

10 Recommendations for working with migrant women in conflict with the law

The Migrant Women Project, of the Institute Land, Work and Citizenship - ITTC, provides since 2017 direct attendance to migrant women in conflict with the law who live in the city of São Paulo. From this service, ITTC directs its activities to a frequent mapping of networks and to building public dialogue, aiming to improve public policies, build care networks for this public, and strengthen existing services.

Action history

1997 Beginning of ITTC

ITTC's work with female migrants deprived of their liberty began in the late 1990s, from the identification of a small population of female migrants who were in female penitentiaries in Sao Paulo and the need to meet the specific demands they posed.

2009 Scenario changes

Because of the struggle for rights, advocacy, and the daily struggle for decarceration and gender equality, the context has changed. The population of migrant women in São Paulo in penal establishments has changed considerably, especially regarding the access to rights - previously denied - in the criminal execution.

2017 Beginning of the Migrant Former Incarcerated Women's Project

The ITTC's constant work with migrant women in prison has allowed us to identify not only the issues they face in prisons, but also a series of challenges and difficulties in life outside prison while serving time in open regimes, that deserve attention and urgent action.

Brief background of the Project

The context of the imprisonment of migrant women in Brazil starts, usually, from the circumstances of social vulnerability to which they are subjected. They are, for the most part, mothers who are the main providers of their homes, and who find themselves in poverty situations and political-economic crises in their countries. As mules of transnational trafficking, they are subjected to the most vulnerable work in the trafficking chain and, when arrested, face prisons that are poorly adapted to their specificities.

Two years of Migrant Former Incarcerated Women's Project

1.600 attendance appointments with migrant women at liberty

On average **40** women consulted per month

It was from the follow-up of individual cases that ITTC learned about the functioning of public services for migrant people, approached professionals from these services and identified the challenges to be faced.

The historical and legislative framework that has guided the Project's performance is the current Brazilian Migration Law (Law 13.445 / 2017). It guides the national migration policy based on the protection of human rights, guided by the principles of equality and non-discrimination. For the first time in Brazil, federal legislation guarantees and recognizes migratory status for non-Brazilian persons in conflict with the law, and establishes non-criminalization of migration as one of its principles, contrary to the previous Foreign Statute (Law 6.815 / 1980), now revoked.

From this perspective on the migrant person, the recommendations proposed by the Migrant Women Project are based on four main markers: migration, gender, criminal justice, and public policy. The application of recommendations should always take these principles into account.

These recommendations for working with migrant women under these conditions are addressed to the civil society that works with the migration theme, but mainly to professionals who work in public facilities, considering matters of prioritization of attention for the attendance and reception of this population.

SITUATIONS AND RECOMMENDATIONS

Right to citizenship

The right to citizenship, as expressed in the Federal Constitution, states that all people in Brazil should receive equal treatment before the law, regardless of nationality, gender, race, sexuality, age and other social markers.

Recommendation nº 1

Addressed to: all organs of the judiciary, legislative and executive, private enterprises and society as a whole.

Qualify and sensitize people who act directly in the public services attendance in the three spheres of the government, as well as authorities as a whole, in order to combat xenophobia and discrimination at all levels. Migrant people with criminal records are citizens, so their access to public policies must be whole, whether these policies are: migratory policies, such as regarding the access to Brazilian documentation; assistance policies, such as the *Cadastro Único - CADÚnico* (Unified Register), such as *Bolsa Família* (Family Grant) and *Bolsa Aluguel* (Rental Grant); health policies, through the full access to the *Sistema Único de Saúde - SUS* (Unified Health System); labor policies, to ensure a decent wage and good working conditions; among other policies included in all spheres of government.

Right to stay

Migrating is a right, therefore, committing a crime in Brazil should not be a justification for denying the permanence and the recognition of a person's rights under these conditions. The time of the criminal process and of the penalty can also open real possibilities of choice to live in the country, such as constructing a family and affection networks, economic and labor market insertion, studying, health treatment, among other situations.

Expulsion is a means for the state to compulsorily remove persons from its national territory, applied to all non-Brazilian persons convicted of common intentional crimes that are punishable by deprivation of liberty, such as imprisonment. Expulsion shall occur upon the completion of the sentence or upon judicial authorization for the purpose of early expulsion. In practice, expulsion may be a means for migrant women in conflict with the law to return to their home country, but it also becomes a new punishment when they choose to stay and settle in Brazil, regardless of the conditions that brought them to the country.

Recommendation nº 2

Addressed to: agents of the criminal justice and executive, especially the Federal Justice, Federal Prosecutor's Office, Federal Public Defender's Office, Federal Police and Ministry of Justice.

To jointly interpret the principle of non-criminalization of migration and the provision dealing with the "gravity (of crime) and the possibilities of resocialization in the national territory", both on the Migration Law, so that, in the analysis of the specific case, resocialization is also understood by these actors as a cause of inexpulsibility, in addition to the other causes already provided for by law, in order to balance the general rule of expulsion of migrant persons with criminal records in Brazil.

Right to documentation

The right to Brazilian documentation for migrant persons is provided for in the Migration Law (article 30, I, h). It is the means by which people are identified and recognized as citizens in society, enabling access to public services, participation in social programs, as well as the possibility of exercising rights and contracting duties. The importance of ensuring access to Brazilian documentation is given that, in many situations, women who are responding to a criminal process or serving a sentence in Brazil have their passports and other personal documents from their country retained in criminal proceedings, thus obtaining Brazilians documents - such as the *Registro Nacional Migratório - RNM* (National Migration Registry), the *Cadastro da Pessoa Física - CPF* (Individual Registry) and the *Carteira de Trabalho e Previdência Social - CTPS* (Work and Social Security Card) - are indispensable for their identification and economic insertion, conditions for their subsistence in the country.

Recommendation nº 3

Addressed to: Ministry of Justice, Public Security and the Federal Police.

Reduce bureaucratic procedures for issuing the *Registro Nacional Migratório - RNM* to persons on temporary release and serving a sentence. We highlight the importance of amending the Annex XV of the Interministerial Ordinance No. 03/2018 to exclude the item that requires criminal records from the home country of migrants under these conditions, allowing the person's reasoned statement about the impossibility of obtaining documents to be sufficient to apply for a residence permit, as this document can only be applied for in the home country and there are costs to be incurred for issuing and sending it.

Recommendation nº 4

Addressed to: Ministry of Justice, Ministry of Labor and the Federal Police.

Guarantee compliance with the Migration Law regarding the full right to migratory regularization, expressly providing access to the *Carteira de Trabalho e Previdência Social* - CTPS for migrants with criminal records, without the need to present judicial authorization, but through the expedition of interministerial ordinances.

Right to health

Access to health for migrant persons must comply with the principles of universality, equity and integrality in equal conditions for the Brazilian population, regardless of their conflict with the law situation. The principle of integrality in access to health through the *Sistema Único de Saúde* - SUS (Unified Health System) should be complemented with social services actions.

Recommendation nº 5

Addressed to: Ministry of Health and all agencies and services within the the *Sistema Único de Saúde* - SUS (Unified Health System) and the *Sistema Único de Assistência Social* - SUAS (Unified Social Assistance System).

Encourage discussion in health access services on attendance of migrant populations, so that they always consider their specificities of culture, ethnicity, race, gender, sexuality and religion, thus aiming to eliminate xenophobia and ensure decent attendance.

Recommendation nº 6

Addressed to: prison units, the Ministry of Health and all organs and services within the *Sistema Único de Saúde* - SUS (Unified Health System).

Ensure that migrant women leave the prison units with their identification card in the *Sistema Único de Saúde* - SUS (Unified Health System) and that they have access, if desired, to their entire medical care history in the prison system (medical record) or, alternatively, forwarding this history to the *Unidade Básica de Saúde* - UBS Basic Health Unit of reference of the place where these women are residing after prison time.

Right to housing

In the city of São Paulo, as in other cities, to get a vacancy at any shelter center you must first go to a *Centro de Referência Especializado de Assistência Social* - CREAS (Specialized Reference Center for Social Assistance) or a *Centro de Referência Especializado para População em Situação de Rua* - Pop Center (Specialized Reference Center for Population in Street situation) of the territory where the person is. These agencies search for vacancies and referral to the public shelter.

Migrant women in conflict with the law have great difficulty accessing these centers - when they need public shelters - because of their working hours. Often, the release permits in prisons is done in the late afternoon and they are compulsorily taken to the headquarters of the Federal Police for the purpose of migratory registration, leaving there late at night.

In situations like this, the indicated step-by-step in the city of São Paulo is to call the number 156, of the City Hall, and request for a referral by the *Sistema Único de Assistência Social* - SUAS (Unified Social Assistance System) so that a city vehicle pick the person up and send her to an emergency shelter. However, language barriers, the lack of information and the delay in the service (it can take up to 3 hours and there is the risk that the vehicle will not reach the place), make this path unfeasible.

Another aggravating factor is the understanding of the *Secretaria Municipal de Assistência e Desenvolvimento Social de São Paulo* - SMADS (Municipal Secretariat of Assistance and Social Development of São Paulo) about the referral of migrant person to specific shelters for this population: for a migrant to be referred to a shelter specific for migrants, he or she must be a newcomer to the city (up to six months). The justification for this understanding is that a longer stay creates bonds in the city and therefore makes it unnecessary to refer them to a specialized shelter. But for migrant women in conflict with the law, such a premise is flawed, as they may spend years in the country without prior ties to the country because they are incarcerated.

Recommendation nº 7

Addressed to: prison units, federal and state judiciary, municipal public authority (through the SMADS), state public authority (through the *Secretaria de Reintegração Social e da Central de Apoio ao Egresso e à Família* (Social Reintegration Secretariat and the Egress and Family Support Center)) and the Federal Police .

Establish an integrated attendance protocol between the judiciary system and prison politics and social services so that people with no fixed address who are leaving prisons can be routed directly to vacancies available in shelters if necessary, thus avoiding being subjected to situations of violation and increased vulnerability, with particular attention to cases of pregnant migrant women and with children up to 6 months old.

Recommendation nº 8

Addressed to: federal and state judiciary, municipal public authority (through the SMADS), state public authority (through the *Secretaria de Reintegração Social e da Central de Apoio ao Egresso e à Família* (Social Reintegration Secretariat and the Egress and Family Support Center)) and the Federal Police.

Create public agencies of reference or qualify those already existing or provided for by law, but not implemented (for example, the *Centrais de Penas e Medidas Alternativas* (State and Federal Justice Penalties and Alternative Measures Centers) and the *Centrais de Apoio ao Egresso e Família* (Egress and Family Support Centers), for those serving penalty in the open, serving alternative measures or for those who left the prison system. These agencies should include and integrate the federal, state and municipal spheres to ensure, articulate and facilitate their access to all public services, especially to intersectoral and interdisciplinary assistance.

Right to vocational training and access to work

The difficulties of insertion in the labor market of people who went through the prison system, in view of discrimination and lack of public policies to encourage hiring, also affects migrant women with criminal records. Access to work, whether through formal mechanisms (registration of employment in a professional card) or even through incentives for autonomous and entrepreneurial activities, enables their subsistence and life of these women in Brazil, as in many situations enable the economic support from their families in their home countries, regardless of the distance.

Recommendation nº 9

Addressed to: federal and state judiciary, legislative and executive, private enterprises and society as a whole.

Ensure the insertion of migrant women with criminal record in the labor market, proposing public policies to encourage the hiring of people who got out of prison in companies, especially those who already hire people who are inside the prison, as well as enforce the Interministerial Ordinance No. 3 of September 11, 2018 (hiring labor of people who were incarcerated), and qualify, through free training, the development of autonomous and entrepreneurial activities.

Recommendation nº 10

Addressed to: prison units, government in all spheres and private enterprises.

Expand the offer of Portuguese courses in the prisons units and also expand the dissemination of free Portuguese courses for migrants in public services and in the private sector, with the provision of scholarships and certificates in all situations.

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Execution:



Support:

