

ASSOCIAÇÃO DE PROTEÇÃO E ASSISTÊNCIA AOS CONDENADOS (APAC)

**An alternative based on restorative justice or a
legitimization of the retributive system in Brazil?**



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Cover picture: the outside wall of the Itaúna APAC. Own elaboration.

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INTRODUCTION

Various countries around the world are facing a penitentiary crisis. Prisons are often overpopulated and violent places where prisoners are abandoned, and recidivism levels are high. What makes the Brazilian case exceptional are the country's extreme incarceration rates and the high levels of social inequality and exclusion reflected in the penitentiary system. Although it is clear that the prison system is highly inefficient and causes more harm than good, incarceration continues to be an attractive measure in the eyes of many politicians and citizens.

In the midst of this chaos, a bottom-up initiative has developed in recent decades. The Associação de Proteção e Assistência aos Condenados [Association for the Protection and Assistance of the Convicted] (hereafter: APAC) is proposed as an alternative prison model in response to the failure of the penitentiary system in Brazil. It started off small-scale with the work of a group of Christian volunteers that took over a prison in São Paulo in 1972 and sought to provide assistance to the prisoners. Nowadays, the APAC has grown into an elaborate method with APAC-based prisons around the world. Moreover, in the state of Minas Gerais, APACs became a public policy since 2010. The APAC seeks to humanize the prison and to promote restorative justice. At first glance, the method seems to indeed offer a more restorative way of responding to crime. However, when taking principles from restorative justice theory and applying them to the APACs, this claim becomes questionable. The aim of this research is to closely analyse the APAC method in light of restorative justice and to examine the extent to which APACs offer an alternative within a context of penitentiary crisis.

Qualitative fieldwork has been carried out in June and July 2019 in Rio Grande do Sul and Minas Gerais. By combining individual interviews with focus groups as well as surveys and participant observation, the fieldwork objective was to grasp a more dynamic perspective on the penitentiary crisis in Brazil and sentencing reform, in particular with regard to the APAC prisons. Participant observation took place in the APAC of Porto Alegre and the APAC of Itaúna. Interviews and focus groups were carried out with experts in the field of law and restorative justice and surveys were completed by the residents of Itaúna.

This paper is structured into three chapters. The first chapter will provide a theoretical framework. One of the central questions is the role of the prison and its alleged failure. Can we indeed speak of a failure of the penitentiary system, or is the prison fulfilling exactly its role? The chapter will rely on arguments from criminal abolitionism and restorative justice. These theoretical movements propose an alternative way of dealing with conflict, arguing that the prison and the current criminal justice system in general are illegitimate and inefficient by its very nature. Interestingly, in recent decades restorative justice has appeared within the penitentiary context as a guide for prison

reform. The chapter will conclude with a note on the complexity of this recent development.

The second chapter discusses the context in which the APAC has developed. It draws a general picture of the penitentiary crisis in Brazil. The main problems that can be identified are the poor living conditions in which prisoners find themselves, massive overcrowding and the selectivity of the criminal justice system. Subsequently, the chapter discusses recent attempts at reforming the Brazilian criminal justice system. The chapter reveals that although there have been a number of attempts, they have failed to effectively address the penitentiary crisis because they continue to operate within a highly punitive paradigm.

Finally, the third chapter consists of an analysis of the APAC method in light of restorative justice. The analysis follows the SWOT model and seeks to identify the strengths, weaknesses, opportunities and threats of the APAC method as an alternative against the penitentiary crisis in Brazil. A final section of the third chapter is dedicated more specifically to restorative justice and its prospects within the Brazilian context. The central hypothesis of this paper claims that although APACs inflict less harm than the traditional penitentiary system, identifying them as restorative is problematic because they continue to run along punitive lines and the APAC method runs the risk of legitimizing the prison as a logical response to conflict.

The final part of this introduction serves to acknowledge those that contributed to this research. First of all, Professor Pablo Isla Monsalve from Leiden University was instrumental as a guide throughout the research process and the writing of this paper. Moreover, the final result of this research would not have been possible without the contributions of those who participated in the interviews, focus groups and surveys. Professor Jackson Leal and the members of the critical criminology group at the UNESC (Universidade do Extremo Sul de Santa Catarina) should be acknowledged for their warm welcome and engagement in fruitful debates. Likewise, Professor Daniel Achutti and his students at the La Salle university contributed to this research with interesting insights. Moreover, one of these students in particular, Fernanda Carlan was a great companion during the visit at the APAC of Porto Alegre. From the PUC Minas (Pontifícia Universidade Católica), professor Klelia Aleixo and her students also deserve acknowledgement for their time and contributions to this research. Another group of noteworthy contributors include professor Carlos Canedo as well as Rafaella Malta and Professor Fernando Jayme from the UFMG (Universidade Federal de Minas Gerais). Their insights were crucial to the analysis and they also facilitated contact with key actors such as Valdeci Ferreira, co-founder and director of the FBAC (supervising organ of the APACs). A special thanks should go to Ferreira for making the time to answer questions that were fundamental to this research. Finally, the APACs of Porto Alegre and Itaúna should be acknowledged for opening their doors and allowing participant observation.

CHAPTER 1

PENITENTIARY CRISIS AND RESTORATIVE JUSTICE

In order to analyse the APACs as an alternative based on restorative justice within a context of penitentiary crisis, it is necessary to understand the core concepts and theories regarding the theme. This chapter will draw on insights from criminal abolitionism and restorative justice in order to establish the theoretical framework. Following a brief discussion on the penitentiary crisis, the role of the prison and the emergence of alternatives to the prison are examined. The chapter introduces restorative justice and ends with a discussion on the recent interest in restorative justice within prisons.

1.1 The penitentiary crisis

The growing prison population worldwide is a crucial factor in explaining the penitentiary crisis. Daniel van Ness argues that this growth does not necessarily result from an overall growth in population size nor rising crime rates, but rather is the consequence of political decisions. More people are being sent to prison and harsher sentences are applied. This can be explained by four factors that include: (1) increased fear of crime within society; (2) a loss of faith in the criminal justice system, which paradoxically results in an increased demand for repressive policies; (3) a growing belief that prisoners cannot be rehabilitated and; (4) a growing prevalence of retributive philosophies of punishment. Politicians have strategically taken advantage of these factors by campaigning against crime in order to gain political power. Although more and longer prison sentences have proven not to be the solution, they continue to gain significant political appeal (Van Ness, 2001).

Overcrowded prisons create a problem for a couple of reasons. By functioning at an enormous overcapacity, it is impossible to guarantee the minimum international standards for the treatment of prisoners. It also poses a challenge to internal security with the result often being gang control over the prison (Woods, 2016). Overcrowding makes the prison hard to control and results in increased violence as well as poor health and sanitation services. Moreover, it is considerably more difficult to carry out activities related to resocialization such as work, education, family visits and recreation when a prison is overcrowded (Van Ness, 2001). Finally, in overcrowded prisons it is usually impossible to classify prisoners according to the severity of their crimes and coexistence with other prisoners may entrench criminal behaviour (Woods, 2016).

It can be argued that problems related to the prison are not a recent phenomenon. Since the birth of the prison, the system has been costly for the State, unable to tackle crime and incapable of transforming individuals (Vargas, 2009). So then, why does the system persist? The idea of the prison has undergone various reforms since its beginning. However, as the following sections will show, different approaches regarding the prison have been based on similar assumptions.

1.2 The role of the prison

The argument has often been made that the prison is failing. However, what exactly has it failed to do? In order to answer that question, one should consider what the role of the prison is in relation to society. Can we talk about failure or is the prison fulfilling exactly its role? Loïc Wacquant reminds us that imprisonment is a relatively recent historical invention. Today, many regard the current prison system as something indispensable, natural and immutable, existing since eternity. However, only with the end of the eighteenth century became deprivation of liberty in itself a punishment. Prior to this moment, the prison was exclusively used to temporarily detain suspects until their real punishment was established which usually meant torture or death (2001). Once prison became the dominant response to crime, it has come to perform various roles. This section will focus on recent decades, a period that could be identified as the neoliberal and neo-conservatist era.

Authors such as Wacquant (2001), Kilduff (2010) and Müller (2012) have argued that the prison system is an important apparatus within neoliberal ideology. The implementation of neoliberal policies throughout the world was accompanied by the renaissance and reinvention of the prison (Müller, 2012). It is no coincidence that all the countries that adopted the neoliberal ideology simultaneously experienced a tremendous increase in incarceration rates (Wacquant, 2001). The decay of the Keynesian welfare state and the rise of neoliberalism in Western Europe and the United States in the 1970s were accompanied by rising mass unemployment, economic insecurity, rising inequality and poverty (Wacquant 2008 in: Müller, 2012). The world entered into a new era marked by a process of economic globalization. Labour became more precarious and at the same time, the state begins to withdraw from its function as guarantor and protector (Beiras, 2005). The result was a marginalization of certain sectors of society and consequently the penalization of marginality to deal with the negative effects of neoliberalism (Wacquant, 2008 in: Müller, 2012). Problems related to the uncertainty of the labour market that originally were regarded a collective problem, now became individualized. Individuals became responsible for their own failure instead of society and are increasingly dependent on the market rather than the state (Lea 2004 in: Beiras, 2005). In short, the 'Left Hand' of the state that illustrates social security, public health and public education was replaced by the 'Right Hand', which

governs through penal policies such as an increase in policing and use of the prison system (Wacquant, 2001). Society transformed into a so-called 'risk-society' where people became more and more obsessed with security (Beiras, 2005).

A number of authors have discussed the role of the prison in this new context. For Wacquant (2001), in the post-Keynesian era the prison fulfils three functions: 1) disciplining those facing the precarious labour situation; 2) neutralizing the most disruptive and; 3) re-establishing the authority of the state that has been reduced in other areas according to the neoliberal ideology. Similarly, Sica (2007) identifies two principal functions of the prison in the globalized world: *limpeza social* or social cleansing and controlling the population surplus or the so-called *excluidos* (the excluded). The neoconservatist logic divides society into two groups: the good citizens and the bad citizens that need to be separated in order to avoid the first group being harmed. Thereby, the prison would be legitimized through its function of protecting society. Furthermore, whenever prison as deterrence is not efficient, the solution would be to make the prison sentence more severe so that any rational person would avoid being sent to prison out of fear of the consequences (Kilduff, 2010). This discourse is based on the assumption that crime is a rational choice and by increasing the price that possible offenders would have to pay (such as a fine, a prison sentence, etc.) they would refrain from illegal activities (Beiras, 2005).

Simultaneously, the objective of resocialization is neglected and has been replaced by the objective of neutralization (Kilduff, 2010). Until the 1970s, socialist thinking as well as criminal politics were principally preoccupied with the possibilities of transforming individuals. Once the correct measures would be applied, the behaviour of the offender could be corrected in order to prevent future crime. The function of the prison within this paradigm was one of rehabilitation and reintegration (Beiras, 2005). From the 1980s on, the idea of resocialization started to gain less popularity. Not only did resocialization efforts prove inefficient as illustrated by the rising crime rates, it also became evident that society had changed and was no longer able to receive the resocialized ex-inmates (Matthews, 2003: in Beiras, 2005). It can be argued that the function of the prison depends on the needs of capitalist societies. Initially, with the emergence of capitalist societies, the role of the prison was to discipline individuals in order for them to be integrated in the labour market. At this time, the idea of resocialization was what legitimized the prison system. Nowadays, many capitalist societies face challenges of structural unemployment and underemployment and the function of resocialization no longer makes sense (Kilduff, 2010). In this context:

La pena no cumple ninguna función de utilidad de las declaradas hasta el momento. No tiene más finalidad que la de gestionar, no erradicar, eficazmente, a bajo costo, una delincuencia que se supone preexistente y normal (Beiras, 2005: 235).

Although the prison has historically been an asset of the elite to have control over the marginalized, this mechanism has never been exposed and reinforced as strongly as it did with the introduction of neoliberalism (Kilduff, 2010). The more unequal a society, the more need for a mechanism of social control (Menegat 2006 in: Kilduff, 2010).

To conclude, to say that a prison fails depends on which role is attributed to it. As this section has shown, the function of the prison in present-day capitalist societies is not one of utility but rather of management. The ulterior objective is often no longer to rehabilitate or to reduce criminality but instead to neutralize the undesired within society. Consequently, to say that the prison system is failing is based on a false assumption about the role of contemporary justice systems. One could argue that in fact, the prison is fulfilling exactly its role, according to the neo-conservatist and neoliberal ideology. For Foucault, this role has always been inherent to the prison institution:

The prison, apparently 'failing', does not miss its target; on the contrary, it reaches it, as far as it gives rise to one particular form of illegality in the midst of others, which it is able to isolate, to place in full light and to organize as a relatively enclosed, but penetrable, milieu. It helps to establish an open illegality, irreducible at a certain level and secretly useful, at once refractory and docile; it isolates, outlines, brings out a form of illegality that seems to sum up symbolically all the others, but which makes it possible to leave in the shade those that one wishes to – or must – tolerate (1995: 276).

Here, the prison is understood as an ideological mechanism which conveniently manages to control certain subjects within society while protecting others. As much as prison fails to address crime rates, it is rather successful in creating delinquency.

1.3 Alternatives to the prison

Facing the controversies of prison system regarding its legitimacy as well as its efficiency, in recent decades there has been considerable attention for alternatives in order to reduce the use of the prisons. Paradoxically, at the same time, incarceration rates continued to increase (Sica, 2007). The result being that the expansion of alternatives without reducing the prison only has led to a higher level of state control over the population without effectively tacking crime nor meeting the needs of victims and offenders (Zehr, 1990).

Authors such as Howard Zehr (1990) and more recently, Cindy Woods (2016) have argued that institutional, judicial and legislative reforms will be ineffective as long as there is not a paradigmatic shift in the way that societies view prisoners and the role of the penitentiary system. Zehr describes this paradigmatic shift as a change of lenses through which we see crime and justice and make assumptions about them. Here, a lens symbolizes the construction of reality.

Although liberal and conservative approaches to crime might seem to differ significantly at the surface, they are based on similar assumptions which include: 1) the centrality of the past and the dichotomy between guilt versus innocence; 2) the idea that crime creates a moral debt which should be paid with an abstract punishment rather than a context-based negotiation; 3) adherence to a set of procedures where context is less relevant than the justice process itself; 4) equalizing crime with the act of breaking the law rather than focusing on the actual harm done and; 5) excluding relevant actors such as the offender and the victim as well as appropriation of the conflict by the state (Zehr, 1990). Even though methods have changed, they have been based on a punitive logic, simply changing the pretext to punish. Whether it being retribution of wrongdoing, resocialization or reducing criminality, they are all justifications for maintaining the punitive model. A model that is intrinsically claiming to combat violence while being based on violent methods itself (Sica, 2007).

The problem is that the idea of 'alternative' usually implies alternative punishments rather than alternatives to punishment. Theorists and politicians often tend to propose ways to punish which are more efficient and less costly than the prison, rather than questioning fundamental assumptions about punishment itself. For this reason, alternatives usually do not have a large impact on core problems such as prison overcrowding which originally, they were intended to address (Zehr, 1990). As for Sica (2007), there is no point in introducing alternative punishments to the prison within an exclusively punitive and retributive paradigm. Section five will highlight the main features of this retributive paradigm.

1.4 The abolitionist movement

The 1960s marked the emergence of criminal abolitionism and critical criminology. Rather than identifying causes for criminal behaviour according to the positivist tradition, the new movement shifts the focus to the criminal justice system, seeking to deconstruct and delegitimize it (Vargas, 2009). Criminal abolitionism criticizes the criminal justice system and its punitive character. For the abolitionists, the existing system brings more problems to society than it solves, thus it must be abolished altogether. In addition to punishing criminals, the system is only designed to preserve an unfair, selective and stigmatizing social order (Achutti, 2017). The influence of symbolic interactionism is reflected within this line of thinking as it seeks to analyse processes of the construction of social reality (Beiras, 2005). Abolitionist thinking aims at exposing the ideological character of criminal law. Besides being selective and only representing the interest of a few, the current penal system does not solve any problems or conflicts, improve public security or reduce criminality. Instead, one may argue that it deteriorates them (Kilduff, 2010).

The abolitionist argument rests on a number of problems related to the current justice system that is argued to be, in itself, a social problem that needs to be tackled. The main problems include: 1) the system does not protect citizens nor social relations; 2) intimidation does not prevent people from committing crimes; 3) the system is selective; 4) prisoners are not being rehabilitated but instead are damaged; 5) social relations are being reduced to individual acts, ignoring complex and longstanding relationships; 6) the justice system is based on a distorted view of society with the assumption that there exists a social consensus with deviation being the exception whereas in reality, society is diverse and in constant conflict; 7) citizens are often viewed as the enemy in a state of war, exemplified by policies such as 'the war on drugs' and 'the war on crime'; 8) the system is based on values which at the same time it claims to combat such as using the violent instrument of the prison to respond to violence; 9) the justice system has a stigmatizing effect; 10) instead of repairing harm, the system inflicts more pain and finally; 11) the victim in the current justice system is absent, its role is reduced to being a mere testimony (Martínez, 1995 in: Beiras, 2005).

The abolitionist movement is not homogeneous and has manifested in various ways. Whereas some advocates have principally denounced the issues related to the justice system, others have proposed concrete alternatives. Salo de Carvalho refers to the term *guiding utopia* where abolitionism serves as a guide in the process of creating criminal policies that lead to a reduction of the use of the penal system (2002 in: Achutti, 2017). Similarly, Howard Zehr (at least in his early work) has admitted that it is perhaps too optimistic to hope for fundamental change. Retributive justice is deeply rooted in our minds as well as in our institutions. Therefore, we should recognize new paradigms as a tool to question existing, retributive, paradigms. Punishment should become marginal to a more restorative approach (1990). Others remain more critical and do not accept the fact that abolitionism is merely taken as a guide based on the idea that ultimately there could be no other way of solving conflicts since it would be impossible to change the punitive logic (Larrauri 2005 in: Achutti, 2017). The problem of utopism and the gap between scientific activities and political reality are recurrent topics in response to penal abolitionism. Various critics have argued that the limit of criminal abolitionist thinking lies in its utopian character, especially in a period characterized by a state that increasingly seeks to control crime. In response, Scheerer has argued that although it is difficult to imagine the end of the current justice system, it should be no reason to stop criticizing the system nor to discard the ultimate objective (1997 in: Beiras, 2005). Moreover, abolitionism has already proven to have had an influence on reality by exposing the exceedingly punitive character of contemporary justice systems and by inspiring alternatives (Beiras, 2005). Similarly, Achutti has argued that:

It is indeed possible to identify clear propositional-constructive aspects in the abolitionist criticism [...] penal abolitionism has not only posed negative criticisms to the penal system; it has also presented itself as one of the most important alternatives to punishment, and not a mere alternative punishment (2017: 14).

As for Sica:

Seja como um 'meio caminho' ou como 'utopia orientadora', é inegável a influência da provocação abolicionista e do pensamento crítico (2007: 16).

Ultimately, authors such as Beiras (2005), Achutti (2017) and Sica (2007) agree that the abolitionist movement has brought contributions to a new paradigm that came to be known as restorative justice.

1.5 Restorative justice

Restorative justice (hereafter: RJ) seeks to transform the way in which we perceive and respond to conflict. The literature on restorative justice offers a broad array of definitions, emphasizing different aspects. For instance, RJ can be defined as an “informal conflict management model detached from the traditional crime-punishment paradigm” (Achutti, 2017: 24). Informal, because the conflict is returned to the offender and the victim rather than being appropriated by official state institutions. This definition also highlights the fact that RJ is an alternative to the existing criminal justice system. For Salm & Leal, RJ is defined as followed:

Trabalha-se com Justiça Restaurativa como uma possibilidade de Justiça calcada em valores e relações interpessoais (multiplicidade humana e valorativa) onde se propõe a restauração da responsabilidade, da liberdade e da harmonia que existem nos grupamentos sociais (Salm & Leal, 2012: 196).

This conception of RJ focuses on the micro-level approach, which proposes that we should focus on the needs and values of those directly involved in a conflict. The authors propose that it is not specialists or professionals who should give meaning to a conflict, but rather the actors actually involved in it as a way of empowerment and a more accurate manifestation of justice. Consequently, RJ should take place outside of the state apparatus (Salm & Leal, 2012). Another definition of RJ emphasizes its primary objective, which is “restoring the victim and the community rather than punishing the offender” (Liebmann, 2007: 25). For Kimmett & Newell, the fundamental demarcating feature of RJ is the belief that in a situation where “one person has harmed another, the most useful response is to try to repair the harm done” (2006: 9). Instead of defining justice as retribution, the restorative approach defines justice as restoration without inflicting any further harm (Zehr, 1990). Sica proposes a broader definition where:

Mais amplamente, qualquer ação que objetive fazer justiça por meio da reparação do dano causado pelo crime pode ser considerada como 'prática restaurativa' (2007: 10).

Recalling the change of lens mentioned earlier, Zehr identifies two contrasting paradigms: the retributive lens and the restorative lens. The retributive lens identifies the state as victim and defines crime as a violation of the law. Justice serves to determine who is to blame and to make sure they get what they deserve. The conflict is framed between the state and the offender and is guided by a systematic set of rules. The restorative lens, on the other hand, regards crime as a violation of people and relationships. It responds by creating obligations to make things right. The process involves the offender as well as the victim and the community. Together they have looked for solutions, which are based on reconciliation, reassurance and repair (Zehr, 1990). In other words, RJ aims to redefine the concept of crime (Sica, 2007). The following table sums up the main distinctions between the two lenses, or paradigms:

Retributive lens	Restorative lens
Crime defined by violation of rules	Crime defined by harm to people and relationships
Harms defined abstractly	Harms defined concretely
Crime seen as categorically different from other harms	Crime recognized as related to other harms and conflicts
State as victim	People and relationships as victims
State and offender seen as primary parties	Victim and offender seen as primary parties
Interpersonal dimensions irrelevant	Interpersonal relations central
Conflictual nature of crime obscured	Conflictual nature of crime recognized
Wounds of offender peripheral	Wounds of offender important
Offense defined in technical, legal terms	Offense understood in full context: moral, social, economic, political

Source: Zehr (1990: 185).

In later work, Zehr recognized that the sharp contrast between ‘restorative’ and ‘retributive’ does not represent restorative values nor real life. Instead, we should consider a restorative continuum from non-restorative through partially restorative to fully restorative. The author thereby proposed six key questions, which serve as a guide to locate a practice on the restorative continuum:

1. Does the model address harms, needs and causes?
2. Is it adequately victim-oriented?
3. Are offenders encouraged to take responsibility?
4. Are all relevant stakeholders involved?
5. Is there an opportunity for dialogue and participatory decision-making?
6. Is the model respectful to all parties? (Zehr, 2002: 55 in: Liebmann, 2007).

The needs of the victim are a very important aspect of RJ. Victims want their pain to be acknowledged and validated. Although this vindication is usually answered with retribution, the alternative would be restitution. Restitution means recovering what is

lost but also has symbolic value by acknowledging the wrongdoing and responsibility. The difference with the latter is that it may be more successful at restoration (Zehr, 1990). Liebmann (2007) finds that, when asking victims what they would have wanted after the crime, they often respond with things they needed such as a return of their property, explanations and answers rather than punishment for the wrongdoer.

Another important aspect of RJ is responsibility. In the current justice system, we often confuse 'taking punishment' with taking responsibility. Upon completing a prison sentence, offenders feel that they have paid their debt to society although in reality, they have cost the state a lot of money without having considered the harm they have caused. The latter is usually not something that offenders are encouraged to do (Liebmann, 2007).

Some restorative practices involve the offender and the victim together such as in victim-offender mediation while other practices approach them separately. In case of the latter, the aim is to help the victim recover from harm while preventing the offender from committing future crime. Some dismiss the separate approach as not being restorative for not involving the actual victim. Others see any rehabilitation project with offenders as restorative, since it seeks to prevent future victims (Liebmann, 2007).

1.6 Restorative justice within the prison

Recently, there has been an increasing interest in RJ in the prison context. Not only did RJ practices start to appear within prisons, some prisons have also adopted the restorative philosophy to the methodology of the prison itself, the so-called 'restorative prisons' (Liebmann, 2007; Dhimi, Mantle & Fox, 2009). For Liebmann, "prisoners have time on their hands and could use it to put right some of the harm they have caused – or at least begin to understand the effect of their actions" (2007: 201). Still, the author also warns that we should not think that it is necessary to imprison before restorative practices can take place. The ideal situation would be to undertake these practices outside of the prison.

The interest for RJ in prison creates a controversy, considering that RJ was proposed precisely as an alternative to the prison (Albrecht, 2011). Opponents to the application of RJ to the prison argue that the objectives of the prison and the objectives of RJ are mutually incompatible. Instead of trying to improve prison conditions, we should look for alternatives that lead to a reduced use of the prison. The so-called 'restorative prisons' run the risk of serving as a new legitimization of imprisonment, dismissing the real intentions of RJ which is the reduction of the prison (Guidoni, 2003). Therefore:

Under the abolitionist perspective, restorative justice cannot fall prey to the criminal justice system, so as to avoid being relegated to the role of a mere expansionist supplement of punitive power (Achutti, 2017: 23).

Moreover, one of the objectives of RJ is to help offenders take responsibility for their acts, which involves a process of reconstruction of the self. However,

Even in today's so-called humane and open prison, the prisoner invariably undergoes a degradation process, which weakens him and makes him docile to the prison's administrative and disciplinary machine (Guidoni, 2003: 62).

Furthermore, Guidoni argues that the logic of a total institution such as the prison is vertical while the restorative logic is horizontal which means that it requires equality among all actors and symmetrical power relations rather than hierarchy (2006). Other differences between RJ and imprisonment which lead to believe that the two are contradictory include: 1) whereas for RJ the victim is a central aspect, the prison only deals with crime and the offender; 2) the prison isolates perpetrators from the community and the victim while RJ seeks to bring them together; 3) although RJ usually requires voluntary participation, the prison often erodes the prisoner's sense of control, responsibility and autonomy and finally; 4) while RJ is based on respecting people, the prison is a shaming and stigmatizing experience (Van Ness, 2007 in: Dhami, Mantle & Fox, 2009). In addition to the final point, Salm & Leal state that:

Não se pode falar em espaços restaurativos algemando pessoas [...] isso humilha o ser humano e o reduz ao nada (Salm & Leal, 2012: 202).

Some authors have taken a more positive stance regarding the potential of RJ in improving the prison system. For Dhami, Mantle & Fox (2009), considering the high levels of fear within many societies and politicians' tendencies of applying harsh criminal policies, the possibility that RJ will replace imprisonment as the dominant response to crime is minimal. Consequently, the greatest potential of RJ lies in improving the experience of imprisonment for inmates while increasing the efficiency of the institution in reducing crime. Furthermore, the authors argue that RJ and the prison have some aspects in common. These include the goal to rehabilitate, to reduce reoffending and to enhance social reintegration. Moreover, both RJ and the prison want perpetrators to take responsibility for their behaviour (ibid.). However, Albrecht (2011) argues that in reality prisons often accomplish the opposite.

Kimmet & Newell (2006) recognize the complementarity of restorative and retributive justice although they also acknowledge and respect differences between the two. RJ within the prison could contribute to humanizing the prison, improving security and reducing harm as well as promoting the reintegration of prisoners into society upon release. Nonetheless, the tension between restorative and retributive justice poses a challenge to the idea of a 'restorative prison'. The inherent characteristic of prisons is

that they are meant to be punitive, and any attempt at making them less harmful could weaken its function of retribution and deterrence. Therefore, RJ is often viewed with suspicion when applying it to the prison. On the other hand, the damaging experience of the prison stands in sharp contrast with restorative ideas. In the words of Immarigeon:

Incarceration is the institutional manifestation of the punitive impulse that restorative justice is designed and intended to challenge (2004: 150 in: Kimmet & Newell, 2006).

This argument is based on the idea that the only objective of RJ is to divert subjects away from the prison and that the only objective of the prison is to punish and therefore, the two cannot be complementary. In addition, reconciling the two creates a risk of legitimating imprisonment. If RJ makes the prison more attractive to the courts, through 'net-widening' it might exacerbate the problem of overcrowding (Immarigeon, 2004 in: Kimmet & Newell, 2006). However, Kimmet & Newell do not fully support this view and do not see RJ and prison as opposites by definition. Instead, the perceived incompatibility between the two might, in fact, create opportunities for transformation (2006).

Authors have explored various areas within the prison system where RJ can make a difference. Some prisons undertake projects working with and for the community. For Liebmann (2007), what makes these projects restorative is the fact that inmates assume responsibility while the community starts seeing them in a more positive light. Moreover, prison projects with the community facilitate the reintegration of the offender upon their release. Another example of the influence of RJ on the prison is its impact on the relationships within the institution itself. Whereas prisons can be violent places, some prisons handle incidents within the prison in a restorative manner (ibid.). Other possibilities for restorative approaches within the prison lie in meeting the needs of victims, making amends, offender restoration, rehabilitation, and maintaining family ties (Kimmet & Newell, 2006). Moreover, RJ may help inmates to understand the impact of their crimes and to identify the causes for their behaviour as well as improving their self-esteem and social skills in order to build healthy relationships within the prison and upon release (Dhami, Mantle & Fox, 2009). Finally, the so-called 'restorative prisons' work toward an entirely restorative approach. They seek to adopt restorative ideas to all aspects of the way that a prison operates. Still admitting that imprisonment is not the most restorative thing to do, for Liebmann "it means making the most of things when people have to be locked up" (2007: 249).

Then again, Guidoni (2006) does recognize the positive effects that RJ can have on the prison by making it more humane and democratic as well as fostering reintegration. However, these positive influences often come at the cost of legitimizing the prison and co-opting RJ into the prison's ideology of punishment. Therefore, RJ should not be treated as a policy for prison reform but rather should be embraced as an alternative to the prison.

We can conclude that the influence of RJ on prisons is rather controversial. The main criticism comes from the fact that RJ might be used as a tool to legitimize the prison whereas it was designed to reduce the prison. The prison has proven to be an illegitimate and inefficient institution. According to movements such as critical criminology and abolitionism, the prison system only exists to maintain an unfair social order. Meanwhile, some authors have also emphasized the fact that we have to face reality and they consider the abolition of the prison system as utopic. Therefore, RJ should be used to make the best of a situation which is unlikely to change. Hence, the idea of 'restorative' can be understood in multiple ways, or in varying degrees, which raises the following question: is it possible to inflict pain (imprisonment) and restore (the offender as well as the victim) at the same time? Or should we be more careful with identifying practices as restorative? The following chapters will place this dilemma in the Brazilian context and offer an analysis of the APAC method, which is considered a so-called 'restorative prison'.

CHAPTER 2

PENITENTIARY CRISIS AND SENTENCING REFORM IN BRAZIL

This chapter will discuss the context in which the APAC has developed. First of all, it will draw a general picture of the penitentiary crisis in Latin America and more specifically in Brazil. The main problems that can be identified are the poor conditions in which prisoners find themselves, massive overcrowding and the selectivity of the criminal justice system. These findings will be supported with statistical data of the prison as well as the prison population. Subsequently, the chapter will identify sentencing reform proposals and restorative initiatives in recent decades in Brazil. Finally, the APAC method will be introduced with a brief historical overview.

2.1 Penitentiary crisis in Brazil

Latin American prisons are usually associated with overcrowding, understaffing, limited provision of services, informality and self-organization on part of the inmates. With regard to the latter, rather than the state, in Latin America it is often inmates themselves who are in charge of the de-facto governance of prisons which is a distinctive feature of the region (Hathazy & Müller, 2016). Moreover, chaos, human rights abuses, violence and transnational criminal networks often characterize prisons in Latin America. Many penitentiaries also fail to rehabilitate inmates and are unable to reduce fear and insecurity within society (Macaulay, 2013). In Brazil, the majority of prisons lack hygiene, light, ventilation, adequate alimentation and space (Câmara dos Deputados do Brasil, 2009). Despite the inhumane conditions within Brazilian prisons, the public continues to support mass incarceration and the careers of politicians often depend on a harsh stance towards crime (Medina, 2016). A context of insecurity, despair and impunity gives rise to expressions such as “bandido bom é bandido morto” [a good bandit is a death bandit] and “olho por olho, dente por dente” [eye for eye, tooth for tooth] (Câmara dos Deputados do Brasil, 2009).

Recalling the argument by Van Ness in the first chapter, claiming that light levels of incarceration are largely the result of the politicization of crime, Brazil is no exception in this regard. Starting from the 1970s, the theoretical and academic bases that legitimize harsher criminal policies were imported by the Latin American countries from the United States (Kilduff, 2010). Throughout the last decades, nearly all Latin American countries experienced a so-called ‘rebirth of the prison’ (Hathazy & Müller, 2012: 113). As pointed out by Rodrigo Nunes, Brazilian legislators were also “not immune to zero-

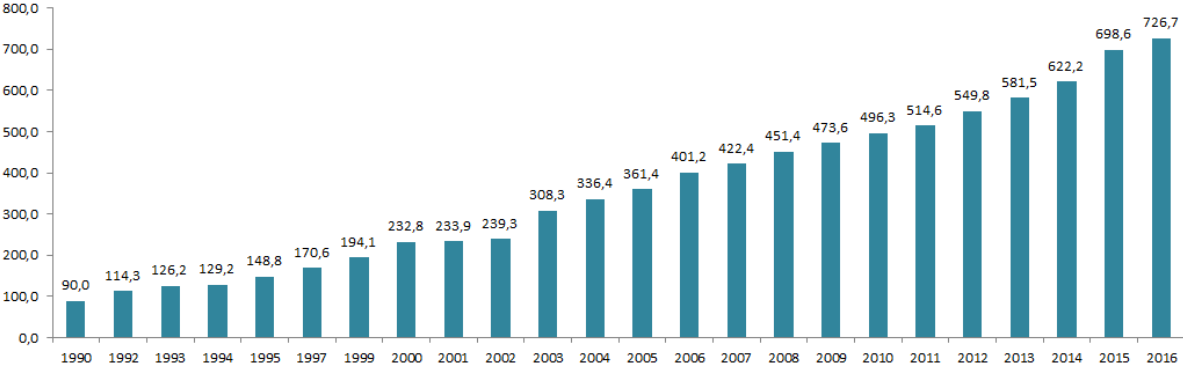
tolerance discourses emanating from the United States” (2014: 128). In Brazil, with the end of the military dictatorship in 1985, the transition to democracy went hand in hand with the building of a highly punitive criminal justice system (Nunes, 2014). Crime started to gain a strong presence in political discourse. Politicians wanting to take a soft approach toward crime were not elected while those promising tougher measures gained widespread popularity (Medina, 2016). Moreover, with the return to democracy, sub-national levels gained more power which created new demands. As a means of consolidating their political position at the state and national level, governors made crime control issues their priority (Hathazy & Müller, 2016). In a so-called ‘penal populist fashion’ (ibid: 118), governors became dominant in determining penal policies and controlling police and prisons as well as passing more punitive laws. Actions at the local level were intensified by changes at the national level with the consolidation of national security plans and a massive expansion of police and judicial bureaucracies (Hathazy & Müller, 2016). In the year 1990, the *Lei dos Crimes Hediondos* [Heinous Crime Law] was enacted which excludes the possibilities of bail, pardons, amnesty and provisional release for a number of offenses such as rape, terrorism and drug trafficking (Nunes, 2014). An analysis of the norms adopted by the criminal justice system in Brazil approved between 1989 and 2006 reveals that 47 per cent led to increased minimum prison sentences or created new categories of criminal behaviour. Simultaneously, only 23 per cent expanded the rights of the prison population or broadened the possibilities for alternatives to imprisonment (Campos, 2010 in: Nunes, 2014).

To illustrate the effects of these developments, data provided by INFOPEN (Sistema de Informação Penitenciária)¹ reveal that between 1990 and 2016, the prison population in Brazil grew by 707 percent (see fig. 1). Not only the total prison population but also the percentage of pre-trial detainees increased —from 18 percent in 1990 to 43 percent in 2010— because the expansion of police and punitive legislation was not accompanied by, a similar increase in the capacity of Brazilian courts (Hathazy & Müller, 2016). In the year 2016, 40 percent of the prison population consisted of pre-trial detainees who were yet to be judged and sentenced (INFOPEN, 2017). Figure 2 illustrates the increase in pre-trial detainees. Moreover, only 45 percent of the prison facilities kept record of the time that these pre-trial detainees were imprisoned where 47 percent had been awaiting their trial and sentencing for over 90 days (INFOPEN, 2017). This means that the majority of prison facilities do not keep a record of how long people are in pre-trial detention, which exposes the lack of an efficient prison administration. Medina (2016) attributes a large share of the prison overcrowding problem to the lack of custody hearings. Besides it being a problem for practical reasons, the lack of custody hearings also is in conflict with human rights standards. Custody hearings are meant to prevent unlawful and arbitrary imprisonment of crime suspects while they await trial. In Brazil, the criminal justice system frequently does not provide detainees with this fundamental

¹ INFOPEN is a database providing statistical information of the Brazilian prison system. Data collection is carried out by the National Penitentiary Department (DEPEN) and the Ministry of Justice and Public Security. Data is collected via surveys completed by penitentiary administrations throughout the country.

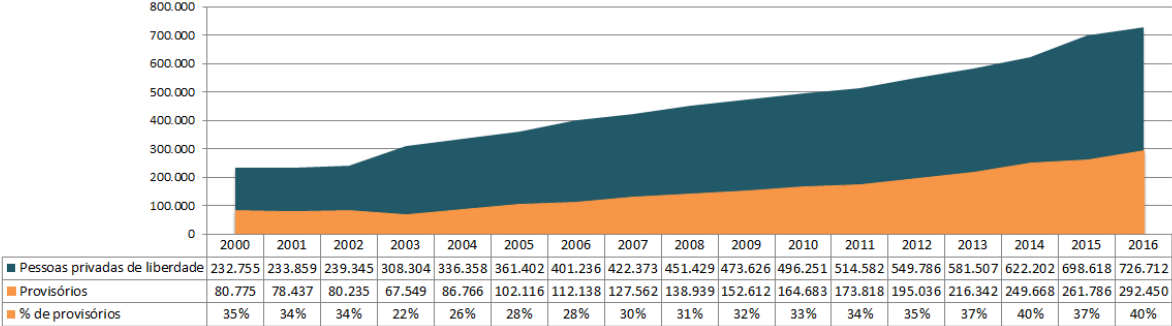
due process guarantee. Consequently, there is a culture of ‘arrest first, ask later’ with many detainees in pre-trial detention without formal charges, accommodated alongside convicted criminals (ibid.).

Fig. 1. Evolution of the prison population between 1990 and 1960 in Brazil.



Source: INFOPEN (2017: 9).

Fig. 2. Evolution of the number of pre-trial detainees between 2000 and 2016 in Brazil.



Source: INFOPEN (2017: 14).

Thus, besides the political explanation that more people are being sent to prison for longer times, due to institutional incapacity of the system overcrowding also results from the fact that the system is simply not capable of processing the high number of detainees. Not only the courts but also the prison facilities seem to lack capacity to respond to the exponentially growing prison population. In 2016, the penitentiary system in Brazil counts 726.712 prisoners while the deficit of prison places accounts for 358.663 (INFOPEN, 2017) which means that penitentiary facilities operate at almost twice their capacity.

Hathazy & Müller (2016: 120) perhaps best describe two factors that have led to the rising prison population across the region:

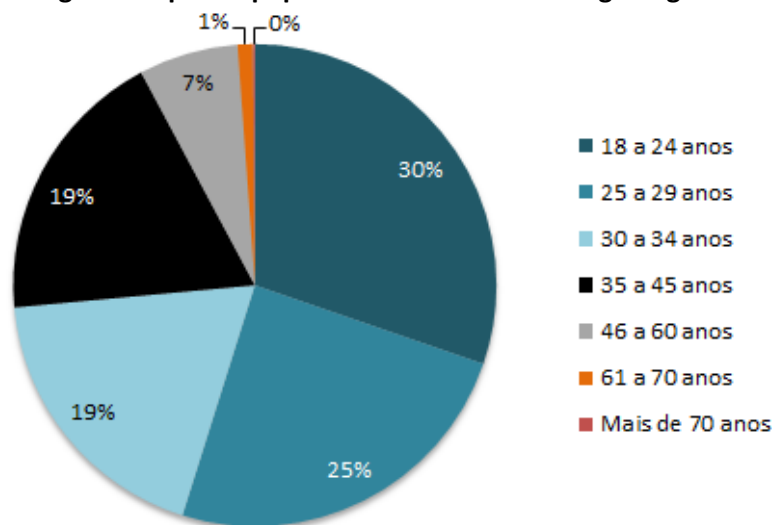
In a region where the impartial legal dimension of the exercise of state power, including court practices and those of the prosecuting offices, has been historically weak, the expansion of police powers and judicial capacities along with the passing of more punitive legislation, unsurprisingly led to an increase in the region's prison population.

Müller (2012) applies the idea of the neoliberal penal state to the region of Latin America and finds some differences compared to 'first world' countries. First, the rise of the penal state in Latin America has reinforced the exclusionary character of Latin American societies within the prison system. Second, Latin American penal states tend to expose more arbitrary, violent and illegal forms of punishment. More specifically, Wacquant analyses the Brazilian context and finds that:

In a context of extreme inequalities and rampant street violence backed by a patrimonial state that tolerates routine judicial discrimination by both class and colour and unfettered police brutality, and considering the appalling conditions of confinement, to impose punitive containment on the residents of declining *favelas* and degraded *conjuntos* is tantamount to treating them as *enemies of the nation* (2014: 1697).

The militarization of poverty in Brazilian cities exposes the ulterior logic of penalization that is selectively targeting the subordinated and marginalized classes (Wacquant, 2014). The prison system in Brazil is inherently elitist and those from the lowest social classes suffer the most from the increasing punitiveness (Medina, 2016). In order to illustrate the selective character of the prison system in Brazil, data by INFOPEN reveal the composition of the prison population according to age, race, and education. With regard to age (see fig. 3), young people seem to be overrepresented within the Brazilian prison system. Whereas the group between 18 and 29 years old represents 18 percent of the total Brazilian population, they account for 55 percent of the prison population (INFOPEN, 2017).

Fig. 3. The prison population in Brazil according to age.



Source: INFOPEN (2017: 30).

Data on race (see fig. 4) show that although black people make up 53 percent of the total Brazilian population, within the prison they account for 64 percent.

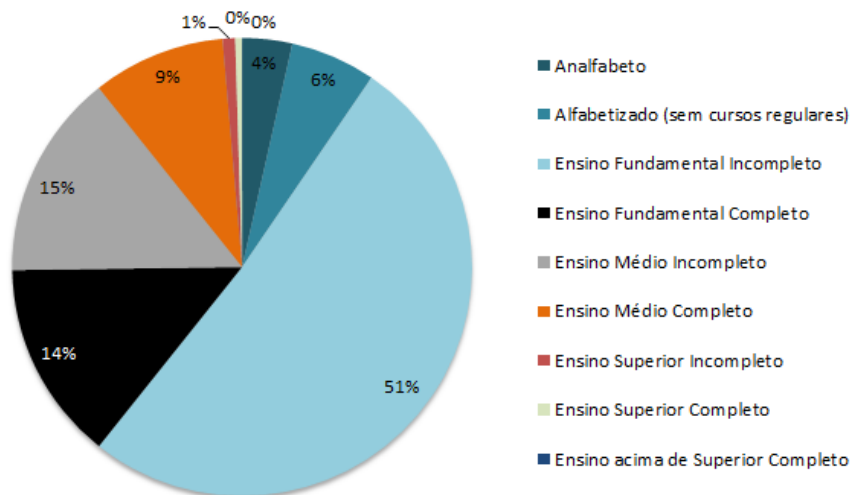
Fig 4. The prison population in Brazil according to race in comparison with the composition of the total population.



Source: INFOPEN (2017: 32).

Regarding education level (see fig. 5), data reveal that the largest segment of the prison population is represented by inmates with low education levels. Half of the inmates have not completed elementary school.

Fig. 5. The prison population in Brazil according to education level.

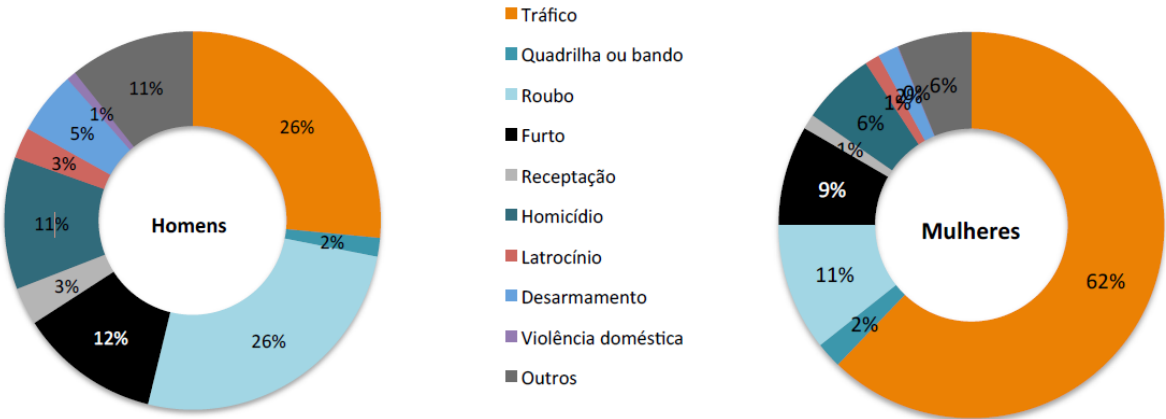


Source: INFOPEN (2017: 33)

It can be concluded from these data that the typical profile of the prison population is young, non-white, and poorly educated. Increasing punitiveness predominantly affects the lower classes and the black population, which undermines the development of a social order based on legal equality (Nunes, 2014). Here, one should not assume that these groups within society are more likely to commit crime. Instead, these numbers reveal the selectivity of the criminal justice system that criminalizes and targets the marginalized sectors (Hathazy & Müller, 2016).

Data from INFOPEN also provide information on the categories of crime for which individuals are in prison or are awaiting their judgement. In 2016, 28 per cent accounted for drug trafficking. Furthermore, robbery and theft made up 37 percent of this group and homicides represent 11 percent. Proportionally, crimes related to drug trafficking are principally found among women while robbery and theft are overrepresented by men (See fig. 6).

Fig. 6. Gender distribution of crimes among the prison population.



Source: INFOPEN (2017: 43).

2.2 The Law of the Execution of Sentences (LEP)

Brazil is a federal republic composed of twenty-six states and the Federal District, Brasília. Each state has the legal, political and financial structure to manage their own prison administrations although they must comply with the centrally established *Lei de Execução Penal* [Law of the Execution of Sentences] (LEP) which is argued to be one of the most advanced legal apparatuses in the world (Câmara dos Deputados do Brasil, 2009). The current LEP was adopted in 1984 with the enactment of Law No 7.210 and provides guidelines for the penitentiary system. These also include the basic human rights of prisoners, to which all states are obligated to adhere (Medina, 2016).

Three principal objectives of the LEP can be identified which include: 1) welfare of the prison population; 2) the need for classification and individualization of sentences and; 3) assistance and discipline (Marques, 2009).

Art. 3. Ao condenado e ao internado serão assegurados todos os direitos não atingidos pela sentença ou pela lei. Não haverá qualquer distinção de natureza racial, social, religiosa ou política (Lei de Execução Penal, 1984).

Art. 5. Os condenados serão classificados, segundo os seus antecedentes e personalidade, para orientar a individualização da execução penal (Lei de Execução Penal, 1984).

Art. 10. A assistência ao preso e ao internado é dever do Estado, objetivando prevenir o crime e orientar o retorno à convivência em sociedade (Lei de Execução Penal, 1984).

In the LEP, assistance to the prison population is subdivided into material assistance, health assistance, legal assistance, educational assistance, social assistance and religious assistance that should all be provided by the state. Material assistance consists of the provision of food, clothing and hygiene facilities. Health assistance includes preventative as well as curative health care for prisoners in the areas of medical, pharmaceutical and dental care. Legal assistance means the provision of a lawyer to those who cannot afford one on their own. Educational assistance consists of schooling as well as professional training for prisoners. The purpose of social assistance is to support and prepare the prisoners for their return to freedom. Finally, religious assistance means to allow prisoners to participate in religious activities as well as to possess religious instruction books without imposing any particular religion or forcing prisoners to participate in religious activities (Lei de Execução Penal, 1984).

Despite excellent legislation, prisoners in Brazil are often treated worse than animals (Câmara dos Deputados do Brasil, 2009). In 2009, the *Câmara dos Deputados do Brasil*² published a report on the conditions within Brazilian prisons. The rapport reveals that the majority of prisons fail to adhere to the basic principles established in the LEP. For example, regarding material assistance, the majority of prison facilities do not offer the minimum standards for a dignified life. Social, legal, health and educational assistance are likewise very poor. With respect to classification and individualization, due to overcrowding and the lack of space, many prisons also fail to adhere to the LEP in this area (Câmara dos Deputados do Brasil, 2009). Although the LEP defends the integrity of prisoners, in reality this aspect is often not applied. Some have argued this to be the main cause of the penitentiary crisis, which could thus be solved by simply applying the LEP. In other words, the penitentiary crisis is not the result of the lack of laws but rather of an ineffective application of existing laws (Andrade & Ferreira, 2015).

² See: <http://bd.camara.gov.br/bd/handle/bdcamara/2701> accessed on 25/10/2019

2.3 Sentencing reform in Brazil and the results

In recent decades, the Latin American countries have been forced to rethink policies regarding their prisons due to either external pressure or circumstances (Macaulay, 2013). Resulting from a crisis of legitimacy and efficiency of the criminal justice system, the need for reform has become evident (Sica, 2007). This section will give an overview of the attempts at reforming the Brazilian criminal justice system and the regulation of alternative sentences. Despite a highly punitive criminal justice system and few electoral incentives, there have been a number of initiatives which contradict the so-called 'zero-tolerance' framework within Brazil and which have a potential impact on incarceration rates (Nunes, 2012). According to Nunes, these initiatives can be explained by several factors. First, there is a growing concern among transnational activists with the increasing rates of incarceration and their consequences which leads to pressure for reform. Yet, the influence of these groups on elected officials remains limited. Another factor is the ideological orientation of the government. The Cardoso, Lula and Rousseff administrations opposed themselves to the *mano dura* policies and proposed to reconcile citizen security with civil rights protection. Similarly, this argument is insufficient because it only focuses on the executive branch. The final and perhaps most important factor is the position of autonomous state agencies, operating insulated from patronage networks and enjoying broad mandates to shape policy. Thereby they overcome political barriers to adopting softer sentencing rules such as the short-term solutions of politicians and the lack of solidarity among the electorate (ibid.).

2.3.1 Law No 7.209: general reform of the Penal Code and the introduction of alternative sentences

The first step towards alternative sentencing in Brazil came with the general reform of the Penal Code in 1984 when the Ministry of Justice and human rights advocates took advantage of the transition to democracy and the decline of conservatives from the military regime (Nunes, 2012). The regulation of Law No 7.209 enabled the possibility of substituting less than one-year prison sentences for non-prison sentences. These alternative punishments included community service or temporary suspension of rights for instance (Souza, 2013).

2.3.2 Law No 9.099: Juizados Especiais Criminais

Another noteworthy attempt at reforming the criminal justice system has been the creation of the Juizados Especiais Criminais (JECrims) with the enactment of *Law No 9.099* in 1995. The objective was to increase access to justice by changing regular mechanisms of prosecution for low-level crimes, based on orality, simplicity, informality, procedural speed, reparation of harm done to the victim and alternative sentences (Art. 62). The law aims at reducing the number of cases that would eventually arrive at the criminal courts by solving them in a more efficient and quick manner (IPEA, 2015).

Art. 62. O processo perante o Juizado Especial orientar-se-á pelos critérios da oralidade, simplicidade, informalidade, economia processual e celeridade, objetivando, sempre que possível, a reparação dos danos sofridos pela vítima e a aplicação de pena não privativa de liberdade.

2.3.3 Law No 9.605 and Law No 9.714: broadening the scope of alternative sentences

In 1998, Law No 9.605 and Law No 9.714 were enacted. These laws increased the options for alternative sentencing. Furthermore, the applicability of alternatives increased from one to four-year sentences, provided that the criminal acts did not involve violence and that the criminal subjects do not pose a serious threat (Souza, 2013).

2.3.4 Law No 11.343: Drugs Law

More recently, in 2006, Law No 11.343 was enacted, also known as the *Lei de Drogas* [Drugs Law]. Through this law, the justice system sought to distinguish between drug related issues understood as crime and those identified as health issue (Souza, 2013). With the enactment of the Drugs Law, drug trafficking continued to be a reason to incarcerate and prison sentences, in fact, increased from three to five years. However, simultaneously, the Law sought to decriminalize the consumption of drugs. Whereas previously, those accused of carrying or cultivating drugs for individual use would receive a prison sentence between 6 to 24 months, the Drugs Law substituted this measure for non-prison sentences (Braga, 2017) such as community service as well as educational or health care programs (Souza, 2013).

2.3.5 Law No 12.403: Preventative Measures Act

In 2011, the Rousseff administration approved a number of alternatives to pre-trial detention of non-violent offenders (Nunes, 2012). The regulation of Law No 12.403, known as the preventative measures act, was meant to ensure that judges would prioritize alternative measures as listed in the Criminal Procedure Code and apply pre-trial detention only as a last resort (Medina, 2016).

The following figure summarizes the principal laws regarding alternative sentencing and criminal justice reform, aimed to reduce the use of the prison.

Fig. 7. Principal laws of sentencing reform in Brazil.

Year	Legislation	Description
1984	Law No 7.209	General reform of the Penal Code and the introduction of alternative sentences
1995	Law No 9.099	Establishes Special Criminal Courts (JECrims) and the introduction of restorative principles.
1998	Law No 9.605	Broadens the scope of alternative sentencing in case of environmental crimes
1998	Law No 9.714	Extends the previous law to other types of crime.
2006	Law No 11.343	Introduces non-prison sentences for individual drug use and cultivation
2011	Law No 12.403	Introduces alternatives to pre-trial detention

Source: Own elaboration.

2.3.6. Results

These analyses reveal that despite the existence of a society demanding harsh punishments and a punitive state apparatus, reforms and alternative punishments have been proposed and regulated in Brazil. The question remains whether these alternatives have had positive effects in terms of providing a solution to the penitentiary crisis in Brazil. The following analysis will claim that largely, measures were either not effective, produced undesired results or, in fact, form part of the problem rather than the solution.

As for the Preventative Measures Act from 2011:

Unfortunately, even after its enactment, surveys administered by civil society administrations demonstrate that the legislative efforts have not yet had an impact on judges' reasoning, who continue to justify pre-trial detention as the best measure for those being accused of crimes (Medina, 2016: 604).

Within the year 2012, 61.3 per cent of the *flagrante delicto* (caught in the act) arrests resulted in pre-trial detention (Sou da Paz, 2013 in: Medina, 2016: 604). This reveals that despite the regulation of alternative measures to pre-trial detention, judges seem unwilling to apply them in the majority of cases.

In case of the Drugs Law from 2006, there are arguments that the aim of shifting drug users from the penitentiary system to the health system has not achieved its results. In fact, the enactment of the law resulted in an increase of the prison population by further criminalizing the trafficking of drugs (Braga, 2017). Whereas in 2005, the number of prisoners accused of drug-related crimes accounted for 32.880, in 2013 this number increased to 146.276 (Campos, 2015 in: Braga, 2017). It can be argued that there are too

many subjective criteria through which police, prosecutors and judges eventually have the power to decide who receives a prison sentence and who deserves a different treatment. The victims of this increased discretion frequently tend to be the young, poorly educated, black and those living in the periphery (Braga, 2017).

Regarding the JECrims, although on paper they promised valuable results – also in terms of being based on restorative principles – the reality was different.

Após dez anos de vigência, constata-se que os juizados especiais criminais pouco contribuíram para a remodelação do paradigma arcaico da justiça penal, não trouxeram nenhum progresso no campo da resolução de conflitos e, mesmo em relação ao objetivo utilitário de celeridade e desobstrução do sistema de justiça, não se verificaram resultados expressivos (Sica, 2007: 227-228).

Besides the fact that the JECrims were not able to reduce the number of cases for the traditional courts, they represented an appropriation of new mechanisms by old practices of the traditional justice system (Achutti, 2016). Achutti summarizes the negative effects of the implementation of JECrims:

1) a importância dos mecanismos conciliatórios foi negligenciada, com a consequente ausência de qualquer diálogo entre vítima e ofensor; 2) houve um descuido acentuado em relação aos interesses da vítima, com foco voltado ao acusado, especialmente através do amplo uso da transação penal; 3) a sobreposição dos atores jurídicos em relação às partes é notória, com predominância do uso de linguagem técnica; 4) quase não se verificam conciliações nos casos concretos, o que não colabora para a solução efetiva do conflito que envolve as partes (2016: 181).

Besides not achieving promised objectives nor genuinely departing from traditional justice mechanisms, the JECrims also produced undesired results. Through net widening, the institutionalization of mediation in the area of criminal justice led to the criminalization of a large number of minor conflicts, which before the enactment of Law No 9,099 were not relevant for the criminal justice system (Sica, 2007).

The failure of the JECrims can be attributed to a criminal justice system that is unprepared for distinct forms of dealing with conflict and unable to successfully carry out the project. Nonetheless, there are also certain aspects inherent to the project itself that are problematic which include the focus on simplification and speed (Sica, 2007).

A busca pela máxima produtividade, aliada ao critério da celeridade, aparecem como obstáculos à reparação da vítima e à opção por processos que realmente proporcionem o diálogo entre as partes, frustrando a possibilidade de estabelecer uma nova maneira de administração de conflitos (Achutti, 2016: 155).

The aim to be effective and to process an enormous amount of cases in a short period undermines the aim to genuinely transform the traditional way in which justice is sought.

2.3.7 General conclusions from alternative sentencing proposals in Brazil

More generally, attempts at reforming the Brazilian criminal justice system have had no real impact on incarceration rates due to the fact that the profile of the subjects that receive alternative sentences is different from the prison population (Souza, 2013). In other words, the target group for alternative sentences would not be considered for prison in the first place.

It is hard to believe that it is coincidental that in the same period in which the scope for alternative sentences was broadened, there was also an increase in the criminalization of new behaviours (Souza, 2013). Since 1988, 869 new categories of criminal behaviour were created of which 760 were eligible for non-prison sentences (Santos, 2011 in: Souza, 2013). Consequently, because new crime categories were created, it is possible that in the same period in which there has been an increase in alternative sentencing, there has been no reduction in the workload for courts nor in incarceration rates.

In an analysis of official documents regarding sentencing reform within recent decades, Souza finds that although the problems related to the prison are recognized, and arguments are made for limited use of the prison system, the prison maintains a central position in debates on security. The prison continues to be unavoidable in order to protect society from certain subjects who are not suitable for alternative sentencing (2013). For instance, criteria, which establish if an alternative sentence can be applied include guilt, antecedents, social behaviour, personality, motives and circumstances. Through these attributes, the system distinguishes between those who have a chance at recovery and those who need to be separated from society, thereby legitimizing the existence of the prison (Souza, 2013). Rather than being alternatives *to* the prison, Souza understands reform proposals from recent decades in Brazil as alternatives *beyond* the prison (2013).

This brings us back to Zehr, who proposed that simply introducing alternative sentences would not be the solution to a penitentiary crisis as long as they operate within the punitive framework. A similar argument is also made by Souza:

Ao mesmo tempo em que possibilitam a resistência a uma certa configuração do poder punitivo, as alternativas penais somente se constituem enquanto possibilidade de resistência por não se encontrarem “fora” da configuração de poder a que se contrapõem, mas justamente num dos pontos em que ele é exercido e que por aí mesmo pode ser reconduzido (2013: 169).

2.4 Restorative justice in Brazil

Recently, several Latin American countries have shown an interest in restorative justice. Often, one of the primary reasons for developing restorative justice programmes has been the urgency to relieve overcrowded courts and prisons. Moreover, existing justice systems often lack confidence and legitimacy, so countries have looked for alternatives (Liebmann, 2007). In addition to the previous section, this section will deal more specifically with RJ initiatives in Brazil in recent decades. A few initiatives in Brazil indicate an interest in RJ.

Law 9.099/95, which has been discussed in the previous section, resembles some of the restorative logic. The JECrims may be regarded as restorative for proposing conciliation and other non-punitive measures in case of low-level crimes. Restorative aspects which could be identified include: 1) seeking to re-establish harmony between those involved in the conflict and thereby including the victim; 2) *transação penal* which means the possibility of applying non-prison sentences by offering the offender a deal and; 3) conditional suspension of the process (Corrêa, 2019; Pinto, 2005). Unfortunately, as illustrated by the previous section, results have been unsatisfactory or contrary to the proposal

In 2005, the Judiciary officially introduced RJ to the Brazilian justice system by implementing a number of pilot projects followed by the institutionalization and expansion of RJ practices (Andrade et al., 2018). A few examples of restorative initiatives on the local level include (Corrêa, 2019: 21):

Year	Place	Name
2005	Brasília/DF	Projeto no Juizado Especial Criminal do Núcleo de Bandeirante
2005	Porto Alegre/RS	Promovendo Práticas Restaurativas no Sistema de Justiça Brasileiro
2006	Belo Horizonte/MG	Projeto Mediar
2006	Gaurulhos e Heliópolis/SP	Projeto Justiça e Educação em Heliópolis e Guarulhos: Parceria para a Cidadania
2008	Campinas/SP	Justiça e Educação – Novas Perspectivas

More recently, in May 2016, the CJN (Conselho Nacional de Justiça) elaborated Resolution No 255, providing for the National Policy of Restorative Justice within the realm of the Judiciary and other provisions, serving as a normative guide for those who wish to apply RJ (Conselho Nacional de Justiça, 2016). Although the CNJ applauds the increasing interest in restorative projects, it seeks to prevent misrepresentation of RJ as

well as its appropriation and monopolization (Conselho Nacional de Justiça, 2019). Therefore, the resolution aims to normalize RJ on the national level:

Considerando a relevância e a necessidade de buscar uniformidade, no âmbito nacional, do conceito de Justiça Restaurativa, para evitar disparidades de orientação e ação, assegurando uma boa execução de política pública respectiva, e respeitando as especificidades de cada segmento de Justiça (Conselho Nacional de Justiça, 2016).

Here, Restorative Justice is understood as:

Um conjunto ordenado e sistêmico de princípios, métodos, técnicas e atividades próprias, que visa à conscientização sobre os fatores relacionais, institucionais e sociais motivadores de conflitos e violência, e por meio do qual os conflitos que geram dano, concreto ou abstrato, são solucionados de modo estruturado (Conselho Nacional de Justiça, 2016).

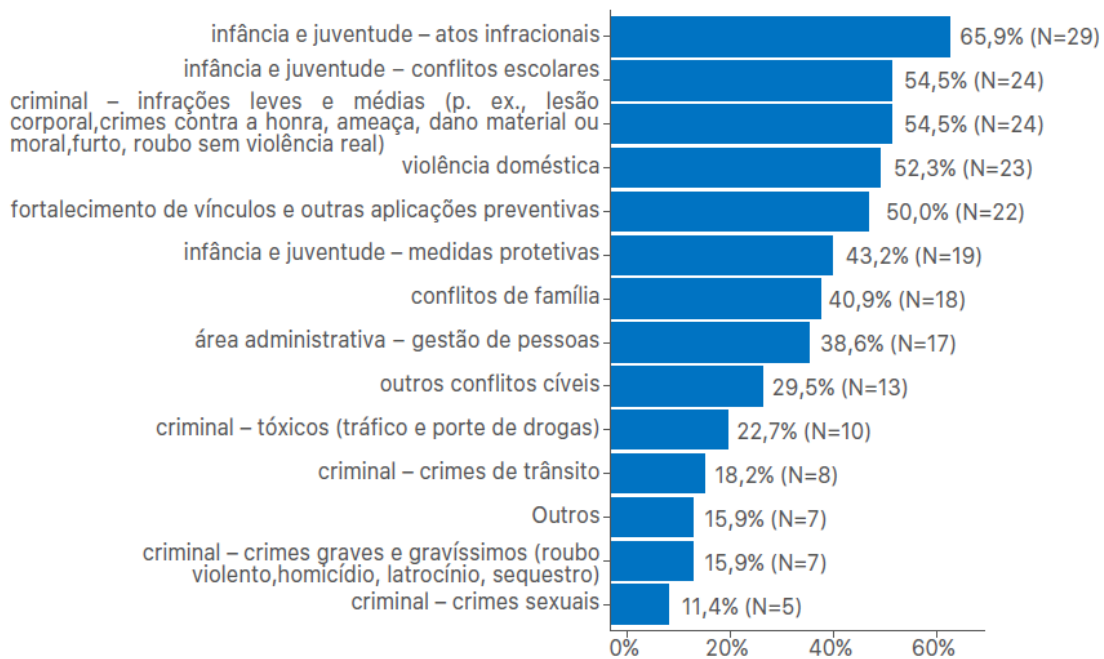
The resolution stresses the importance of participation of the offender and the victim as well as their families and other parties involved in the harmful event. The objective is to attend the need of all parties involved and to hold those who inflicted harm —directly or indirectly— accountable in order to empower the community and repair social relations.

Diante da complexidade dos fenômenos conflito e violência, devem ser considerados não só os aspectos relacionais individuais, mas também, os comunitários, institucionais e sociais que contribuem para seu surgimento, estabelecendo-se fluxos e procedimentos que cuidem dessas dimensões e promovam mudanças de paradigmas, bem como, provendo-se espaços apropriados e adequados (Conselho Nacional de Justiça, 2016).

Moreover, the resolution determined that it is the responsibility of Justice Courts to diffuse, expand, deploy and promote the creation and implementation of restorative justice opportunities. In addition, they should incentivize training of restorative justice professionals (Conselho Nacional de Justiça, 2016).

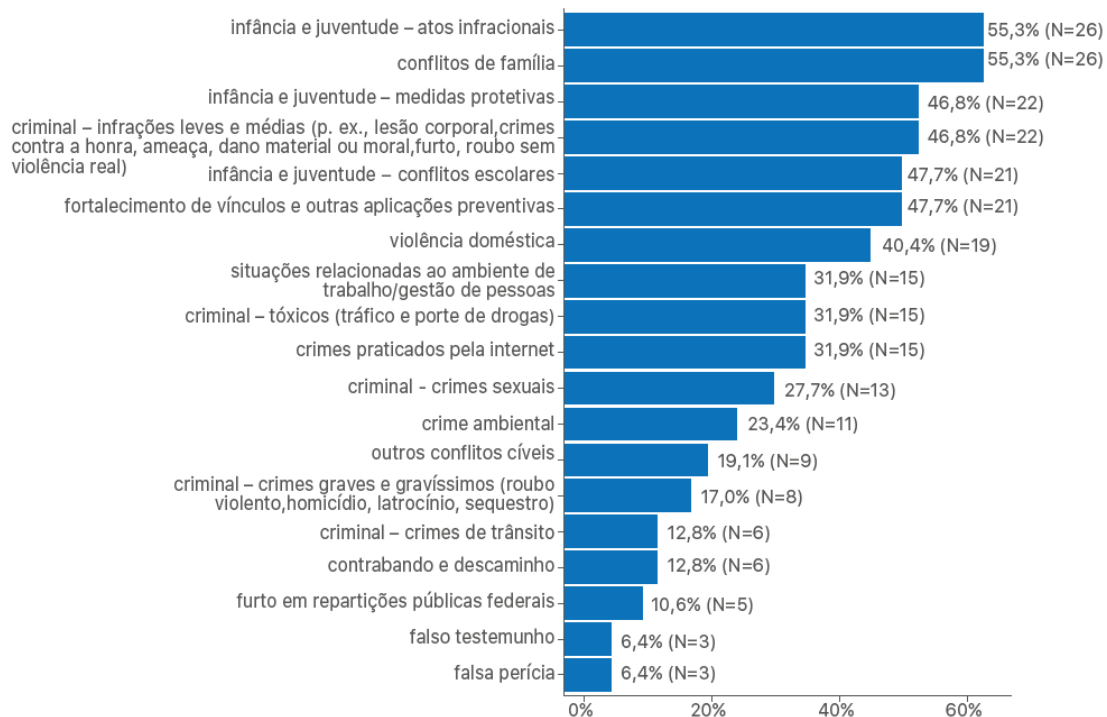
A survey carried out by the CNJ between February and April in the year 2019 provides data on existing RJ projects in the country. Surveys were filled out by 27 Courts of Justice and 5 Federal Regional Courts within Brazil (Conselho Nacional de Justiça, 2019). Figure 8 and figure 9 reveal the most popular areas in which restorative practices are applied and are wished to be applied. It can be noted that the use of RJ for more serious conflicts or crimes is less frequent. This may be due to the fact that in Brazil, RJ is yet in its experimental phase and the country is still gradually developing an adequate structure to use RJ practices in case of more serious crimes (Soares et al., 2018).

Fig. 8. Areas in which restorative practices are applied in Brazil.



Source CNJ (2019: 19).

Fig. 9. Areas of interest for training and implementation restorative practices.



Source: CNJ (2019: 38).

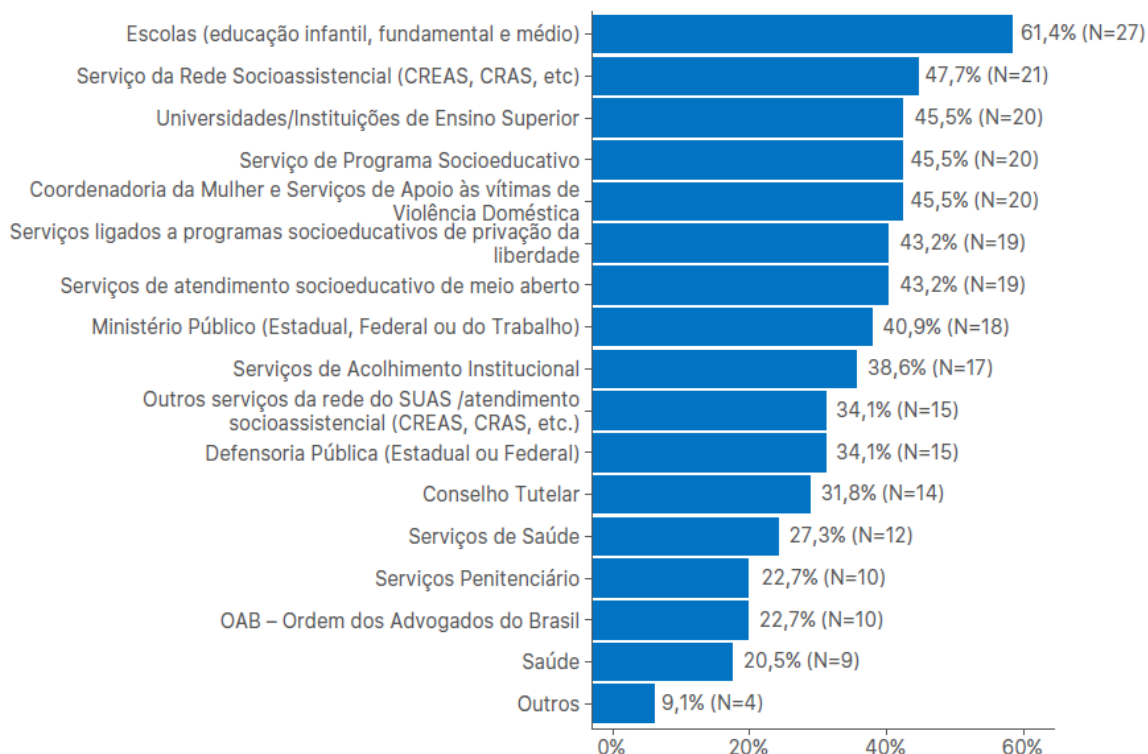
Some observers are alarmed by the fact that in the Brazilian context, restorative practices have been predominantly directed toward low-level conflicts and crimes, whether it concerns juvenile justice institutions or adults such as the JECrims (Secco & Lima, 2018). Limiting the use of RJ to less serious situations may result in a net widening of social control by absorbing...

...tais casos que normalmente receberiam apenas uma advertência policial ou seriam redirecionados a outros setores que não criminal (Morris, 2005 in: Pallamolla, 2014: 177).

This argument is reinforced by the fact that often, when there is no possibility of establishing an agreement between parties or when the offender does not comply with the 'restorative' solution, the case runs the risk of eventually being referred to the traditional justice system after all (Jaccoud, 2005 in: Pallamolla, 2014).

Figure 10 shows that although to a limited extent, restorative practices are also used within penitentiary institutions. The area, which benefits the most, is the education system.

Fig. 10. Institutions that are engaged in restorative practices.



Source: CNJ (2019: 17).

2.5 A brief historical overview of the APAC method

This section will give a brief historical overview of the APAC prisons which are proposed as an alternative prison based on a specific methodology and are argued to run along restorative lines. The origins of the APAC method can be traced back to 1972, when lawyer and journalist Mario Ottoboni, together with a group of Christian volunteers took over the Humaitá prison in São José dos Campos (SP). Initially their intention was to visit the prison to evangelize and give moral support to the prisoners.

Tudo era empírico e objetivava tão somente resolver o problema da Comarca, cuja população vivia sobressaltada com as constantes fugas, rebeliões e violências verificadas naquele estabelecimento prisional. O grupo não tinha parâmetros nem modelos a serem seguidos. Muito menos experiência com o mundo do crime, das drogas e das prisões. Mesmo assim, pacientemente foram sendo vencidas as barreiras que surgiam no caminho (FBAC, 2019 s/d).

In 1974, the Association of Protection and Assistance to the Convicted (APAC) was created as a non-profit legal entity, assisting the justice system in the execution of sentences. Now that the APAC was legally organized, its members were better able to guarantee the rights of prisoners (FBAC, 2019 s/d). The dedication of the volunteers as well as positive results resulted in an expansion of APACs throughout the country, and eventually throughout the world. The method has expanded most within the state of Minas Gerais. The APAC of Itaúna (MG) is regarded a model for all other APAC prisons (Ferreira & Ottoboni, 2016).

In order to maintain uniformity and avoid improvisation, in 1995 the FBAC (Fraternidade Brasileira de Assistência aos Condenados) was created. The FBAC is an organisation that coordinates and oversees the implementation and management of all APACs according to the established guidelines. The organisation is also responsible for expanding the method (Ferreira & Ottoboni, 2016).

Since its creation, the objective of the APAC has been to offer an alternative to the traditional prison system. APACs seek to recover inmates (in the APAC called recuperandos) in order to prevent recidivism and, as a consequence, to protect society (Ferreira & Ottoboni, 2016).

The APAC method consists of 12 fundamental elements, that, together, should be able to achieve the main objectives, which are: recovering the prisoner, protecting society, helping victims and promoting restorative justice (Ferreira & Ottoboni, 2016). These elements include:

1. Participação da comunidade
2. O recuperando ajudando o recuperando
3. Trabalho
4. Espiritualidade e a importância de se fazer a experiência com Deus
5. Assistência jurídica
6. Assistência à saúde
7. Valorização humana - base do Método APAC
8. A família - Do recuperando e da vítima
9. O voluntário e o curso para sua formação
10. Centro de Reintegração Social – CRS
11. Mérito
12. A jornada de libertação com Cristo

Currently in Brazil, there are 53 APACs already operating and 77 APACs being implemented. Regarding the ones already operating, there are 45 masculine and 8 feminine establishments. Since its creation in 1972, APACs have housed 49.072 inmates. Today, there are 3250 inmates serving time in APAC establishments. This number also includes those in *regime aberto* (see Fig. 11).

Fig. 11. Number of *recuperandos* serving time in APAC establishments.³

	Feminina	Masculina	Total
Regime fechado	174	1681	1855
Regime semiaberto intra muros	71	735	806
Regime semiaberto extra muros	12	389	401
Regime aberto	20	168	188
Total de recuperandos	277	2973	3250

Source: FBAC Website <http://www.fbac.org.br/infoapac/relatoriogeral.php> (accessed on 24/10/2019).

In 2010, the *Novos Rumos* program was created by the Court of Justice of Minas Gerais (TJMG). Through this programme, the state of Minas Gerais seeks to promote and support the implementation of the APAC method throughout the entire state and to mobilize communities and judges. The participation of the TJMG is established in Art. 6 of Resolution 633/2010:

Programa destinado a disseminar e consolidar a metodologia Apac- Associação de Proteção e Assistência aos Condenados. Compreende ações que visam ao suporte das atividades desenvolvidas pelas APACs atualmente em funcionamento e à sua instalação nas demais comarcas do Estado de Minas Gerais (Tribunal de Justiça de Minas Gerais, 2018).

³ In the Brazilian penitentiary system, prisoners have the possibility of moving from a closed regime to a semi-open regime and finally to an open regime where each time they are less supervised and gain more benefits such as temporary leave (Código Penal, 1940).

Through this resolution, the APAC method became a public policy of the State of Minas Gerais. The state should not only respond to proposals of creating more APACs, it should also actively incentivize communities to create more APACs. With regard to the latter, this includes public hearings or seminars, for instance. Other activities include promoting partnerships with the State, municipalities, private enterprises, institutions, NGOs and foundations; providing information; promoting cooperation among various social segments; supporting training for those who wish to be involved in APACs and; evaluating the results of the existing APACs (Tribunal de Justiça de Minas Gerais, 2018).

Besides the APAC method, the *Novos Rumos* program also includes other projects such as *Projeto Começar de Novo* and *Grupo de Monitoramento e Fiscalização do Sistema Carcerário, e do Sistema de Medidas Socioeducativas e de Segurança* (GMF). The general aim is to improve criminal justice management by adopting preventative measures and promoting alternative sentences as well as investing in RJ and improving the prison system. Thereby, the state seeks to reduce the number of criminal cases, incarceration rates, recidivism, impunity and social insecurity as well as to strengthen social justice (Tribunal de Justiça de Minas Gerais, 2018).

To conclude, this chapter has provided a general picture regarding the context of the penitentiary crisis in Brazil as well as recent attempts at reforming the criminal justice system. There have been many efforts to respond to the penitentiary crisis by introducing sentencing reforms and alternatives, some based on restorative logic. One of these attempts has been the creation and expansion of the APAC method. The following and final chapter will offer a more in-depth analysis on the institutionalization of APACs in Brazil and their effect on the penitentiary crisis.

CHAPTER 3

THE APAC METHOD AS AN ALTERNATIVE IN A CONTEXT OF PENITENTIARY CRISIS

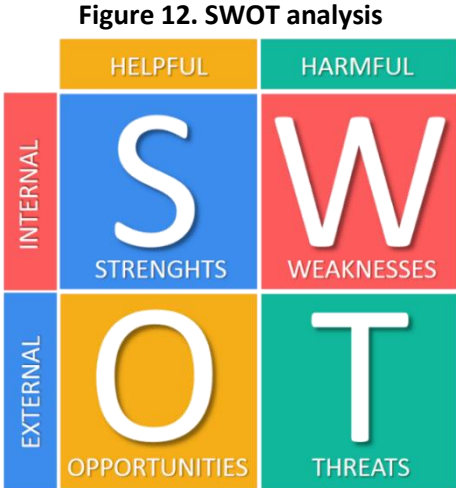
This third and final chapter will offer an analysis of the APAC method and place it in the theoretical debate and the Brazilian context that have been discussed in the previous chapters. Fieldwork has been conducted in June and July 2019 in Minas Gerais and Rio Grande do Sul. By combining individual interviews with focus groups as well as participant observation and surveys, the fieldwork objective was to grasp a more dynamic perspective on the penitentiary crisis in Brazil and sentencing reform, in particular the APAC prisons.

Participants of the individual interviews and focus groups include law professors and students as well as professionals working in the field of criminal justice and restorative justice. The interviews and focus groups were conducted at the following universities: Universidade do Extremo Sul da Santa Catarina (UNESC), Universidade de La Salle, Universidade Federal de Minas Gerais (UFMG) and Pontifícia Universidade Católica (PUC) in Minas Gerais. At the UFMG, there was also an interview with two members of the Ciranda Project of Restorative Justice, which is an extension of the Law Faculty that works with restorative justice.

Observations were carried out in the masculine APAC of Porto Alegre, which was recently created in December 2018, as well as the masculine APAC in Itaúna, implemented in 1985 and considered a model for all other APACs. Inside the APACs, it was also possible to interview inmates—in the APAC called *recuperandos*— and employees. In the APAC of Itaúna, an interview took place with the co-founder and director of the Fraternidade Brasileira de Assistência aos Condenados (FBAC, Brazilian Fraternity for Assistance to the Condemned), Valdeci Ferreira. The following analysis will mainly rely on examples from the Itaúna prison since it is the most developed and was most accessible for observation. Whenever relevant, examples from the Porto Alegre APAC will be explicitly mentioned.

Surveys were completed by the residents of Itaúna with a total of thirty-seven respondents. To date, there has been little effort to research the perception and involvement of the community in proximity to an APAC. The survey has been crucial for this analysis regarding the importance of society's perception of crime and the prison within the debate on the penitentiary crisis.

The combination of different types of research techniques allows for a thorough understanding of the APAC’s potential as well as the challenges it faces. In order to categorize findings, this analysis follows the SWOT (Strengths, Weaknesses, Opportunities and Threats) model. The SWOT model is a tool to analyse internal and external factors of an organization and categorizes them in those that are helpful in achieving the objective and those that are harmful. Recalling the previous chapter, the objectives of APAC method are humanizing the prison, recovering the prisoner, protecting society, helping victims and promoting restorative justice (Ferreira & Ottoboni, 2016). The remainder of this chapter is divided into five sections. The first four sections will each discuss the APAC method according to one element of the SWOT model. Thus, the strengths, weaknesses, opportunities and threats of the APAC method. The final section discusses the APAC method in light of restorative justice more specifically. Can APACs be considered restorative? What elements are restorative? What does this mean for the debate on restorative justice in Brazil?



Source: <https://www.business-to-you.com/swot-analysis/>

3.1 Strengths of the APAC method

3.1.1 An alternative language

The APAC adapts a different and less stigmatizing language than the traditional prison system. Inmates are called *recuperandos* which translates into those in the process of recovery or rehabilitation. Instead of numbers, inmates are labelled with their own names. Everybody, including the staff, carries a card around their neck with their name on it. Furthermore, instead of punishing, APAC uses the term recovering which implies that the main objective is to help the prisoner take responsibility and move on rather than to merely imprison. The president of the FBAC explains that the recovery process encompasses a number of aspects:

Na APAC falamos de recuperandos. Recuperar os valores, recuperar a saúde física, a saúde bucal, a saúde mental, recuperar os valores da família e do trabalho e recuperar a autoestima (V. Ferreira, interview with the author, 2019).

3.1.2 Improved living conditions

One distinguishing aspect of the APAC prisons are the descent living conditions compared to most traditional prisons in Brazil. There are relatively spacious and light dorms where each *recuperando* has his own bed. Overall, the facility is kept clean and organized, mostly by the inmates themselves. There is a very high level of discipline within the APACs and *recuperandos* are rewarded or penalized for the extent to which they keep their dorms clean and organized. In the outside area of the Itaúna APAC there are many plants, an area for recreation and a well-maintained garden as well as domestic animals. The walls in all APAC facilities are coloured light blue. According to the president of the FBAC, this colour was chosen as the result of scientific research which found that light blue induces positive behaviour.

Image 1. Yard, APAC Itaúna



Image 2. Yard, APAC Itaúna



Inside the building there is a dentist practice. Although it had been out of order for a while, due to the lack of donations and volunteers, it was currently operating. Furthermore, there is a pharmacy. Many of the pharmaceuticals are donated. Moreover, the APAC offers psychological, legal and social assistance. The APAC of Itaúna also counts with a nutritionist who is in charge of making sure *recuperandos* receive a well-balanced diet. There is a library with many books —most of which are also donated— and there are classrooms where *recuperandos* can complete their primary and secondary education. Furthermore, inmates are offered the possibility to be enrolled at a university through the so-called *universidade à distancia*⁴. For instance, one of the *recuperandos* was currently studying economics while completing his prison sentence, something that was not possible in the traditional prison. Others take part in *cursos profissionalizantes* where they learn a profession such as baker or gardener for instance. In the APAC of Porto Alegre, these options were scarce yet due to the lack of volunteers and donations.

The APAC in Itaúna offers work opportunities in each of the three prison regimes. The president of the FBAC explains the purpose of work in each of these stages:

Você tem três enfoques do trabalho. Porque a APAC, ele foi desenhado de acordo com a LEP, ela adota o sistema progressivo de cumprimento de pena. Fechado, semiaberto e trabalho externo. Para cada um desses regimes, o método tem um enfoque. Por exemplo, no fechado é trabalho artesanal, laborterapia. Para que aquelas mãos que no passado cometeram crimes agora podem ser mãos que fazem coisas bonitas. Então, o trabalho como oportunidade de reflexão interior para aquela pessoa descobrir que tem valores, potencialidades, de que ela é útil. Já no semiaberto você está mais próximo da rua, da liberdade, então, é a hora da profissionalização. Então, nas APACs nós vamos ajudar aos concursos profissionalizantes, oportunidades produtivas, cozinha, padaria, serralheria, horta, várias oportunidades de trabalho. No trabalho externo ele trabalha de dia e volta de noite para dormir na APAC. No sistema comum, poucos são aqueles que trabalham (V. Ferreira, interview with the author, 2019).

Different from private prisons, APACs are non-profit and the principal aim of work is to form part of the recovery process.

Se só o trabalho recuperasse, não precisa de APAC. As prisões privadas já teriam resolvido o problema. A lógica das prisões privadas é o lucro e a lógica das APACs é a recuperação. Não tem fim lucrativo. Então, o trabalho é um elemento essencial, é muito importante e deve fazer parte do contexto, mas não pode ser o contexto (V. Ferreira, interview with the author, 2019).

Although living conditions are considerably better and *recuperandos* are offered educational and professional opportunities, it should not be forgotten that the APAC is

⁴ Open university.

still a prison and that the level of discipline is remarkable. One of the *recuperandos* commented that many people think that the APAC is a hotel. He doesn't agree because there is a lot of discipline which is punishment enough.

3.1.3 Improved relationships with the family

Including the family in the recovery process and fostering positive relationships between *recuperandos* and their family is an important strength of the APAC method. The idea is to not only provide assistance to the *recuperando* but also to the family. Volunteers from the APAC visit the inmates' families and when needed, families are provided with some basic goods such as food and hygiene products that are gathered by the APAC.

In the APAC, family visits are facilitated. In the traditional system, families often have to travel long distances, wait in line for hours and are treated with suspicion as they have to go through an extensive search upon entry which is a humiliating experience. In case of the APAC, families reside in the neighbourhood and do not have to wait in line for hours due to the small number of prisoners in each APAC facility. Moreover, door policy is based on trust rather than suspicion. As a result, *recuperandos* commented that they see their family more frequently now that they are in the APAC. In the APACs of both Porto Alegre and Itaúna there is also a private room where *recuperandos* can spend the night with their partner twice a month (see image 3).

Image 3. Room for private visits, APAC Itaúna



Family is a motivational factor. For instance, in the hallways there is a scoreboard where good and bad behaviour is classified for each *recuperando* according to a points system. When asked why this system works, one of the *recuperandos* answered that the scoreboard is motivational because you do not want your family to visit and see that you have a negative score.

3.1.4 Improved relationships with the community

One of the central aspects of the APAC method that has a positive influence on its performance is the focus on improving relationships between the community and the inmates. Not only is the participation of the community in the execution of sentences regulated in the LEP, also within RJ does the community occupy an important role. It should be noted that a community is a relatively vague concept and may differ, for instance, between small cities and capitals such as is the case with Itaúna and Porto Alegre.

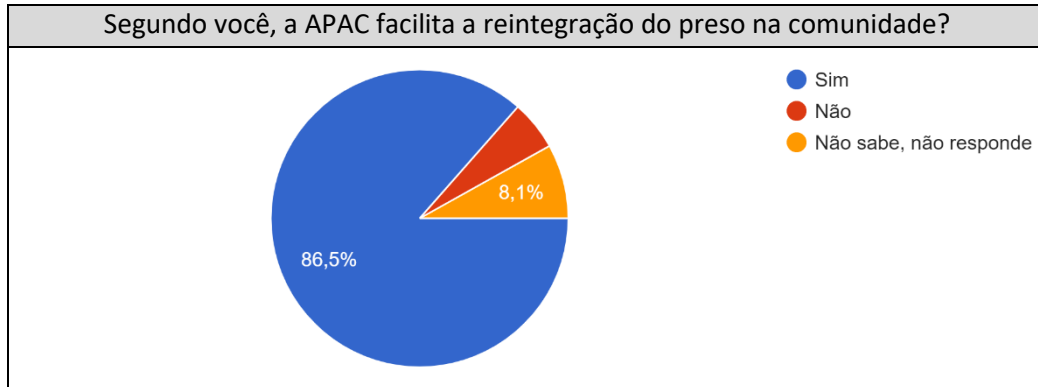
Itaúna é uma comunidade menor. Facilitam os vínculos, os laços familiares, religiosos, culturais. Tudo isso contribui. Na capital é mais difícil, mas não é impossível. Tem vantagens e desvantagens. Por exemplo, aqui em Itaúna você tem 10 empresas para tentar motivar elas para trazerem alguma unidade produtiva para a APAC ou para dar um emprego a um ex-recuperando, por exemplo. Já na capital você tem dezenas de oportunidades de trabalho, de parcerias (V. Ferreira, interview with the author, 2019).

Thus, although there are advantages to creating an APAC in a small city due to stronger social ties, there are also less opportunities to reintegrate *ex-recuperandos* into the labour market which may be an advantage of creating an APAC in a larger city. As the following quote illustrates, the APAC seeks to take down the walls between the prison and the community by inviting the community into the prison and by sending prisoners out into the community.

O tempo todo estamos fazendo parcerias, promovendo o trabalho da APAC. Organizar um café, convidar empresários. Tem projetos de escolas que trazem alunos para conhecer a APAC. No final da visita eles ganham uma flor. Eles levam para casa, a família deles vem. Tem vários APACs que os juízes autorizam os recuperandos saírem para pintar o asilo, para reformar as creches, para pintar escolas. Isso também é justiça restaurativa, isso também ajuda romper os preconceitos (V. Ferreira, interview with the author, 2019).

Nearly all participants of the survey in Itaúna believe that the APAC facilitates the reintroduction of the *recuperandos* into the community (see fig. 13).

Figure 13. Does the APAC facilitate the reintegration of the prisoner into the community?



An essential part of the APAC method and one of its 12 elements is the work of volunteers. These volunteers may perform various tasks such as family visits, teaching and creative activities. Many volunteers also perform religious activities in the APAC. Some critics believe that the element of community participation should be treated with more caution. It is not necessarily ordinary citizens that suddenly become involved in the execution of sentences with the presence of an APAC, but instead professionals that already occupy this type of role within society. Furthermore, the support and involvement from the community differs highly between different APACs in Brazil. For instance, the APAC of Santa Luzia does not have the high levels of community support that Itaúna does (PUC Minas, focus group, 2019). In Itaúna, nearly all participants of the survey knew about the APAC method and half of the respondents was in some way or another familiar with the APAC of Itaúna. Moreover, a majority showed interest in being more involved in the APAC (see fig. 14 & 15).

Figure 14. What is your relationship with the APAC in Itaúna?

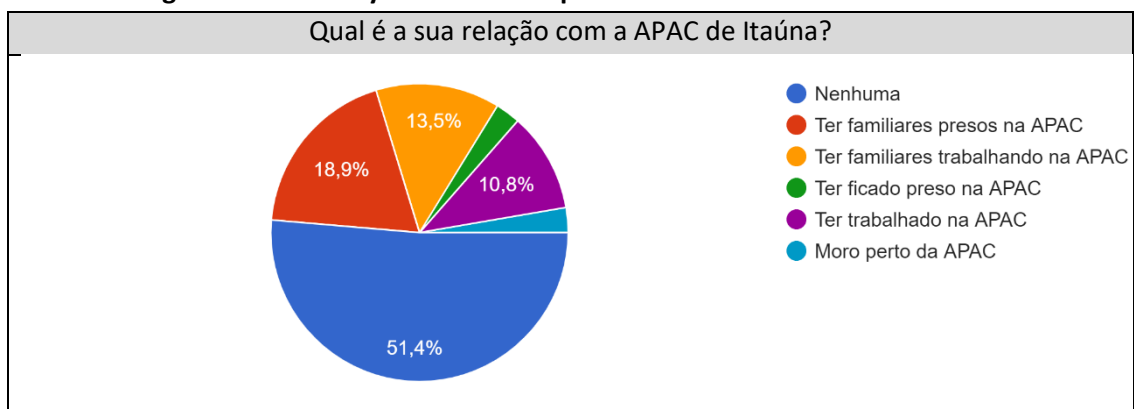
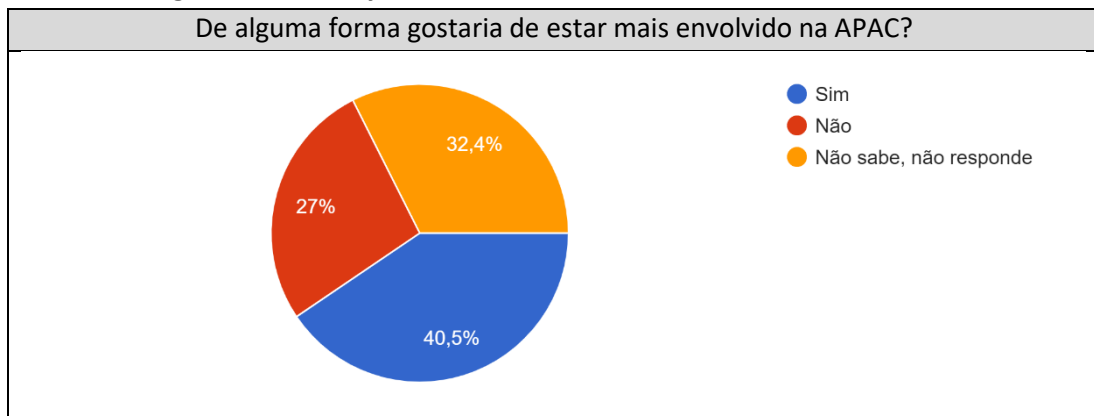


Figure 15. Would you like to be more involved in the APAC?



Although opening the prison to the community may have a positive impact on the way that citizens view prisoners and it may facilitate reintegration into the community, there is also a risk involved of the prison becoming an attraction.

Agora, eu acho bem produtivo o envolvimento da comunidade com os presos. Até porque a ideia inicial seria que a prisão vai afetar no mínimo possível a vida daquela pessoa. Ela vai tirar a tua liberdade, mas ela não te tira o direito de ter direitos. Então, se tivesse um envolvimento comunitário que não fosse simplesmente para ficar olhando para a pessoa como se fosse uma atração, bom, seria bem interessante (D. Achutti, interview with the author, 2019).

3.1.5 Internal relationships based on trust and respect rather than coercion

One remarkable observation was the degree of respect within the APAC between the staff and the *recuperandos*. People make eye contact, give each other hugs and address each other by name. The maximum capacity of an APAC is 200 inmates in order to ensure an individual and personal approach. Many of the staff has either been a *recuperando* in the past or has personal experience with someone that has been. Moreover, the staff usually comes from the community itself rather than being provided by the state as an external actor. This may to a certain extent explain the degree of proximity between inmates and prison staff.

No sistema comum não tem respeito. Mandam você fazer coisas com nenhum respeito e você fica só olhando para o chão. Na APAC tem muito respeito. As pessoas me perguntam por que não fogo, a resposta é simples, do amor ninguém foge (Recuperando, interview with the author, 2019).

Not only respect but also trust is one of the pillars of the APAC. In the APAC, it is relatively easy to escape for instance. One inmate explains that in the initial stage, escapes are more common but once the new *recuperando* becomes more familiar with

the method he will decide to stay. As illustrated by the previous quote, nobody escapes from love, which is also one of the APAC slogans painted on the walls. In the APAC of Porto Alegre, one of the *recuperandos* picked up a kitchen knife and explained that in the traditional prison the knife would be regarded a weapon whereas in the APAC, it is simply a kitchen utensil. He meant to illustrate the degree of trust and responsibility they are given in the APAC.

3.1.6 Increased subjective security within the community

The survey reveals that the APAC of Itaúna enjoys relatively high levels of trust from the community compared to the criminal justice system in general (see fig. 16 & 17). Furthermore, according to the survey, the APAC has led to a subjective decline in insecurity (see fig. 18).

Figure 16. What is your degree of trust in the Brazilian criminal justice system?

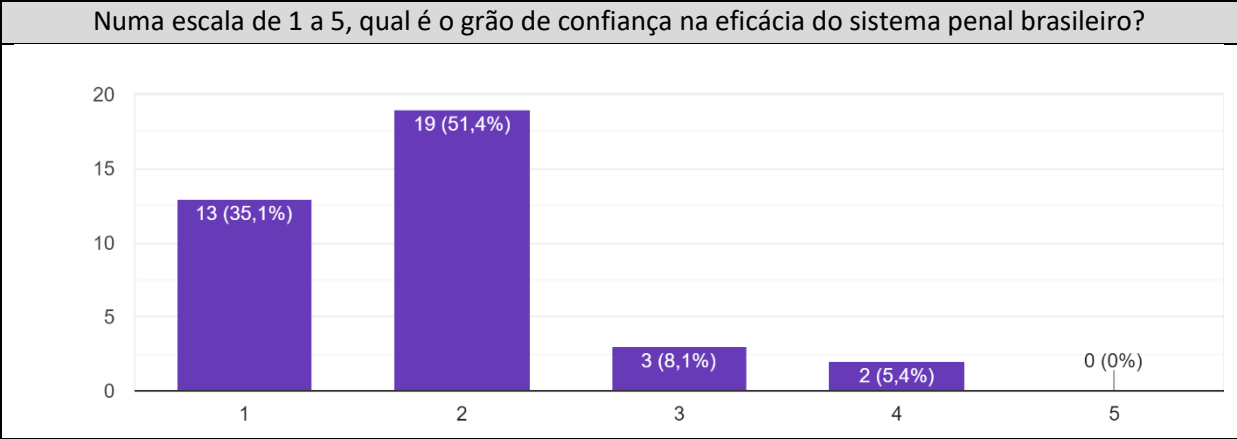


Figure 17. What is your degree of trust in the APAC?

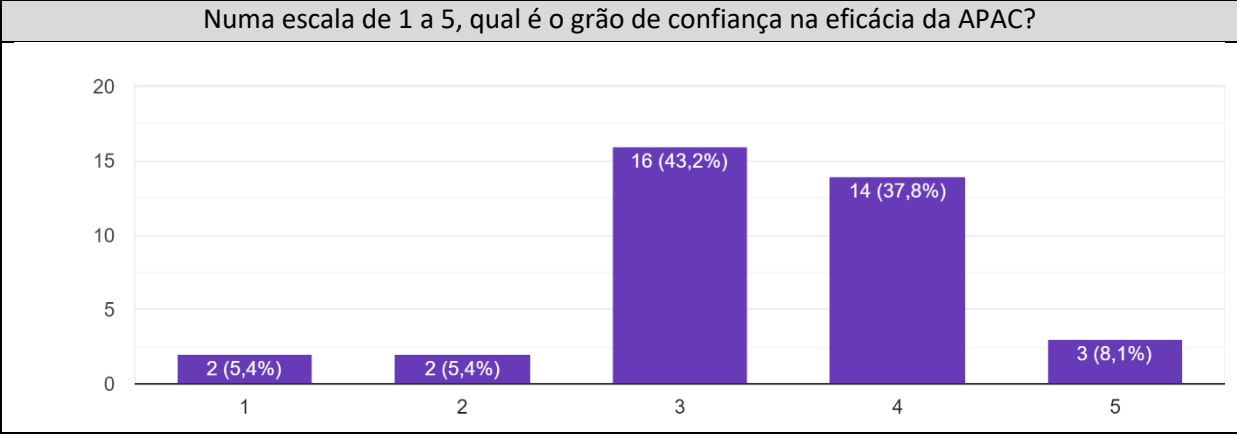
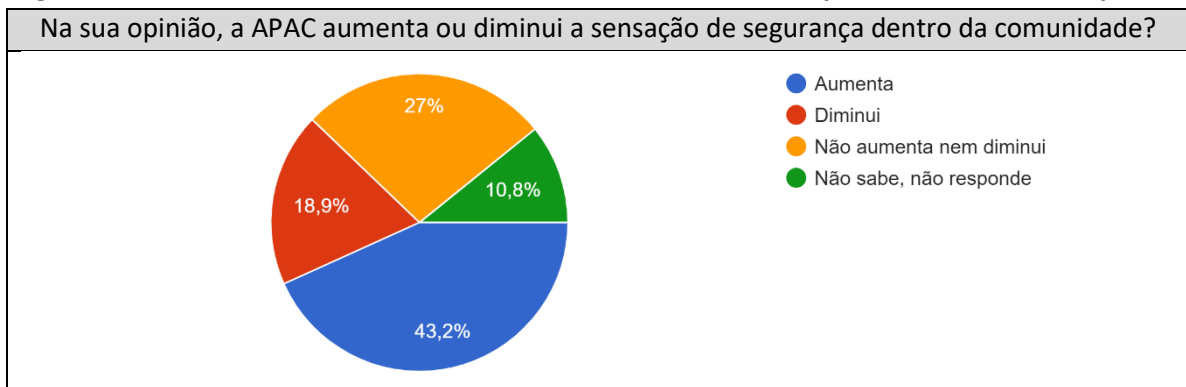


Figure 18. Does the APAC increase or decrease the sense of security within the community?



3.1.7 Lower costs

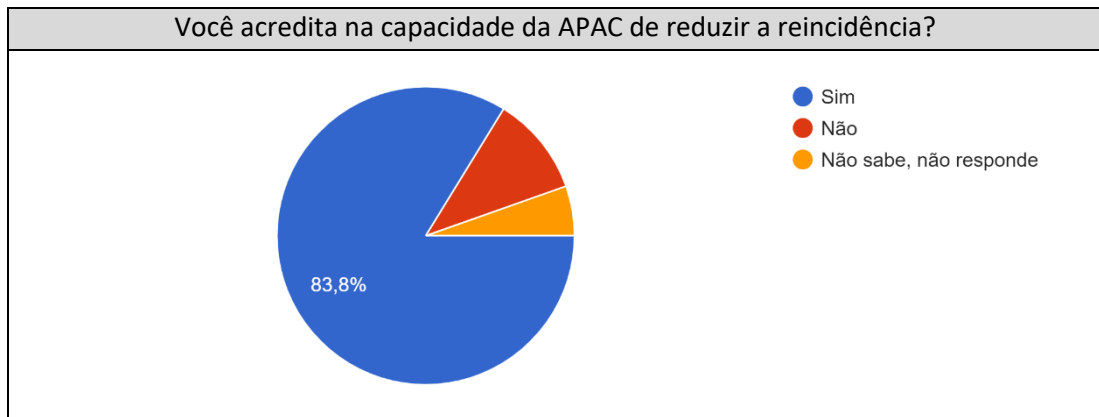
The penitentiary system is very costly for the state and many prisons lack financing. It is claimed that the costs of keeping a prisoner in an APAC is three times lower than in a common prison (Tribunal de Justiça de Minas Gerais, 2018). To a large extent, these lower costs result from the absence of armed penitentiary agents. The APAC is based on trust rather than coercion and there is less investment in expensive security strategies. Another reason for the reduced costs is the reliance on volunteers and donations. The FBAC actively seeks partnerships and offers training to the community to become a volunteer. Finally, the inmates carry out most of the prison work themselves such as cooking, cleaning and certain security matters. The CSS (Conselho de Sinceridade e Solidaridade), composed of only *recuperandos* is responsible for the overall functioning of the prison. *Recuperandos* also work in the bakery or in the garden for instance. They are rewarded with a sentence deduction of one day for each three days worked. Products such as handicrafts and pastries are sold to the community. The APACs in Minas Gerais also receive money from the state, although this amount is less than that traditional prisons are rewarded and would alone not be sufficient to sustain the APAC. Important to note is that due to reliance on volunteers and donations, the income of the APACs is volatile which creates a weakness. It may occur that there are periods without teachers and dentists or pharmaceuticals for instance. There is also variation among the APACs with regard to their financial sustainability. The APAC of Itaúna is self-sustainable due to the income created by productive activities within the prison. However, other APACs, such as the one in Santa Luzia (MG) are almost entirely dependent on donations (PUC Minas, focus group, 2019).

3.1.8 Lower recidivism rates

According to the FBAC website, recidivism rates within the APAC system are 15% whereas on a national level they are approximately 80%. Whether this information is reliable is questioned by some critics because it is not based on recent empirical

research. Yet, the majority of participants of the survey believe that the APAC of Itaúna contributes to reducing recidivism rates (see fig. 20). Although this seems promising, it is important to have reliable data on the actual impact of APACs on recidivism rates and should thus be a subject for further research.

Figure 20. Do you believe the APAC is able to reduce recidivism?



3.2 Weaknesses of the APAC method

3.2.1 Selectivity

It should be noted that many achievements of the APAC method are possible due to its selectivity. Inmates from the traditional system may be selected or refused according to the APAC logic. Furthermore, when not behaving accordingly, *recuperandos* are sent back to the traditional prison. The APAC method is not compatible with the entire prison population and remains dependent on the existing criminal justice system in order to be successful. This point has also been made by Sascha Darke:

APAC prisons operate as a 'system within a system', in particular that they only take prisoners who accept their guilt and express a willingness to participate in a full-time regime of activities (2014: 232).

Although circumstances in the traditional prison may be worse, some prefer to stay there than to accept all aspects of the APAC method which include strict discipline, activities from morning till evening and a strict no-drugs policy. Furthermore, the threat of returning to the traditional prison is crucial to the success of the method. Thus, the APAC cannot exist outside of the punitive system or replace it but, instead, works within it. The ability to select and expel inmates facilitates good performance of the APAC but should be viewed with caution in the broader picture.

Ele [o recuperando] para ser escolhido passa por estudo pretérito de comportamento e outros elementos fundamentais e verificação se aquele indivíduo tem alguma ligação

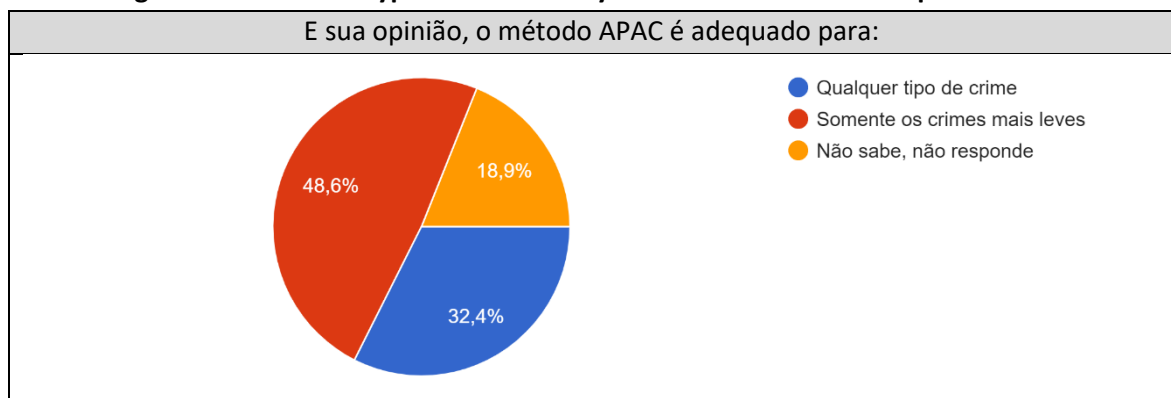
com organização ou facção criminoso. É muito fácil você pegar uma unidade pequena e dizer que não tem grade, não tem agentes penitenciários armados, que só estão aqui para ajudar, vocês vão trabalhar na horta e para diminuir a pena de vocês têm que ajudar contribuir com isso. Agora, começa colocar gente lá dentro que tenha efetivamente diversidade, diferença ideológica, ou seja, pessoas com comportamento não tão aceitável dentro da unidade prisional, esses resultados positivos já vão mudar de forma absurda (J. Leal, interview with the author, 2019).

The APAC informs about the number of places available and the criteria. The actual process of selecting prisoners is the responsibility of the Judge of Executions, the Public Ministry and the Penitentiary Administration. According to the director of the FBAC, the selection process is based on four criteria.

Primeiro critério para ir para uma APAC é que a pessoa esteja condenada. Não pode ir direto para a APAC. Tem que passar pelo sistema comum porque lá ela vai aguardar o julgamento. Segundo, que a família resida na comarca. Terceiro critério é que ele manifeste por escrito que ele quer ir para APAC, que quer mudar de vida, que aceita as normas, etc. O quarto é o critério da antiguidade. Pela data da sentença ele fica numa fila de espera aguardando a vez dele ser transferido para a APAC (V, Ferreira, interview with the author, 2019).

The method proposes that everyone is recoverable as long as they are motivated which is illustrated by the phrase 'aqui entra o homem, o delito fica lá fora'. This slogan is painted on the APAC walls. No distinction is made between different types of crimes. Recalling chapter two, this is a positive development and contrasts with many past reform attempts only addressing low-level crimes and thereby amplifying state control. Nonetheless, the survey revealed that the majority of the Itaúna residents do not share this view and believe that the APAC should only be used for low-level crimes (see fig. 21). It was unfortunately not possible to access data on the types of crimes for which *recuperandos* are in the APAC.

Figure 21. For which types of crimes do you think the APAC is adequate?



3.2.2 Religion as a central element

Mentioning religion in this part of the analysis should not be understood as a general belief that religion is a weakness. Instead, what is analysed here is the central role that religion occupies in a prison context which may be controversial. Inside both the APAC of Porto Alegre and the APAC in Itaúna, religion occupies an important role. This is illustrated by Christian symbols in the facilities as well as daily religious activities. More importantly, two of the twelve elements of the APAC method are related to religion:

1. *Espiritualidade e a importância de se fazer a experiência com Deus*
2. *A jornada de libertação com Cristo*

The latter is a yearly event to which families are also invited. Even though religion constitutes a central element in the APAC method, the director of the FBAC emphasizes that it is not mandatory and that it is not a prerequisite for being transferred to an APAC. The reason to incorporate religion —or spirituality as it is called in the APAC— into the twelve elements of the APAC method is based on scientific research according to the director of the FBAC. Believing in a superior force helps the wrongdoer to understand his mistakes and rebuild himself in order to be able to live in society again.

No método APAC, você cria espaços, você promove momentos para que essa pessoa possa também perceber que existe algo a transcender que alguns chamam de Deus, outros chamam de Ala, outros de Buda, algo que transcende, um ser superior. Mas isso é muito livre, a pessoa não é obrigada dentro das APACs a participar. É oferecido porque a gente entende que sem deus é muito difícil de caminhar. É importante sobretudo em nosso contexto latino americano (V. Ferreira, interview with the author, 2019).

Moreover, similarly to the element of work, religion alone does not recover. Instead, together with the other elements from the APAC method, each in the right proportion, it should be able to contribute to the recovery of prisoners.

Só a religião também não recupera. Você pode criar pessoas fanáticas, mas não recupera. Se só religião recuperasse também não precisava de APAC. Todo presídio que você vai tem um grupinho lá de religiosos, católicos, evangélicos. O preso se esconde atrás da religião. Ele mascara, ele mente, ele finge, ele diz que está convertido para se proteger, para obter favores, privilégios, para sobreviver dentro da prisão, mas quando ele ganhar liberdade ele vai cometer crime de novo. Então, por isso que na APAC tudo tem que estar na justa medida. É uma engrenagem. Tudo está baseado em pesquisa. Muitos anos de pesquisa (V. Ferreira, interview with the author, 2019).

Participants of the focus group at the PUC Minas are sceptical about the idea that the APAC accepts all religions. Originally, APAC was an acronym for *Amando o Próximo Amarás a Cristo*. Thus, it may be understood that the APAC accepts all religions as long as they are Christian. Moreover, participants believe that without religion, the APAC

method would not work because religion plays an important role in disciplining the inmates. The latter has also been emphasized by one of the members of the Ciranda project:

A religião faz as pessoas uma prisão interna psicológica. Ela traz uma questão de uma normatização. Você vai normalizar aquelas pessoas para ingressar na sociedade como a sociedade deseja que elas sejam. É uma forma de controle através da religião (F. Malta, interview with the author, 2019).

Others emphasize the fact that recovering and disciplining prisoners through religion is nothing new.

Me parece uma verdadeira imposição de um determinado cristianismo ou uma determinada vertente religiosa. Ou seja, você se salva através da bíblia e isso remete efetivamente a etapas significativamente mais pretéritos mais anteriores da prisão, século dezoito/dezenove (J, Leal, interview with the author, 2019).

Finally, the central role of religion is deemed controversial by critics and occupies a more dominant role than the APAC claims.

Mesmo não sendo no discurso, na prática acaba sendo que a religião é o mais importante. A maneira como a APAC é organizada passa pela religião. Passa pela ideia de que o processo de reintegração e reconhecer os erros e melhorar como pessoa passa pela fé, por deus. Isso abre uma discussão complicada. Primeiro, porque pela nossa constituição o estado é laico. Segundo que exigir de uma pessoa para fazer parte da APAC abraça um tipo de fé. De modo geral, sempre foi dito 'a gente não exige isso não, não precisa disso', mas eu acho que acaba que precisa sim (C. Canedo, interview with the author, 2019).

In short, although there is no religious prerequisite in the selection process, there are reasons to believe that religion still constitutes an excluding factor for non-Christians. No one in the APAC is obliged to take part in religious activities. Nonetheless, the design of the APAC method makes it hard to believe that anyone not interested in Christian values would be transferred to an APAC. Therefore, in the APACs, religion constitutes an excluding factor.

3.2.3 Absence of the victim

There are currently no programs dedicated to victims within the Brazilian APACs. Neither victims have an opportunity to participate, other than being a volunteer. Nonetheless, when the *recuperando* and the victim are ready, there is a possibility of reconciliation, facilitated by the APAC. Reconciliation with the victim has no impact whatsoever on the duration of the prison sentence. The *recuperando* may make this choice because he truly wants to reconcile, not because there is a chance of gaining benefits.

O que a gente tenta promover na APAC é que os nossos recuperandos possam tomar consciência do mal que eles fizeram. Precisam se responsabilizar pelo mal que eles fizeram. E se em algum momento eles tomam a decisão de se reconciliar com a vítima, nossa equipe vai oportunizar momentos para isso. Seja levando uma carta pedindo perdão. Isso já aconteceu com muita frequência. Começa a se aproximar. Se a resistência for forte, espera um tempo. Mas, é importante que o recuperando primeiro ele tenha a coragem, que ele deu conta desse passo. E depois vai depender da vítima, se ela quer ou não. Nós já tivemos dezenas de casos em que a vítima veio para se reconciliar. E muitas vezes oferecemos acompanhamento psicológico, espiritual. Tudo depende da vítima, se ela manifesta. Nós temos hoje pessoas voluntárias na APAC que foram vítimas (V. Ferreira, interview with the author, 2019).

According to Ferreira, there are plans for the future to pay more attention to the victim. The Sycamore Tree program by Prison Fellowship International is a RJ program of eight sessions that promotes contact between victims and offenders. Next year, the program is supposed to start within Brazilian APACs. Thus, there might be an opportunity here to give a more important role to victims, although at the moment this aspect has been largely neglected and the APAC method focuses principally on the offender.

3.3 Opportunities for the APAC method

3.3.1 Transforming the punitive culture

The major opportunity for the APAC method lies in the transformation of the punitive culture and stereotypes of the prison population, albeit this is a difficult and slow process. The director of the FBAC admits that it would be rather ambitious to try and replace the entire criminal justice system with the APAC method and explains that instead, the aim is to give an example of how it could be done otherwise.

A APAC é uma alternativa dentro desse contexto de caos que é o sistema prisional. Eu ainda diria que se hoje fechassem todas as APACs, o direito processual penal no Brasil e a execução penal no Brasil nunca mais seriam o mesmo depois da experiência das APACs. Porque a APAC mostrou que é possível fazer diferente daquilo que se fez a vida inteira na história da humanidade. (...) As APACs têm contribuído para que as autoridades enxerguem a pena na sua dupla finalidade, punir e recuperar. Porque é do direito positivista que hoje os países da América Latina, todos tem a mesma visão de que a pena tem uma dupla finalidade. Ocorre que até hoje só ficou na primeira parte, que é punir. Então, no Brasil pelo menos a gente já conseguiu avançar muito (V. Ferreira, interview with the author, 2019).

By creating linkages with the community, APAC prisons may change the perception that the community has of the prison population. Professor Leal from the UNESCO explains that there is a gap between society and the prison which leads to a distorted view of reality and the idea of impunity.

Tem que fazer a sociedade entrar na prisão. A prisão tem que abrir as portas para a sociedade entrar. Em grande medida a gente percebe uma profunda ignorância e um gigante desconhecimento da prisão. A pessoa vê na televisão que aconteceu um crime rumoroso e a pessoa recebeu uma liberdade provisória. Isso vai se pagando como uma manifestação de impunidade e as pessoas projetam isso ao todo o resto do sistema como se fosse algo absolutamente generalizado. Se tem alguns presos em condições excepcionais fica como se todo preso ficasse naquela situação privilegiada. Ou seja, é fundamental que a gente consiga mostrar para a sociedade o quanto é triste a prisão, quanto aquilo é verdadeiro sofrimento. A gente tem que levar a experiência da prisão para a sociedade para que a sociedade pare de falar bobagem acerca da prisão de quanto é bom ou fácil (J. Leal, interview with the author, 2019).

Some critics believe that the influence of the APAC is yet limited and unable to contrast the media representations of criminal organizations for instance (PUC Minas, focus group, 2019). Although this may be true on the national level, the survey revealed that the APAC did have a considerable impact on residents' perception of prisoners in Itaúna. The majority of participants believe that the APAC changed their perception of prisoners (see fig. 22) and that prisoners should receive a more humane treatment (see fig. 23).

Figure 22. Does the APAC change stereotypes of prisoners?

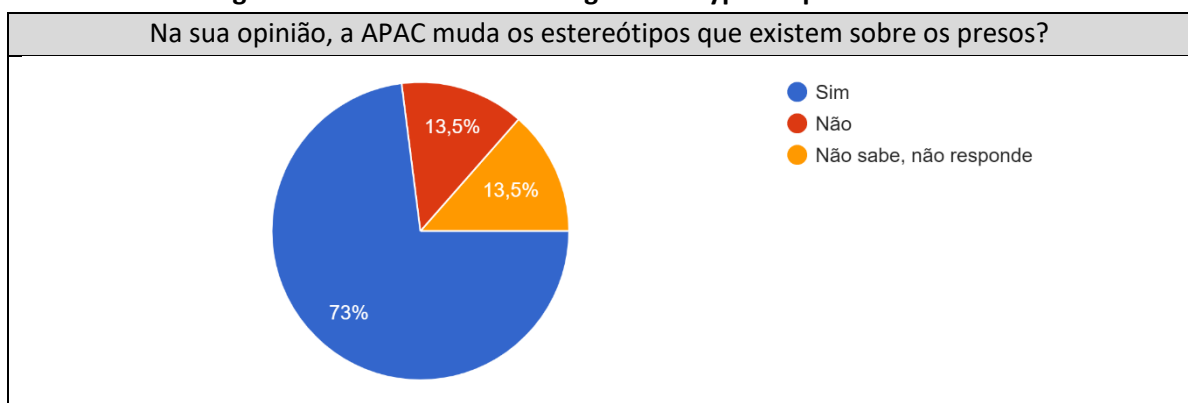


Figure 23. Does a more humane treatment increase the efficiency of the criminal justice system?



3.4 Threats to the APAC method

3.4.1 The dependency on the support and participation of the community

The opportunity of the APAC method simultaneously constitutes one of its principal threats. The survival of APACs depends to a great extent on the participation and acceptance of the community. If citizens continue to favour retribution over restoration, this will pose a threat to the APAC method. Not only are APACs dependent on volunteers and donations from the community, the community also has a vote whether an APAC will be implemented or not through the so-called *audiências públicas*. Through these public hearings, residents often voice concerns about the creation of an APAC because it would devalue their neighbourhood for instance (PUC Minas, focus group, 2019). The director of the FBAC also expresses his concern with the difficulty to mobilize communities:

Não é uma tarefa fácil. Eu falo que o problema das prisões não está dentro das prisões. Está fora das prisões numa cultura de preconceito em relação à pessoa presa. Aquela cultura diz que o preso tem que sofrer, tem que morrer, bandido bom é bandido morto. Então, a sociedade, na maioria, vê as prisões como espaço de vingança e não como espaço de mudança de vida, para a recuperação. O desafio das APACs é de mudar essa mentalidade e nós estamos há 46 anos desde o nascimento da APAC em São José dos Campos em 1972 até hoje em dia, fazendo esse trabalho de mobilizar as comunidades, de levar uma mensagem diferente (V. Ferreira, interview with the author, 2019).

Nearly all the participants of the interviews and focus groups expressed a similar concern which is the fact that Brazilian society is highly punitive and that any alternative that offers a more humane approach is seen as impunity.

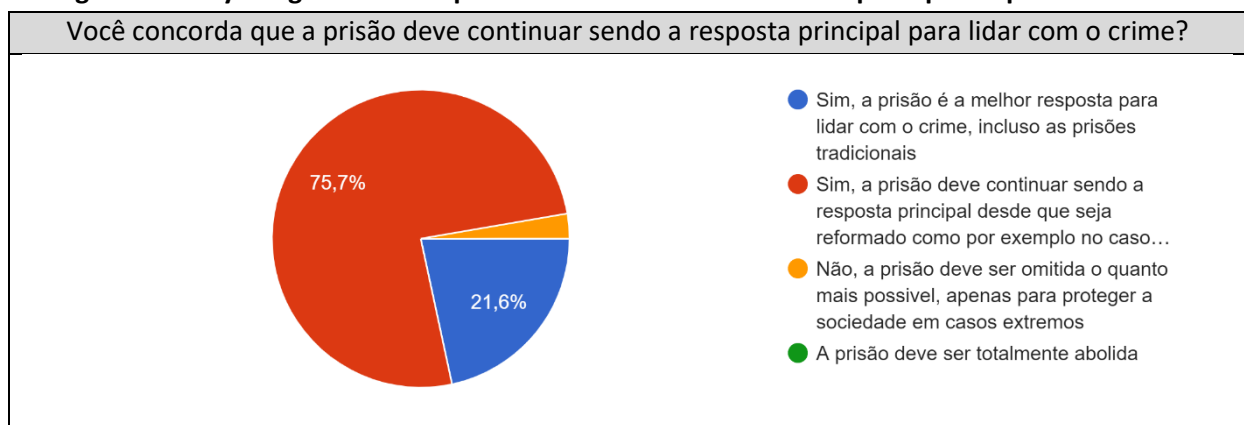
APAC é excessivamente benevolente e o momento conservador do Brasil não vai aceitar que se aplica uma pena benevolente ao condenado envolvido em tráfico de drogas, latrocínio ou homicídio. Ou seja, a sociedade brasileira não permite isso. (...) Se eu não botar essa pessoa numa situação absolutamente miserável e degradante dentro de uma instituição mais infeliz e infernal, impossível, parece que não nos damos por satisfeitos de punir determinados indivíduos que, em geral no Brasil, são negros, pobres e homens jovens, oriundos da periferia, de bairros não privilegiados (J. Leal, interview with the author, 2019).

Eu sou promotor no Ministério Público. A maioria das minhas colegas tem um viés mais duro. Eu sou considerado liberal demais. Nós, os liberais, somos minoria. A justiça em geral tem uma visão mais punitiva. Eu acho que eles estão refletindo a própria sociedade que tem uma visão punitiva (C. Canedo, interview with the author, 2019).

3.4.2 Legitimizing the prison?

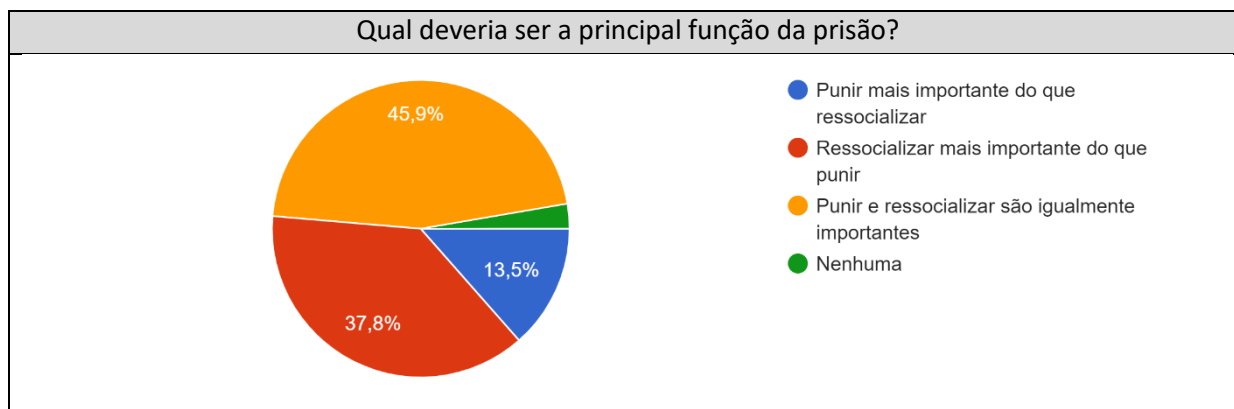
The survey in Itaúna reveals that although residents may have a changed perspective on prisoners and think they should receive a more human treatment, they continue to believe that imprisonment is the best way to respond to crime whether it being in the form of an APAC or a traditional prison (see fig. 24). Participants even commented that it is necessary for the traditional prison to exist in order for the APAC prison to work. Some of these comments include: “Tem que ter a prisão tradicional ruim, primeiro, para a pessoa depois valorizar mais a APAC” and “Não pode ir direto para a APAC, tem que ser punido primeiro”.

Figure 24. Do you agree that the prison should continue to be the principal response to crime?



Although resocialization is important, APACs do not abandon the punitive element and the majority of the participants of the survey in Itaúna believe that punishing and resocializing are equally important (see fig. 25). It can be argued that the APAC legitimizes the prison and the punitive logic. According to a member of the Ciranda Project, “Algumas pessoas vão olhar para a APAC e falar, a gente tem que manter o sistema de punição porque dá certo” (F. Malta, interview with the author, 2019). This constitutes a risk of increasing social control through high levels of discipline and religion as well as legitimizing imprisonment as a logical approach to crime. Moreover, using the concept of RJ in this context poses a threat to a more profound transformation of society. Presenting the APAC as restorative may satisfy theorists and politicians whereas, in fact, APACs continue to run along punitive lines, although with a more humane disguise. Some participants of the interviews and focus groups mentioned that the APACs do nothing more than effectively applying the LEP as illustrated by the focus on work, education and family for instance. The method may thus not be as revolutionary as it is often presented.

Figure 25. What should be the principal function of the prison?



3.4.3 Appropriation by the state

Originally, the APACs are a bottom-up initiative where society takes responsibility for the execution of sentences in a more humane manner. Recently, the state has entered. In 2010, the APAC method became a public policy of the state of Minas Gerais. Although this may have positive implications such as their legitimization, expansion and increased financing, it also poses a threat. It should be viewed with caution that a bottom-up initiative becomes appropriated by the state.

Sim, isso nos preocupa porque a APAC deve ser uma escolha da comunidade. A APAC é o resultado da sociedade civil organizada que toma consciência do problema e resolve apontar um caminho. Eu tenho muito medo com aquilo que vem de cima para baixo porque não se cria APAC por decreto. Porque essa autoridade, o que é que ela quer? Deve ser muito perigoso. E o papel da FBAC é esse de ir acompanhando as APACs desde o início e de não aceitar ser cooptado pelo Estado e virar mais uma prisão comum (V. Ferreira, interview with the author, 2019).

As emphasized in chapter one, within JR there is a limited role for the state and the main actors should be those directly involved in the conflict. Ideally, RJ takes place outside of formal state institutions without state agents in order to promote a democratic solution, attending the needs of those involved in the conflict. Therefore, the interest of the state in the APACs poses a threat.

SUMMARY: SWOT ANALYSIS OF THE APAC METHOD

Strengths	Weaknesses
<ol style="list-style-type: none"> 1. Use of an alternative and less stigmatizing language 2. Improved living conditions 3. Improved relationships with the family 4. Improved relationships with the community 5. Internal relationships based on respect and trust rather than coercion 6. Increased subjective security within the community 7. Lower costs 8. Lower indicators of recidivism 	<ol style="list-style-type: none"> 9. The success of the APAC is determined by the selectivity of the method. 10. The central role of religion is controversial 11. The victim is neglected and the APAC prioritizes the individual behaviour of the offender.
Opportunities	Threats
<ol style="list-style-type: none"> 12. Transforming the punitive culture by taking down the walls between the prison and the community. 	<ol style="list-style-type: none"> 13. Dependency on community support and participation creates uncertainties for the future 14. Legitimizing the prison by providing an example of how imprisonment can be successful 15. Associating APACs with restorative justice may be satisfactory whereas in reality, APACs continue to run along punitive lines 16. Appropriation by the state of a bottom-up initiative

3.5 The APAC method and restorative justice in Brazil

Many factors make it hard to consider the APAC restorative. These include the very nature of the prison, the strong presence of religion and discipline as well as the relative neglect of the victim. Yet, some restorative elements may be identified. This section will conclude with the prospects for RJ in Brazil and the role of the APACs in this regard.

3.5.1 Restorative justice and the prison

Since one of the pillars of JR is dialogue, APACs or any prison more generally could never be restorative because they isolate individuals from society which is a decision made by the state rather than the actors involved (victim, offender, community). Moreover, RJ focuses on the restoration of relationships. Although the APAC stimulates interaction

between inmates and their families as well as with the community, the method prioritizes the individual recovery of the offender. This is based on a positivist assumption that crime should be treated individually rather than considering political or socioeconomic factors.

A minha ideia de justiça restaurativa é estabelecer um diálogo para reintegrar alguém à comunidade. Essa ideia de diálogo não passa por qualquer ideia de privação de liberdade, mesmo na APAC. A APAC ainda é privativa de liberdade, ainda de uma outra natureza, uma outra perspectiva. Eu não acho que a ideia de restauração passa por isso (C. Canedo, interview with the author, 2019).

A prisão ela não é restaurativa. Por melhor que seja a prisão, ela jamais seria restaurativa. O que é restaurado diante um crime são as relações e não a pessoa, não vou transformar a pessoa. Se eu colocar essa pessoa fora da convivência social, ela não tem o que restaurar. Então, isso é um paradoxo dentro da ideia de justiça restaurativa. A prisão restaurativa não existe (F. Jayme, interview with the author, 2019).

RJ advocates are divided into those who believe RJ happens within the existing criminal justice system and those that see abolitionism as the ulterior objective. Following the perspective of the latter, a professor at the UNESC argues that JR should be a total transformation of society rather than an attempt at reforming prisons within the existing criminal justice system.

A justiça restaurativa não é uma política pontual de reforma do sistema penal, é uma transformação da sociedade. Isso ultrapassa a ideia de ressocialização. Falar da justiça restaurativa é falar de um grande processo de mudança social e não simplesmente de um processo individualizado e pontual de melhorar a prisão (J. Leal, interview with the author, 2019).

3.5.2 Restorative justice and religion

It can be argued that Christianity and RJ share a number of common values and terminology such as tolerance, respect, compassion and acceptance of the worth of all individuals regardless of their actions. Moreover, they both seek reparation between the offender and those that are harmed (Sarre & Young, 2011). Nonetheless, religion is also is controversial in the context of JR as has been argued by members of the Ciranda Project:

Na APAC, a religião é imposta, é condição para estar no sistema APAC. Isso já é uma diferença considerável em relação à justiça restaurativa (F. Jayme, interview with the author, 2019).

Não é que dentro de uma prática restaurativa a religião não seja bem-vinda, se faz sentido para a pessoa que participa. Mas, não pode ser obrigada e nem posso estruturar uma prática restaurativa utilizando isso como elo basilar em comum. Que nos une é

nossa humanidade, não é nossa religiosidade, há algo anterior a isso. Porque se eu sou de outra religião ou não a tenho, eu não me sinto bem-vindo naquele espaço (F. Malta, interview with the author, 2019).

The idea of RJ is that participants are equal and feel comfortable, whether it being the offender, the victim or community representatives. In a method based on a specific religion, Christianity in this case, some may feel excluded or uncomfortable which impedes a truly restorative outcome.

3.5.3 The victim

The APAC method claims to rescue the victims of crime. Within RJ, the victim plays a crucial role. By focusing on the actual harm done rather than the act of breaking the law, the experience and the needs of the victim should be central. Nonetheless, in the APAC method, the main focus is on the transformation of the offender. Although there are occasions where the victim is involved to reconcile with one of the *recuperandos*, in general the victim is neglected in the APAC approach. Even if the victim would be more involved, this would still be controversial since the offender has already been incarcerated which affects the relationship between the actors:

No contexto do sistema penal brasileiro, fundamentalmente a gente teria que estabelecer a vítima e o ofensor como iguais, mas no sistema penal não se vê de fato o criminoso como um indivíduo igual, mas sim como alguém que deveria ser apartado. Não existe uma posição de equivalência entre os dois. Então, qualquer contato humano entre os dois é praticamente impossível (UNESC, focus group, 2019).

3.5.4 Restorative elements in the APAC method

Responsibility is an important aspect of RJ. As mentioned earlier, taking punishment is often confused with taking responsibility and in the traditional system offenders are not encouraged to take responsibility.

Se você for num presídio, você vai ouvir de muitos detentos que eles estão ali sem culpa. O encarceramento deles é injusto. Envolvendo esse detento que não aceita essa condenação e não se reconhece responsável tem caráter plenamente restaurativo que é construir responsabilidade e, aí, criar perspectivas de reparação que não é só uma reparação financeira do dano (F. Jayme, interview with the author, 2019).

In the APAC, *recuperandos* are incentivized and offered assistance to take responsibility for the harm they have caused. A professor at the PUC Minas believes that indirectly, this may be seen as restorative.

Um dos elementos restaurativos do método APAC pode ser a reparação da vítima. Não direto da relação com a vítima, mas sim por assumir responsabilidade da parte do preso (A. Klelia, interview with author, 2019).

The offender plays an important role in RJ, as well as within the APAC method. Rather than abandoning the prisoner upon incarceration, the APAC seeks to immerse *recuperandos* in an elaborate restoration program and offers assistance to the offender as well as his family. Working with the needs of those affected by the conflict is one of the pillars of RJ. The director of the FBAC thereby opposes the APAC method to the common prison which serves as a so-called crime university.

O que acontece hoje no Brasil e na maioria dos países no mundo é que a justiça é tão somente condenar a pessoa e punir. A pessoa comete um crime, a polícia prende, o juiz sentencia e aquela pessoa vai cumprir a pena. As pessoas ficam felizes porque a justiça foi feita. Mas, nós entendemos que a justiça só será feita quando essa pessoa que cometeu o delito seja sentenciada, ela agora poderá ser colocada diante uma proposta terapêutica que ajuda a rever os seus valores, que ajude a fazer uma reflexão sobre aquele fato cometido, sobre aquele mal que ela causou e as pessoas que foram feridas. O que é que acontece hoje, coloca numa prisão comum, que são verdadeiras universidades do crime e as pessoas saem pior do que elas entraram. Então, a justiça não foi feita (V. Ferreira, interview with the author, 2019).

The APAC emphasizes the human condition. One of the *recuperandos* in Porto Alegre commented that when he was transferred from the traditional prison to the APAC, he left with his hands cuffed, looking at the ground. Once he arrived at the APAC, his handcuffs were taken off and he received a hug, he was treated as a human being. A professor at the UFMG argues that the human aspect is the starting point of RJ.

O que é importante é que eles [os condenados] foram reconhecidos como seres humanos, como sujeitos. Todo sistema de justiça é um processo de desumanização. Se você andar na corte, nas varas criminais, vai ver o preso algemado, uniformizado, marcado, rotulado, de cabeça baixa, não pode levantar a cabeça. No processo restaurativo, a primeira coisa é exatamente resgatar essa condição humana desse sujeito (F. Jayme, interview with the author, 2019).

The family and the wider community are important actors within RJ. They are also central within the APAC method. Needs of the family are attended and they are treated as an important support for the *recuperandos*. The community plays a role in providing assistance to the APAC population. Nonetheless, as argued by Malta: “Não há iniciativas efetivas voltadas à corresponsabilização dessa comunidade ou ao auxílio às vítimas, como preceitua a justiça restaurativa” (2016: 12). The responsibility is put entirely upon the offenders who need to transform while the community merely offers assistance rather than reviewing the existing social structure.

Finally, restorative principles may be found in the way that internal conflict is solved in the APAC through dialogue. Whenever there is a conflict within the APAC, the CSS is primarily responsible for resolving it. The CSS gathers those involved and seeks to find a solution among the inmates rather than the intervention of a prison guard. One of the

recuperandos explained that there is a more democratic environment within the APAC. Every fifteen days there is a reunion with all the *recuperandos* to discuss concerns and issues in the APAC. Mechanisms such as reconciliation and mediation could be an opportunity for applying RJ to the prison context.

Dentro da prisão acontecem conflitos entre presos, entre presos e agentes carcerários e entre agentes carcerários. É um ambiente muito promíscuo, muito negativo. Muita gente num lugar fechado não tem como dar certo. As pessoas brigam, se matam, não tem muito o que fazer. Então, tu tens que lidar de alguma forma com esses casos. E acho que sim, tem que trabalhar com mecanismos de conciliação e mediação (D. Achutti, interview with the author, 2019).

3.5.5 Prospects for restorative justice in Brazil

There are several challenges to the possibility of RJ in Brazil. Critics agree that Brazil has a very punitive culture, difficult to change and an obstacle to RJ.

Enquanto a sociedade é punitivista e individualista, disputando o espaço econômico, nós não vamos ter nenhuma possibilidade de horizonte de justiça restaurativa e também não do abolicionismo penal (J. Leal, interview with the author, 2019).

Hoje, neste momento político, acho pouco provável que a justiça restaurativa se amplie dentro do sistema prisional enquanto instituição. Tem um governo muito conservador. Boa parcela da nossa população realmente acredita que a pessoa não vai cometer crime se tiver um tipo de punição mais severo. Pessoas defendendo pena de morte como se isso fosse dissuadir e diminuir a criminalidade. Tem uma campanha em cima do medo, um estado de temor o tempo inteiro. Como se mais punição fosse colocar a população num lugar seguro (R. Malta, interview with the author, 2019).

A justiça restaurativa não vai funcionar no Brasil. Tomar uma ideia de fora e tentar ela fazer funcionar no Brasil não vai dar certo. A justiça restaurativa tem que ser de baixo para cima. Não dá certo se o Estado apropria dela. Não é natural. Tem uma sociedade punitiva com um passado de ditadura que não vai receber bem estratégias de paz. A justiça restaurativa está de moda então vai ter que trabalhar com ela, mas a justiça restaurativa não tem capacidade de mudar a situação no Brasil. A justiça restaurativa tem muito a ver com cultura e a cultura é difícil de se mudar (A. Klelia, interview with the author, 2019).

The participants of the interviews also agree that RJ requires a different set of techniques and structures for which the Brazilian justice system is currently not prepared. Conciliation and mediation, for instance, require a set of techniques that professionals in Brazil are not trained for (D. Achutti, interview with the author, 2019). RJ is still very recent and the legal community does not have a lot of knowledge about RJ. There are few educational institutions treating the subject (F. Jayme, interview with the author, 2019).

Moreover, a professor at the UFMG comments that RJ requires a certain level of homogeneity and social organization and that on the contrary, Brazil is a very heterogeneous and unequal country which impedes the implementation of RJ as the dominant way of dealing with conflict.

É difícil estabelecer o clima no qual as partes estejam livremente dispostas a se encontrarem e se estabelecerem acordos. Isso fica mais complicado se você tem um país como Brasil, muito grande, muito desigual, com comunidades muito diferentes e criminalidade muito violenta, que faz com que a ideia da restauração fique mais complicada. Nós não temos uma tradição democrática de diálogo. Temos uma cultura muito conflitiva, pouco disposta a resolver problemas. Um país muito heterogêneo, tanto do ponto de vista racial quanto de acesso à cultura e educação quanto social, política, etc. (...) Eu acho que é possível no Brasil a justiça restaurativa. Mas tem limitações estruturais para levar isso adiante. Uma representação social de que pena tem que ter cadeia, se não é cadeia não vale. Como a sociedade está muito assustada com a criminalidade, ela tem um discurso punitivo. Esse discurso se reflete na atuação da justiça (C. Canedo, interview with the author, 2019).

Thus, it seems highly unlikely that restorative justice will become a wide scale reality in Brazil any time soon. Not only because society nor the conservative government will not allow it, also because of technical reasons such as an insufficient preparation of professionals to engage in RJ practices.

FINAL CONCLUSIONS

The aim of this research project was to analyse the APAC method in light of restorative justice and to examine the extent to which APACs offer an alternative within a context of penitentiary crisis in Brazil.

Restorative justice seeks to transform the way in which we perceive and respond to conflict. Howard Zehr was one of the pioneer thinkers of restorative justice and he was followed by many authors writing on the subject. This has led to a widespread body of theory on restorative justice that eventually resulted in different conceptions of its purpose. On the one hand, some authors believe that restorative justice should replace the entire criminal justice system in order to not be co-opted into the punitive logic. On the other hand, others have acknowledged that this is highly utopic and propose that restorative justice should serve as a guide to improve the current criminal justice system.

The APAC is an example of the latter. The APAC is proposed as an alternative prison that produces less harm than the traditional prison and offers a more humane perspective on the prison population. The analysis reveals that some restorative aspects can be identified in the APAC method. These include the use of a less stigmatizing language; the involvement of the family and the community; internal relationships based on respect and trust rather than coercion; mediation in response to internal conflict and; assistance to the offender in order to engage in a process of transformation and to take responsibility.

Nonetheless, rather than an alternative to the current Brazilian criminal justice system based on restorative justice, the APAC method continues to operate within the punitive structure and can even be considered dependent on it, a so-called system within a system. Prisoners are selected from the traditional prison according to their compatibility with the APAC method and in case they fail to adhere to the strict method, they are sent back to the common prison. Without its selectivity and the threat of return to the traditional prison, it seems highly unlikely that the APAC would achieve similar results. Therefore, rather than replacing the retributive criminal justice system with a paradigm based on restorative justice, APACs remain dependent on the existing system. Moreover, APACs are based on the punitive logic themselves. There are extreme levels of discipline within APACs and prisoners are rewarded or punished according to their behaviour. Needless to say, although with a more humane approach, APACs still fall into the category of a prison and rather than an alternative to punishment, they are an alternative way of punishing. Chapter one and two have shown that many attempts at addressing the prison crisis have failed precisely because they were merely another way of punishing rather than an alternative to punishment. This raises the question, to what extent do APACs truly introduce a transformation of the criminal justice system other

than applying the already established rules in the LEP? Although methods are different, the achievements of the APAC method are nothing different from what all prisons in Brazil are in fact supposed to do. This includes providing material, health, legal, educational, social and religious assistance and seeking to re-socialize inmates as well as encouraging reintegration into the community. Therefore, the project may not be as revolutionary as it is proposed. For these reasons, many critics are sceptical about its potential to offer a solution to the penitentiary crisis in Brazil.

Still, the APAC can be regarded a temporary solution to the suffering of a small number of prisoners. In addition, APACs may transform the way society thinks of crime and how we should respond to it by taking away the walls between prisoners and the community. This constitutes an opportunity of opening doors toward a society where restorative justice is possible. According to the APAC discourse, restorative justice is understood as the ability to challenge stereotypes, to change the punitive culture that dominates Brazilian society. If the expansion of APACs produces similar effects on the community as the APAC in Itaúna, they could indeed be a means to achieve a more favourable climate to implement less punitive measures. Nonetheless, this would be an optimistic prediction. Not only because the punitive culture in Brazil is strong and the impact of the APACs remains limited on a broader scale, the APACs themselves also maintain certain elements of the punitive logic. The positive results that the survey in Itaúna revealed are likely to be different in other communities that are yet unfamiliar with the APAC method. This could be an area for further research in order to establish the opportunities of the APAC in transforming stereotypes of the prison population in communities other than Itaúna. Yet, even in Itaúna where participants of the survey adopted a more humane perspective on the prison population, the majority continued to believe that imprisonment is the best way to respond to conflict and that punishment is equally important to resocialization.

Treating APACs as the solution to the penitentiary crisis and associating them with restorative justice is dangerous. APACs deal with the consequences of the penitentiary crisis but not with the root of the problem. As illustrated by chapter one and two, the root of the penitentiary crisis are the increasing levels of mass-incarceration in response to an extremely socially unequal society. When ignoring this fact, APACs may serve to legitimize the prison by showing that imprisonment can be effective and legitimate and should thus continue being the dominant way to deal with conflict in society.

This is where the relation between RJ and the prison becomes complicated. Some RJ advocates believe that restorative justice works within the existing system and should make the experience better and more restorative. Others believe that RJ should replace the existing system in order to avoid being captured by the punitive logic. I agree with the latter although I recognize that Brazil is far from ready to shift from a punitive to a restorative paradigm. RJ is not something that can be implemented top-down but should be a bottom-up process which is unlikely within a divided and heterogeneous society

that is obsessed with security, demands harsh punishments and still perceives high levels of impunity. RJ should be understood as culture rather than a specific set of techniques and culture is difficult to change.

Within this context, APACs are an example of how RJ principles can alleviate the harmful experience that is imprisonment. The APAC seeks to restore relationships between the offender and the family as well as the community. Therefore, the offender is less isolated than in the traditional system which makes return to society easier. Moreover, whereas imprisonment is usually a rather stigmatizing experience, the APACs seeks to recover the self-esteem of the offender. Thus, in light of harms reduction, the APAC manages to apply restorative aspects to the prison. As proposed by Howard Zehr in the first chapter, RJ is not a sharp contrast between 'restorative' and 'retributive' but can be understood as a continuum. I would argue that the APACs are somewhere in between non-restorative and partially restorative. The model does address harms and needs but prioritizes the offender while neglecting the victim. Offenders are encouraged to take responsibility and within the APAC there is an opportunity for dialogue and participatory decision-making. However, these restorative values are only realized post-incarceration. It is important to be more careful with characterizing initiatives such as the APAC as based on restorative justice. Although the work of the APACs has brought relatively positive results, they should not satisfy critics because they only address the prison crisis at the surface.

The SWOT analysis has allowed for a thorough understanding of the strengths and opportunities of the APAC method as well as its threats and weaknesses. The APACs should be encouraged for improving the living standards for prisoners as well as reducing recidivism rates at a lower cost than traditional prisons. However, these strengths are largely made possible by the selectivity of the APAC method and come at the cost of high levels of discipline and an overrepresentation of religion. Moreover, the APAC method prioritizes the offender over the victim whereas the victim is central in restorative justice. The opportunity of the APAC method which is transforming the punitive culture that dominates Brazil simultaneously constitutes a threat. Indeed, if society continues to favour retribution over restoration, the survival of APACs is at risk or the APAC may serve to legitimize the criminal justice system based on retribution.

This paper has emphasized the importance of critically assessing alternatives in a context of penitentiary crisis. Using restorative justice as opposed to the retributive paradigm may serve as a useful tool in order to establish whether an attempt at addressing the prison crisis truly provides an alternative way of approaching conflict or whether it is merely an attempt of making existing approaches more efficient and less costly without fundamentally addressing the crisis.

APPENDIX

1. INDIVIDUAL INTERVIEWS

Interviewed	Role	Theme	Place and date
Jackson da Silva Leal	Lawyer and professor of criminology at the UNESC (Universidade do Extremo Sul da Santa Catarina) in Criciúma.	The Brazilian penitentiary crisis; restorative justice and the prison; abolitionism; alternatives to the prison; the APAC method	Criciúma, 14-06-2019
Daniel Achutti	Lawyer and law professor at the La Salle University in Canoas.	The Brazilian penitentiary crisis; restorative justice and the prison; abolitionism; alternatives to the prison; the APAC method	Porto Alegre, 24-06-2019
Rafaella Malta	Master student in Law at the UFGM (Universidade Federal de Minas Gerais); lawyer; Member of the Ciranda Project of Restorative Justice.	Restorative justice; restorative justice in the prison; the APAC method	Belo Horizonte, 28-06-2019
Fernando Jayme	Law professor at the UFGM; lawyer; coordinator of the Ciranda Project or Restorative Justice.	Restorative justice; restorative justice in the prison; the APAC method	Belo Horizonte, 28-06-2019
Carlos Canedo	Law professor at the UFGM and public prosecutor	The Brazilian penitentiary crisis; the APAC method	Belo Horizonte, 03-07-2019
Klelia Canabrava Aleixo	Lawyer and professor of law and public policies at the PUC Minas (Pontifícia Universidade Católica)	Restorative elements in the APAC method	Belo Horizonte, 05-07-2019
Valdeci Ferreira	Co-founder and director of the FBAC (Fraternidade Brasileira de Assistência aos Condenados).	The APAC method; restorative justice	Itaúna, 15-07-2019

2. FOCUS GROUPS

Participants	Role	Theme	Place and date
Grupo de Criminologia Crítica from the UNESCO; 7 participants	Debate group on critical criminology formed by undergraduate and master students	The Brazilian penitentiary crisis; restorative justice in the prison and the APAC method	Criciúma, 14-06-2019
Class of Penology and Fundamental Rights from the PUC Minas; 18 participants	Students of Klelia Aleixo enrolled in the undergraduate Law program	The APAC method	Belo Horizonte, 05-07-2019

3. PARTICIPANT OBSERVATION

Place	Type	Theme	Date
APAC of Porto Alegre	Observing the APAC prisons from within by walking around and talking to employees, volunteers and <i>recuperandos</i> .	The APAC method; restorative elements	21-06-2019
APAC of Itaúna	Observing the APAC prisons from within by walking around and talking to employees, volunteers and <i>recuperandos</i> .	The APAC method; restorative elements	16-07-2019 17-07-2019

4. SURVEY ABOUT THE INVOLVEMENT AND PERCEPTION OF THE ITAÚNA COMMUNITY REGARDING THE APAC

ENVOLVIMENTO E PERCEÇÃO DA COMUNIDADE SOBRE A ASSOCIAÇÃO DE PROTEÇÃO E ASSISTÊNCIA AOS CONDENADOS

Esta é uma enquete anônima sobre a APAC (Associação de Proteção e Assistência aos Condenados) de Itaúna. Se propõe como uma prisão alternativa onde os presos são chamados recuperandos. Não há agentes penitenciários e policiais armados e os próprios presos guardam as chaves. A comunidade participa no processo de recuperação através do voluntariado. O objetivo da APAC é promover a humanização das prisões, sem perder de vista a finalidade punitiva da pena. Seu propósito é evitar a reincidência no crime e oferecer alternativas para o condenado se recuperar.

Idade:	Sexo:	Tempo morando em Itaúna:
Data:	Lugar:	Número:

1. Qual é a sua familiaridade com o método APAC?				
<input type="radio"/> Não conheço	<input type="radio"/> Ouvi falar	<input type="radio"/> Conheço bem		
2. Qual é a sua relação com a APAC de Itaúna?				
<input type="radio"/> Nenhuma	<input type="radio"/> Ter familiares presos na APAC	<input type="radio"/> Ter familiares trabalhando na APAC		
<input type="radio"/> Ter ficado preso na APAC	<input type="radio"/> Ter trabalhado na APAC	<input type="radio"/> Outro (explique):		
3. De alguma forma gostaria de estar mais envolvido na APAC?				
<input type="radio"/> Sim	<input type="radio"/> Não	<input type="radio"/> Não sabe, não responde		
4. Em geral, gostaria de estar mais envolvido na política criminal local?				
<input type="radio"/> Sim	<input type="radio"/> Não	<input type="radio"/> Não sabe, não responde		
5. Numa escala de 1 à 5, qual é o nível de medo do crime que você sente				
<input type="radio"/> 1 muito baixo	<input type="radio"/> 2 baixo	<input type="radio"/> 3 neutral	<input type="radio"/> 3 alto	<input type="radio"/> 5 muito alto
6. Na sua opinião, a APAC aumenta ou diminui a sensação de segurança dentro da comunidade?				
<input type="radio"/> Aumenta	<input type="radio"/> Diminui	<input type="radio"/> Não aumenta nem diminui	<input type="radio"/> Não sabe, não responde	
7. Na sua opinião, a APAC muda os estereótipos que existem sobre os presos?				
<input type="radio"/> Sim	<input type="radio"/> Não	<input type="radio"/> Não sabe, não responde		
8. Qual é a sua opinião sobre o fato de não ter agentes de segurança na APAC?				
<input type="radio"/> Concordo	<input type="radio"/> Desconcordo	<input type="radio"/> Não concordo nem desconcordo	<input type="radio"/> Não sabe, não responde	
9. Você tem medo de fugas ou rebeliões na APAC?				
<input type="radio"/> Sim	<input type="radio"/> Não	<input type="radio"/> Não mais do que na prisão comum	<input type="radio"/> Não sabe, não responde	

10. Na sua opinião, os prisioneiros podem ser ressocializados?				
<input type="radio"/> Sim	<input type="radio"/> Não	<input type="radio"/> Depende do crime	<input type="radio"/> Depende da pessoa	<input type="radio"/> Não sabe, não responde
11. Em relação à pergunta anterior, a APAC da Itaúna teve alguma influência sobre essa opinião?				
<input type="radio"/> Sim	<input type="radio"/> Não	<input type="radio"/> Não sabe, não responde		
12. Você acredita na capacidade da APAC de reduzir a reincidência?				
<input type="radio"/> Sim	<input type="radio"/> Não	<input type="radio"/> Não sabe, não responde		
13. Segundo você, a APAC facilita a reintegração do preso na comunidade?				
<input type="radio"/> Sim	<input type="radio"/> Não	<input type="radio"/> Não sabe, não responde		
14. Qual deveria ser a principal função da prisão?				
<input type="radio"/> Punir mais importante do que ressocializar	<input type="radio"/> Ressocializar mais importante do que punir	<input type="radio"/> Punir e ressocializar são igualmente importantes	<input type="radio"/> Nenhuma	
15. Você concorda que a prisão deve continuar sendo a resposta principal para lidar com o crime?				
<input type="radio"/> Sim, a prisão é a melhor resposta para lidar com o crime, incluso as prisões tradicionais	<input type="radio"/> A prisão deve continuar sendo a resposta principal desde que seja reformada, como por exemplo no caso das APACs	<input type="radio"/> A prisão deve ser omitida o quanto mais possível, apenas para proteger a sociedade em casos extremos	<input type="radio"/> A prisão deve ser totalmente abolida	
16. Para quais tipos de crime você acha que a prisão é a melhor resposta? (é possível ter mais de uma resposta)				
<input type="radio"/> Furto	<input type="radio"/> Roubo	<input type="radio"/> Tráfico de drogas	<input type="radio"/> Crimes sexuais	
<input type="radio"/> Homicídio	<input type="radio"/> Latrocínio	<input type="radio"/> Colarinho branco	<input type="radio"/> Outro:	
17. Você acredita que um tratamento mais humano dos presos aumenta a eficácia do sistema prisional?				
<input type="radio"/> Sim	<input type="radio"/> Não	<input type="radio"/> Não sabe, não responde		
18. Numa escala de 1 a 5, qual é o grão de confiança na eficácia do sistema penal brasileiro?				
<input type="radio"/> 1 não confio	<input type="radio"/> 2 confio pouco	<input type="radio"/> 3 neutral	<input type="radio"/> 4 confio bastante	<input type="radio"/> 5 confio muito
19. Numa escala de 1 a 5, qual é o grão de confiança na eficácia da APAC?				
<input type="radio"/> 1 não confio	<input type="radio"/> 2 confio pouco	<input type="radio"/> 3 neutral	<input type="radio"/> 4 confio bastante	<input type="radio"/> 5 confio muito
20. Em sua opinião, o método APAC é adequado para:				
<input type="radio"/> Qualquer tipo de crime	<input type="radio"/> Somente os crimes mais leves	<input type="radio"/> Não sabe, não responde		
21. Quais tipos de crime você considera compatível com o método APAC? (é possível ter mais de uma resposta)				
<input type="radio"/> Furto	<input type="radio"/> Roubo	<input type="radio"/> Tráfico de drogas	<input type="radio"/> Crimes sexuais	
<input type="radio"/> Homicídio	<input type="radio"/> Latrocínio	<input type="radio"/> Colarinho branco	<input type="radio"/> Outro:	
22. Com qual frequência você foi vítima de crime nos últimos 5 anos?				
<input type="radio"/> 0 vezes	<input type="radio"/> 1 ou 2 vezes	<input type="radio"/> 3 ou 4 vezes	<input type="radio"/> 5 ou mais vezes	

23. Se você fosse vítima de um crime, gostaria de que o responsável iria para uma APAC?				
<input type="radio"/> Sim	<input type="radio"/> Não	<input type="radio"/> Não sabe, não responde		
24. Se fosse vítima de um crime, gostaria de estar envolvido na definição da pena?				
<input type="radio"/> Sim	<input type="radio"/> Não	<input type="radio"/> Não sabe, não responde		
25. Se fosse vítima de um crime, gostaria de estar envolvido na reabilitação do preso?				
<input type="radio"/> Sim	<input type="radio"/> Não	<input type="radio"/> Não sabe, não responde		
26. Você acha que o método APAC deveria substituir todas as prisões tradicionais no Brasil?				
<input type="radio"/> Todas	<input type="radio"/> Quase todas	<input type="radio"/> Não sabe, não responde	<input type="radio"/> Poucas	<input type="radio"/> Nenhuma

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