

Court suspends Christmas pardon as Brazil's jail population reaches world's third highest

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A report issued by Brazil's Justice Ministry on December 8 reveals that the country's prison population more than doubled between 2005 and June of 2016, reaching a total of more than 720,000. This figure places Brazil in the infamous position of the world's third largest incarcerator, despite its having only the fifth largest population. Shockingly, of those imprisoned, 40 percent are being held without any conviction whatsoever.

The country's prison population in absolute numbers is smaller only than that of the United States, with 2.2 million prisoners, and China—with seven times Brazil's population—with 1.6 million prisoners. The incarceration rate is also the third highest, at 343 prisoners per 100,000 inhabitants, also behind the US (at 666) and Russia (455). At the same time, the report also reveals that Brazil has the world's third largest rate of overcrowding, with prisons jammed to 197 percent overcapacity, trailing behind only the fascist Duterte regime in the Philippines (316 percent) and neighboring Peru (230 percent).

Significantly, the last three years alone have seen 100,000 people thrown into the dungeons created by Brazil's system of social apartheid.

The unbearable situation created by these conditions exploded once again with a New Year's Eve prison rebellion in the western state of Goiás that ended with nine dead, including two by decapitation. This has become a veritable holiday tradition, after multiple New Year's revolts in 2017 and 2014 ended in dozens of deaths and decapitations.

Parallel to prison massacres, Brazilian federal troops have occupied the capitals of four states—Rio Grande do Norte, Sergipe, Rio Grande do Sul and Rio de Janeiro. Their actions, which have included house-to-house searches, are conducted outside of civilian control and are answerable only to military tribunals. In each case, governors have issued Public Emergency decrees giving the federal troops impunity, while withholding the wages of civil servants and state police, prompting them to stay in their quarters.

The return of state Military Police to the streets after deals

have been reached with the state governments has not resulted in any of these cases in a withdrawal of federal troops. On the contrary, a decree issued on December 29 by President Michel Temer provides for their deployment at least until July, at which point Rio de Janeiro and Rio Grande do Sul will have completed a year under federal military intervention.

Against this backdrop of prison mayhem and military repression, the most significant political event has been the suspension by the Supreme Court of Temer's presidential Christmas Pardon, under the pretext that it would facilitate the evasion of justice by businessmen and politicians convicted by the ever-widening Lava-Jato investigation into a bribes-and-kickbacks scheme in major infrastructure projects.

After the decree was unveiled on December 22, the charge was led by federal prosecutor Deltan Dallagnol, a self-absorbed anti-corruption "crusader", who stated that the pardon—which would reduce sentences by up to 80 percent—would undercut his team's ability to blackmail the accused into turning state informants.

Dallagnol boasts of being heir to the "Clean Hands" Italian anti-corruption operations, never bothering to consider that the key political result of that operation was the entry into government of the fascist Northern League.

Dallagnol was followed by the Temer-appointed Attorney-general Raquel Dodge, who asked Supreme Court President Carmen Lúcia Rocha to suspend the decree on the grounds that "the President has no unhindered power to extend pardons, otherwise he would take over the power of courts and liquidate sentences ... extinguishing the pillars of the Brazilian Constitutional Republic". Temer's decree would also "send a message against the Constitution" in a time of "rejection of systemic corruption". Rocha accepted the argument, adding her own opinion that "a pardon cannot be a prize to the criminal nor implicate tolerance for crime".

The right-wing language employed to suspend the decree until February, at the end of the Supreme Court recess, does not take into consideration, remarkably, that the measure has

been applied by a plurality of Brazilian presidents stretching back to the 1950s, and had become increasingly embracing since the end of the military dictatorship in 1985. The application of the presidential pardon must be reviewed in every case by local courts, which may rule that individual prisoners are not eligible for a pardon.

In defending the measure, the government has claimed that Justice Ministry data shows that, on top of the 40 percent of prisoners who were not convicted, a staggering 80,000—or 20 percent of those have been convicted—are in jail for simple theft, and would be eligible for pardon after court review, which is restricted to non-violent, non-threatening crimes and requires good behavior and collaboration with authorities. Significantly, presidential pardons in Brazil cannot be applied in any circumstance to so-called heinous crimes, which according to Brazilian law encompass drug trafficking, which accounts for 36 percent of convictions.

A February 2017 report by *O Globo* newspaper, in the aftermath of the January 2017 prison massacres, has found that the so-called “Drugs Law” signed by former Workers Party (PT) president Lula da Silva in 2006 has made the percentage of prisoners incarcerated for drug-related offenses soar from 8.7 percent in 2006 to the cited 36 percent.

Even so, since 1997 presidential decrees have become ever more encompassing, with maximum sentencing for eligibility increasing from six to 12 years and the minimum time served falling from from one-third to one-fourth of the original sentence. The pardon has also been extended to include the elderly and mothers with small children.

The attacks on the 2017 pardon by Dallagnol and Dodge, backed by the press and the majority of pundits, take issue with its exclusion of a maximum penalty limit to become eligible for sentence review, and the reduction of minimum time served to one-fifth of the original sentence, as well as the possibility of pardon of fines together with prison sentences and the “non-exclusion” of crimes of corruption—which, not being classified as heinous crimes, were never before excluded from the annual decrees. Temer ignored the recommendation to exclude corruption from the pardon by the technical body charged with drafting the decree, the National Crime and Prison Council (CNPCCP).

In fact, the president and the majority of the council had resigned on January 25, 2017 in protest over Temer naming of the far-right lawyer Alexandre de Moraes as Justice Minister and his declaration that fighting crime required “less studies and more guns.” As a result, the CNPCCP took a sharp turn to the right.

The former CNPCCP President Alamiro Velludo came forward on December 29 to declare to *Folha de S. Paulo* “there is a punishing climate stoked by Lava-Jato, and those

who came out against the decree are the repressive organs, which I find dangerous.”

Nonetheless, a report by a *Folha de S. Paulo* columnist from December 29 and another by the specialized Law website ConsultorJurídico arrive at the same conclusion: of the 50 politicians and businessmen convicted by Lava-Jato, only 33 are currently serving sentences and only one has served the one-fifth of sentence minimum necessary to be eligible for a pardon.

The support of Supreme Court’s president Carmen Rocha and the press for the self-serving narrative of Lava-Jato prosecutor Dallagnol signal the advanced state of decay of democratic forms of rule in Brazil, where the supposed fight against corruption is being employed ever more openly to justify increasing the powers of the state and attacking fundamental rights.

This turn to the right is being carried out with the full complicity of Brazil’s pseudo-left. In Congress, the first questioning of the decree came from the Socialism and Freedom Party (PSOL), a “broad party” that includes in its ranks both Morenoite and Pabloite tendencies.

PSOL’s senior representative in the Lower House, Chico Alencar from Rio de Janeiro, announced on December 27 a draft law to limit the powers of the president to issue pardons. At the same time the Morenoite Spanish-language website *La Izquierda Diario* reported in true yellow press fashion: “Christmas Gift: Temer issues pardon that benefits those convicted of corruption.”

As for the fate of the hundreds of thousands of workers and youth facing horrifying abuse and violence inside Brazil’s vast prison system, this is a matter of complete indifference for these so-called “lefts,” whose politics reflect the interests of more privileged layers of the Brazilian upper middle class.



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