



CONTRIBUTIONS TO THE MID-TERM REVIEW OF THE MINISTERIAL DECLARATION ON DRUGS 2019

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	<p>Conectas Direitos Humanos is a civil society organization with the mission to enforce human rights and to fight inequalities in order to build a fair, free, and democratic society. Conectas was responsible for organizing this report with the contribution of the organizations and collectives below.</p>
	<p>Grupo de Trabalhos em Prevenção Positivo – GTP +5, is a non-governmental, community-based and non-profit organization founded by people living with HIV/AIDS. Since 2006, GTP+ has worked with people in and out of the Pernambuco prison system, especially LGBTI+ people and those living with HIV/AIDS.</p>
	<p>Reduc (Rede Brasileira de Redução de Danos e Direitos Humanos) has the mission of discussing, planning, developing, articulating and supporting scientific and social actions, as well as strengthening public policies that favor issues related to Harm Reduction.</p>
	<p>Centro de Estudos de Segurança e Cidadania (CESeC), founded in 2000 at Universidade Candido Mendes, is one of the first academic institutions entirely dedicated to the subjects of violence and public security in Brazil. Its main objective is to carry out innovative research and other types of projects that foster public debate and contribute to promoting human rights in the country's criminal justice system.</p>
	<p>Iniciativa Negra por uma Nova Política de Drogas is a civil society organization that has been working since 2015 to build a racial and economic justice agenda, promoting human rights advocacy actions and proposing reforms to the current anti-drug policy.</p>
	<p>Desinstitute is a non-profit civil society organization that works to guarantee human rights and care in freedom in the field of mental health in Brazil and Latin America.</p>

	<p>Plataforma Brasileira de Política de Drogas is a network for the joint action of non-governmental organizations, collectives and specialists from various fields of activity that seeks to debate and promote drug policies based on guaranteeing human rights and reducing the damage produced by problematic drug use and the violence associated with the illegality of their circulation.</p>
	<p>The Institutional Program on Drug Policy, Human Rights and Mental Health seeks to broaden the dialogue with society and articulate the production of knowledge in these three thematic areas, in order to contribute to the drafting, implementation and evaluation of public policies.</p>

1. INITIAL CONSIDERATIONS

This report focuses on the national drug policy in force in Brazil, the country of origin of the organizations that subscribe to these contributions and that work, among other topics, monitoring and reporting violations of the rights of people who use drugs and/or have been imprisoned due to being convicted based on the Drug Law in force (Law No. 11,343/2006¹).

Although the 2019 Ministerial Declaration established challenges to be overcome by the international community within a decade, **four years later, it is still not possible to state that there has been progress in our drug policy at the national level.** For this reason, the purpose of this report is to highlight some of the challenges that have already been identified and that stand out in the Brazilian reality as a starting point for a substantial change regarding the issue of drugs, which has historically been absorbed by public security bodies as if it were a matter that pertained exclusively to these bodies.

¹Law No. 11,343 of 2006 establishes the National System of Public Policies on Drugs - Sisnad; determines measures to prevent misuse, provide care and ensure the social reintegration of drug users and addicts; establishes standards to repress unauthorized production and illicit drug trafficking; defines crimes and provides other measures. Available at: https://www.planalto.gov.br/ccivil_03/ato2004-2006/2006/lei/11343.htm. Accessed on Jan 11, 2024.

Brazil ranks last - with the title of country with the worst drug laws - in the ranking² that compares drug policies in 30 countries. The study was carried out by the Harm Reduction Consortium, a global initiative that includes 190 organizations focused on harm reduction and drug policy. The ranking shows the extent to which drug policies and their implementation align with UN principles on human rights, health, and development. In the aforementioned study, the columns relating to harm reduction and health continue to be a source of concern, with Brazil scoring 9 points out of 100. The assessment considered that Brazil bases its drug policy not on health care and social assistance, but rather on mass incarceration, police lethality and compulsory hospitalization.

These contributions are also meant to alert United Nations authorities within the scope of the 2024 Mid-term Review so that recommendations can be made to States in order for concrete measures to be implemented to promote a drug policy based on human rights, as recommended by the United Nations' International Guidelines on Human Rights and Drug Policy³, recognized by the Brazilian Government.

2. METHODOLOGY

Considering the Brazilian history regarding its drug policy and the current scenario, the subscribing organizations chose to structure this report into two (2) thematic axes that address some of the challenges previously identified in the Ministerial Declaration. The reason why some and not all of the challenges were chosen is that in addition to some of the challenges being much further from being overcome than others in the Brazilian reality and/or being worked on in such a way by the Public Authorities that they require a concerted effort by organized civil society, social movements and professionals from different areas

² The global drug policy index. Available at: <<https://static.poder360.com.br/2021/11/global-drug-policy-index.pdf>> (Accessed on November 11, 2021)

³ International Guidelines on Human Rights and Drug Policy. Available at: <https://www.undp.org/publications/international-guidelines-human-rights-and-drug-policy> . Accessed on Jan. 11, 2024.

to ensure access to fundamental rights for people who use drugs or are affected by the current drug policy, as will be demonstrated, some of them are interspersed and at times demand common or complementary measures.

Therefore, the thematic axes that will be addressed in this report are: **(1)** attention and health care for people who use drugs; **(2)** policies and measures that do not comply with the international legal framework on human rights. The purpose is to demonstrate that, for certain situations, some common or complementary measures can help overcome the identified challenges.

At the end, some recommendations will be presented to the Brazilian State and may be addressed during the Mid-term Review, without prejudice to other measures that the United Nations deems necessary and appropriate for the country.

AXIS 1 - ATTENTION AND HEALTH CARE FOR PEOPLE WHO USE DRUGS

CHALLENGE 1. The availability of internationally controlled substances for medical and scientific purposes, including for pain relief and palliative care.

The medical and scientific community⁴ already understands that the use of some substances that make up Cannabis, such as THC and CBD, is beneficial for treating various diseases such as Parkinson's, Alzheimer's, epilepsy, symptoms of depression and anxiety, asthma, meningitis, allergy relief in general, in addition to serving as an active ingredient in the treatment of several types of cancer. It is not without reason, therefore, that the topic was chosen as one of the most important challenges in establishing a drug policy with efforts and commitment from the entire international community at the time of the Ministerial Declaration.

⁴ Marijuana Facts, Drug Policy, available at: https://drugpolicy.org/wp-content/uploads/2023/06/dpa_marijuana_booklet_january2018_0.pdf . Accessed on Jan. 12, 2024.

Although Cannabis has a lower dependency level than alcohol, tobacco⁵ and caffeine, and cannabinoids present more beneficial results with insignificant side effects when compared to the main drugs available to fight the same symptoms, some countries – such as Brazil – continue to opt for the criminalization of Cannabis instead of regulating it.

In 2017, an action was filed before the Brazilian Supreme Court seeking the declaration of unconstitutionality of legal provisions (including the Brazilian Drug Law) to decriminalize the planting, cultivation, harvesting, storage, transportation, prescription, administration and acquisition of Cannabis for medicinal and therapeutic well-being purposes. Approximately 7 years later, the judgment on the merits of the action never took place, which has, in the meantime, harmed the condition of many people who could be undergoing some type of treatment to improve their health using this substance.

Despite the resolutions of the National Health Surveillance Agency (ANVISA) having created a less difficult state of affairs than it once was, the importing of therapeutic Cannabis-based products faces bureaucratic issues that even involve customs jurisdiction⁶. The issues include the high purchase cost, the possibility of forcing treatment interruption – given the quantitative limitation, among others. Such formal obstacles end up undermining progress in ANVISA's stance of enabling citizens to seek the treatment method that best suits their needs and their own dignity.

In 2019, ANVISA held two public consultations to regulate medicinal cannabis-based drugs in Brazil, given the growing demand from medical professionals and patients up until that period, which represented progress on the topic. These consultations resulted in a proposal for procedures for the registration and supervision of drugs produced based on medicinal Cannabis and another proposal with requirements for the cultivation of the plant by pharmaceutical companies, solely and exclusively for medicinal and scientific purposes.⁷

⁵ Harm reduction is the right way to treat drug abuse, available at: <https://www.economist.com/europe/2018/11/24/harm-reduction-is-the-right-way-to-treat-drug-abuse>. Accessed on Jan. 12, 2024.

⁶ See Decree-Law No. 6.759 of 2009, which regulates the administration of customs activities and the inspection, control and taxing of foreign trade operations. Available at: https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/decreto/d6759.htm. Accessed on Jan. 12, 2024.

⁷ See “Questions and answers on medicinal Cannabis”, available at: <https://www.gov.br/anvisa/pt-br/arquivos-noticias-anvisa/1612json-file-1#:~:text=A%20proposta%20da%20Anvisa%20para,e%20a%20realiza%C3%A7%C3%A3o%20de%20estudos>. Accessed on Jan. 12, 2024.

The following year, despite the recommendation of the World Health Organization (WHO) being met by the United Nations Commission on Narcotic Drugs that Cannabis should be removed from the list of most dangerous substances, the Brazilian government voted against this recommendation, ignoring all available debates and information regarding the importance of regulation and denying the right to health by continuing to criminalize the indiscriminate possession of substances considered illicit, including Cannabis and derivatives. However, the acquisition of imported medicines, their purchase in pharmacies and cannabis associations and their cultivation has been permitted, as long as they are authorized by habeas corpus.⁸

One of the delicate issues regarding purchasing from pharmacies in associations is the amount paid, which is inaccessible to the majority of the Brazilian population. With the purpose of changing this reality, legislative proposals were made to ensure broad distribution through the Brazilian Public Health System (SUS). Despite progress at local level, such as the possibility of acquisition in the State of São Paulo⁹ and in Rio de Janeiro¹⁰, no national standard has been passed to date¹¹.

Both the aforementioned action and the draft bills that are under discussion demonstrate the importance ascribed to effective and scientifically proven ways of improving people's quality of life and health and the need for the Brazilian state to clarify the constitutional outlines of a new model of access to healthcare that also includes access to certain substances that are currently prohibited.

⁸ Novos tempos: Cannabis Medicinal ganha espaço no SUS. Available at: <https://www.epsvj.fiocruz.br/noticias/reportagem/novos-tempos-cannabis-medicinal-ganha-espaco-no-sus#:~:text=Em%202022%2C%20o%20Conselho%20Federal,vedado%20seu%20uso%20em%20adultos>. Accessed on Jan. 12, 2024.

⁹<https://g1.globo.com/saude/noticia/2023/12/28/entenda-o-que-e-maconha-medicinal-que-sera-distribuida-de-graca-pelo-sus-em-sp.ghtml>

¹⁰ [Ordinary Law 10201 2023 of Rio de Janeiro RJ \(leisestaduais.com.br\)](https://leisestaduais.com.br/Ordinary-Law-10201-2023-of-Rio-de-Janeiro-RJ)

¹¹ There are draft bills, but the respective discussions are still ongoing; see Draft Bill (PL) 4,776/2019, by senator Flávio Arns (PSB-PR), which establishes the use of Cannabis for medicinal purposes and production, control, supervision, prescription, dispensing and import of medicines based on the substance, its derivatives and synthetic analogues, and PL 89/2023 which attempts to ensure the right to Cannabis-based medicine, whether national or imported, for medicinal use, in association with other cannabinoid substances, including tetrahydrocannabinol, in public and private health units affiliated with the Brazilian Public Health System (SUS)

The absence of broad and complete regulation reinforces structural racism to the extent that low-income people, especially young and black people who need effective treatment, are prevented from having the right to health care, from having access to justice, as well as being subject to imprisonment due to the mistaken Brazilian policy of “war on drugs”. Currently, residents of favelas and city outskirts that use cannabis derivatives to treat health issues depend on donations from non-governmental organizations and collectives to obtain relief from several symptoms¹². Thus, only a small portion of the population - middle/upper class and white - has safe and guaranteed access to the therapeutic benefits of cannabis.

CHALLENGE 2. The transmission rate of HIV, hepatitis C virus and other blood-borne diseases associated with drug use, including injection drug use in some countries, is still high.

Harm reduction (HR) has already proven to be a highly effective strategy for reducing HIV epidemic rates through disseminating knowledge that can change risk behaviors and providing sterile syringes to people who already use injectable drugs, for instance. In addition to being efficient in reducing transmission rates, it has been proven that preventive action through HR is much less costly than providing HIV treatment through antiretroviral drugs¹³.

Contrary to robust scientific evidence on harm reduction, Brazil continues to neglect the adoption of this approach as a national public policy. In 2023, successive attempts were made to criminalize harm reduction and the distribution of inputs for psychoactive substances. The result is the focus on approaches based on abstinence as the only possible way of treating problematic drug use.

Although injectable drugs are not a common reality throughout Brazil, compared to other countries, such as the Philippines, it is worth highlighting that marginalized

¹² Movimentos, 2023. Plantando saúde e reparação: o uso terapêutico da maconha nas favelas do Rio de Janeiro. Available at [https://uploads.strikinglycdn.com/files/55bf47f5-93ce-49af-998e-b356c1046a9f/PLANTANDO_SAUDE_WEB%20\(1\).pdf](https://uploads.strikinglycdn.com/files/55bf47f5-93ce-49af-998e-b356c1046a9f/PLANTANDO_SAUDE_WEB%20(1).pdf)

¹³ See Aid for the war on drugs. Harm Reduction International, United Kingdom: London, 2023.

populations live in a context of systematic rights violations and exclusion from public policies in Brazil, which significantly contributes to the indiscriminate use of drugs and the adoption of other high-risk behaviors. Factors such as social inequality, lack of housing, access to healthcare¹⁴ and information, discrimination, violence and criminalization end up being determining factors for the transmission of HIV.

It is also worth considering that, in the prison context, vulnerability is aggravated and rates of HIV, syphilis, viral hepatitis and tuberculosis are proportionally higher, according to research by the Ministry of Justice. On the other hand, there is no specific and standardized HR program. While the majority of arrests originate from drug laws or crimes against property, particularly involving people who are young, black and poor people, drug use in these spaces is widely known and ignored by public authorities, going so far as to become an instrument of control.

Also in the context under discussion, it is necessary to mention the severe situation experienced by trans women incarcerated in male penitentiaries. In addition to the gender, race and economic factors mentioned above, due to the lack of opportunities for formal subsistence work and assistance from the Brazilian State, such people are vulnerable to the point of offering sexual services and adopting high-risk behaviors for HIV transmission, such as having sex without a condom, in exchange for food, money, personal hygiene products and even drugs¹⁵.

CHALLENGE 3. Drug treatment and health services continue to fall short and drug-related deaths have increased.

Historically, the approach to drug use has been more focused on repression than on outpatient health care policies. There have been important advances in terms of harm reduction policies and treatment of people with a serious drug use, however, in 2019, the

¹⁴ This concept also includes affiliating citizens with health services as a strategy for reducing harm and preventing and combating HIV.

¹⁵ Projeto Fortalecer para Superar Preconceitos: Diagnóstico sobre o tratamento penal da população LGBTQIA+ na zona da mata pernambucana. Available at https://marcozero.org/wp-content/uploads/2023/12/0Pesquisa-fortalecer-para-Superar-Preconceitos_2023-2.pdf

Federal Government established a new National Drug Policy (PNAD)¹⁶ - in force to date - that ended the National Harm Reduction Policy.

This decree, in turn, suppressed the harm reduction policy at the national level, focusing only on abstinence in the implementation of public policies for people who use drugs, reaffirming the priority of therapeutic communities and encouraging a return to asylum logic.¹⁷

Therapeutic Communities

The current National Drug Policy focuses almost exclusively on preventive and educational actions with a view to promoting and maintaining abstinence, especially in imprisonment areas. When people involved with drugs are not criminalized, the available public policy has been inpatient care in Therapeutic Communities.

Therapeutic Communities are private entities that provide temporary residential care for people with serious drug use. The operating model of these establishments is based on isolation, abstinence and, in the vast majority of cases, association with religious denominations. In recent years, therapeutic communities have become the main operators of public policies in Brazil for the treatment of people suffering from serious drug use, with these entities receiving substantial public and private funding.

However, such institutions remain in an interstitial zone regarding their legal nature, as they are not considered - for control and inspection purposes - health, social assistance or public security institutions, even though they receive funding from all these branches of government.

¹⁶ See Decree no. 9.761 of 2019, which establishes the new National Drug Policy.

¹⁷ In the first month of the current government's term in office, a department to support therapeutic communities was created within the Ministry of Social Development (MDS). Considered extremely harmful, there were several protests from civil society and professional councils against the creation of this department, as several serious human rights violations were reported in these centers, in addition to accusations that they use Christian religious precepts as a treatment "method". More recently, the Department of Support for Therapeutic Communities was replaced by the Department of Alcohol and Drug Support and Shelter Organizations.

Although they are private entities, these institutions increasingly receive State funding, even though there are no data or indicators to assess whether the strategy is working or not. This policy lacks planning, inspection and assessment, since there is no clarity on the type of service contracted, the composition of its cost, its inputs, the expected outputs and, mainly, its impact and effectiveness¹⁸.

The public funding allocated to these institutions is granted in a trivial manner, with few or no criteria for investigating the services provided. Millions of reais are invested each year, without the public authorities knowing or supervising these institutions.

In recent years, there has been an incentive, including in financial terms, to structure and expand Therapeutic Communities to the detriment of outpatient care services within the Public Psychosocial Care Network. The increase in public funding in these entities coincides with the disinvestment in the care model based on harm reduction.

We emphasize that there is no inspection mechanism defined by the public authorities to evaluate the institutions that receive funding; in practice, this allows a multitude of these institutions to be created year after year with the purpose of obtaining public funding, transforming access to health - under the false pretense of a health care operation - into a large profitable market resulting from human rights violations. Research by Centro de Estudos de Segurança e Cidadania demonstrated that even institutions certified to receive public funds operate without any standardization of the service provided, with the main focus of “treatment” being the moral-religious reform of the individual and the violation of rights such as freedom of conscience and belief¹⁹.

Finally, regarding the public investment in therapeutic communities, it is important to state that this funding competes with the funding of other public health care operations that value both the scientific support of their actions and the rights of the people served, which are offered by the Brazilian Public Health System (SUS) and the Brazilian Unified Social

¹⁸ See research carried out by Conectas Direitos Humanos with CEBRAP - conectas.org/publicacao/financiamento-publico-de-comunidades-terapeuticas-brasileiras-entre-2017-e-2020/

¹⁹ Napolião, Paula; Castro, Giulia. Imposição da fé como política pública: comunidades terapêuticas no Rio de Janeiro.

Assistance System (SUAS). While therapeutic communities are funded, other essential public services end up bearing the financial brunt, as demonstrated by the document *Painel Saúde Mental: 20 anos da Lei 10.216/2001*²⁰, prepared by Desinstitute - a civil society organization in Brazil. Thus, the Brazilian State has chosen to invest public funds in private institutions of a confessional origin and of dubious legality that offer highly controversial treatments, without any compensation.

The approach to treating people who use drugs may vary according to the region, being more comprehensive in urban areas than in rural areas. The policies and the quality of these services may also vary according to jurisdiction and coincide, in terms of geographic distribution, not with the highest demand from users, but with places in which religious institutions have more power. The responsibility for implementing these alternatives may involve different entities, such as the judiciary branch, the Ministry of Health and non-governmental organizations that, in many cases, have led initiatives to care for people who use drugs.

Currently, alternatives to traditional detention include the Psychosocial Care Network (RAPS) and Harm Reduction Programs. The RAPS establishes service centers for people with mental health problems, including the harmful effects of crack, alcohol and other drugs, and are part of the Brazilian Public Health System (SUS), offering mental health services, including treatment for people who use drugs. These services may include outpatient clinics, psychosocial care centers (CAPS), street clinics and other service centers. Harm Reduction Programs operate in some Brazilian cities and attempt to minimize the risks associated with drug use, offering services such as syringe management, counseling and referral for treatment. Currently, this work is carried out by sheltering centers that are not connected to the State, many of them under constant threat of criminalization²¹.

Finally, it is worth highlighting that other alleged alternative measures to institutionalization would be the measures set out in the drug legislation itself (Law No.

²⁰ Painel Saúde Mental: 20 anos da Lei 10.216/2001, available at: <https://drive.google.com/file/d/1VBM6qPcPuWsVCSsfBifh6v0QellN36r/view>

²¹ See Parliamentary Investigation Committee started in the city of São Paulo - [Oposição nega acordo para Câmara de SP abrir CPI contra padre Júlio e ONGs: 'Perseguição injustificada para atrair voto', diz PT | São Paulo | G1 \(globo.com\)](#)

11,343/2006) or therapeutic communities. However, these measures have not proven to be effective in sheltering and treating people with serious drug use, especially because they do not consider outpatient services as a way of contributing to their treatment. In the case of therapeutic communities, hospitalizations have been mostly compulsory and several serious human rights violations have been reported in these facilities.

It is also worth highlighting that, over the last few years, several organizations, including the Federal Psychology Council, have issued statements that are critical of the policy presented because they reproduce outdated paradigms in relation to the care of people who use alcohol and other drugs.²²

In addition to promoting public policies without evidence of efficiency and effectiveness, Therapeutic Communities have been the subject of countless complaints of torture. Inspections carried out in therapeutic communities by the Brazilian National Mechanism for the Prevention and Fight Against Torture (MNPCT), in partnership with the Federal Psychology Council (CFP) and the Federal Attorney's Office for Citizen's Rights, of the Federal Prosecution Office (PFDC/MPF)²³ found human rights violations in all units visited. Walls, locks and restrictions on access to means of communication were identified; incarceration in an illegal or arbitrary manner; punishments and signs of torture; violation of religious freedom and sexual diversity; "Labor therapy": forced and unpaid work, similar to slave labor; weaknesses in work teams, without criteria or scientific rigor; religious racism; inpatient care of adolescents, including, at times together with adults; public funding by the State.

Although Therapeutic Communities are not managed by public authorities, nor are they connected to the Brazilian Public Health System or the Unified Social Assistance System, the federal and state executive branches of power have allocated plentiful funds to support a hospitalization policy that opposes the Anti-asylum effort present throughout the

²² Governo Federal decreta fim da política de Redução de Danos. Available at: <https://site.cfp.org.br/governo-federal-decreta-fim-da-politica-de-reducao-de-danos/>. Accessed on Jan. 12, 2024.

²³ Relatório Nacional de Inspeção em Comunidades Terapêuticas available at : https://site.cfp.org.br/wp-content/uploads/2018/06/Relatorio-da-inspecao-nacional-em-comunidades-terapeuticas_web.pdf

world - and recognized by Brazilian legislation since 2001. Recently, a bill was passed²⁴ granting tax exemption to organizations managing Therapeutic Communities, most of which are religious institutions.

AXIS 2 - POLICIES AND MEASURES THAT OPPOSE HUMAN RIGHTS

CHALLENGE 4. Responses that do not comply with the three international drug control conventions and that do not fulfill applicable international human rights obligations pose a challenge to the implementation of joint commitments based on the principle of common and shared responsibility.

The Brazilian Drug Law (Law No. 11,343 of 2006) began to differentiate “drug users” from “drug dealers” by decriminalizing the conduct of personal use (article 28)²⁵; in theory, people who use drugs cannot be sentenced to imprisonment. However, the law lacks regulation, as there are no criteria to differentiate between subjects (“drug user” and “drug dealer”) or distinguish whether the drug carried was intended for commercial activities 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”. Ultimately, the task of ascertaining each criterion remains at the discretion of police officers at the time of the approach and of the police authority when determining the crime that was committed: white and middle class people are seen as “drug users” and black, poor people from the city outskirts are read as “drug dealers”²⁶.

²⁴ See draft bill passed on November 2021 that grants tax exemption to Therapeutic Communities. <https://www.viomundo.com.br/blogdozenha/adilson-silva-e-leonardo-pinho-projetos-no-congresso-drenam-mais-dinheiro-publico-para-comunidades-terapeuticas.html>

²⁵ Chapter III, Law no. 11,343 of 2006. Art. 28. Anyone who acquires, stows, stores, transports or brings drugs for personal consumption, without authorization or in violation of legal or regulatory provisions, will be subject to the following sentences: I - warning about the effects of drugs; II - provision community services; III - educational measure of attending an educational program or course.

²⁶ See “Prisão Provisória e Lei de Drogas: um estudo sobre os flagrantes de tráfico de drogas na cidade de São Paulo” (Núcleo de Estudos da Violência - USP and Open Society Institute, 2011).

Such criteria facilitate the higher criminalization of the black population, especially considering residents of poor neighborhoods in city outskirts, as they always find themselves in a suspicious situation in the eyes of the police forces and the judiciary branch, including the Prosecution Office. For state organizations, the existence of drugs in these locations will always lead to an assumption of commercial purpose. This leads to the multitude of reports of people arrested as drug dealers while carrying a small amount of drugs.

With the “new” Drug Law, which, according to the Brazilian State, decriminalized drug use and promoted a drug treatment policy, the number of people incarcerated for drug trafficking increased substantially: in 2005, 13% of incarcerated men and 49% of incarcerated women were imprisoned accused of drug trafficking; currently, this number is 29.26% for men and 64.48% for women. This piece of legislation is yet another example of a norm produced without connection with reality and interpreted and implemented by white people. For over 10 years, an Extraordinary Appeal has been pending judgment by the Federal Supreme Court, discussing the constitutionality of the criminalization of people who use drugs²⁷.

Although, in Brazil, the possession of drugs for personal consumption, in theory, does not justify a prison sentence, the Brazilian State punishes vulnerable people who use psychoactive substances, especially black, poor and homeless individuals. The “war on drugs” policy, imported from United States politics, is reflected in the number of people incarcerated for drug-related offenses, which represents around a third of the imprisoned population across the country.²⁸

In 2023, the Public Defender's Office of the State of São Paulo published a survey carried out in the region known as “Cracolândia” (or “Crack Land”), in the city of São Paulo, which analyzed 641 arrests of people who used crack between September 20, 2022 and

²⁷ [Supremo Tribunal Federal \(stf.jus.br\)](http://stf.jus.br)

²⁸ Pesquisa inédita mostra quantos condenados por tráfico poderiam ser absolvidos se porte de maconha for descriminalizado pelo STF. Available at: <https://oglobo.globo.com/brasil/noticia/2023/05/pesquisa-inedita-mostra-quantos-condenados-por-trafico-poderiam-ser-absolvidos-se-porte-de-maconha-for-descriminalizada-pelo-stf.ghtml> . Accessed on Jan. 12, 2024.

November 2022. These data are connected to Phase VI of the “Caronte” police operation, the intention of which, according to the official discourse of the State of São Paulo, was “to uncompromisingly curb the explicit consumption of drugs on public roads, with special attention to crack, seizing drug users’ pipes, with subsequent referral to the health unit for hospitalization”.²⁹

Also in 2023, the NGO GTP+ - Grupo de Trabalhos em Prevenção Posithivo, through the “Fortalecer para Superar Preconceitos V” project, identified that 63.6% of LGBTQIAP+ people incarcerated in the Zona da Mata region of the State of Pernambuco were answering for the crime of drug trafficking, despite only 37.5% using illicit drugs while incarcerated. In the same context, it was also found that 58.33% of the people interviewed were arrested in *flagrante delicto* in a work setting³⁰, noting the use of drug law to criminalize “undesirable” segments of society and prison abuse, as experienced by Human Rights defender Fernanda Falcão³¹.

In addition to the violations perpetrated against people who use drugs, the so-called “war on drugs” is the authorities’ official discourse when justifying the violation of entire communities located in the outskirts of cities, also made up mostly of black people. In this context of mass incarceration becoming commonplace, it should be noted that many people who use drugs, and who do not make a profit from their sale, are arrested as if they were drug dealers. This is because Brazilian legislation does not actually distinguish between people who sell drugs and those who are consumers.

In the case of the female prison population,³² nearly 70% of inmates have been imprisoned for crimes related to the Drug Law (Law no.11.343/2006), and over 75% of them are mothers. Despite there being legislation that secures the right for people caring for children up to the age of 12 to be prosecuted without detention or under house arrest, few

²⁹ “Operação Cachimbo: relatório das detenções em massa realizadas na Cracolândia”, São Paulo State Public Defender’s Office. Available at: <https://www.defensoria.sp.def.br/documents/20122/b559c1be-dbc2-fa0b-0da5-b2392762725a>. Accessed on Jan. 12, 2024.

³⁰ Projeto Fortalecer para Superar Preconceitos: Diagnóstico sobre o tratamento penal da população LGBTQIA+ na zona da mata pernambucana. Available at https://marcozero.org/wp-content/uploads/2023/12/0Pesquisa-fortalecer-para-Superar-Preconceitos_2023-2.pdf

³¹ <<https://revistamarieclaire.globo.com/EuLeitora/noticia/2022/01/fui-presa-e-estuprada-e-hoje-ajudo-pessoas-trans-que-vivem-com-hiv.html>>. Accessed on Jan. 26, 2024

³² See: **Mulheres privadas de liberdade**. Available at: <<http://mulheresemprisao.org.br/>>.

women have access to these rights, especially those accused of perpetrating crimes related to the retail drug trade.

In addition to the prison sentence for those accused of involvement in drug trade and production, Brazilian legislation establishes the possibility of enforcing a fine and suspending political rights as a criminal sanction. Thus, as long as a convicted person does not pay their fine, even if their imprisonment or rights restriction sentence has been fully served, their liability will not be extinguished, extending the effects of the conviction, even if the person is no longer detained.

According to criminal legislation, the value of the fine may vary according to some legally established parameters, and must be established by the judge, on a case-by-case basis, taking into account the economic and financial situation of the accused. In practice, a criminal conviction to pay a fine (in addition to other incarceration or rights restriction sentences) for an offense described in the Penal Code could be between BRL 366.66 and BRL 5,940,000.00. For the crime of drug trafficking, which is set out in special legislation (article 33 of Law No. 11,343/2006, responsible for incarcerating 29.26% of all imprisoned men and 64.48% of all imprisoned women), the minimum fine is BRL 18,333.33 and can reach up to BRL 24 million.

Considering that the people sent to the prison system are those with the most fragile socioeconomic conditions, this will be a difficult debt to pay and the sentence - and its effects - will extend exclusively due to poverty.

The consequence of having a pending sentence due to poverty has several concrete effects on the citizen's life: maintenance of the status of repeat offender, with increased sentences in the case of a new conviction; the prolonged loss of political rights and, consequently, the impossibility of maintaining several public documents such as Voter IDs, Individual Taxpayer IDs (essential for opening bank accounts and obtaining a labor card), difficulty in accessing social benefits and public or private financing, difficulty in entering penitentiaries as a visitor, among others. It is also necessary to consider that, for a person who has been recently released from prison, the departure from prison is a moment of

particular socioeconomic vulnerability.

In November 2021, the Superior Court of Justice³³ established the understanding that, when a convict defaults in their fine and proves they are prevented from making that payment, their liability may still be extinguished. The decision was a welcome one, but it is necessary to monitor and evaluate whether it will be accepted by the State Courts of Justice, as well as how said proof of impossibility of payment will be interpreted.

It is not a mere rhetorical device to state that the connection of the extinction of liability with compliance with the fine leads to the establishment of an unconstitutional life sentence for poor convicts, with a consequent violation of Article 11 of the ICCPR.

The criminalization of drugs - and poverty - in Brazil also leads to practices such as federal interventions with the use of military force in lower-income communities in Rio de Janeiro or collective search and seizure warrants in the São Paulo favelas. Under the pretext of combating drug trafficking, entire communities are placed under suspicion, countless homes are invaded and vandalized, and citizens are accused of being involved in criminal activities.

As if the mass incarceration of young black people accused of being drug dealers and all the violations that occur within the prison system were not enough, there are often highly lethal operations in favelas and city outskirts that violate several rights, including the right to access to health (even for children), the right to safe refuge at home, the right to access education, work, among others. In this context, it has been demonstrated that Brazil has the police with the highest lethality levels, with almost 80% of its victims being black people³⁴.

Research carried out by Centro de Estudos de Segurança e Cidadania (CeSEC) found that the so-called “war on drugs” has harmful effects on society in several areas. In addition

³³ Multa não impede extinção da punibilidade para condenado que não pode pagar. Available at: <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>

³⁴ Ver em: “Brazil: Human Rights Under Assault,” Amnesty International submission to the 41st session of the UPR Working Group, 7-18 November 2022 <<https://www.amnesty.org/en/wp-content/uploads/2022/04/AMR1954322022ENGLISH.pdf>>. Accessed on Jan. 26, 2024

to not complying with the stated goal of reducing the production, consumption and circulation of psychoactive substances, the current Brazilian drug policy, based largely on repression, is extremely costly to the public coffers: in one year, two Brazilian states (Rio de Janeiro and São Paulo) spent 5.2 billion reais to enact drug legislation.³⁵ In addition to the waste of public resources, shootings during police operations carried out on a nearly daily basis in Brazilian favelas and outskirts cause significant losses in the learning of children and adolescents in these places.³⁶ These same shootings have immediate and long-term impacts on the physical and mental health of people living in the region, compromising already delicate situations or contributing to the emergence of new diseases due to the closure of health units and the absence of health professionals.³⁷ Finally, local businesses in the favelas also suffer enormous losses caused by police raids motivated by the war on drugs.³⁸

Notice that Brazil is still far from the parameters established by this Commission, such as dealing with the drug problem in accordance with the principles of the United Nations Charter, international treaties and conventions and the Universal Declaration of Human Rights. It is only with the adoption of an adequate national drug policy that observes Human Rights and that addresses the problem from the perspective of public health, promoting health and dignity, that the Brazilian State will be able to adequately face the social problems arising from drug abuse.

RECOMMENDATIONS

- Decriminalize drug use so that users are not punished, establishing criteria for distinguishing between drug use and sale;

³⁵ LEMGRUBER, Julita (coord.) et al. Um tiro no pé: Impactos da proibição das drogas no orçamento do sistema de justiça criminal do Rio de Janeiro e São Paulo. Relatório da primeira etapa do projeto "Drogas: Quanto custa proibir". Rio de Janeiro: CESeC, março de 2021.

³⁶ LEMGRUBER, Julita (coord.). Tiros no futuro: Impactos da guerra às drogas na rede municipal de educação do Rio de Janeiro. Rio de Janeiro: CESeC, fevereiro de 2022.

³⁷ LEMGRUBER, Julita et al. Saúde na linha de tiro: impactos da guerra às drogas sobre a saúde no Rio de Janeiro. Rio de Janeiro: CESeC, 2023.

³⁸ LEMGRUBER, Julita et al. Favelas na mira do tiro [livro eletrônico]: impactos da guerra às drogas na economia dos territórios / Julita Lemgruber. – Rio de Janeiro : CESeC, 2023.

- Promotion of anti-discriminatory practices in Public Security and the Justice System, with a focus on curtailing racial profiling and police lethality, mass incarceration and the criminalization of poverty through fines;
- Establish appropriate, accessible and effective legal, administrative and other procedures to ensure the human rights-compatible implementation of any drug-related law, policy or practice.
- Ensure independent, impartial, swift and complete investigations and accountability of the State and its officials for allegations of human rights violations in the context of drug control laws, policies and practices, ensuring the use of body cameras by police forces to this end;
- Ensure adequate, appropriate and effective reparation policies, including financial compensation, to all individuals, groups and territories whose rights have been violated as a result of drug control laws, policies and practices;
- Develop and implement policies at municipal and state levels based on Harm Reduction, to be evaluated and monitored by civil society and competent entities in the long term;
- Propose structural changes to the National Drug Policy so that it prioritizes people's lives and no longer merely perpetuates racism, transphobia, asylum care, and punitive and hygienist policies as a justification for care and public security;
- Implement innovative and integrated initiatives that overcome institutional and interdepartmental divergences, producing better responses to cases of drug use in open spaces, such as the so-called Cracolândias;
- Develop complementary actions to mitigate risks and losses indirectly related to drug use, such as dialogue with public security entities;
- Create programs that promote alternative and sustainable forms of housing and income generation for people who attend drug use sites in open spaces;
- Involve local community-based organizations to help articulate policies, institutions and services directed at these populations, structuring intersector forums and facilitating the insertion of the most vulnerable populations into the economy and into the social fabric of communities;

- Provide housing and employment opportunities without requiring illicit drug abstinence to obtain positive impacts on the substance consumption pattern, family connections, reintegration into the job market, health and well-being;
- **Regulate associations to ensure legal security for popular associations that produce cannabis-derived products, ensuring that these institutions have priority in the supply of these substances;**
- Implement federal legislation that guarantees the distribution of cannabis-derived substances through the Brazilian Public Health System;
- Promotion of cannabis initiatives in Brazilian favelas and outskirts, providing legal and psychosocial support, guidance and monitoring for patients who use cannabis therapeutically in these places independently and without any financial support. These institutions depend on donations and volunteer professionals to maintain their operations. It is necessary for public authorities to establish partnerships with these initiatives, which already have expertise and legitimacy in the territories in which they are located;