



**DIREITOS HUMANOS E PRISÃO**  
**CONSTRUÇÃO CULTURAL E DISPUTA DE RACIONALIDADES**

*LOS DERECHOS HUMANOS Y LA PRISIÓN*  
*CONSTRUCCIÓN CULTURAL Y DISPUTA DE RACIONALIDADES*

*HUMAN RIGHTS AND THE PRISON*  
*CULTURAL CONSTRUCTION AND DISPUTE OF RATIONALITIES*

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**RESUMO**

Este artigo reflete sobre os direitos humanos como uma racionalidade de resistência contra a irracionalidade punitiva presente no ambiente carcerário brasileiro. Afirma que as pessoas defensoras dos direitos humanos (DDHs) são atores e atrizes fundamentais no desafio à cultura de violência e ao desrespeito pelos direitos fundamentais de todos os participantes no sistema penal. Mas *como implementar uma cultura de direitos humanos no ambiente prisional?* Para responder a esta questão, o artigo faz uso de uma análise político-normativa e crítica e, em seguida, lança luz sobre a importância da atuação das pessoas defensoras dos direitos humanos para a resistência e lutas pelos direitos e múltiplas dignidades dos participantes no mundo carcerário. Posteriormente, propõe que as pessoas defensoras dos direitos humanos



ouçam as vozes dos mortos e, ao mesmo tempo, confrontem a irracionalidade punitiva, uma vez que estas vozes ecoam e denunciam violações persistentes dos direitos humanos. Nesse sentido, apresenta os direitos humanos como estratégia abolicionista para superar o sistema penal e sua irracionalidade punitiva. A seção final fornece um resumo dos argumentos apresentados e explica como implementar uma cultura de direitos humanos no ambiente prisional.

**Palavras-chave:** Direitos Humanos. Prisão. Defensores(as) dos Direitos Humanos. Irracionalidade Punitiva.

### RESUMEN

Este artículo reflexiona sobre los derechos humanos como una racionalidad de resistencia contra la irracionalidad punitiva presente en el ambiente penitenciario brasileño. Sostiene que las personas defensoras de los derechos humanos (DDHs) son actores y actrices clave para desafiar la cultura de violencia y el desprecio por los derechos fundamentales de todos los participantes dentro del sistema penal. Pero, *¿cómo implementar una cultura de derechos humanos en el entorno penitenciario?* Para responder a esta pregunta, el artículo hace uso de un análisis político-normativo y crítico y luego arroja luz sobre la importancia de las acciones de las personas defensoras de los derechos humanos para la resistencia y las luchas por los derechos y las múltiples dignidades de las partes interesadas en el mundo carcelario. Posteriormente propone que las personas defensoras de los derechos humanos escuchen las voces de los muertos y al mismo tiempo enfrenten la irracionalidad punitiva, ya que estas voces hacen eco y denuncian las persistentes violaciones de los derechos humanos. En este sentido, presenta los derechos humanos como una estrategia abolicionista para superar el sistema penal y su irracionalidad punitiva. La sección final proporciona un resumen de los argumentos presentados y explica cómo implementar una cultura de derechos humanos en el entorno penitenciario.

**Palabras clave:** Derechos Humanos. Prisión. Defensores (as) de los Derechos Humanos. Irracionalidad Punitiva.

### ABSTRACT

This paper reflects on human rights as a rationality of resistance against the punitive irrationality present in the Brazilian prison environment. It argues human rights defenders (HRDs) are key actors in challenging the culture of violence and disregard for the fundamental rights of all stakeholders within the penal system. But *how to implement a human rights culture in the prison environment?* To answer this question, the paper makes use of political-normative and critical analysis and then sheds light on the significance of HRDs' actions for the resistance and struggles for the rights and multiple



dignities of stakeholders in the custodial world. It subsequently proposes that human rights defenders must listen to the voices of the dead while facing up punitive irrationality since these voices echo and denounce persistent human rights violations. In this sense, it presents human rights as an abolitionist strategy to overcome the penal system and its punitive irrationality. The final section provides a summary of the arguments made and explains how to implement a human rights culture in the prison environment.

**Keywords:** Human Rights. Prison. Human Rights Defenders. Punitive Irrationality.

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## 1. INTRODUCTION

Human rights, as a hermeneutic and epistemological field, goes through a paradigmatic crisis, which entails the emergence of a new paradigm, a new perspective, going through a revaluation of its meanings and utterances, abandoning abstract universalism and empty rhetoric for a critical and interdisciplinary construction, being seen as a practical and pedagogical framework, synthesis of several processes of struggles for human dignity.

Under this new perspective of practice and commitment, human rights, in the various voices of struggles, with a multifaceted and hybrid character, marked by intercultural practices in repudiation of abstract universalism (PIOVESAN, 2010, p. 18), can give effective responses to the crisis of effectiveness inherited from its classical construction. In the same way that human rights are a construct built step-by-step by the community, group or individual who claimed and fought for them in the construction of their dignities (FLORES, 2009, p. 117), so are the violations of these rights and their relativization.

In this critical perspective, human rights are presented as a practice of deconstruction of these violations through the formation of human rights defenders, individually or organized into collectives, who are committed to their promotion, dissemination, defense, protection and effectiveness. In fact, if human rights must be understood as a practice, there must be also those who practice them (TERTO NETO, 2018, p. 439).

Although the context of human rights violations has been widespread in all sectors of society and the State, by a methodological option and for a better thematic approach, this research specifically addresses the teratological violations of human rights that occurred in the prison environment. And it does so by making use of a political-normative and critical analysis.

The choice of this environment of violations is based on the premise that there are the greatest found violations of human rights in there. As mentioned in the constitutional action *Arguição de Descumprimento de Preceito Fundamental* nº 347, "there is perhaps, since the abolition of slavery, the greatest violation of human rights on national soil", being the most serious

affront to the Brazilian Constitution that currently takes place in the country.<sup>1</sup> Moreover, as Foucault well points out, there are also the greatest visible signs of exercise of state power, punitive or not, which makes the exercise of observation and analysis much more concrete.

Is not the criminal system, in general, the way in which power as power is shown in the most manifest way? Arresting someone, keeping him in prison, depriving him of food, heating, preventing him from leaving, making love, etc., is the most delusional manifestation of power imaginable (FOUCAULT, 2008, p. 268).

It is in the criminal system, therefore, that there are the clearest signs of the exercise of state power, punitive or not, as well as crystallized teratological violations of human rights, arising from the action or omission of the State. That is exactly why it is important for research, and for the realization of prison rights, to understand the following question: *How to implement a human rights culture in the prison environment?*

As the path to the effectiveness of human rights permeates the deconstruction of the culture of indifference to violence and inequality, from the critical human rights perspective, it means that there must also be deconstructed countless dogmas and discourses of legitimation of violations that occur daily.

In this sense, it is essential to build the relationship of human rights, as a practical and pedagogical framework, a beacon of the legitimacy of state power, with dogmas and discourses legitimizing the violations that occur in the prison environment, evidencing the possibility and paths for the establishment of a culture and education for human rights in this specific locus, deconstructing the culture of violence persisting there throughout this historical process.

The next section discusses human rights as a response, that is, as a rationality of resistance to the punitive irrationality present in the prison environment. The third section sheds light on the significance of actions of human rights defenders for the resistance and struggles for the rights and multiple dignities of stakeholders in the custodial world. The fourth section

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1 JOTA <<http://www.jota.info/wp-content/uploads/2015/05/ADPF-347.pdf>> access 12/04/2024.



proposes that human rights defenders must listen to the voices of the dead while facing up punitive irrationality since these voices echo and denounce persistent human rights violations. The fifth section argues for human rights as an abolitionist strategy to overcome the penal system and its punitive irrationality. Finally, a brief conclusion is presented.

## **2. HUMAN RIGHTS AS A RESPONSE: THE RATIONALITY OF RESISTANCE TO PUNITIVE IRRATIONALITY**

The repudiation of the abstract universalism of the classical conception of human rights and its crisis of effectiveness led to the construction of a critical human rights theory (PIOVESAN, 2009, p. 13), an emerging paradigm in which human rights constitute a rationality of resistance, and are, therefore, fruit of the process of struggles for access to goods that lead to a dignified life, products of institutional, social and cultural processes that enable the opening and consolidation of spaces of struggles for multiple human dignities (RICOBON, 2010, p. 351).

In this perspective, there is thus the possibility of deconstructing the framework of ineffectiveness and human rights violations, through a process of struggles and cultural deconstruction of indifference and the promotion of violence and inequality, which are constructs of criminal rationality. Criminal rationality consists of a set of institutional practices that form a specific discourse that builds the penal system and justifies the form it assumes, as well as what it produces. In Alvaro Pires' categorical definition:

The concept of penal rationality has two meanings. In a theoretical and formal sense, it simply indicates a system of thought that identifies itself as relating to criminal justice and thus distinguishes itself from other systems, but which, in order to be relatively autonomous, need not distinguish itself point by point, in the same way that human beings are distinct having several points in common (physiological, for example). In an empirical and descriptive sense, it designates a concrete form of rationality that was updated at a given historical moment (PIRES, 2004, p. 40).

Criminal rationality, therefore, configures a system of thought, the basis of a specific system, the penal system, which is structured and distinguished

from other legal systems, with a series of statements, postulates and proper assumptions, in addition to a concrete practice, synthesized in criminal law. In addition, considering that the criminal rationality addressed here has its beginning from the mid-eighteenth and nineteenth centuries, it can be characterized as modern (PIRES, 2004, p. 40).

According to modern criminal rationality, the penal system refers to a set of practices aimed at verticalized social control exercised over people in a constant way, oppressing, formatting and configuring social relations (FOUCAULT, 1977, p. 115), having as striking characteristics the processes of hierarchization and mechanization of relationships, labeling and stigmatization (ZAFFARONI, 1992, p. 15). These characteristics point to the structuralist character of modern criminal rationality, and consequently of the penal system, which constructs from its discursive and linguistic practices the idea of a universal structure, a social configuration that presents itself as the only possible, formatting the subject to fit into this structure, prescribing them an appropriate behavior, eluding their identity (GOFFMAN, 2015, p. 158), denying the existence of plural dignities and violently slaughtering them.

No one wonders why punitive power exists, for it seems like it's always been there, but it's not like that absolutely (ZAFFARONI, 2013, p. 18).

As an example of this universal structure created, rooted, in the formation of modern society, the product of modern criminal rationality, and perhaps the one that best illustrates this colonizing character of ideas and oppressor of plurality, is the normative structure constructed by criminal law, normative discourse of the penal system that "he who makes  $x$  can or should be punished with  $y$ ", as well as its variants such as "whoever makes  $x$  will be subject to a minimum penalty of  $y$  and maximum of  $z$ " (PIRES, 2004, p. 41), which present themselves as if they were the only rational possibility in the face of deviant behaviors. As a result, those who do not comply with the social norms standardized by criminal law, imposed by the criminal system and built by modern criminal rationality will be seen and labeled as an outsider (BECKER, 2008, p. 15), enemy (ZAFFARONI, 2007, p. 13) or simply bandit (MISSE, 2010, p. 15).



It should be borne in mind that the construction of enemies or outsiders has very well-defined contours and falls on a very specific population, poor and peripheral, which does not serve or that serves in excess to the hegemonic interests of the State and Capital, serving as a true management of poverty and undesirables, constituting true dungeons for the subproletariat, removing their condition as human beings (WACQUANT, 2003, p. 19).

In this context, modern criminal rationality establishes, through the penal system and its normative discourse, criminal law, a selective and stigmatizing punitiveness, creating through its statements the profile of the outsider or the enemy, thus legitimizing the imposition of physical violence, psychological and juridical by the State, most of the times lethal, seeking their destruction, removing their condition of subject, directing to these subjects all its punitive wrath, in search of their complete annihilation (ZAFFARONI, 2007, p. 17). In other words, these subjects are those who can be killed (by the State) (MISSE, 2010, p. 21).

In this way, in an insane punitive wave, which has gained space in popular daily life, fostered by policies of criminal recrudescence and media criminology (MISSE, 2013, p. 193), which even includes the use of physical torture, death, lynching and courts of exception (MISSE, 2013, p. 13), the penal system seeks to inflict its penalties on the bodies and souls of those who are inadequate to its universal and massifying structure.

Criminal upsurge means the growing criminal policy of law and order, with proposals to combat enemies and outsiders with increasing force and violence, policies that have even gained strength in the worrying national scenario with campaigns such as "In Goiás State the bandit changes profession or changes State", making apology to summary executions and the forbidden banishment penalty, as well as the establishment of legal instruments that harden and increase the penalty such as the "Anti-Crime Package", Law 13.964/19, which proposes greater obstacles to regime progression, increasing the time requirements for obtaining such rights, and increases the maximum time for imprisonment, from 30 to 40 years.



Therefore, although the agencies or institutions component of the penal system act in an uncoordinated manner, often conflicting with each other,<sup>2</sup> all act from the perspective of modern criminal rationality, with the objective of social control and massacre of subjectivities, aiming at the annihilation of some specific groups, whose undesirable characteristics place them in the subhuman condition of outsiders or enemies, under the argument of promoting social security.

Still from the perspective of a criminal rationality strongly marked by a punitive insanity, which does not comply with its own fundamental precepts that it had established, such as the sealing to the death penalty and physical punishments (art. 5º, item XLVII, Brazilian Constitution), or as the functions of the penalty (art. 59, *caput*, CP and art. 1º, *caput*, LEP), limiting only to one of them, that of punishing, the use of the term rationality, or reason, constitutes in itself an ontological misunderstanding.

Still from the perspective of a criminal rationality strongly marked by punitive insanity, which fails to comply with its own fundamental precepts that it had established, such as the prohibition of the death penalty and physical torture (art. 5º, XLVII of Brazilian Constitution), or as the functions of the penalty (art. 59, *caput*, Penal Code and art. 1º, *caput*, LEP or Criminal Enforcement Act), being limited to only one of them, that of punishing, the use of the term rationality, or reason, configures itself an ontological mistake. As Zaffaroni explains:

It is important to clarify that we do not believe that the internal coherence of the legal-criminal discourse is exhausted in its non-contradiction or logical complexity, on the contrary, it also requires a basic anthropological foundation with which it must remain in a non-contradictory relationship, since, if law serves man – and not the other way around – the planning of the exercise of power in the penal system must presuppose this basic philosophical or regional ontological anthropology of man (ZAFFARONI, 1992, p. 16).

Therefore, for the sake of inadequacy and commitment to the ontological meaning of the terms used, this research opts for the punitive irrationality nomenclature, especially due to fact the current stage of modern criminal

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<sup>2</sup> JUS <<https://jus.com.br/artigos/67902/policias-civil-e-militar-diretrizes-de-interacao-e-trabalho>> access 12/04/2024.



rationality has nothing of rational. On the contrary, it is disorganized, contradictory, uncoordinated and incoherent, but it has a well-determined objective, which is the systemic and structural social control through legitimized institutional violence, translating all social conflicts into punishment (BATISTA, 2011, p. 1-6).

Punitive irrationality is then understood here as the current moment of modern criminal rationality, of cry for criminal upsurge, fostered by media criminology, populist discourses of the right and culture of fear, leading to an increasingly repressive and vigilant state, without rationalizing about practical results, being synthesized by the classical inquiry: "Arrests have never been so high in Brazil, but still no one feels safer".<sup>3</sup>

This punitive irrationality, built on the molds of modern criminal rationality and the structures of the penal system, is manifested in the execution of penalties, the death penalty and physical punishment, legally abolished, the fine penalty and, mainly, imprisonment, which is the dominant place in the identity self-portrait of the penal system (PIRES, 2004, p. 41).

Faced with such a complex structure, which produces inequalities and is deeply rooted in social bases as well as socially accepted as the only viable possibility, *what can human rights do?*

Human rights can become a legal, ethical and social agenda that serves as a guide for the construction of a new rationality, more attentive to human dignity than to punitive media and market yearnings, a rationality of resistance against punitive irrationality, as long as they are free from the iron cages that were placed in their classic conception based on abstract universalism and solipsistic legal positivization. For that to occur, it is necessary a reinvention of human rights under critical human rights theory. In this perspective, human rights are the result of a process of struggles for multiple dignities, considering the plural subject, a set of social and pedagogical practices (FLORES, 2009, p. 17).

It should be noted, therefore, that the premise that if human rights are not a given but a construct, its violations are also a construct so that there

3 Instituto Paraceto <<https://institutoparaceto.org/2012/11/23/ranking-de-prisoneiros-pais-nunca-se-prendeu-tanto-no-brasil-boa-noticia>> access 12/04/2024.



should be a cultural deconstruction of the naturalization of violence and inequalities and, as it follows, a deconstruction of the criminal culture itself.

This way, as a culture and rationality, human rights and their defenders, from their critical thinking (WACQUANT, 2003, p. 147), must deconstruct the demand for more punishment that legitimizes discourses such as impunity, love for punishment, belief in pain and so forth. Human rights and their defenders, therefore, must deconstruct dogmas and the culture of punishment, break with the structures of the penal system, and its belief in pain as a solution to social conflict (ABRAMOVAY et al, 2008, p. 34). Consequently, the proposal of human rights as a rationality of resistance, as a response to punitive irrationality and the ills of the penal system (CARNELUTTI, 2002), permeates the construction of a human rights culture as opposed to the culture of punishment.

It follows that if the proposal is that human rights can be seen as a rationality of resistance against punitive irrationality, there must be a diffusion of this rationality between the subjects and politicians involved in the maintenance of this sordid, selective and massing penal system, establishing the human rights culture and the commitment to its effectiveness, forming, as much as possible, human rights defenders (TERTO NETO, 2018).

This conflict of rationalities does not occur without obstacles as, for instance, the current systems. This is so especially in regard to the penal system that has maintenance mechanisms, including the very demonization of human rights disseminated by media criminology. And the discourses of law and order are part of these mechanisms (PIRES, 2004).

It is precisely in the penal system that lies the essence of the idea for a rationality of resistance, nonetheless. This means that it is necessary to create and consolidate a space of struggles for the multiple dignities inserted in the prison environment and massacred by this punitive and structuralist irrationality, shaping social relations and stigmatizing those who do not fit into its universal standards.

And to resist, human rights must be practiced and disseminated by committed human rights defenders individually or in collective organization

in all spaces where this punitive irrationality is present, especially in prisons that synthesize and concentrate the most brutal and vertical forms of the exercise of punitive power.

In this resistance, we all must pursue the overcoming of punitive irrationality by a rationality attentive to the plurality of subjects involved in the prison environment, revaluing the role of these subjects, be them prisoners or servants (judges, prosecutors, lawyers, public defenders, assessors, interns, bailiffs, prison officers, nurses and so forth). It is not an impossible task, but a highly dignified task entrusted to human rights and their defenders (ZAFFARONI, 2013, p. 312).

### **3. THE ACTIONS OF HUMAN RIGHTS DEFENDERS IN PRISON: RESISTANCE AND STRUGGLE**

The critical human rights theory, as an emerging paradigm, and its perspective on human rights as a practice, commitment and action, brings with it the need to practice human rights, acting in their defense, promotion, protection, dissemination and effectiveness. This perspective points thus to the role of human rights defenders, either in their individual activities or when they are organized into groups and collectives (TERTO NETO, 2016, p. 439).

What defines a human rights defender is its action in the processes of struggles for human dignity, constituting them as guarantors, activists and militants in favor of the full exercise of dignity and citizenship (Terto Neto, 2020, p. 73-74; Terto Neto, 2018, p. 32-35). In such a context, it is necessary to educate on their rights and train as many human rights defenders as possible for the establishment of a human rights culture.

From a critical perspective, human rights are products of institutional, social and cultural processes that enable the opening and consolidation of spaces of struggles for multiple human dignities (Ricobom, 2010, p. 351). Therefore, the actions of these defenders are crucial for the realization of human rights and for overcoming the framework of their indiscriminate violations, especially in the prison environment (Terto Neto, 2016, p. 458).

Human rights defenders must establish and consolidate spaces of struggles for the multiple dignities of those who are involved there, either as incarcerated or as those other subjects involved in the prison system, the families of the inmates and the servers of the system (prison staff, prison agents, nurses, social workers, doctors, manual workers, drivers and others, involving everyone in the commitment to human rights, in a pedagogical practice of action and dissemination of this constructed commitment.

The fundamental point of the action of human rights defenders when they work in the prison environment is the struggle for the dignity of public security servants in a process of police dignification (Abramovay et al, 2008, p. 34; Zaffaroni, 2013, p. 310). These public security agents must be directly involved in the pedagogical practices of human rights defenders, so that they also make a commitment to the realization and guarantee of human rights and their performance does not derive only from an established legal minimum, but that these agents see themselves as guarantors of the promotion and exercise of the dignity and citizenship of all stakeholders in the prison system (Coelho and Pedra, 2013, p. 188). The desired change of perspective, with the consequent resignification of the role of these security agents, will fundamentally alter the operability of the penal system. In this regard, it is worth remembering that the movement of demanicomialization was driven by nurses (Zaffaroni, 2013, p. 312).

The struggles for human rights and the full exercise of the plural dignity of prisoners must be opened and consolidated inside and outside the prison environment. It must be an integrated work within and outside the walls, with family members and servants, seeking the socialization of human rights perspectives among these subjects to establish a human rights culture, that is, the practical adequacy to human rights postulates.

The role of the human rights defender in this environment should not be limited to legal issues, since not all demands or obstacles to the realization of human rights in prison have their origin in the legal sphere, due to the inherent rights of the prisoner in execution of the sentence as regime progression, temporary exits, conditional release, permission to leave, monitoring and information about the criminal enforcement. There are also

material needs such as medical and spiritual assistance, and others that, although they are legally provided for, their effectiveness permeates other different spheres.

In this sense, human rights defenders who work in/with the prison environment need to be open to other ways of listening and acting such as dealing with the issues inherent to the coexistence between prisoners, who have well-designed and very specific rules, or to deal with the low attendance of visits to some prisoners due to their families' financial limitations, or the abandonment of female inmates who are forgotten by husbands and families, receiving a much smaller number of visits when compared proportionally to male inmates.

All these issues transcend the judicial action plan and require an interdisciplinary and multi-professional approach so that human rights can effectively fulfill its role as rationality of resistance and cultural transformation.

The *Lei de Execução Penal* (Criminal Enforcement Act) provides for some institutions that are bodies for the supervision of criminal enforcement:

Art. 61. The bodies of criminal enforcement are:

- I - the National Council for Criminal and Penitentiary Policy;
- II - the Judgment of Execution;
- III - the Public Prosecutor's Office;
- IV - the Penitentiary Council;
- V - the Penitentiary Departments;
- VI - The Patronage;
- VII - the Council of the Community.
- VIII - the Public Defender's Office.

People representing those bodies must be also human rights defenders. They must form the committees, occupy the positions, integrate the councils and put themselves in the condition of fiscal criminal execution, to ascertain their legality and combat violations and non-access to human rights, identifying from which orders these obstacles are constituted.

There are as well those who campaign individually in the sponsorship of individual causes of a significant number of people, such as criminal lawyers, who are essential to the construction of the human rights culture, who are activists and militants of the criminal and procedural criminal guarantees of those they represent.

Another space-occupying initiative is religious groups, mostly evangelicals, who provide spiritual assistance to prisoners in all prisons in the country.<sup>4</sup>

With these specific examples, it is clear that the action of the human rights defender in prison transcends the legal sphere, which means it requires interdisciplinary action for the realization of rights and guarantees in the prison environment. This action also requires a set of pedagogical practices, which must be carried out from the occupation of spaces and the involvement and commitment of human rights defenders.

#### **4. LISTENING TO THE DEAD: IN THE FACE OF PUNITIVE IRRATIONALITY, THE VOICES OF THE DEAD ECHO AND DENOUNCE.**

In the penal system, which is marked by corruption, violence, selectivity and stigmatization and seeks to massacre the subjectivity of those inserted there, the dead are a marked presence (Zaffaroni, 2016, p. 20), being the harshest and only reality of the criminal issue (Zaffaroni, 2013, p. 11), and the dead say a lot. The first and most obvious information echoed in the voices of the dead is that they are dead. To ignore the criminal issue and its punitive irrationality is therefore to mute the dead, take away their voices after having taken away all their dignity, human condition, freedom and life (Zaffaroni, 2013, p. 28).

In addition to this first finding, the dead still have much to say, from basic findings such as "who killed them?" to much more complex information such as "why did they die?", reverberating information even before it happened, such as the announced deaths (Zaffaroni, 2016).

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<sup>4</sup> Heinrich Böll Stiftung <<https://br.boell.org/ptbr/2012/02/26/prisao-politicas-publicas-e-religiao>> access 12/04/2024.





The announced deaths are part of a universe of deaths produced by the penal system, deaths that occur in a massive and normalized way and point to the violent operability of the penal system. When analyzing them, the possibility of framing each of these deaths in a previously established list is clear, so that they derive from a normalized social reality (Zaffaroni, 2016).

Although Zaffaroni divides them into a range of categories, placing greater emphasis on institutional deaths caused by armed personnel of criminal system agencies (Zaffaroni, 2016), it is possible to see some practical categories announced deaths that make up this list previously established as death in confrontation with the police, death by the "war of factions", deaths by the dispute over the territory of drug trafficking, among others (Valois, 2019, p. 621).

These announced deaths should be understood as data and diagnoses of the criminal system, especially of the prison system, which, in turn, is the critical point of this violent system, since, in addition to normalization, they are also propagated with frank approval, denouncing the relativization of fundamental human rights such as life and human dignity, resulting in a dehumanization of those submitted to prison. And in the context of punitive irrationality the supporters of this maximum violence are considered as an element that reinforces the effectiveness of the criminal and prison system (Zaffaroni, 2016, p. 29).

The dead speak even before they die. They announce and denounce the violence of the penal system, prison, the normalization and legitimation of this violence, dehumanization, the relativization of human rights, especially the right to life, and all other aspects characteristic of punitive irrationality.

The voices of the dead echo before, during and after their deaths, denouncing punitive irrationality. As a result, the actions of human rights defenders, as installers and broadcasters of a human rights culture and a rationality of resistance to this punitive irrationality, announced and denounced by the dead, should not fail to listen to them, and should always be sensitive to what they have to say.

In this perspective, listening to the word of the dead is therefore the main strategy of a human rights defender working in the criminal system, especially in the prison environment.

It is thus from the word of the dead that human rights defenders must define their field of action, the tools to be used, what violations to be primarily fought, what urgent issues to tackle, which populations are affected by them and so forth. They must address all the points necessary for developing a strategy of struggles and resistance. This should have as its final goal the deconstruction of the culture of naturalization and trivialization of these deaths as well as the dehumanizing discourse that sees in these deaths a demonstration of the effectiveness of the penal system. By doing so, human rights defenders might start establishing a human rights culture in the prison environment, inverting the logic of punishment and relativization of rights for the logic of promotion, defense, protection and commitment to the realization of human rights.

## **5. IMPLODING PRISON: HUMAN RIGHTS AS AN ABOLITIONIST STRATEGY**

The idea of human rights as a rationality of resistance against punitive irrationality carries with it a range of necessary concerns. This is so especially when one realizes that dealing with the criminal system and its irrationality means dealing with a system that has historically undergone numerous reforms not to improve itself, but, instead, to ensure it stays the same, perpetuating its structural crisis, which reveals a reformist isomorphism (Foucault, 1977).

What, then, would prevent the use of human rights by the penal system, and by punitive irrationality, as an instrument for legitimizing the penalty, given that human rights, in their classic conception, have already been used to legitimize numerous atrocities such as civilizational and humanitarian wars? (Tosi, 2010, p. 62-64)

In this sense, it is important to warn human rights defenders, especially those working in prison, aware of the contradiction of seeking to guarantee

and enforce rights from the imposition of more severe afflictive penalties, which is a cognitive trap of punitive irrationality (Pires, 2004, p. 46).

What happens is that, from a critical human rights perspective, the very idea of the penalty and a legitimized massacre is conflicting and contrary to the processes of struggles for dignities and the full exercise of citizenship (Pires, 2004, p. 40).

The solution of social conflicts through the imposition of penalties that violate life and massacre the human dignity of multiple individuals is a typical process of inversion of human rights, which violates the same rights that it purports to protect (Ricobom, 2010, p. 347).

Given the idea of human rights as a rationality of resistance against punitive irrationality, it is precisely the commitment of the subjects (stakeholders) to the realization of human rights that guide their performance and their self-perception, not as executioners of violations, but as actors in the struggles for guaranteeing and disseminating human rights. Thus, the human rights defender, committed to the critical view of human rights, does not seek legitimacy to punish themselves, nor seeks to elect the correct reasons to punish themselves, or even alternative punishment, but pursues alternatives to punishment itself, deconstructing the structuralist character (supposedly of universal truth) of the solution presented by punitive irrationality (Baratta, 2011, p. 159).

In other words, for those committed to the promotion, dissemination, protection, defense and enforcement of human rights, from a critical perspective, the one who makes  $x$  should not be punished with  $y$ , but should have the opportunity to access the good  $z$ , must have access to the right  $k$ , must be attended by the protection bodies  $w$ , should be educated in human rights, or any other alternative to prison and its violence, to its massacres of subjectivity, to its control.

It follows that if human rights defenders are committed to the enforcement of human rights, which as fundamental rights are regulated constitutionally and infra-constitutionally, and to the struggles to ensure that no one will be subjected to a cruel, degrading or inhuman punishment, it is precisely the prison penalty that must be fought, this prison that crosses

modernity and contemporaneity by slaughtering dignity and violating the rights of an incalculable range of subjects (human beings) (Valois, 2019, p. 62).

In this perspective, it is important to note that the scholars of the penalty, although there are many criminological, sociological and criminal schools, can be divided into two major groups: those that legitimize and those that delegitimize the penalty (Batista, 2011, p. 4-8).

The critical human rights theory is structured in a perspective of delegitimization of the penalty, imprisonment and its consequences, positioning itself against the violation of human dignity and the massacre of any subjects.

Although products of punitive irrationality, penalties and punishments are not only diluted by the penal system and its various agencies, most notably the prison, but in all spheres of society, in the domestic and family, school, professional and countless others, and human rights, as an interdisciplinary hermeneutic and epistemological field, must deconstruct them into their most diverse fronts of action, through the work of human rights defenders.

This abolitionist perspective, derived from penal abolitionism, synthesizes a proposal to overcome the penal system by alternative instances of conflict resolution, as well as all its characteristics declared to be contrary to human rights, based on the normalization and legitimation of violence, in the massacre of human dignity and pluralities, since these characteristics are structural, characteristic of their exercise of power and that, “as they constitute marks of their essence, cannot be eliminated without the suppression of the penal systems themselves” (Zaffaroni, 1992, p. 13-16).

However, unlike the establishment of human rights culture based on the dissemination of human rights education, as a rationality of resistance to punitive irrationality, which is not an impossible task but a highly dignified one (Zaffaroni, 2013, p. 317), criminal abolitionism and the disappearance of prisons are not on the horizon of current possibilities (Motta, 2011, p. 353).

For this reason, numerous abolitionists work in the concrete plane from a guarantor perspective, in view of its legal instrumentalization and, therefore, greater acceptance in the courts, colleges, courses and bookstores.

The use of the guarantor perspective as an abolitionist strategy, based on the historical and functional construction of the penalty (Carvalho, 2002, p. 263), however, may end up repeating the errors and falling into the cognitive trap mentioned above, attributing legitimacy to the prison penalty provided that certain assumptions are fulfilled, starting to make up, again, part of the discourse of legitimation of the criminal system and its irrationality, as with the reformed utilitarianism that sees in the penalty functional aspects for society as the dissuasion of devious behavior, even having a supposed humanitarian function for outlawing crueler punishments (Ferrajoli, 2014, p. 257).

Precisely for this reason, there is a diagnosis of a growing disbandment of those adepts to a critical perspective, although there has been an increasing deepening in this sense, even among some progressive, humanist or allegedly critical groups, there is a growing demand for the imposition of more distressing punishments or against the imposition of alternative, non-carceral penalties as a form of protection of rights, falling into a paradox of guaranteeing rights through the degradation of human rights (Pires, 2004, p. 46-47).

Thus, for the guarantor perspective to be, in fact, a strategy to work on penal abolitionism, it must be developed by its representatives from a delegitimizing perspective (Carvalho, 2002), that is, it must be attentive to critical human rights theory and criminology.

The establishment of a human rights culture, therefore, as a rationality of resistance to punitive irrationality, points to the prospect of creating a field prone to the fecundation of the abolitionist possibility, in the deconstruction of the punitive universal structure. This is because abolitionism is not consistent with static and totalizing recipes, and cannot be interpreted as a naive immediate prescription, it values procedural and micro struggles, so that it is possible to exercise abolitionist practices on a daily basis, always having as a commitment to surpass the punitive model (Andrade, 2012, p. 264), converging to the critical human rights perspective that is supported here.

After all, human rights are the herald of the degree of punitivism fostered by the penal system, and its effectiveness, especially in the prison environment, is directly linked to the performance of active and committed human rights defenders and their interpretation of the laws that support the penal system and its legitimizing discourse, criminal law (Zaffaroni, 2008, p. 78).

In this way, if what is proposed is a deconstruction of human rights violations and, also, of the prison itself, it might occur through the agents (stakeholders) involved in its operation, prisoners, family members, servants, as long as they are trained and committed to the effectiveness of human rights, as human rights defenders (Terto Neto, 2020).

## **6. FINAL CONSIDERATIONS**

This paper has reflected on human rights as a rationality of resistance to punitive irrationality, highlighting the importance of the struggles for the rights and dignities of those involved in the prison system, as well as proposing the construction of a culture of human rights as a strategy of resistance.

To do so, it has focused on the actions of human rights defenders, who are the ones resisting and advocating for the rights of those involved in the prison system, demonstrating the importance of dignity in listening to the voices of the deceased, whose rights were violated, and thus confronting punitive irrationality.

It has therefore emphasized the importance of listening to the voices of the deceased in the context of the criminal justice system, denouncing the violence and irrationality present in prison environments, and focusing attention on the need for human rights defenders to draw on these voices in order to define strategies of struggles and effective resistance.

In this regard, it has proposed to approach human rights as an abolitionist strategy in order to overcome the criminal justice system and its punitive irrationality, pointing to the need to build a culture of human rights based on this process of resistance, seeking alternatives to punishment and the realization of human rights, with the implementation of a culture of

human rights in prison. In short, it has argued for the establishment of a line of work based on human rights statements as a rationality of resistance to criminal irrationality permeating the actions of human rights defenders who are committed to democracy, social justice and the dissemination and realization of human rights for all.

It has explained that for this to work human rights defenders must seek the recognition of each of the agents (stakeholders) working in the prison environment and acknowledge their importance in these processes of struggles for deconstructing a historically perpetuated culture of violence. All in all, it has stressed the importance of human rights defenders recognizing the spaces of struggles within the prison system and defining how to occupy them strategically.

As per the main research question - *how to implement a human rights culture in the prison environment?* – this paper has contended that it involves creating spaces of struggles to ensure and disseminate human rights. It also involves giving support to the actions of human rights defenders in resisting and advocating for the rights of those involved in the prison system. It still involves listening to the voices of the deceased to denounce human rights violations. And it finally involves proposing the usage human rights as an abolitionist strategy in facing the penal system.

There should be no doubt therefore that the implementation of a human rights culture in the prison environment is essential to resist the punitive irrationality present in the Brazilian prison system. Although it might remain a distant reality, considering that punitive irrationality is a reflection of a society with its structures deeply marked by social authoritarianism, this paper has nonetheless contended that human rights defenders play a fundamental role in challenging the culture of violence and disrespect for fundamental rights in the penal system, also in promoting that the voices of the deceased be heard, and then in proposing human rights as an abolitionist strategy to overcome the penal system and its punitive irrationality.



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