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HEALTH WHILE A RIGHT OF PRISONERS AND THE PRISON SYSTEM SUB JUDICE

SAÚDE ENQUANTO DIREITO DOS APENADOS E O SISTEMA PRISIONAL SUB JUDICE SALUD MIENTRAS EL DERECHO DE LOS CONDENADOS Y EL SISTEMA PRISIONAL SUB JÚDICE

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ABSTRACT

Objective: understanding the social phenomena related to the health of prisoners in the Brazilian prison system. **Method:** a case study was developed in a male penal institute, of medium security, in the state of Paraíba. The sample consisted of 35 inmates with different age groups, education and convicted of various crimes. Respondents reported about the health system conditions inside the prison and the role of the state in managing this process. The research project was approved by the Research Ethics Committee, CAAE: 0321.0031.000-11. **Results:** there were identified that the health care of prisoners has not been developed to meet all the requirements established by law. **Conclusion:** the absence of prevention, maintenance and treatment of health of prisoners, generated by both physiological and structural factors and the lack of health personnel and technology, creates a serious public health problem that goes beyond the prison environment. **Descriptors:** Right to Health; Legislation; Prisons.

RESUMO

Objetivo: entender os fenômenos sociais relacionados à saúde dos presidiários no sistema prisional brasileiro. **Método:** estudo de caso que foi desenvolvido em um instituto penal masculino, de segurança média, no Estado da Paraíba. A amostra foi composta por 35 apenados com diferentes faixas etárias, escolaridade e condenados por diferentes crimes. Os entrevistados relataram sobre as condições do sistema de saúde dentro da prisão e o papel do Estado na condução desse processo. O projeto de pesquisa foi aprovado pelo Comitê de Ética em Pesquisa, CAAE: 0321.0031.000-11. **Resultados:** identificou-se que a atenção à saúde dos presidiários não tem sido desenvolvida de modo a atender todos os requisitos dispostos na legislação vigente. **Conclusão:** a ausência de prevenção, manutenção e tratamento da saúde dos presidiários, gerados por fatores tanto fisiológicos quanto estruturais e pela falta de pessoal e tecnologia em saúde, gera um problema grave de saúde pública que ultrapassa o ambiente da prisão. **Descritores:** Direito à Saúde; Legislação; Prisões.

RESUMEN

Objetivo: comprender los fenómenos sociales relacionados con la salud de los presos en el sistema penitenciario brasileño. **Método:** un estudio de caso se ha desarrollado en un instituto penal masculino, de seguridad mediana, el Estado de Paraíba. La muestra consistió en 35 reclusos con diferentes grupos de edad, la educación y condenado por varios delitos. Los encuestados informaron sobre las condiciones del sistema de salud dentro de la prisión y el papel del Estado en la gestión de este proceso. El proyecto de investigación fue aprobado por el Comité de Ética en la Investigación, CAAE: 0321.0031.000-11. **Resultados:** se identificó que el cuidado de la salud de los presos no ha sido desarrollado para satisfacer todos los requisitos establecidos por la ley. **Conclusión:** la ausencia de prevención, mantenimiento y tratamiento de la salud de los presos, generados tanto por factores fisiológicos y estructurales y la falta de personal de salud y la tecnología, crea un grave problema de salud pública que va más allá del ámbito penitenciario. **Descriptor:** Derecho a la Salud; Legislación; Prisiones.

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INTRODUCTION

According to the Constitution of the Federative Republic of Brazil (CF), enacted in 1988, health is a right for all, guaranteed to any Brazilian citizen, it is the duty of the State, to offering it through the power of their devices.¹ The Law 7210/1984, also known as the Law of Penal Execution (LEP), points out that the prisoner has the right to health, which is a social right.² As a Brazilian citizen, the detainee has the right to health and is supported by the Federal Constitution.

The Unified Health System (SUS) in full force in Brazil is based on the principles of universality, equity and Completeness and their actions are of the government responsibility. It is anchored in the Declaration of Alma Ata and ensures that health is enjoying a decent life, enjoying a range of human rights.³⁻⁴ However, within the Brazilian prison system this legislation is often assaulted there a number of inadequacies related to both infrastructure as the conditions of life such as food, hygiene, among others.

This phenomenon is related to the worldwide increase in the prison population, which is reflected in Brazil, where from 2001 to 2011, the number of prisoners increased by approximately 120%.⁵ The disproportionality between the ticket and outputs results in overcrowding, compromising the process of morbidity and mortality within the prisons.

In order to overcoming the problems concerning health in the prison there was created under the National Plan for the Prison System Health (PNSSP) according to Interministerial Ordinance No. 1.777/2003, which gives the citizen convict the guarantee of their social rights when serving a sentence for an offense arising.⁶ This Plan aims to organizing the access to the actions of the prison population and SUS health services, providing health centers for primary care in prisons and organizing the reference shares for specialized outpatient services, addition of hospital services.

Despite all the current legislation in the health care field in the prison environment, there is still a clear lack of conditions and material and human resources to quality care, citing in particular the lack of health professionals, minimally enabled to accomplish this task.

Given the above, the questions are: What is the quality of health service provided in Brazilian prisons? The State shall ensure compliance with current legislation on health?

The objective of this study is:

- Understanding the social phenomena related to the health of prisoners in the Brazilian prison system.

METHOD

The method used in this research was the case study, because it is an empirical research, which started from the desire to understand complex social phenomena, small groups of behavior and its organizational, administrative and individual process, beyond political related to it.

The research scenario was a Security Institute Criminal average State of Paraíba, with capacity for 640 inmates, aimed at male inmates, serving custodial sentence with sentence of more than four years. The choice of this scenario was due to the fact that it presents a multidisciplinary team of health, as provided in the State Operating Health Plan of Prisons (POESSP) and Prison Health Unit established by the National Health Plan of Prisons.

There was included in the survey a sample of 35 participants. The collection of empirical material occurred between the months of December 2011 and August 2012 and was obligatorily preceded by the knowledge and acquiescence of the Consent and Informed of respondents; explanations of the objectives of the investigation; importance of the contribution and the accuracy of the information provided; guaranteed anonymity and the right to freedom to withdraw from the study at any time if they so wished.

The technique used was the interview of the structured type, with recording the testimonies of prisoners and registration forms exclusively designed for this purpose. Alternatively, interview scripts were applied to inmates who did not accept the recording.

The survey was conducted in two stages: capture the information on the sociodemographic profile of inmates, containing age, level of education and crime committed. In the second stage there were collected information regarding the quality of health services provided in the prison, as

well as their understanding of the state's role in the context of the right to health.

The interviews were transcribed and analyzed, following the technique of Thematic of Minayo analysis, which is in search of meaning units to build a communication in which the presence of certain themes express the reference values and behavioral models of the discourse related the analytic object.⁷

The research was approved by the Ethics Committee of the National School of Public Health under the Protocol CEP/ENSP - No 304/11 and Presentation Certificate for Ethics Assessment (CAAE): 0321.0031.000-11. Addition was performed in accordance with the Helsinki Declaration revised in 2000⁸ and of Resolution no. 466/2012 of the National Health Council.⁹

RESULTS AND DISCUSSION

◆ Crimes committed

Figure 1 shows that the majority of participants, 12 individuals (34,28%) were sentenced on the basis of Article 157 paragraph 2 of the Brazilian Penal Code (PC) (qualified theft). A percentage no less significant is convicted in Articles 121 (kill someone) 8 subjects (22,85%). The sentenced due to Article 155 (Subtract for themselves) associated with Article 157 §2,5 prisoners (14,28%); Article 121 associated with the Article 157,3 inmates (8,57%). The other 7 subjects (20%) were accused by other articles typified in the Penal Code.

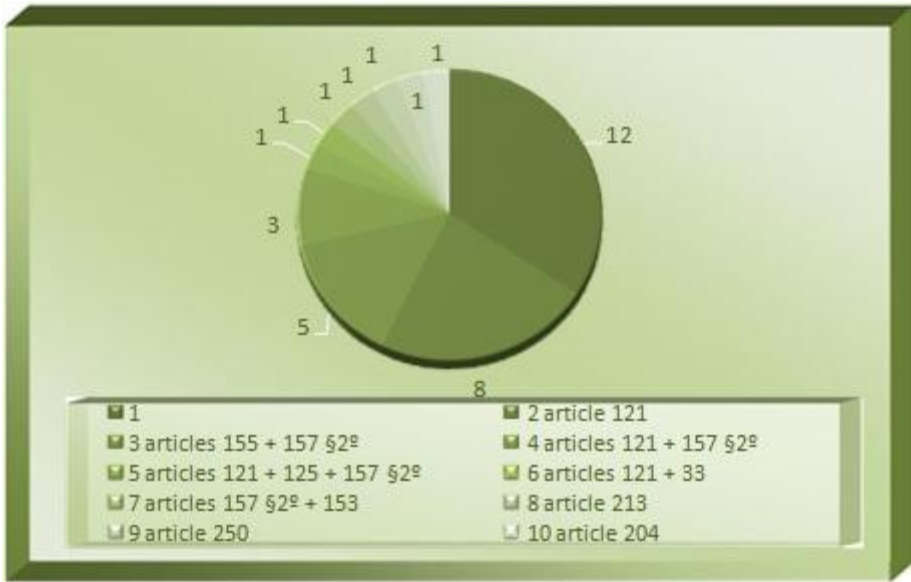


Figure 1. Statement of the crimes committed by inmates and their respective articles in the Criminal Code. João Pessoa (PB), August, 2012.

About the crimes committed by men in Brazil, the National Penitentiary Department/ Penitentiary System Information of the Ministry of Justice (Depen/InfoPen) reports that, Articles 157§2 and 121, are the most used in Brazil. Of the 50,471 crimes tried and accomplished Against the Person, 27.584 were qualified homicide (54,65%), incurred in Article 121 of the Criminal Code. With regard to property crimes, crimes of 217.247, 13.327 (6,13%) have infringed Article 157 Paragraph 2 on the aggravated robbery.¹⁰

In the state of Paraíba, in 2010, there were 6.774 crimes against the person, and, in 2011, this number increased to 7.118. In João Pessoa, the state capital, the month of January to August 2012 was recorded 351 homicides, representing a decrease of 13,1% over the same period last year (404 cases).¹⁰

With regard to crimes against heritage in 2011, in the State of Paraíba, the number was 2,849. Among these crimes, the most incidents in João Pessoa were the theft to the person, theft in residence, car theft and bike and vehicle theft. In 2011, the records pointed to 1,723 cases in João Pessoa.¹¹⁻²

The kinds of crimes committed by participants called our attention, the diversity of criminal acts and the association between them: Article 121 associated with the Article 157; Article 121 associated with articles 125 [associate to cause abortion (...)] and 127 (associated with comminated Feathers); Article 33 (Import, export and remit ...) associated with Article 121; Article 153 [Disclose someone (...)] associated with the Article 157, in addition to Articles 213 (rape), 250 (causing fire), 204 (Frustrate through fraud ...) and 155

(Subtract for you ...) of Brazilian Penal Code.

The association of Articles of the Penal Code for composition of the sentence, as a rule, implies increasing the inmate's prison time. In fact this prison said Pavilions "General" connecting all types of prisoners and all kinds of crimes they committed. The transit trapped inside the pavilions is free, and the prison ends up becoming a kind of "school" of the crime. The National Council of Justice suggests the separation of offenders in relation to the type of crime committed, where drug dealers, murderers,

and rapists, among others, should occupy their proper spaces in prisons.⁵ However, the national reality, and also to the State of Paraíba, is not that.

◆ Age of the inmates

Figure 2 shows, in absolute numbers, the age group of inmates of the Criminal Institute of the State of Paraíba. It was observed that most of the inmates, 11 individuals (31,45%) are aged over 40 years old; 8 (22,85%) are in the range of 35-40; 4 are between 33-35 (11,42%); 7 are between 25-30 years old (20,00%), while 5 (14,28%) are subjects younger than 25 years old.

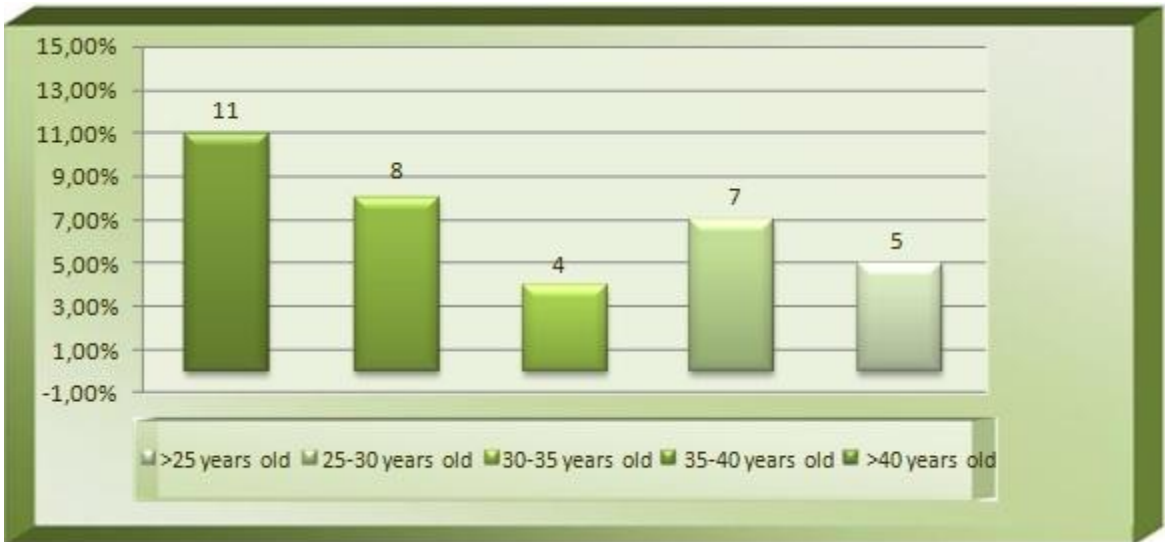


Figure 2. Distribution according to age. João Pessoa (PB), August, 2012.

The National Penitentiary Department/ Penitentiary Information System of the Ministry of Justice - (Depen/InfoPen) reports that the panorama of the age groups of prisoners in Brazil repeats, basically, in the States of the Federation, regarding the age and health problems.¹⁰ This fact is extremely worrying, because when entering the prison system, young people already have diseases that are aggravated due to the precariousness of the prison health system.¹³ On the other hand, living without restrictions in open pavilions, as seen in the scenario this research, just spreading from small affections to diseases

that require hospitalization and isolation. In this context, mental disorders take dramatic contours, since many of which are not even considered.

◆ Schooling of the inmates

Figure 3 shows, in absolute numbers, the level of education of the inmates of the sample. It was observed that more than half of respondents 20 (57,14%) had incomplete primary education; 4 (10,45%) completed primary school; 1 (2,9%) had not completed high school; 2 (5,71%) completed high school and only 1 (2,9%) concluded higher education. The "illiterate" constituted 7 subjects (20,85%).

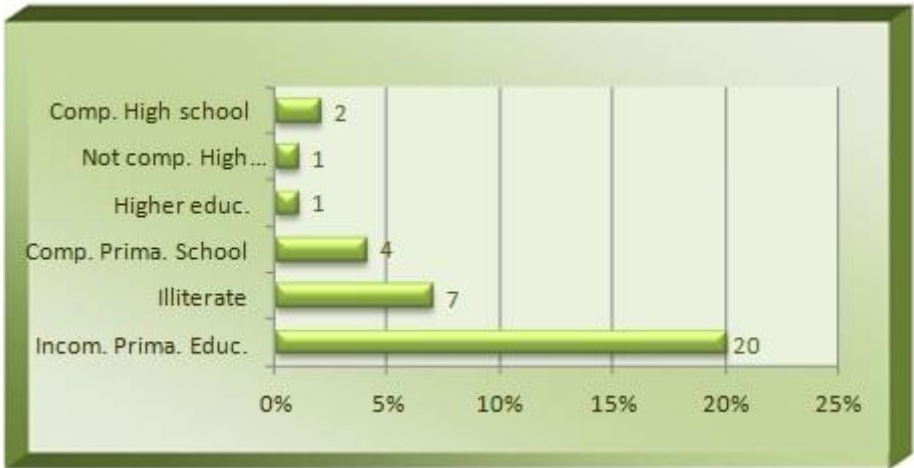


Figure 3. Distribution regarding the level of education. João Pessoa (PB), August, 2012.

Data from the National Penitentiary Department/Penitentiary Information System of the Ministry of Justice show, about the education of prisoners throughout the national territory, of the 496.251 prisoners, 175.087 (35,28%) had incomplete primary education; 62.532 (12,60%) have completed primary education; 28.787 (5,80%) have completed high school; 47.839 (9,6%) inmates are literate and 25.000 (5%) are illiterate.¹⁰

The low effectiveness of the national education system shows, in its entirety, the numbers that reveal the level of education of inmates in the country. When entering the prison system, the individual is immediately "enrolled" in what came to be called "school of crime", because without information and options to deal with the institutional idleness just easily are co-opted by members of organized groups always attentive to opportunities enroll new members.

• Prisoners' health: purpose or contingency?

According to Effort II Report data Prison of the State of Paraíba,¹² there is a deficit of approximately 3.000 vacancies, considering the entire prison system of the state, which now has about 8.500 inmates.

Overcrowding has as a direct consequence on the impossibility of maintaining the health of prisoners. The prisoners themselves recognize the interdependence between the elements of the triad "time - overcrowding - disease" and its harmful and unquestionable consequences for themselves and for the other companions in misfortune. The evidence collected by the P14 interviewed reveals this fact:

[...] When we take out, we get sick, and there's too many people down there on top of each other, a riot (p14).

The overcrowded cells, poor and unsanitary housing make the arrests an environment conducive to the proliferation of epidemics and the spread of diseases. All these structural factors are associated with a poor diet, sedentary lifestyle, drug use and poor hygiene making the health conditions of the subjects are affected.¹⁴

Detainees are affected by various diseases within the prisons. The most common are respiratory diseases, such as tuberculosis and pneumonia; followed by liver diseases such as hepatitis, and sexually

transmitted diseases, AIDS being the main one. Surveys estimate that approximately 20% of Brazilian prisoners have HIV. This is the result of homosexuality associated with sexual violence by other prisoners and injecting drug use.¹⁴

The testimonies of prisoners in relation to the quality of health services provided in the prison and the role that the state develops in the context of the right to health and health care received in prison was raised by responses to this social group to a series of questions about the process of illness and treatment in areas suitable for this purpose, within the Criminal Institute. We highlight the following statements:

[...] We asks an inmate who helps in the post to lead the people, then he decides, because there are days it's so stuck up, here's 600 and 800 men sometimes doctor and there are days that have a "heads" sick, when the post is open to people is rescued when you stand at the parlatorium waiting car (p16).

[...] It is very difficult to get here, I have problem of high blood pressure, take medicine controlled every day, only come up when I disturbed, the problem here is that there's a nurse stuck it is this House that distributes medicine is amazing, just have to put it in his head that he was never a nurse on the street I was never there in the street doctor wants to apply the injection prisoners, then the "goat" does not accept, if it was specialized, a "bitch" who lived on the street robbing, killing there arrives in the chain wants to become a nurse, I don't give my arm, run no risk (p3).

[...] I got Erysipelas, fever, inflames everything suppurates, pain, tonight I didn't sleep and I can't take care down there (p13).

Access to health care is limited by several factors: how are organized health services, qualifications of health professionals, the location of services, the adequacy of technological resources, the financing of actions and health services, provision of services and the health needs of persons.¹⁵

The reality of health care in our search scenario gets to be dramatic, if analyzed according to the items proposed by the above author. Although the professional qualification for the performance of its activities is unquestionable, the way the service is organized and your offer, do not meet the needs of the user population, as

occurs in only the morning, getting prisoners who fall ill in other periods under the care of an inmate who assumes the position of "nurse", without any technical or theoretical training to perform this function.

From the point of view of the adequacy of technological resources, especially the soft-hard and light technologies, in the morning, when the unit is in operation, the inmates are treated, if they gain access to the post. Asked about cases of emergency situations considered:

[...] I had very strong cough and I was bleeding, so I came here, but it gave nothing, today I'm here to solve the problem of my arm, I took a stud and a guy there dislocated my arm, then said he had no vehicle was weekend, put me in the parlatorium felt a lot of pain almost die of pain, so the car never showed up and went back to the Pavilion and the cellmates held and put in place the arm hence after the pain is gone and the swelling went down and the car did not come, the post was closed the health center (p12).

[...] boy what I saw sick, took quick on the wheelbarrow, then know not (p23).

Health care of prisoners in the Criminal Institute, in emergency situations, does not differ from elective situations, in terms of drama. Its differential is that the non-provision of assistance may result in death of the individual. Article 14 of Law 7210 of 1984 (LEP)² ensures the health care of prisoners, even before the establishment of the Unified Health System (SUS). This law ensures medical care, pharmaceutical and dental care, even when the criminal establishment is not equipped to promote the necessary medical care; it is provided elsewhere, authorized by the direction of the establishment.

According to studies conducted with inmates¹⁶⁻⁷ which suffer from several diseases, which requires specialized care, often lacking in continuity of secondary and tertiary, depending on the degree of complexity identified by the health team. Data from a survey say¹⁸, the sequence of service users should prioritize the most serious, followed by other degrees of complexity, so that everyone can be satisfied.

With regard to the state's role in the context of the right to health, even with numerous legal provisions to guarantee the dignity of prisoners and maintaining their

health, the situation of the prison population in Brazil remains precarious, if analyzed from the point of practical view. The perception of the inmates of the Criminal Institute on the state's role in the context of the right to health was unanimous as to state negligence. The statements below make it clear that, despite the apparatus available in legal terms, the practical implementation of the right to health is still prison is a utopia for prisoners:

[...] I think I can do more for us, there's so much he can do. It is a good proposal. Can improve the food, increase the meds could put more people to take care of us to the health center (p12).

[...] ambulance to assist the people and staff at the clinic this afternoon and what State is this! That ends the Director sometimes taking us in his car to help us (p32).

The state has given little attention to the Prison System, in recent decades, leaving aside the necessary humanization, in particular regarding the deprivation of liberty, allowing many prisons are transformed into authentic dungeons and distant respect to the physical and moral integrity of prisoners, right constitutionally tax.¹⁹

It is known that the state recognizes the importance of compliance with current legislation and the maintenance of programs of care in relation to the health of the prisoner; however, the legal framework alone is not capable of meeting the system's weaknesses with regard to maintenance of health measures adopted within the prisons. In this sense, even with a competent conglomerate programs, decrees, laws and ordinances, cannot overcome the problems that present themselves daily.²⁰

With regard to health convict's rights, it is noteworthy that the confinement does not remove this social group their constitutional rights, among these being the right to health. The specific assistance to this group is guaranteed by PNSSP aimed, among others is to organize access to the actions of the prison population and SUS health services, creating several primary care units in prisons and organizing the reference shares for outpatient services specialized, in addition to hospital services.

The statements below contradict the legal standard and show a blatant disregard to Article 196 of the Constitution of the

Federative Republic of Brazil, 1 which provides "health as a right and duty of the state", with universal and equal access to programs and services for its promotion, protection and recovery.

[...] the people arrested even, anything okay, there are days that I need from the doctor and I can't even come up and have the day he doesn't come (p34).

[...] We know the right there, but you need the right time, to talk to the doctor is the greatest sacrifice in the world, anytime you need not have (p35).

The statements show that although some know their rights, conform not to receive or receiving a service that does not meet even their basic needs health nurse. It is known that the right to health necessarily involves the expression and exercise of citizenship as the foundation of human dignity.²¹ Unfortunately, we are compelled to agree studies argues that health has not been met by all citizens¹⁷. Prison System, the applicability of SUS is still incipient, leaving individuals confined to the margin of the right to health and without assistance compatible with their needs.

When asked to report what improvements the Criminal Institute could have, to ensure the health of prisoners, respondents mentioned to matters of an administrative nature (human resources), structural (material resources) and operational (work process). We highlight the following statements:

[...] the boy who is going to pick up people should be more human, he's going to pick up people and say they haven't been able vacation for me, with my leg here, I'm not holding up, kicked one officer in the Serrotão version and then I guess the points she Platinum "handled" inside, it's coming out I can't stand sleeping secretion (p6).

[...] increase the size of the ambulatory and the food could be better (p24).

[...] more remedies that we need are six hundred prisoners here (p9).

[...] have an ambulance to take us to the hospital (p11).

The administrative questions resumed to lack of human resources and the dehumanization of some prison guards. The issues of structural deficiencies forwarded relative to the size of the health unit and lack of material resources. Health unit dimensions are unsatisfactory, for propitiate lack of privacy and find yourself at odds with NSCLC resolution.²² Finally, the

operational matters alluded to effective work process in the prison health unit. The choice of prisoners who receive health care from a health-promoting agent creates obstacles in the process for some prisoners and the unfeasible for others.

It is noteworthy that all the actions listed by respondents as health guaranteed access are enshrined in legal terms as rights acquired by this social group in accordance with the Constitution of the Federative Republic of Brazil,¹ with the no. 8080 Act 19/09/1990 (Health Organic Law),³ with the number of Law 7210 of 11/7/1984 of Criminal Law Enforcement - (LEP)² and the Interministerial Ordinance no. 1777 of 09/09/2003,⁶ approving the PNSSP and the booklet of person in prison.²³

The data found in this study are in agreement with the review conducted in 201324, which show that there is a deficit of qualified and humanized staff to deal with detainees, especially those with weak health.

CONCLUSION

The study enabled the condensation of important data on the Criminal Institute of Paraíba, in the context of health care afforded to prisoners. The results revealed that the health care of prisoners has not been developed to meet current legislation, providing only partially the provisions PNSSP. All these factors are the result of the penitentiary has professionals related to the Plan, but does not meet your numeric prerequisite, with a reduced number of health professionals and support (correctional officers) employed for this purpose.

From the point of view of prevention, maintenance and treatment of health of prisoners, overcrowded cells, exposure to internal pathogens generated by the garbage accumulation, lack of light and hard technology prevents any attempt to maintain health in the Criminal Institute. This serious problem not only affects the lives of the inmates, but also the health of visitors, setting, therefore, a matter of public health. Exposed to illness, these people are vectors for extramural contamination from prison.

Despite the great seriousness of this problem, the search for theoretical basis of empirical data revealed a relative scarcity of scientific production on the subject in

question, particularly studies on the health of male prisoners, related to the Brazilian prison system.

At the end of this research we believe have contributed to the emergence of improvements in overcoming at least some of the problems in health and particularly the health in the prison context, based on the reverb own problems of the investigated scenario that is not so different from that known on the national scene.

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