# PARTICIPANTS' PAPERS

## PREVENTION OF REOFFENDING AND ENSURING SOCIAL INTEGRATION – LEGAL AIMS VERSUS REALITY IN BRAZIL

*Ana Cristina Bandeira Lins**

### I. INTRODUCTION

Since 1984, Brazil has, no doubt, one of the most modern laws on penal execution, which aims primarily at reintegration of the condemned person into society, rather than punishing. The laws give more value to non-custodial measures rather than imprisonment, a prison progression system and various modalities of assisting the condemned persons. International rules and norms that followed the reform of the General Part of the Penal Code[1] and of the Law on Penal Execution[2] provided little innovation on this legislation that already foresaw, as its explicit objective and goal, the creation of conditions allowing the social integration of the offenders. In practice, however, the Brazilian State appears to disrespect the law since its enactment: the reality of Brazilian prison life is quite different from what national and international rules impose. Despite various legislation enlarging the hypothesis of alternative non-custodial penalties and measures, the prison population is increasing. Meanwhile, the creation of more humane modes of serving a penalty of imprisonment, favouring the reduction of penal reoffending in the country, cannot be ignored, featuring a widening of alternative penalties or pre-trial measures as well as the creation of public policies that help effective social reintegration.

### II. LEGAL FRAMEWORK VS. PRISON REALITY

The reform of the general section of the Penal Code (Law nº 7.209/84) and the Penal Execution Code (N° 7.210/84), recognizing the uselessness of imprisonment as a method to prevent reoffending, allows social reintegration. Thus, non-custodial measures were foreseen besides furlough and parole, such as rendering of community service, temporary limitation of rights and restrictions on weekends, and monetary penalties. A differentiation and progression of prison regimes was provided, allowing that a large part of penalties were initiated in the so-called semi-open regime (allowing the prisoner to leave prison to work) and the open regime (returning to a halfway house at night), considering the size of the penalty, characteristics of the individual and the nature of the crime committed. Furthermore, the rules on the prescription periods of crimes were enlarged. Imprisonment should be the exception.[3]

* Procuradora da República (Federal Public Prosecutor), São Paulo, Brazil.

[1] Law Nº 7.209/84.

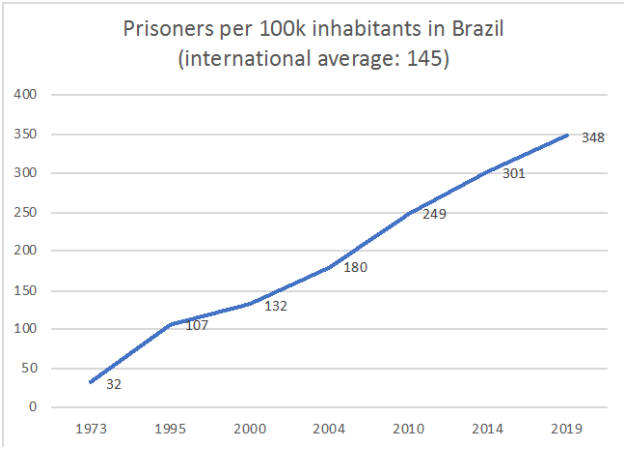
[2] Law N° 7.210/84.

[3] In: Statement of motives (*Exposição de Motivos*) Nº 211 (of 9 May 1983), of the Law 7.209/84. Available at: https://www2.camara.leg.br/legin/fed/lei/1980-1987/lei-7209-11-julho-1984-356852-exposicaodemotivos-148879-pl.html.

The presentation of the motives for reform of the Penal Code already clearly indicated the need to increase, in the future, possible further alternative solutions to imprisonment. Later, Law n° 9099/95 introduced the possibility of negotiating non-custodial measures prior to a penal process, and the conditional suspension of the process (prior to judgment) for crimes with a minor offensive potential. In 1998, Law n° 9.714 widened the modalities of alternative penalties and authorized the substitution of imprisonment for non-custodial measures in cases of intermediate gravity,[4] committed without violence or serious threats, provided the individual conditions so permitted.

Despite these various legal reforms, the prison population of the country continued to increase dramatically. Brazil has the world's third largest prison population (746,532 persons actually in prison), of which more than one-third are pre-trial detainees.[5] The legal objective to make incarceration the exception and give preference to non-custodial measures has not yet been achieved. In 2018, 63.9 per cent of all penal sentences executed (219.3 thousand) were imprisonment.[6]

This resulted in a continuous increase in the absolute number of prisoners and of the prison population rate. If, prior to the legal reform, in 1973, the prison population rate (prisoners per 100,000 inhabitants) was 32, it showed a significantly increasing scale, passing 107 in 1995, 132 in 2000, 180 in 2004, 249 in 2010 and 301 in 2014, culminating at 348 in 2019. These numbers should be compared to the worldwide average, which is 145.[7] See the following chart:




Prisons are overcrowded, with an occupancy level of 167.8 per cent. If one were to take into account the cases where imprisonment had been ordered and not yet executed (a total of 586,000), this would almost double the number of incarcerated persons. In 2018, 74 per cent of all imprisoned persons were in the "closed" regime (i.e. full-time imprisonment). The facilities allowing the semi-open regime (24.13% of all imprisoned persons) are insufficient, and there are virtually no halfway houses (1.7%) allowing the

[4] For convictions of up to four years of imprisonment.
[5] In August 2019, at https://www.prisonstudies.org/, accessed on 09/10/2019.
[6] In *Sumário Executivo. Justiça em números*. 2018, at https://www.cnj.jus.br/wp-content/uploads/2011/02/da64a36ddee693ddf735b9ec03319e84.pdf, accessed on 10/10/2019.
[7] Idem.

"open" regime; thus, that measure has been substituted by nightly recoil,[8] which is, in fact, not controlled in the overwhelming majority of cases.

Among those incarcerated, only 15 per cent have access to work and 12 per cent to studying.[9] The sanitary conditions in the prisons are extremely precarious, leading to health issues. In a study on the prison population in Rio de Janeiro, it was found that the level of tuberculosis incidents among prisoners is 35 times higher than in the overall population.[10]

These problems are aggravated by the effective loss of control of the State over most of the prisons to criminal organizations, and this leads to the truly precarious state of the Brazilian prison system currently. Whereas in the Southeast (São Paulo, Rio de Janeiro), criminal organizations are already hegemonic in prisons, the North and Northeast are marked by disputes for new markets and routes for drug trafficking, and the conflict among the criminal organizations leads to assassinations inside the prisons, in numbers not to be neglected. Only this year, there have been two large cases of "slaughtering" of imprisoned people for this reason. On 26 and 27 May 2019, 55 people were killed in prisons in Manaus. On 29 July 2019, 57 imprisoned people were assassinated in Altamira.

It is notorious that organized crime is recruiting its new members inside the prisons, be it voluntarily or by force.[11] Using the words of one of the leaders of the largest criminal organization in Brazil, the Primeiro Comando da Capital ("PCC"), Prison is the "machine to make the PCC".[12]

## III. CRIMINAL RECIDIVISM IN BRAZIL

There is no reliable databank yet that would allow to provide effective numbers on criminal recidivism in Brazil. Few surveys have been carried out, with partial data only, and there is no clear concept on how to define recidivism; thus, data are not comparable. In the study on criminal recidivism of the Instituto de Pesquisa Econômica Aplicada – IPEA[13], the following data were gathered in the survey:

[8] Data from August 2018, in *CNJ*, *Banco Nacional de Monitoramento de Prisões*, at www.cnj.jus.br, accessed on 09/10/2019.
[9] In *DEPEN*, *Levantamento Nacional de Informações Penitenciárias,* 2016, available at http://depen.gov.br/DEPEN/noticias-1/noticias/infopen-levantamento-nacional-de-informacoes-penitenciarias-2016/relatorio_2016_22111.pdf, accessed on 10/102019.
[10] *DIUANA et Alii*, *Saúde em prisões: representações e práticas dos agente de segurança penitenciária no Rio de Janeiro, Brazil,* available at http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0102-311X2008000800017, accessed on 10/10/2019.
[11] Camila Caldeira Nunes Dias, *Da pulverização ao monopólio da violência: expansão e consolidação do Primeiro Comando da Capital no sistema carcerário paulista,* 2011, available at http://pct.capes.gov.br/teses/2011/33002010028P1/TES.PDF, accessed on 03/10/2019
[12] https://noticias.uol.com.br/cotidiano/ultimas-noticias/2018/08/01/criminoso-que-atuou-nos-ataques-de-2006-diz-que-prisao-e-maquina-de-fazer-pcc.htm, accessed on 03/10/2019
[13] Institute of Applied Economic Research, cf. *IPEA. Reincidência criminal no Brasil,* available at http://www.ipea.gov.br/portal/images/stories/PDFs/relatoriopesquisa/150611_relatorio_reincidencia_criminal.pdf, accessed on 03/10/2015.

- Rate of generic reoffending (commitment of a crime – including people detained provisionally and the accused – following a prior conviction for a crime): 70 per cent[14].

- Rate of penitentiary recidivism (new imprisonment of a person previously imprisoned): between 45 and 50 per cent.[15]

- Rate of legal recidivism (a second crime – with conviction – was committed following a final and unappealable sentence of a first conviction, within 5 years following the end of the execution of the penalty): between 24.4[16] and 34 per cent[17].

In a study of the Grupo Candango of Criminology of the law faculty of the UNB, relating to a sample for the period 1997 to 1999, the recidivism index in non-custodial penalties was said to be 24.2 per cent, whereas the rate for those condemned to serving an actual prison sentence was said to be 53.1 per cent.[18]

The reoffending rates are fairly high, showing that a penalty of imprisonment continues to be inefficient for the prevention of further crimes.

## IV. POSITIVE INITIATIVES

In view of the failing of the system of imprisonment, various initiatives have been launched to seek solutions for a more effective response to criminality, aiming at diminishing the reoffending rates. Instead of waiting for national law initiatives, the National Councils of Justice and of the Public Ministry innovated the criminal processes, regulating the Agreement not to criminally prosecute (Acordo de Não Persecução Penal), a Custody hearing (Audiência de Custódia), and stimulating measures of Restorative Justice. Within the prison system, differentiated methods, such as the "Respect module" (módulo de respeito) and the Association for the Protection of and Assistance to the Condemned (associação de proteção e assistência aos condenados – "APAC") base themselves on the valuing of the human being and discipline, offering better conditions to allow social reintegration. Following the release from prison, government projects and non-governmental initiatives join forces to allow reintegrating the released person into the labour market. Alternative penalties, procedural suspensions and penal settlements have been a rather effective means to achieve social reintegration.

[14] Data based on the report on the management of DEPEN, dated 2001, in the parliamentary investigative committee on the prison system (*CPI do sistema carcerário*), in 2008, and is frequently repeated in speeches of Judicial authorities.
[15] According to samples collected by Adorno and Bordini between 1974 and 1976 and by Kahn between 1994 and 1996. These indices are also corroborated with the research carried out by Luis Flávio Sapori, in the *Centro de Estudos e Pesquisas em Segurança Pública*, which arrives, based on the analysis of samples in Minas Gerais, at a rate of 51.4 per cent.
[16] Survey of IPEA on the basis of data in five Brazilian States, dated 2013.
[17] According to the survey *Censo Penitenciário Nacional* of 1994.
[18] https://www.unbciencia.unb.br/humanidades/57-direito/301-penas-alternativas-reduzem-reincidencia.

**A. The Agreement Not to Prosecute ("ANPP")**

The National Council of the Public Ministry[19] (Conselho Nacional do Ministério Público), the official external control body of that institution, mitigated the principle of compulsory criminal prosecution, seeking acceleration of the process and a solution that would avoid the prejudicial social effects of a criminal penalty. Based directly on the principles of the Tokyo Rules, it created the possibility of a settlement ("plea agreement") in case of crimes of small or medium gravity[20] that did not involve violence or serious threats. The plea agreement, to be concluded prior to official accusation, must foresee, cumulatively or in isolation, the repair of any harm done, the voluntary handing over of any instruments used and of any result or benefit from the crime, as well as the rendering of community service, financial compensation and/or other measures.[21]

Even though the constitutionality of this form of plea agreement was quite disputed in legal doctrine, and sometimes even rejected by judges due to lack of a proper legal provision in Brazilian law on which they could be based, such plea agreements were de facto concluded by the organs of the Federal Public Ministry before the advent of the new law n. 13.964, of 24 December 2019, that will enter in to force on 24 January 2020. Between May 2018 and September 2019, more than 1,700 plea agreements have been concluded by the Federal Public Ministry, primarily in the areas of smuggling, false import declarations and other types of falsifications.[22] As they impose alternative measures to incarceration, the plea agreements are considered to contribute to the rehabilitation and social reintegration of the offender and the reduction of reoffending.

**B. Custody Hearing (*Audiência de Custódia*)**

Based directly on the International Covenant on Civil and Political Rights and on the American Convention on Human Rights (both integrated into the Brazilian legal system in 1992), the National Justice Council approved Resolution n° 213/2005, following an interim injunction of the Federal Supreme Court in an action on non-compliance with the fundamental norm n° 347 that imposes on judges the realization of custody hearings, determining the duty to present any arrested person to a judicial authority within 24 hours. In that hearing, the legality of the arrest, the integrity of the arrested person and the possibility of an immediate release are being verified.

Even though almost 70 per cent of all cases analysed relate to non-violent crimes (mostly drug trafficking, theft, dealing in stolen goods etc.), it is noted that still 57 per cent of all arrests are converted into provisional arrests. A mere one per cent are released without any restrictions. The remaining arrested persons are being released with precautionary measures such as having to report to the judge, nightly house arrest, electronic monitoring (anklet) or other forms of precaution.[23] In any case, these measures have contributed to a reduction of the provisional arrests.

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[19] The Federal Public Ministry – Ministério Público Federal – is the body of prosecutors (*procuradores*) with competence for all crimes at the federal level. Each State has Public Ministries with prosecutors (*Promotores da justiça*) competent for all other crimes (unless special jurisdictions apply). The National Council embraces all public ministries.

[20] In case of crimes where the law foresees a penalty of less than four years, and where a settlement is not suitable (foreseen for cases of crimes with a maximum penalty of two years, or three years in case of environmental crimes). With these parameters, such a settlement would be possible in the majority of penalty types foreseen in Brazilian legislation.

[21] Resolution CNMP nº 183/2018, at http://www.cnmp.mp.br/portal/images/Resolucoes/Resoluo-183.pdf.

[22] Data supplied by the 2nd Chamber for the Coordination and Revision of the Federal Public Ministry.

[23] *IDDD*, *O fim da liberdade*, 2019, available at https://www.cnj.jus.br/wp-content/uploads/conteudo/arquivo/

### C. Restorative Justice

The Brazilian justice system and the UNDP, driven by Resolution 2002/12, initiated more than 15 years ago pilot projects on the application of the method of restorative justice that, in the context of criminal law, privileges the dialogue between the victim, the offender and possibly other members of society as well as the repair of any damage caused by the crime over retributive justice. Since then, various efforts have been made to extend the application of this concept, via specific projects and training courses, promoted by the international agency.

The National Justice Council ("CNJ") issued Resolution n° 225/2016, determining the implementation of programmes of restorative justice through the courts and the constitution of programme managing committees. A mapping by the CNJ found that various courts created some form of exclusive structure for that purpose, and various confirmed using its principles in the criminal context, especially in penal processes on crimes of minor offensive potential and domestic violence.[24]

Applying such initiatives still depends very much on the personal initiative of the prosecutor or judge assigned to the case, as there does not yet exist an institutional framework within the courts for such purpose, and not even an express legal provision that would oblige them to use the proper instruments of restorative justice. The potential, however, of such mechanisms to contribute in fact to strengthen the social relations and the rehabilitation of the offenders is being recognized, and it may develop in the future.

### D. Respect Module

Inspired by the Spanish model, the State of Goiás introduced this model of differentiated incarceration in Brazil, creating separate wings inside the prisons. With a more humanized treatment of the condemned person, jointly with strict rules on conduct and coexistence, the right to work in prison is guaranteed in those modules, and there are educational and cultural activities (just as foreseen in the Brazilian penal execution legislation). The incarcerated persons are subject to a continued evaluation of their behaviour. Stealing, aggression and the use of drugs are not tolerated in these wings. In case of bad behaviour, the condemned returns to the "normal" prison.

The respect model is recognized by the incarcerated as a means to achieve a change ("who wishes to change his life"), and in order to volunteer for such respect modules, they will have to have shown good behaviour. Many incarcerated persons desist from applying for access to this regime because it would mean waiving any access to drugs (that are illegally offered in the "normal" system).

Fewer fugitives are reported from the respect modules than from the common system of incarceration.[25] There are no studies available, however, on the rate of reoffending.

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2019/09/bf7efcc53341636f610e1cb2d3194d2c.pdf, accessed on 10/10/2019.

[24] CNJ, *Mapeamento dos Programas de Justiça Restaurativa,* 2019, available at https://www.cnj.jus.br/wp-content/uploads/conteudo/arquivo/2019/06/8e6cf55c06c5593974bfb8803a8697f3.pdf, accessed on 10/10/2019.

[25] IPEA, *Reincidência criminal no Brasil*, available at: http://www.ipea.gov.br/portal/images/stories/PDFs/relatoriopesquisa/150611_relatorio_reincidencia_criminal.pdf, accessed on 03/10/2019.

## E. APAC – The Association of Protection and Assistance of the Convicted

In 1974, the first APAC was formed, based on the idea of a group of Christian volunteers, with the motto "to kill the criminal and save the man". It is based on 12 elements: participation of the community; "recoverees" (as they call the prisoners) help non-recoverees; work; spirituality; legal aid; health; dignity of the human being; family; voluntariness; infrastructure as a social centre; merit; and social activities with externs.

These associations are of a religious imprint, are non-profit organizations that conclude an accord with the State to participate in the management of prison life, from the construction of the infrastructure (or adaptation of a public building) to the actual execution of the activities of the system.

The units are small (mostly under 100 interns) and no overcrowding is allowed. The structure and furniture are much more differentiated compared to ordinary prisons. The treatment of the incarcerated is very humanized. All interns have the possibility to work or to study, have access to health care, legal aid, as well as religious (non-denominational) activities and recreation, assisted by a group of volunteers.

The incarcerated and their families participate in the managing council of the prison, jointly with the volunteers of the association. Admission is restricted to only those incarcerated who lived in the location of the establishment, so as to guarantee the effective participation of their families, thus avoiding the rupture of the affectionate links to them, which is a common problem in normal models of incarceration.

The incarcerated persons themselves carry out the tasks that would be carried out by the personnel or third parties in the common prison system. It is the inmates themselves who conduct the activities like opening and locking of doors, receiving visitors, inspecting the cells, and controlling to keep the timetable.

Just like in the Respect Modules, discipline and merit are quite highly valued, but in the case of APAC, it is the internal council of the incarcerated itself that controls the behaviour of the others, on a rotating basis. There are sanctions for non-compliance with the rules or lack of discipline. Delays in carrying out duties lead to a loss of recreation time. It is prohibited to speak about crimes. Acts of violence are not tolerated. The incarcerated are responsible for the order and cleanliness of their cells and must keep the nightly silence. A repeated disrespect of the rules may lead to returning the incarcerated person to a common prison unit.

Based mostly on voluntary work and the work of the "recoverees", the cost of maintenance of APAC-managed facilities is much less than of the normal prison. In the State of Minas Gerais, the yearly cost for each intern is around R$ 12,655.00,[26] compared to R$ 23,000 per year for a normal prison, according to the Federal Tribunal of Accounts.

This model is quite appreciated by the incarcerated people, especially for its direct participation in the management of the establishment and the absence of prison agents

[26] *Estudo preliminar: a metodologia APAC e a criação de vagas no sistema prisional a partir da implantação de centros de reintegração social,* available at: http://depen.gov.br/DEPEN/depen/ouvidoria/EstudoPreliminarAMetodologiaAPACeaCriacaodevagasnoSistemaPrisionalapartirdaImplantacaodeCentrosdeReintegracaoSocialSITE.pdf, accessed on 03/10/2019.

(employees of the State) that would control them.[27] No escapes from this model of prison have been reported.

Currently, there are about 100 of these APAC models in Brazil,[28] out of a total of 2,600 prisons overall. Therefore, it is very difficult for an incarcerated person to manage a transfer to such a unit. The rate of reoffending in the APAC model is only around 15 per cent, much below the estimated 70 per cent for prisons in general.[29]

**F. Alternative Penalties and Measures**

Alternative measures – whether prior to the penal process (in the form of plea agreements or settlements), during the process (conditional suspension of the process) or after conviction (substituting a penalty of imprisonment) – have generally resulted in a much lower rate of reoffending than those of offenders that were condemned to serve time in prison; furthermore, these measures prove to be an effective tool of social reintegration and are infinitely cheaper for the public.

In the State of São Paulo, 192,292 alternative measures were imposed and registered in the monitoring centres between 2002 and June 2019. The recidivism index was a mere 3.5 per cent. The costs of these measures were a mere R$ 26.40 per month[30] (or R$ 317.88 per year), which is really minimal, compared to the cost of maintaining an incarcerated person, which bears a cost of R$ 23,000 per year, according to the Federal Tribunal of Accounts (Tribunal de Contas da União).

1. Data of the Federal Justice System in the Subsection of São Paulo

When analysing the data of the Centre of Penalties and Alternative Measures of the Federal Justice in São Paulo (Central de Penas e Medidas Alternativas da Justiça Federal – CEPEMA,)[31] one will note that the substitution of incarceration penalties by alternative measures and alternative penalties is very positive for social integration, provided it is well-structured and directed, in particular if in the form of the convicted providing community service or paying pecuniary penalties.

CEPEMA, which counts in its ranks professionals in the field of psychology and social assistance, entertains accords with public and private bodies for those offenders that shall render public services as an alternative measure to imprisonment. The selected entities allow the absorption of various professional profiles, either in terms of the level of school or academic education or in terms of the area of activity (there are agreements with more than a hundred entities, public and non-governmental, in the areas of health services, child education up to university levels, public libraries, cultural entities, organizations providing assistance – be it to persons leaving the prison, persons with physical deficiencies, homeless people, elderly people, sheltered children and teenagers

[27] IPEA, *Reincidência Criminal no Brazil,* 2015, available at https://www.ipea.gov.br/portal/images/stories/PDFs/relatoriopesquisa/150611_relatorio_reincidencia_criminal.pdf.

[28] http://www.fbac.org.br/, accessed on 03/10/2019.

[29] Tribunal de Justiça do Estado de Minas Gerais, *Programa novos rumos,* 2018, available at www.tjmg.jus.br › lumis › portal › file › fileDownload, accessed on 03/10/2019.

[30] Data of the State of São Paulo at http://www.reintegracaosocial.sp.gov.br/db/crsc-kyu/archives/59d698315987a3c6bcdb3bab0e56b5fe.pdf, accessed on 09/10/2019.

[31] Justiça Federal, Central de Penas e Medidas Alternativas da Justiça Federal – *CEPEMA*, Report on the Activity (*Relatório de atividades*), 2018, available at: http://www.jfsp.jus.br/documentos/administrativo/NUAL/Relatorio_de_atividades_5anos_CEPEMA.pdf, accessed on 11/10/2019.

and even organs of the Judiciary). This way, the "collaborator" (term used for the sentenced as well as the offender who concluded a plea agreement or settlement prior to conviction) is steered, following an initial interview, to the type of service that is most adequate to his/her professional and social profile, taking into account also criteria like closeness to home and the compatibility of the timetable of the rendering of services with the exercising of normal work duties of the collaborator.

The entities that are entrusted with receiving such services confirm that the rendering of qualified services, related to the education and professional experience of the collaborator, break the stigma of the "convicted" felon, leaving behind all forms of prejudice or discrimination. Furthermore, the sense of responsibility of the collaborator is being enforced, his/her impact on the entity is positive and one perceives a true reparation to society.[32]

Should there be a violation in the performance of the service (delays, absences, failure of commitment), estimated to amount to less than 5 per cent, a new hearing will be set to give a formal warning, and the obligations (such as having to appear before the judge to report on and justify the activities actually performed) may be made more intense.[33]

Interviews carried out when the person is being released upon completing the service prove that the collaborators changed their own perception of themselves as criminals, realizing how their activities were valued by the employees and users of the entities. Furthermore, a major social engagement of the collaborator can be observed, it being common that he/she wishes to continue the activity as a volunteer of the entity.

Matching the collaborator to the social service rendered, jointly with the adequate monitoring of the process by the judge responsible for the penal execution, is what guarantees the success of the measure, according to the coordinating Federal Judge of the CEPEMA in São Paulo, Dr. Alessandro Diaferia, both in relation to the social reintegration of the offender and the low level of reoffending.[34] He even mentioned the case of the recruitment of the (former) offender as an employee by the benefiting entity.

In the five-year-period from October 2013 to October 2018, of a total of 2,651 offenders registered in this system, 1,408 were arising from alternative penalties. The remaining included those with plea agreements, settlements, suspension of the process or interim measures. From all archived files, a mere 1 per cent related to cases where a collaborator was sent to jail, which would mean a serious non-compliance with the service obligations or a reoffence during the time when the measure was applied, whereas a total of 62 per cent related to full completion of the service. The remaining cases that were archived (37%) relate to prescription, pardon, personal conditions that prevented the fulfilment of the measure (such as illness) or a transfer of residence of the offender (in which case the process was transferred to the new jurisdiction, and the case closed in Sao Paulo).[35] These numbers indicate, indeed, that the alternative measures to incarceration,

[32] Ibid.
[33] Interview conducted by the author with the Federal Judge and Coordinator of CEPEMA in São Paulo, Dr. Alessandro Diaféria, on 11/10/2019.
[34] Ibid.
[35] Justiça Federal, Central de Penas e Medidas Alternativas da Justiça Federal – CEPEMA, *Relatório de atividades,* 2018, available at:
http://www.jfsp.jus.br/documentos/administrativo/NUAL/Relatorio_de_atividades_5anos_CEPEMA.pdf,

when well administered and accompanied, are quite satisfactory for the prevention of reoffending.

With regard to pecuniary settlements, following the norms of the CNJ and the Council of the Federal Justice, payments are collected in an account at the disposal of the judge responsible for the execution of penalties, to be used after public selection processes on social projects. CEPEMA selected projects of non-governmental organizations for the professional training of persons released from prison; the donation of mattresses and clothing for homeless people; professional empowerment of fugitive immigrants; construction of shelters for fugitives; cultural workshops for socially vulnerable children, etc. Again, according to the coordinating judge of CEPEMA, who participates directly in the selection of the contemplated projects, the pecuniary penalties do not only serve to reintegrate the offender into society, but also to "reintegrate excluded persons into society", the major part of victims of crimes falling into the competence of the Federal Justice.

## G. Specific Initiatives of Reintegrating Incarcerated Persons and Persons Released from Prison into the Labour Market

A major obstacle to successful social rehabilitation of an ex-offender is the reintegration into the labour market. Not only will the normal work activity have been interrupted for years, as there are few opportunities to actually work while incarcerated, but there is also a prejudice (or at least great reluctance) against recruiting an incarcerated person or person released from prison. In order to overcome such hurdles, various programmes have been developed by the Executive and Judiciary organs.

The National Policy of Work within the Prison System (Política Nacional de Trabalho no âmbito do Sistema Prisional[36]) seeks to increase the absorption of prisoners and persons released from prison into the labour market. It determines that all public contracting of the Federal Government (direct and indirect administration) in excess of a value of R$ 330,000 must offer between 3 per cent and 6 per cent of the selected workers to incarcerated people or persons released from prison.

In the State of São Paulo, the Programme for Social Reintegration for Prison Leavers (Programa de Reinserção Social para Egressos do Sistema Prisonal)[37] provides for the intermediation of workforce (register of professionals and of available positions), professional qualification (in-prison training on tasks for which there is employment available in the region) and treatment seeking the social reintegration (providing social or psychological assistance to persons released from prison or their family members). The programme allows the State organs to demand, in public tender processes for construction works or services, the contracting of at least 5 per cent of persons released from prison. Since 2003, more than one million attendances were provided to ex-offenders and their families. Since 2010, more than 60,000 convicted persons sentenced to the half-open regime were provided a job opportunity through the programme. [38]

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accessed on 10/10/2019.

[36] Federal Decree n° 9.450/2018.

[37] State Decree (*Decreto Estadual*) nº 55.125/2009, available at: https://www.al.sp.gov.br/repositorio/legislacao/decreto/2009/decreto-55125-07.12.2009.html.

[38] Report, available at http://www.reintegracaosocial.sp.gov.br/db/crsc-kyu/archives/59d698315987a3c6bcdb3bab0e56b5fe.pdf.

In the judicial ambit, the CNJ created a project in 2009 called "Start again", aiming at promoting actions of social reintegration of incarcerated persons and persons released from prison. It is composed of educative actions, professional capacitation, and having a data bank of available professional positions at the disposal of persons released from prison.[39] That project stimulates partnerships between the different organs of the Judiciary with public and private entities for the offering of courses and created a gateway to workplace opportunities. Of the 18,882 job offers registered, 14,042 were actually filled.[40] Various initiatives have been formed throughout the country in the form of accords between the Judiciary and non-governmental organizations, mainly for the professional capacitation and absorption of the work force of persons released from prison.

## V. CONCLUSION

The goals already enshrined in the 1984 legislation in Brazil are, unfortunately, still far from being achieved: imprisonment should be the exception, but it still is the rule; and the prison should be a place respecting the dignity of the human being, aiming toward reintegration into society, whereas in practice most of the minimal rights of the prisoners are not guaranteed and the recruitment of the offenders by organized crime is intense.

Despite the different legal and regulatory initiatives to avoid a conviction and incarceration, the number of incarcerated people in Brazil is still increasing in absolute and relative terms. The most humanized models of imprisonment are the exception, a true minority, and the common prisons, in reality quite remote from what is foreseen by the legal framework, have contributed little to the prevention or reduction of reoffending.

Even though reliable data are missing that would allow a correct assessment of the actual reoffending rate on a national level, the studies and partial data available clearly prove that the non-custodial measures – whether before or during the process or at the stage of the execution of the penalty – are much more effective for the social reintegration of the offender, as well as to prevent reoffending. Those measures are also much cheaper for society and contribute directly to the promotion of social inclusion of marginalized sectors of the society. It is urgent that decision-makers face those facts and promote a radical breakthrough in the practice of criminal justice and the penal system.

[39] Resolution CNJ nº 96/2009, available at https://atos.cnj.jus.br/atos/detalhar/atos-normativos?documento=65.
[40] Data of CNJ, available at https://www.cnj.jus.br/portal-de-oportunidades-comecar-de-novo/projetocomecardenovo/index.wsp, accessed on 03/10/2019