Dossiê Especial

Revista Juris Poiesis, Rio de Janeiro. v. 24, n. 35, 2021.
ISSN 2448-0517

SUMÁRIO

LSA 2021 REPORTE - HUMAN RIGHTS IN FOCUS:
CHALLENGES TO BE FACED IN CONTEMPORARY SOCIETIES

Fernanda Duarte[1]
Estácio de Sá University, Brazil

Rafael Mario Iorio Filho[2]
Federal Fluminense University, Brazil

Ronaldo Lucas da Silva[3]
Estácio de Sá University, Brazil

This publication features abstracts of papers which were presented at CRN1[4] sessions on Human Rights at the Law and Society Association Annual conference in Chicago, from 26 to 30 May 2021. The sessions were organized by a group of researchers mostly from Brazil and the UK who have been working together within the CRN1 network examining Human Rights related to legal development, constitutional law and legal cultures from the perspectives of both legal sociology and comparative law. In particular, this network seeks to understand how political and historical paths, as well as global influences such as universalization of human rights and democratic constitutional values, have shaped the formation and evolution of constitutional law and legal culture in various countries. It further seeks to examine the manifestations of contemporary legal culture in the political aspects of constitutional law, and in implementing democratic processes and human rights. Altogether CRN1 supported five sessions either being roudtables or paper sessions gathering scholars engaged in these debates, such as following.

Covid & the Administrative State Roundtable examines governmental responses to the Covid pandemic with a particular focus on the issues of administrative challenges, such as resources, adequacy of infrastructure/ problems of federal design, etc, and the implications for

[1] Professor at Estácio de Sá Universit- UNESA/ MA and PhD Programs in Law (Rio de Janeiro). Professor at Federal Fluminense University-UFF (Niterói). fduarte1969@yahoo.com.br
[2] Professor at Federal Fluminense University-UFF (Niterói). rafael_iorio@id.uff.br
[3] Professor at Estácio de Sá Universit- UNESA/Law School Law (Rio de Janeiro). r.lucas.silva1966@gmail.com
[4] For more information, see: https://lawandsociety.site-ym.com/page/CRN01

democracy and human rights protection. This session was organized by professor Anne Oakes and Prof. Rafael Mario Iorio Filho served as chair.

Giving Content to Human Rights Roundtable which was organized by Prof. Anne Richardson Oakes (UK) and Prof. Fernanda Duarte (Brazil) examined the ways in which national courts translate international human rights guarantees into a form that is compatible with the conceptual frameworks of national constitutional commitments. In particular, it will take a comparative view - eg comparing the human rights jurisprudence of the European Court of Human Rights with that of the Inter-American Court of Human Rights, and will consider what, if any, is the role of transnational judicial dialogue in this process. Prof Anne Richardson Oakes served as its chair as well.

Vulnerable Populations in Focus Roundtable dealt with issues regarding vulnerable populations, considering CRN1 socio-legal and political researches that relates to the topic. It has, in particular, focus on their recognition for democracy and human rights and human rights protection. The session was organized by Prof. Cristina Lúcia Seabra Iorio (Brazil) and Prof. Fernanda Duarte (Brazil) served as chair.

Women's Incarceration in Brazil - The UPR Collaborative Experience Brazil & Uk Paper Session presented the data findings of the collaborative research project carried on by Federal Fluminense University (UFF), Estacio de Sá University (UNESA) both in Brazil and Birmingham City University (BCU) in UK. This project deals with issues regarding women´s encarceration in Brazil, human rights protection and the Universal Periodical Review – UPR, regarding Brazil´s performance. The session was organized by Prof. Fernanda Duarte (Brazil). Prof. Anne Richardson Oakes (UK) served as chair and Prof. Denis Halis (Brazil) served as discussant.

Showcasing the complexity and varity of the issues that arise when considering human rights in focus, the sessions joined experts from different countries across the world who discussed the theory and practice of human rights as well as the challenges to be faced in contemporary societies.

Niterói, Winter of 2021

GIVING CONTENT TO HUMAN RIGHTS ROUNDTABLE

ABSTRACTS

Aspirational and Ontological Models of Rights: The Case of the European Social Model and the Limits of Rights-based Legalism

Luke Mason, Birmingham City University; luke.mason@bcu.ac.uk

The language of rights has become the dominant cognitive framework within vast swathes of law over recent decades. In part, this reflects the peremptory status of such normative forms, and the considerable impact that expansive interpretive approaches to rights can have.
However, as well as introducing a certain form of naivety into legal scholarship and commentary, as well as into popular discourses around law, the impact of this pivot to rights-based legalism has caused a haphazard effect of solemn legal declarations of rights. The development of social and labour rights in Europe provides an illustrative example of this phenomenon.

While social and economic rights were traditionally excluded from the corpus of justiciable rights, there has been an explosion of rights-based approaches to both social and economic areas of law, in particular in the European Union. However, the mixed successes of these developments underlines the limitations and contingent nature of many fundamental rights within these fields. This paper argues that many social and economic rights, if they are to be couched in this form, require economic frameworks and relationships to be (legally) constructed. These are not themselves rights-based approaches to law, but rather rest upon the careful construction of relationships between legal persons, that is paradigmatic legal models which have been somewhat displaced in terms of dominance within the legal imagination by right-based approaches.

This paper concludes that traditional discussions of enforceability and justiciability of certain rights are often misplaced. That which determines the effectiveness of a rights-based approach to any area of law is the non-rights based scaffolding constructed around it. This underlines a deeper limitation to rights-based understandings of legal (and possibly ethical) knowledge, that is that they are powerful, multifunctional normative artefacts, but cannot and do not provide a full normative framework from first principles.

Regional Human Rights Courts and Domestic Reparation Programmes: Are Standards of Reparation Changing?

Ebba Lekvall, Birmingham City University; ebba.lekvall@bcu.ac.uk

The individual right to reparation is well established in international human rights law (IHRL) and victims of violations now have a right to the restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition as forms of reparation. States have a corresponding obligation to provide reparation according to certain standard developed by international human rights bodies and regional courts, including by the Inter-American Court of Human Rights (IACtHR) and the European Court of Human Rights (ECtHR). The jurisprudence of the IACtHR is particularly rich when it comes to reparation and the standards states are expected to implement. Nevertheless, these standards developed by the IHRL system may be exacting for transitional justice states (TJ), i.e. states transitioning from authoritarianism to democracy or from conflict to peace while attempting to address past violations through mechanisms of truth, justice, reparation, and guarantees of non-repetition. This is because existing legal standards of reparation, as develop by the international legal system, do not generally allow states to take into account the wider TJ context in which reparation is provided, such as a very large number of victims, competing obligations, and scarcity of resources.

Reparation in TJ contexts, as well as other contexts dealing with large-scale violations, is often provided through reparation programmes (DRPs), an out of court process that provides better access and quicker reparation for victims, and the reparation provided should supposedly be in accordance with existing legal standards. However, there may be signs that the legal standards of reparation for DRPs are changing, at least in some regional systems, in a way that allows for the consideration of a wider TJ context. Several states have argued in cases before their regional courts, including Guatemala and Colombia before the IACtHR, and Poland and Turkey before the ECtHR, that they should be allowed to provide reparation to victims through DRPs. These courts have therefore had to analyse DRPs and whether the reparation programmes fulfil the expected standards of reparation in cases against states. In doing so, both courts seem to have altered the standards of reparation applicable to DRPs. This paper will explore how and the extent to which recent jurisprudence from these courts has slowly begun to change the standards for DRPs and what the consequences may be, both for the right to reparation for victims receiving reparation through DRPs and for victims who bring cases before these courts.

Giving Content to International Human Rights – the US Perspective

Lissa Griffin, Elisabeth Haub School of Law at Pace University, NY.; lgriffin@law.pace.edu

The United States has an uneasy relationship with international human rights norms. The US approach to international human rights norms and standards might even be called reluctant or even dismissive. These attitudes are to a large extent grounded on the United States' perception of its own "exceptionalism," a remarkably durable belief that the United States is different from other countries and to a large extent exempt from international norms.[5]

Of the two most direct avenues for incorporation of international human rights standards – through treaty obligations or membership in a super-national human rights tribunal – the United States is an outlier: the US has refused to join most major international human rights treaties[6] and is not subject to any super-national tribunal. To be sure, the US Constitution makes adoption of a foreign treat difficult, discouraging international accountability in its own right: acceptance of a treaty requires the President's signature and a vote of two-thirds of the senate, a supermajority that is difficult to secure.[7] Once approved, treaty obligations are as binding as domestic law.[8] Of the treaties it has joined, the US has maintained several significant

.

[5] For examples of the extensive literature on the connection between American exceptionalism and human rights, see, *American Exceptionalism and Human Rights* (Michael Ignatieff ed., 2005); Mugambi Jouet, *The Exceptional Absence of Human Rights as a Principle in American Law*, 34 Pace L. Rev. 688 (2014); Stephen Gardbaum, *The Myth and the Reality of American Constitutional Exceptionalism*, 107 Mich. L. Rev. 391 (2008); Harold Koh, *On American Exceptionalism*, 55 Stan. L. Rev. 1479 (2002).

[6] Of the eleven major human rights treaties, The United States is a signatory on only three: The International Covenant on Civil and Political Rights (ICPRR), signed in 1977 and ratified in 1992; The International Convention on the Elimination of All Forms of Racial Discrimination (CERD), signed in 1966 and ratified in 1994; and The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), signed in 1988 and ratified in 1994. International Covenant on Civil and Political Rights, art. 10(1), *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 172, (entered into force Mar. 23, 1976); International Convention on the Elimination of All Forms of Racial Discrimination, *entered into force Jan. 4, 1969*, 660 U.N.T.S. 195; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *entered into force* June 26, 1987, 1465 U.N.T.S. 85.

It is also a signatory of the Convention on the Prevention and Punishment of the Crime of Genocide, signed in 1948 and ratified in 1988. It has signed but not ratified the Convention on the Rights of Persons with Disabilities (CRPD), The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and The Convention on the Rights of the Child (CRC). It has neither signed nor ratified The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), The International Convention for the Protection of All Persons from Enforced Disappearance (CED), and The Convention on the Rights of Persons with Disabilities (CRPD).

[7] U.S. CONST. art. II § 2.

[8] U.S. CONST. art. VI, cl. 2 ("The laws of the United States… and all Treaties…shall be the supreme Law of the Land and the Judges in every State shall be bound thereby…..").

reservations.[9] Although other countries remain under the formal jurisdiction of super-national human rights tribunals,[10] the United States is not subject to the jurisdiction of any international or super-national court. In addition, over the past four years the US has distanced itself from international human rights responsibilities by withdrawing from the UN Human Rights Council[11] and the UN Education Scientific and Cultural Organization (UNESCO);[12] suspending cooperation with UN rapporteurs about potential domestic human rights violations;[13] and rejecting the legitimacy of the International Criminal Court.[14]

Despite this, the US legal system does find itself contending with international human rights standards in several ways. First, as a signatory on the ICCPR,[15] the United States is subject to international human rights norms through the United Nations Human Rights Commission and its Universal Periodic Review.[16] That process, begun in 2009, invites the 193 member states to review the human rights record of each member every five years. The process has resulted in an international dialogue concerning the US's performance on human rights (as well as the performance of many other countries) particularly with respect to the US adherence to capital punishment.[17] There is concern, however, about whether the UPR process has not produced meaningful changes in human rights in practice.[18]

---

[9] For a complete list of the US human rights treaty reservations, *See U.S. Reservations, Declarations, and Understandings to Human Rights Treaties*, UNIVERSITY OF MINNESOTA HUMAN RIGHTS LIBRARY, http://hrlibrary.umn.edu/usdocs/usres.html (last visited Jan. 19, 2021).

[10] *See, e.g.*, the European Court of Human Rights, the International Court of Justice, the International Criminal Court, and the Inter-American Commission on Human Rights.

[11] Gardiner Harris, *Trump Administration Withdraws US from UN Human Rights Council*, N. Y. TIMES, (June 19, 2018), https://www.nytimes.com/2018/06/19/us/politics/trump-israel-palestinians-human-rights.html.

[12] Eli Rosenberg & Carol Morello, *US withdraws from UNESCO, the UN's cultural organization citing anti-Israel bias*, WASH. POST., (Oct. 12, 2017), http://www.washingtonpost.com/news/post-nation/wp/2017/10/12/u-s-withdraws-from-unesco-the-u-n-s-cultural-organization-citing-anti-israel-bias/?utm_term=.5cc4e3a47b19.

[13] Ed Pilkington, *US halts cooperation with UNJ on potential human rights violations*, GUARDIAN, (Jan. 4, 2019), https://www.theguardian.com/law/2019/jan/04/trump-administration-un-human-rights-violations.

[14] Mark Landler, *Bolton Expands on His Boss's Views, Except on North Korea*, N.Y. TIMES, (Sept. 10, 2018), https://www.nytimes.com/2018/09/10/us/politics/trump-plo-bolton-international-criminal-court.html; Jordan Fabian, *Bolton threatens sanctions against International criminal Court*, HILL, (Sept. 10, 2018), https://thehill.com/homenews/adminisration/405871-bolton-threatens-sanctions-against-international-criminal-court.

[15] International Covenant on Civil and Political Rights, art. 10(1), *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 172, (entered into force Mar. 23, 1976).

[16] G.A. Res. 60/251, (April 3, 2006).

[17] *See, e.g., Recommendations on Criminal Justice*, UNIVERSAL PERIODIC REVIEW OF THE UNITED STATES OF AMERICA, (ACLU), May 2015, recommendations 176.165 through 176.213 (41 recommendations related to capital punishment).

[18] *See, e.g.*, Emma Hickey, *The UN's Universal Periodic Review: Is It Adding Value and Improving the Human Rights Situation on the Ground?* 7 Vienna J. on Int'l Const. L. 4 (2013), https://perma.cc/724C-YA7F; Constance de la Vega & Tamara N Lewis, *Peer Review in the Mix: How the UPR Transforms Human Rights Discourse*, *in* NEW CHALLENGES FOR THE UN HUMAN RIGHTS MACHINERY WHAT FUTURE FOR THE UN TREATY BODY SYSTEM AND THE HUMAN RIGHTS COUNSEL PROCEDURES?, M. Cherif Bassiouni & William A. Schabaas (eds. 2012);

Second, as an outlier that still maintains capital punishment, under the extradition treaties the US maintains with over 100 countries, a US request for extradition of a foreign national may be denied unless the US represents that the defendant will not be subject to the death penalty – a practice considered to violate human rights.[19] As has been demonstrated by the UK's recent refusal to extradite Wikileaks' founder Julian Assange, moreover, in addition to the concern about the death penalty, treaty members will deny extradition where the find that the US justice system will not protect their own citizen's human rights, in this case the defendant's mental health.[20]

Brazilian Penintential System, Case "Urso Branco" and the Inter-American Court Of Human Rights

Guilherme Calmon Nogueira da Gama, Estácio de Sá University; State University of Rio de Janeiro, gcncalmon@gmail.com

In 1996 the "José Mário Alves da Silva" Detention House (better known as the "Urso Branco" Penitentiary) was inaugurated, which in the early 2000s became the largest prison in the northern region of Brazil with approximately 1.300 prisoners. The number of places available to prisoners, however, was 450. In January 2002, due to the problems detected in the prison, there was the second largest slaughter in Brazil (behind only the Carandiru slaughter in the State of São Paulo), with the death of 27 prisoners, some of whom were quartered.

In 2014, a new rebellion at the "Urso Branco" Prison resulted in death of 14 other prisoners. In July 2004, the Inter-American Court of Human Rights (ICHR) issued a Resolution[21] on the provisional measures related to the Federative Republic of Brazil involving the case of the "Urso Branco" Penitentiary, imposing measures on the Brazilian State regarding the realization of human rights to life, integrity and the protection of prisoners, as well as the

Roland Chauville, *The Universal Period Review's First Cycle: Successes and Failures*, *in* HUMAN RIGHTS AND THE UNIVERSAL PERIOD REVIEW: RITUALS AND RITUALISM, Hillary Charlesworth & Emma Larking (eds. 2015).

[19] For a further discussion of this practice see, e.g.,Capital Punishment in Context, International Law and Opinion, https://capitalpunishmentincontext.org/issues/international.

[20] Jill Lawless, *UK judge refuses extradition of WikiLeaks founder Assange*, A.P. NEWS, (Jan. 4, 2021), https://apnews.com/article/julian-assange-uk-refuses-us-extradition-5b148b0b6b9f72a20eedad4218e8227a.

[21] https://www.corteidh.or.cr/docs/medidas/urso_se_04_portugues.pdf. Visited 05.01.2021.

identification and punishment of those responsible for the tragedies of the massacres that occurred inside the prison.

The National Council of Justice, in Brazil, carried out some activities to identify compliance with the deliberations of the Inter-American Court of Human Rights. In 2014, the National Council of Justice held a prison task force at the "Urso Branco" Penitentiary, presenting a diagnosis regarding the situation of the prison establishment, which still had overcrowding problems and the lack of adequate health care for prisoners.

On 12.17.2020, Edson Fachin, judge of the Supreme Federal Court in Brazil, granted the preliminary injunction[22] in part regarding the determination of Brazilian judges to evaluate prison cases for people incarcerated in establishments in addition to the number of existing vacancies, members of the group of COVID-19, involving other conditions.

The research to be presented at the LSA 2021 event aims to verify whether the case involving the "Urso Branco" Penitentiary, in particular the Resolution of the Inter-American Court of Human Rights, generated some modification of the Brazilian national penitentiary system, notably in matters relating to the effectiveness human rights to life, integrity and protection of prisoners. In the same way, it will be sought to verify if the Brazilian organs of control of the prison system - National Council of Justice, Prisions Corrections Department, Public Prosecutor's Office, Public Defender's Office - have acted effectively to give concreteness to the determinations of the Inter-American Court. Finally, the work will seek to clarify the investigations and punishments involving the massacres that took place in the "Urso Branco" Penitentiary.

[22] BRAZIL, Supreme Federal Court, Precautionary measure Habeas Corpus n. 188.820/DF,
Author: Union Public Defender's Office; Patients: prisoners beyond the capacity of vacancies, members of groups at risk for COVID-19 and who have not committed crimes with violence or serious threat.

Communicable Disease & Corrections in the United States: [Existing] Statutory Responses

Sarah L. Cooper, Birmingham City University, sarah.cooper@bcu.ac.uk;
Michael Bayham, Arizona State University, mbayham@asu.edu;
Thomas Nicklin, Birmingham City University, thomas.nicklin@mail.bcu.ac.uk

Correctional facilities quickly emerged as "COVID-19 clusters" — places with the largest number of known infections — in the United States (US) (Kovarksy, 2020). With facilities across the US housing large, ageing and medically compromised populations (National Research Council, 2014; ACLU, 2012); finite supplies of PPE and cleaning products; limited screening and treatment programs; and architecture that frustrates social distancing and isolation practices, they presented ideal transmission environments, and the state and federal government were called upon to slow the spread (Vera Institute, 2020). Across the US, policy responses included facilitating early release, reducing admissions to correctional facilities, and widening healthcare access and social support for inmates, yet there is concern "Lawmakers failed to reduce prison and jail populations enough to slow down the spread…" (Prison Policy Initiative, 2021). The need for law-makers to address communicable disease transmission in correctional facilities is not a COVID-19-exclusive issue, however. HIV/AIDS, tuberculosis, and H1N1, for example, presented challenges long before COVID-19 (e.g., Dubler, 1979; Spencer, 1991; Pines, 1999, Glaser & Greifinger, 1993; Flanigan, 2009; Fortin, 2011). In fact, research shows the issue has been on the minds of US law-makers across three centuries.

This paper presents the authors' investigation into procedures codified in state statutes that could address removal of inmates during emergencies like COVID-19, all of which existed when the pandemic struck. Part I contextualises the study and outlines our research design. Part II describes the 'size and shape' of our resulting data-set, which comprises 80+ procedures across three categories, namely: (1) the removal of inmates specifically due to disease outbreak (*Removal for Disease*); (2) the removal of prisoners during an emergency, including explicitly or implicitly a disease outbreak (*Emergency Removal*); and (3) the executive's ability to modify or suspend laws that could frustrate dealing with an emergency, which could effectively be used to remove inmates on safety grounds (*Executive Emergency)*. Points of interest across the data-set include the number of procedures per state; labels; years of enactment and amendments; decision-makers; initiation requirements; and petition-ability. Part III shares potential lines of

inquiry based on our initial findings, including developing 'deep dive' case studies on states and/or decision-makers, and/or model legislation based on the experiences of multi-stakeholders in addressing COVID-19.

Intension, Extension, and the 'Supermax' Prison – Hiding the Harm of Inmates.

Anil Singh Matoo, Birmingham City University; anil.matoo@bcu.ac.uk

The modern Supermax prison in the USA indefinitely incarcerates individuals in prolonged solitary confinement between twenty-two and twenty-four hours per day. In Supermax units, prisoners are in isolation with high restrictions placed upon their contact with other inmates, correctional staff, and the outside world.

Supermax Prisons can either be stand-alone units or form an integral part of a maximum-security prison. The Supermax prison in Florence, Colorado (referred to as Administrative Detention Maximum or ADMAX or ADX Florence), Virginia's Red Onion State Prison, and California's Pelican Bay State Prison are examples of the former. Examples of integrated Supermax prisons are Utah State Prison, Ohio State Penitentiary, and Jackson High-Maximum Correctional Facility in Georgia. Integrated Supermax structures are designed to segregate a prisoner from the general prison population. For example, in Utah State Prison, prisoners are segregated in sections called UINTAS. In these sections, certain categories of prisoners are isolated on grounds of administrative segregation or, in specific circumstances, protective segregation for vulnerable or at-risk prisoners.

However, as there is uncertainty as to what constitutes a Supermax prison, this paper argues that this uncertainty stems from the varying jurisdictional methods of naming and referencing "segregation", "isolation", and "the Supermax." This paper offers an analysis of intensional and extensional meaning in order to appreciate the vagueness surrounding Supermax incarceration. Ultimately, this paper will argue that this vagueness surrounding Supermax confinement not only legitimises but hides the harm that prolonged isolation can have upon inmates.

There are two methods in naming and referencing Supermax confinement. The first method relates to the punishment of prolonged solitary confinement itself and has the largest variance. This form of naming is prescriptive in nature as seen in terms across States such as "lockdown", "isolation", "protective custody", "administrative segregation" ("ad-seg"), "prolonged detention", and "punitive segregation." Furthermore, the Federal Bureau of Prisons uses the terms 'AD' (Administrative Detention) and 'DS' (Disciplinary Segregation). In this naming method, the Supermax's unit name is incidental and is interchangeable with the punishment of prolonged solitary confinement. Therefore, prisoners are placed into "ad-seg", which becomes synonymous with Supermax confinement.

In the second naming method, one finds references to tangible units such as "Supermax", "Security Housing Units" (SHUs), "Intensive Management Units (IMUs), "Restrictive House Unit" (RHUs), and "Control Handling Units" (CHUs). These names can refer to the integrated Supermaxes such as the SHU in New York, the IMUs in Oregon and Washington, and the RHU in Pennsylvania. The units can also be referred to as UINTA 1, as in Utah, or "Secure Program Facility", as in Wisconsin.

The name of a tangible, stand-alone unit can also reflect the practice of prolonged solitary confinement. In particular, the names of stand-alone Supermax structures are synonymous with the punishment of prolonged solitary confinement. For example, ADX Florence is not only a stand-alone Supermax structure; but the name itself is a symbolic representation of the punishment of prolonged solitary confinement. Furthermore, there are names of tangible prisons, which are tacitly known as "Supermax" units. Virginia's Red Onion State Prison and California's Pelican Bay State Prison are examples of this tacit reference to the Supermax and the punishment of prolonged solitary confinement.

Human Rights and the City: A Matter of Constitutional Empowerment

Anne Richardson Oakes, Birmingham City University; anne.oakes@bcu.ac.uk

Professor Hirschl has recently suggested that the "right to the city," is "[a]rguably the most important conceptual innovation of the last half -century concerning the normative foundations

of city dwellers' rights."[23] French philosopher Henri Lefebvre's ground breaking book *Le Droit à La Ville* published in 1968 promoted a normative vision for restructuring the power relations underpinning urban space. His vision of a right to the city was a rejection of a commodification of urban life which turns urban space and governance into exclusive goods. His call to "rescue the citizen as main element and protagonist of the city that he himself had built" and to transform urban space into "a meeting point for building collective life" was stronger on rhetoric than on substance but has come to sustain claims for urban empowerment couched in terms of human rights. The Human Rights Cities initiative that gained momentum following the "Cities for Human Rights" conference that took place in Barcelona in 1998 seeks to connect municipal empowerment with international legal regimes. The European Charter for Safeguarding of Human Rights in the City adopted in Saint-Denis, Paris in 2000 and the Gwangju Asia Human Rights Charter (1998) foreground the contribution of local actors and local democracy in promoting human rights conceptualised in terms of inclusion and recognition of "diversity, identity and difference in urban spaces."[24] International networks of cooperation and collaboration now connect the cities that identify themselves in this way. In practical terms however, the extent to which a right to the city can have more than symbolic effect is governed by the internal structures of the state to which the city belongs. In this connection, as Professor Frug has pointed out, the status of the city as a legal concept can be problematic.[25] This paper addresses the right to the city by reference to the rights of the city. It takes as examplars, the United States and Brazil, two federal countries with very different explanations of the place of local authorities within their constitutional frameworks to consider Professor Hirschl's view that as more than half of the world's population lives in cities, a figure that will increase to more than three quarters by 2050, "what cities need is a more robust constitutional standing."[26]

[23] Ran Hirschl, City, State: Constitutionalism and the Megacity, 21 (2020).
[24] Hirschl, at 158.
[25] Gerald Frug, *The City as a Legal Concept*, 93 *HARV. L. REV.* 1057 (1980).
[26] Hirschl, at170.

Giving Content to Human Rights and transnational judicial dialogue: is there an anthropological challenge to be faced?

Fernanda Duarte, Universidade Estácio de Sá/UNESA. Universidade Federal Fluminense/UFF – Brazil; fduarte1969@yahoo.com.br, fernanda_duarte@id.uff.br;
Rafael Mario Iorio Filho, Universidade Federal Fluminense/UFF – Brazil; rafa.ioriofilho@gmail.com, rafael_iorio@id.uff.br

The impact and relevance of human rights today, as well as their demands for protection and promotion, specifically in the international arena, can be seen in the expansion of judicial bodies that culminated in the creation of the Human Rights Courts (such as the European Court of Human Rights and the Inter-American Court of Human Rights) within the regional system of protection of HRs, after World War II. Responsible for the application and interpretation of the respective human rights conventions within the Council of Europe and the OAS, these courts, in the exercise of their functions, end up ruling on violations caused either by the domestic law and/or by the very member states that are bound to them. Such rulings presuppose an understanding of domestic law based on international parameters, constructed outside the local legal experience. This circumstance, if on the one hand, as stated in the literature on the subject, may allow the construction of dialogues between the courts, since it is based on the idea of multilevel protection of rights and on a relationship of conventionality, on the other hand it may also generate situations of dissonance between what was decided by the international court and what was ruled by the national court, as for example, in the case of the Brazilian Amnesty Law that was disapproved by the Inter-American Court in 2010 and 2018, but was considered constitutional by the Brazilian Supreme Court in 2010. Beyond the discussion on the cogent force of international law and the mandatory compliance with the decisions of the Human Rights Courts, if law can be taken as a set of local discourses and practices and if culture interferes in socialization and social efficacy of law (which brings us back to the idea of legal sensibility, proposed by the American Anthropologist Clifford Geertz), an anthropological challenge rises. Are the international courts of human rights fit to come up with a concept of human rights that take into account the plurality of justice conceptions of different peoples that inhabit our planet? This is the biggest challenge these courts may face and a question that remains open.

COVID & THE ADMINISTRATIVE STATE ROUNDTABLE

ABSTRACTS

The Emergency Administration between Normality and Exceptionality

Fabio Giglione, Sapienza University, Rome, fabio.giglione@uniroma1.it

The spread of Covid19 has provoked a reaction of the Administrative State all over the world. That has mainly concerned the health authorities, but also, generally speaking, the Central Government at expenses of Regional as well as Local authorities. In addition to this, it has often been frequent to set up new administrations dedicated to fighting the epidemic to replace the ordinary administrations. With good reason it can be said that all this has made it possible to highlight a real emergency administration.

However, is this sufficient to consider the essential lines of democratic systems at risk? Is it enough to have seen the use of extraordinary administrative powers to maintain the illegality of the measures actually taken? The paper intends to emphasize that emergency administration is not in itself in contrast with democratic and liberal systems, if certain conditions are observed. To establish the boundary of legitimate action of the emergency administration, the author makes use of two conceptual distinctions: that of a constitutional nature between a state of necessity and a state of emergency and that of the fundamental right to health which is at the same time an individual right of claim and an interest of the community. Around this conceptual distinctions, the author recognizes that there are wide spaces for conciliation between democratic systems and emergency administration, because the latter is an expression of an administrative function of completing ordinary functions when there are serious risks for the collective interests. Power, in fact, is not only an evil for freedoms, but an indispensable resource for protecting collective interests.

Nevertheless, the author warns of some risks: this happens if the emergency administration is not limited in time and proportionate to the interest at risk and if the emergency administration becomes a parallel administration which interprets the threatened public interests as new interests authorizing the new administration to derogate from the ordinary rules. The risks for democracy and for the protection of freedoms occur only if the emergency

administration stabilizes itself over time and if it becomes a parallel administration entitled to intervene in derogation of the normal rules.

COVID-19 and The Right to Access to Information

Ana Fierro, Centro de Investigación, Docencia Económica CIDE, ana.fierro@cide.edu

This pandemic has placed humanity in an uncertainty that we have not experienced in a lng time. We have had to face an unknown disease, whose symptoms, prophylaxis, and sequelae at first, we did not know. Throughout 2020 the scientific and medical community has been solving and informing us, little by little about the effects and solutions to this global health problem. This scenario of lockdown and uncertainty about how to react to the disease, what treatment to follow, whether there will be a hospital that can take care of our family, how vaccines work, when can we have access to vaccines concern all society. Today, timely, clear, and truthful public information has literally become a matter of life and death. International bodies such as the European Council[27] and the Inter-American Court of Human Rights prepared two documents emphasizing the need to respect freedom of expression and access to public information during the pandemic. Freedom of expression plays an important role in times of emergency. The need of timely and clear public information is essential for making health, economic and social decisions. Therefore, restrictions to access of public information must be strict to preserve a democratic society. The media and the internet must be respected for keeping citizens informed of the situation, communicate the measures taken and promote cooperation between government and society. To this end, the commitment of the media and journalists to communicate truthfully and accountably is important. In this sense, the InterAmerican Court itself accepts restrictions when it is attentive to national security, public order, or health; however, its sanction cannot mean prior censorship, nor a widespread suspension. In addition, both media and government must ensure the protection of personal data and avoid disclosing information that promotes discrimination.[28] Thus, public information, which our authorities have an obligation to produce and make accessible to the whole of society, faces four major

[27] Council of Europe. (2020). *Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis*. April 7th, 2020. June 2020: https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40.

[28] Comisión Interamericana de Derechos Humanos. (2018). *Declaración de principios sobre libertad de expresión.* June 2020 en: https://www.cidh.oas.org/basicos/declaracion.htm.

obstacles to achieving its task of guiding society in prevention measures and supporting them to deal with the health and economic crisis: opaque transparency, the need for clear language, post-truth, and fake news. This article explores these challenges and some pathways to overcome them.

The Intersection of Federal, State and Local Governments' Responsibilities to Protect Public Health During the Pandemic in the United States and Brazil.

Ilaria Di-Gioia, Birmingham City University, ilaria.Di-Gioia@bcu.ac.uk;
Vanice Valle, vanicevalle@gmail.com;
Anne Richardson Oakes, Birmingham City University anne.oakes@bcu.ac.uk

The United States and Brazil are federal countries with constitutions that diffuse regulatory power away from the centre in favour of state and local governments. In the absence of strong presidential leadership, the frontline of response has been at these lower levels but the result has been intra-governmental conflict concerning allocation of responsibilities and a patchwork of responses that have done little to promote public confidence in the ability of their governments to control the spread of the disease. In both countries public health emergency orders which have closed businesses and schools, required masks to be worn on public transport and in public places and at their most extreme, required citizens to stay at home or 'shelter in place' have generated law suits framed not only in terms of infringement of constitutional rights but also of separation of powers at both horizontal and vertical levels. This paper focuses specifically on the way in which management of the pandemic has generated intra-governmental conflict at the vertical level. It notes that in the United States two- tier constitution which recognises only federal and state governments and has nothing to say regarding local autonomy, local authorities seeking to put in place increased measures of public health protection have struggled to develop legal strategies that can withstand state gubernatorial opposition. This is not the case in Brazil where the Brazilian Constitution of 1988 gives municipalities equal federative partnership with states and the federal government, a status recently confirmed in relation to the management of the pandemic by two recent decisions of the Federal Supreme Court of Brazil (SFT)

This paper considers these issues in the context of COVID-19 related responses, by

specific reference to the role of municipalities in what Professor Hirschl terms 'old-world' and 'new-world' constitutions. The paper is in two parts. In Part 1 we consider the position in Brazil in the context of a conflict between a federal government led by a Covid-impact-denying President and states and municipalities seeking to put in place measures for the protection of public health and the control of the pandemic. The conflict reached the FST which has been asked to pronounce specifically upon the constitutional allocation of competencies on two occasions. Part I considers these law suits and the context in which they arose with the premise that they have something important to contribute to our understanding of federalism and constitutional design in Brazil.

By way of contrast, Part II moves to the United States where the public health concern is similar but the constitutional dynamic is different. In this Part we identify and examine disputes between five states and their municipalities. In the absence of a constitutional framework that can recognise and empower local authorities vis à vis the states to which, in legal terms, they belong, the disputes to date have not made it into a federal court but are framed in terms of state law under which they stand little prospect of success. We note however that in some of the court filings it is possible to discern the rudiments of an argument for independent local autonomy which its proponents claim is deeply rooted in the U.S. concept of democracy and consider whether this is an argument whose time may now have come.

We return in conclusion to the position of municipalities in 'old-world' and 'new-world' constitutions. We note the prediction that the "new urban era has begun"[29] and suggest that, the formal constitutional position notwithstanding, municipalities in both Brazil and the United States will continue to conduct their intra-governmental disputes with skills that are primarily political rather than legal.

[29] Parag Khanna, *Beyond City Limits*, 181 FOREIGN POLICY 120, 122 (Sept/Oct. 2010): The 21st century will not be dominated by America or China, Brazil or India, but by the city … the age of the nation- state is over. The new urban era has begun.

Communicable Disease & Corrections in the United States: [Existing] Statutory Responses

Sarah L. Cooper, Birmingham City University, sarah.cooper@bcu.ac.uk;
Michael Bayham, Arizona State University, mbayham@asu.edu;
Thomas Nicklin, Birmingham City University, thomas.nicklin@mail.bcu.ac.uk

Correctional facilities quickly emerged as "COVID-19 clusters" — places with the largest number of known infections — in the United States (US) (Kovarksy, 2020). With facilities across the US housing large, ageing and medically compromised populations (National Research Council, 2014; ACLU, 2012); finite supplies of PPE and cleaning products; limited screening and treatment programs; and architecture that frustrates social distancing and isolation practices, they presented ideal transmission environments, and the state and federal government were called upon to slow the spread (Vera Institute, 2020). Across the US, policy responses included facilitating early release, reducing admissions to correctional facilities, and widening healthcare access and social support for inmates, yet there is concern "Lawmakers failed to reduce prison and jail populations enough to slow down the spread…" (Prison Policy Initiative, 2021). The need for law-makers to address communicable disease transmission in correctional facilities is not a COVID-19-exclusive issue, however. HIV/AIDS, tuberculosis, and H1N1, for example, presented challenges long before COVID-19 (e.g., Dubler, 1979; Spencer, 1991; Pines, 1999, Glaser & Greifinger, 1993; Flanigan, 2009; Fortin, 2011). In fact, research shows the issue has been on the minds of US law-makers across three centuries.

This paper presents the authors' investigation into procedures codified in state statutes that could address removal of inmates during emergencies like COVID-19, all of which existed when the pandemic struck. Part I contextualises the study and outlines our research design. Part II describes the 'size and shape' of our resulting data-set, which comprises 80+ procedures across three categories, namely: (1) the removal of inmates specifically due to disease outbreak (*Removal for Disease*); (2) the removal of prisoners during an emergency, including explicitly or implicitly a disease outbreak (*Emergency Removal*); and (3) the executive's ability to modify or suspend laws that could frustrate dealing with an emergency, which could effectively be used to remove inmates on safety grounds (*Executive Emergency)*. Points of interest across the data-set include the number of procedures per state; labels; years of enactment and amendments; decision-makers; initiation requirements; and petition-ability. Part III shares potential lines of

inquiry based on our initial findings, including developing 'deep dive' case studies on states and/or decision-makers, and/or model legislation based on the experiences of multi-stakeholders in addressing COVID-19.

COVID-19 and Incarcerated Persons' Rights

Masha Lisitsyna, Open Society Justice Initiative
Adriana Garcia, Centro de Investigacion y Docencia Economicas (CIDE),
adrianagarcia@uchicago.edu

Necessary measures to protect the life and health of incarcerated individuals against the risk posed by COVID-19 have taken on worldwide urgency. Overcrowding, inadequate health services, and poor living and sanitary conditions, such as poor cell ventilation, characterize penitentiary systems across multiple jurisdictions. These factors are exacerbated by the COVID-19 pandemic, endangering the lives of detained individuals, prison staff, and the surrounding community. Compared to the wider population, the incarcerated are particularly vulnerable and at higher risk of contracting the virus, which can spread rapidly in detention due to the high concentration of persons in confined spaces. Lawyers and advocates around the world are taking action to protect the health and safety of incarcerated individuals and those facing trial through the courts—and some of their legal strategies are saving lives. The most urgent measure to address the health crisis consists in reducing the prison population to allow for physical distancing. States also have a responsibility to take appropriate, immediate measures to protect the lives and health of incarcerated persons, due to the fact that, under international human rights law, states have a heightened duty to protect the health of those in its custody. In this paper we analyze two of such important litigation efforts in Brazil and Mexico. In Mexico, the Mexican organization Centro de Derechos Humanos Miguel Agustin Pro Juarez, A.C. ("Centro Prodh") filed a lawsuit against the governor of the state of Morelos, the Mexican Ministry of Health, and other state authorities arguing that the failure of authorities to enact pandemic guidelines and policies runs contrary to their obligation to protect those in the Morelos state prison system from COVID-19. In Brazil, the Public Defender (*Defensoria Publica do Estado do Rio de Janeiro*) and the Public Prosecutor's Office (*Ministerio Publico do Estado do Rio de Janeiro*) of Rio de Janeiro, filed a collective action (*Ação Civil Pública*) against the State of Rio de Janeiro, the Municipality of Rio de Janeiro, and the Associacao

Filantropica Nova Esperanca, an organization managing a penitentiary health care unit. The collective action argues for rapid intervention regarding the deteriorating situation in Rio's prisons due to the COVID-19 outbreak. It takes into account recommendations and resolutions issued by multiple public bodies regarding measures to prevent the spread of the virus in the prison system, most of which have not been applied. We will analyze the legal arguments, strategies and results of such efforts.

Impact of the COVID Pandemic on Development of Global Administrative Law

I-Ju Chen, School of Law, Birmingham City University, i-ju.chen@bcu.ac.uk

The rapid spread of the COVID pandemic has highlighted the extent to which citizens look to state institutions and governments to provide directions and concrete solutions to severe public health threats. The requirements for measures of Covid control including, at their most extreme, national lockdown designation and implementation have presented challenges which governments have struggled to meet. The problem has been complicated by the anti science stance of populist leaders such as Donald Trump and Jair Bolsonaro who have downplayed the COVID crisis and failed to take prompt and decisive measures of response. Their failures in this respect have not only propelled their countries to the top of the league tables in terms of COVID related deaths but have also inhibited their nations' ability to engage with international efforts to respond effectively to the COVID crisis. These are therefore the challenges to which a 21st century global administrative law must respond.

Global administrative law is an emerging international legal regime that is developed based upon dual insights. One insight is usually termed 'global governance', and can be characterised as global administrative action. The second is that increasingly such action is being regulated by administrative law. However, the definition of global administrative law is contested. According to Benedict Kingsbury and Megan Donaldson, global administrative law can be understood as a regime, which is composed of the legal rules, principles, and institutional norms applicable to processes of administration. These procedures of administration are undertaken in approaches that implicate more than purely intra-State structures of legal and political authority. Given the unprecedented administrative challenges arising from COVID, this paper examines the issues of global administrative challenges and governmental responses.

It also explores the impact of the COVID pandemic on the development of global administrative law. Furthermore, this paper aims to offer suggestions to improve this developing field.

VULNERABLE POPULATIONS IN FOCUS ROUNDTABLE

ABSTRACTS

Vulnerability in focus: domestic and family violence against women[30]

Ana Paula Faria Felipe, Universidade Estácio de Sá/UNESA (Brazil);
anapaulaffelipe@gmail.com

Among other social disturbances, violence against women within domestic and family sphere is an evil that has afflicted the societies of the world for centuries and, although supported by Brazilian criminal law, creates social instability and keeps women victims in vulnerable situation.

In Brazil, we have Law 11.340 (Law Maria da Penha), a specific legislation that created mechanisms to curb and prevent crimes of domestic violence against women. It brought more severe treatment to the aggressors, inserted social and protective policies of a criminal nature. However, the rigor of this law and institutional actions have not managed to reduce the number of legal proceedings, which implies recognizing, in principle, the non-reduction in the rate of this type of violence.

To understand these conflicts and the functioning of the Brazilian Criminal Justice System, it is necessary to look at those who experience it and its forms of regulation and administration. It is necessary to look beyond normativity, which is why this research seeks the support of Social Sciences.

During the field research, it's possible to observe that vulnerability enters the justice system with regard to the management of conflicts of domestic and family violence against women.

It's emphasized that the consequences of this violence affect the entire family system and, therefore, this system also needs to be considered one of the victims of this crime.

[30] The present work started during the doctorate in Law and the continuation of the research takes place in the postdoctoral scope, as a CAPES scholarship holder, in the Postgraduate Law Program at Universidade Estácio de Sá / RJ (PPGD / UNESA).

Taking care of this family system is another aspect of public policies. However, there are still many gaps in confronting and preventing domestic and family violence against women in order to reduce the vulnerability field in which those involved are inserted, especially the victim.

The Legal Vulnerability and Invisibility of Gipsy in Brazil in times of COVID-19 Pandemic

Cristina Lucia Seabra Iorio, Universidade Estácio de Sá/UNESA (Brazil);
cris.seabraiorio@gmail.com

I assume that there is a legal invisibility of Gypsy in the Brazilian legal field, as an ethnic minority and vulnerable group. In fact, compared to other vulnerable minorities or groups, they seem to be the most invisible among the invisible. There is a lot of research in Brazil, in the field of Law, on various ethnic minorities or on vulnerable groups, such as LBTQI +, Afro-Brazilians, Natives, Quilombolas, disabled people and women, some of which even have explicit constitutional status in the text, but very little material on Gypsy.

As well as I have seen that this legal vulnerability and invisibility has deepened in the pandemic scenario of COVID-19.

In order to verify this hypothesis, I articulate the Methodology of Semiolinguistic Discourse Analysis, of French matrix, with its explanations of the “said”, the “unspoken” and the “discursive formations” of the legal-political discourses.

In order to highlight this supposed invisibility, I try to guide my investigation through the following guiding questions: do the demands of this ethnic group reach the judiciary or not? If there are judicial decisions, what are those decisions? Are there legal references about gipsies? Are there academic legal papers about gypsies?

My main objective is to interview these texts and discourses and describe how Brazilian legal field gives visibility to the Gypsy people

The Music, Health, Social Inclusion, and Human Rights Lab: A Lisbon Lusíada University Project for Human Rights promotion through music

Filipa Pais d'Aguiar, Lusíada Lisbon University Faculty of Law (Portugal);
filipapaes@gmail.com

The Music, Health, Social Inclusion, and Human Rights Lab: A Lisbon Lusíada University Project for Human Rights promotion through music Right on the foundations of Human Rights one can find the Human Being Dignity Principle which is both the home and the lighthouse for several of its autonomous, yet intertwined dimensions such as sustainability, digital and biological existence. The awareness arising of youngsters for the vital importance of Human Rights and of the Human Dignity several dimensions' can be developed through education. On the one hand, this awareness may also promote health, social inclusion, cooperation, and communication skills on populations at risk of social exclusion. On the other hand, music, as a universal language, has the potential of gathering youth in an educational context. Therefore, this multidisciplinary research group, formed by a high-profile team of psychologists, social workers, music and law professors and researchers looks forward to observing and study the real impact of education for Human Rights through musical performance activities on health, social inclusion, well-being, and quality of life improvement. To do so, there will be applied quantitative and qualitative evaluation methods at the end of each of the two moments that comprise the project program. The first moment includes forming the MusicLab at a public school where young students from one of the Lisbon parishes will weekly meet professional musicians, learn from jam sessions, and organise fortnightly small concerts. The second moment will extend to a larger group of both students, geographic areas and topics addressing subjects such as Human Rights, Human Dignity, Migrant Communities' Rights, Minorities Rights, and inclusion. The program project is currently on its first moment.

Human Trafficking

Lara Denise Góes da Costa, War Law Collegue (Brazil); larinhas@hotmail.com

This work aims to present the panorama of the transnational crime of trafficking in girls and women and their current preventive measures. To this end, reports from national and international agencies and inter-agency cooperation documents were analyzed as they enable

the exchange of intelligence for access to criminal networks. The impact of mixed, irregular or complex migratory flows is due to a variety of factors, however, national states do not consider the specific individual elements that motivated asylum seekers and in general the reception of migrants or displaced persons or refugees is due to the justification policies that give it a status of refuge. However, mixed and irregular migratory flows are a challenge for the state in terms of sovereignty because the people participating in these movements suffer deprivation, human rights violations and discrimination and therefore require individualized assistance. The issue is aggravated as human trafficking as a transnational crime has persisted in recent decades despite efforts to contain, prevent and punish the networks of criminal organizations involved beyond the national state. According to an Interpol report, most victims are girls between 10 and 19 years old for sexual exploitation and / or forced domestic work. In general, they are chosen according to their vulnerabilities and trafficked between countries based on the use of coercion or deception. Upon reaching their destination, "they are stripped of their autonomy, freedom of movement and choice, being forced to work in precarious and inhuman conditions. In addition, human smuggling is related to several other crimes, including illicit cash flows, use of fraudulent travel documents and cyber crimes, as well as their connection with drug trafficking network nets. Even so, the punishment for trafficking in persons is lenient with the perpetrators and preventive measures are still insufficient to eradicate this transnational crime.

Indigenous Lives Matter: Biological Cataclysm And Themission Of The Supremo Tribunal Federal.

Rubens Beçak, São Paulo University – USP (Brazil); prof.becak@usp.br;
Rafaella Lopes, São Paulo University- FDRP/USP (Brazil); rafaellamarinelilopes@usp.br / rafaellamarinelilopes@hotmail.com

This work will reflect upon the judicial activism of the Supremo Tribunal Federal (STF) regarding the protection of indigenous peoples in the context of the Covid-19pandemic. The appalling silence of the Brazilian Federal Executive caused of the Failure to Comply with the 709 Fundamental Precept at theSupreme Court, which demanded from the Union the articulation of a Covid-19 General Coping Plan for indigenous peoples, without major results so far. The General Plan has been rejected twice by the tribunal, as the rapporteur understood it to be "generic and vague", without predictions to implement it. Nine months have passed

without anyefficient and protective articulation of such peoples considered to be vulnerable, with anestimated 16% higher mortality rate in relation to non-indigenous. The Brazilian federalgovernment, from the beginning, has shown itself as an enemy of the environment and indigenous people protection agenda, leaving the Judiciary to decide on itsunconstitutional omissions. Although the STF proved to be an activist in the case, itdoes not have the power of formulating and executing resolutive policies in this regard.This leads us to question what the court's real limits are when deciding on theexecutive's omissions, which proved to be ineffective in defending the indigenous people's right to life, and to defend a more incisive role of the Supreme Court in the face of the imminence of a new biological cataclysm.

WOMEN'S INCARCERATION IN BRAZIL – THE UPR COLLABORATIVE EXPERIENCE BRAZIL & UK PAPER SESSION

ABSTRACTS

Female Incarceration and Health: A Dialogue Between the Universal Periodic Review (UPR), the Bangkok Rules and Public Policies in the Brazilian Penitentiary System

Ana Paula Faria Felipe, Universidade Estácio de Sá/UNESA (Brazil);
anapaulaffelipe@gmail.com;
Carlos Manoel Nascimento, Universidade Estácio de Sá/UNESA (Brazil);
carlosmanoelnascimento@hotmail.com

One of the responsibilities of the UN Human Rights Council is to periodically review the human rights situation in member states through the Universal Periodic Review (UPR), which analyzes the extent to which these states respect their human rights obligations. The present research has as a guiding question the analysis of the referred Recommendations related to female incarceration with a cut in the health care of these women and observing if it is respected by the system through laws, normative acts and public policies. The research is carried out within the scope of the international academic cooperation project between the Estácio de Sá; University (PPGD / UNESA) and Birmingham City University.

Public Rights and Policies in Brazilian Jail: Jail and Maternity

Maria Rodrigues Freitas, Universidade Estácio de Sá/UNESA (Brazil);
carolinarfreitas@gmail.com

The present work intends to analyze which are the rights guaranteed to women mothers imprisoned in Brazil and the public policies adopted for the realization of these rights. This work is part of broader research that is producing a UPR report to be submitted to the UN in a partnership between Estácio de Sá; University (Brazil) Birmingham City University (UK) with

the theme of female incarceration in Brazil in confrontation with the rules of Bangkok. My main hypothesis is that the conditions of incarcerated women mothers violate Bangkok's rules due to deficiency in public policies and not due to the default of domestic legislation. The research is in its initial phase, however, the data collected in official government organizations demonstrate that: 1) lack of a centralized public policy to deal with the issue, 2) difficulties in unifying and managing information about these women and children in the prison system, 3) lack of personal and physical structure to meet the guarantees of women mothers and pregnant women in prison. The methodology used by this research is quantitative and focuses on official normative acts, state databases produced by the Executive and Judiciary. It is still premature to establish any proposition about the problem faced, however, the data has demonstrated that the violations to the guarantees of the prison mothers and their children are not due to the absence of legislation on the subject, but to a gap between what the law provides and the acts of public administration that put them into practice. As a consequence, the judiciary has been called upon to intervene in the issue, but its performance is still very timid given the size of the problem to be faced. Like the proposition of this conference, this research intends to reveal a reality marked by inequality and the role of the Law to overcome them.

The Health of Incarcerated Women: Brazil's Performance in the Last Cycle of the Universal Periodic Review (UPR)

Fabricio Carvalho, Universidade Estácio de Sá/UNESA (Brazil);
fabriciofcarvalho@gmail.com

Since it was created in 2006, the UN Human Rights Council has as one of its main duties to periodically review the human rights situation in countries through the Universal Periodic Review - UPR. Through this instrument, member countries undergo evaluations carried out by other member countries, through a partnership and cooperation relationship, the fruit of which includes the presentation of recommendations to be followed by the countries surveyed Thus, the research to be developed will seek to specifically identify the recommendations on the health of incarcerated women presented in the report of the last cycle of the UPR (2012-2016) and, then, carry out the survey and analysis of data about the measures adopted internally by the Brazilian state to promote and implement such recommendations, in the administrative (public policy), legislative and judicial spheres, aiming, in the end, to outline Brazil's

performance in terms of its implementation The qualitative methodology will be used, starting with the identification of the recommendations of the last UPR cycle on the health of incarcerated women, and then, data research, normative acts, documents and reports submitted by public bodies (National Council of Justice, National Penitentiary Department, National Council for Criminal and Penitentiary Policy, Ministry of Justice, Ministry of Women, Family and Human Rights) and civil society (Coletivo RPU, Instituto Terra, Trabalho e Cidadania). Initial surveys reveal Brazil's difficulties in implementing the UPR recommendations in the researched theme.The research will be developed within the scope of the internationalization project of the Estácio de Sá; University (PPGD/UNESA).

Women Healthcare and Maternity in Brazilian Prisons: An Empirical Research for the Upr Report

Mariése Alencar, Universidade Estácio de Sá/UNESA (Brazil); mariese.alencar@estacio.br

Established by the Human Rights Council in 2006, the Universal Periodic Review (UPR) is a mechanism that involves a review of the human rights records of all 193 UN member states. The UPR is a complex procedure, composed by four phases: domestic human rights information collection; interactive dialogue within the so called UPR working groups; confection and approval of final reports with other states recommendations; and monitoring of the recommendations implementation. Nowadays, the UPR is in its third cycle and data collection of human rights situation is in course. This research intends to contribute to the UPR report confection regarding the situation of female incarceration in Brazil, specifically, women healthcare and maternity within prisons. This is an empirical investigation, focused in the academic production about the theme from 2017 to 2019. A quantitative search was performed, using incarceration as keyword, in the Catalog of Thesis and Dissertations provided by the *Coordenação de Aperfeiçoamento de Pessoal de Nível Superior* (CAPES), an institution linked to the Brazilian Minister of Education. A total of 272 works were found. After, a manual search identified works related only with female incarceration and they were classified by the human rights issues they addressed. Among them, 20 works addressing women healthcare and maternity were selected. Currently, the selected works are being analyzed. After that, a general overview about human rights conditions of Brazilian female prisons, based on the Academia

perspective, can be obtained, which can give important insight to the confection of the UPR report.