brazil, we are very far from achieving the guarantee of isonomic treatment, especially when we talk about Criminal Justice – which, as mentioned above, has a very well-established preferential profile. In this sense, guaranteeing a learning experience for community leaders regarding fundamental rights and the functioning of justice becomes an important strategy for effective access to justice, as well as ensuring that such leaders lead the structural changes that need to occur within the Criminal Justice system.

In Brazil, experiences such as THEMIS – Gender, Justice and Human Rights<sup>5</sup> use legal empowerment as a way to face violence and discrimination based on gender, through the training of Popular Legal Promoters, who seek to subvert the order imposed by the very form of organization of the state and the judiciary, providing communities with the ability to seek and independently build solutions based on knowledge of the law.

At IDDD, it is worth highlighting the project **“Women and Criminal Justice: strengthening networks in the territories”** which aims to consolidate networks of trust and protection among women directly or indirectly affected by mass incarceration. Based on a training, themes such as anti-racism, gender equality, maternity in prison

---

<sup>5</sup> More on this organization can be found on: <https://themis.org.br/>.

and violence against women are brought up. Experiences of incidence in public policies are also shared, both in the Legislative and in the Executive powers, to reduce violence against women impacted by prison and to build other strategies to face female over-incarceration.

### **(iii) Empowerment of women prison survivors and family members of prisoners**

Of all forms of gender discrimination, that which relates to Criminal Justice is one of the cruelest. It is women who lose their family ties when they go through the prison system; on the other hand, they are also the ones who ensure that ties are maintained when they have a family member deprived of liberty. In line with the burden socially imposed on women, those who are prison survivors and/or have family members in prison find themselves in the role of seeking to guarantee the realization of the most basic rights.

Women who are targets of the criminal justice system suffer the effects of punishment doubly: the penalty imposed by the State and the one for having frustrated the expectations of the role that they are expected to play in society. They are invisible and abandoned in prison.

The prison joint efforts carried out by IDDD in 2017 and 2018<sup>6</sup>, which aimed to provide legal assistance for women prisoners to ensure effective compliance with the Legal Framework for Early Childhood Care, exposes the multiple layers of violations of the rights of women deprived of liberty, such as the lack of access to justice, repeated non-compliance with legal provisions, neglect of women's specificities and difficulties in guaranteeing the coexistence of imprisoned mothers with their children.

Another project that has exposed the disproportionate way in which women are affected when it comes to the criminal justice system is the Defense of Human Rights Defenders, which had the participation of women community leaders who are active in the anti-prison movement – fighting for the end of prisons and in defense of friends and relatives deprived of liberty. In mapping the criminalizations that fall on human rights defenders, we could observe that this group is daily exposed to the power and arbitrariness of state agents. This is because the family members – almost entirely women – are the main guarantors of basic survival conditions for people who are imprisoned, by carrying out the visits, taking food, basic hygiene items and playing the role, in practical terms, of monitoring and denouncing torture and violations of rights

---

<sup>6</sup> The report with data on this assistance can be accessed on: [http://www.iddd.org.br/wp-content/uploads/2020/07/Maes\\_Livres\\_IDDD.pdf](http://www.iddd.org.br/wp-content/uploads/2020/07/Maes_Livres_IDDD.pdf).

that occur in the Brazilian prison system. And precisely one of the main threats of criminalization to these women occurs when visiting prisons, when they are subjected to vexatious frisks and placed under suspicion, often in a clear attempt to discourage them from entering the units and repress any impulse to denounce the conditions of their interiors.

**(iv) The challenges faced by those seeking to advance and/or implement legal empowerment approaches**

From our experiences, we have realized that there are several challenges for approaches to legal empowerment, starting with the language of law itself, created and still maintained as a way to distance society from its appropriation. In our projects that work on legal empowerment – inside and outside prison – the great challenge is the translation of technical terms that define themselves into an accessible and comprehensible language.

The creation of a space of trust – the premise for achieving a fruitful environment for exchanging experiences and knowledge when talking about matters related to criminal justice – has proven to be fundamental and, therefore, also always posed as a challenge. Only in a space of mutual trust is it possible to understand the different dimensions of daily violations of the rights of the most diverse groups.

In addition to the technical knowledge of those who intend to disseminate it, a qualified listening ability to the issues raised by the group that participates in a legal empowerment strategy is also fundamental. Because what is sought is precisely the training that enables groups to build forms of independent conflict resolution, considering their particularities, which allow greater chances of access to justice, as well as being able to play an active role in the consolidation of changes and rights.

In this sense, it is worth highlighting an initiative by this institute to train lawyers who are capable of building, establishing dialogue and listening to people affected by daily violations of the criminal justice system.