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Notes on the Bahian Penal Enigma: Subnational Variation and Low Imprisonment Rates in Brazil

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Abstract

The arrival of mass incarceration in Brazil has placed the country as an important setting for investigation in comparative penology. Having reached more than seven hundred thousand prisoners in 2019, the country has consolidated itself as the largest prison population in Latin America. However, the country presents significant internal variation among the subnational states. The situation of imprisonment in Bahia, for instance, subverts the process of Brazilian prison expansion, displaying the lowest imprisonment rate among the 27 subnational states of the federation. As such, this different pattern of imprisonment offers a conundrum demanding explanation. The present argument analyzes the reasons behind the different trajectory of imprisonment in this state, addressing its political background, its adoption of prison privatization and the outlook of its penal apparatus. It attempts to explore this Bahian enigma by shedding light on some of its specific developments, but also closely examining imprisonment conditions in the southern region of the state.

Keywords Punishment · Imprisonment rates · Comparative penology · Subnational variation · Brazil

Trancoso in the state of Bahia is one of the jewels of the Brazilian coastline, featuring scenic beaches with crystal clear waters, shimmering sands, and picturesque palm trees. The small village offers comfort and refuge in a soothing and chilled atmosphere amidst the local population. It fuses together global jetsetters and international celebrities with well to do Brazilians in a luxurious environment of fancy seaside hotels and restaurants disguised under the façade of a modest and prosaic fisherman community. Nested in the southern part of Bahia, in a district in the city of Porto Seguro, it epitomizes the contradictions of this state and the country at large in relation to the acute social and economic inequalities of the Brazilian federation.

Not far from this tropical paradise, a clear enclave of the Global-North in the poverty-stricken surroundings, the drama of Brazilian punishment wreaks havoc. Prisons in the adjoining southern region of the state of Bahia display the problems of overcrowding, violence, and lack of infrastructure that usually plague Latin American prison facilities. As such, they constitute one of the most poignant

characterizations of the Global-South and its predicaments. Yet they reveal a surprising conundrum. Despite their precariousness, they are part of a subnational prison system holding imprisonment rates comparable to European countries, as the state of Bahia has the lowest rate in comparison to the other 26 subnational states in the Brazilian federative arrangement.

In the wake of a proposed new federative arrangement for the criminal justice system in Brazil,¹ in which the federal government plans to adopt a more pronounced role in the elaboration of policies and the administration of crime control and punishment, this situation of subnational variation in the outlook of criminal justice institutions and practices springs to the fore. The wide internal variation of imprisonment population and rates indicates the importance of subnational administration to the outlook of punitive practices in the country (Fonseca, 2024), as, in the current federative arrangement, subnational administrations are responsible for

¹ The Brazilian Federal government has just introduced a Constitutional amendment proposal to reform the organization of institutions of crime control and punishment within the federative arrangement. Since the beginning of the century, there has been a concerted effort to establish the Unified System of Public Security (Sistema Único de Segurança Pública – SUSP) in the country through incremental steps, reaching now an attempt to offer an amendment to the Brazilian Constitution. This step takes further the modernizing thrust which characterized policies in the field since the return to democracy.

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most activities of punishment and crime control. Following the open trail of modernization initiated in the democratic period (Fonseca, 2018), the federal government has been trying to coordinate efforts to improve the operation of the criminal justice system, through an attempt to bring more accountability and efficiency to its institutions.

The prison system in Brazil has been through significant expansion since the return to democracy in the 1980s. At the peak of imprisonment in the country in 2019, between convicted and remand adult prisoners, the prison population reached around 760,000 people behind bars and displayed an imprisonment rate of almost 350 inmates per hundred thousand inhabitants (MJSP, 2024). The historical series leading to this situation of mass incarceration displays a steep and consistent increase, as it departed from 239,000 inmates in 2002 and witnessed an expansion of the prison population more accentuated than the US imprisonment (MJ, 2015).

The situation of imprisonment in the state of Bahia offers a different picture from the overall outlook of national imprisonment. Although witnessing increasing numbers in the second decade of the present century, its numbers are not comparable to national rates and to other states in the federation. It is one of the common tropes of comparative penology that rates of imprisonment conceal a vast reality behind the cold face of numeric data (Cavadino & Dignan, 2005; Nelken, 2010). Exploring the numbers of imprisonment in Bahia would certainly lead to an incorrect comprehension of punishment in the state, as it does not mean any form of leniency or penal mildness in the region. On the contrary, overcrowding, poor sanitary conditions, understaffing, and violence constitute the standard of the prison experience. At the same time, these numbers also fail to grasp the overall levels of violence in the state, which displays one of the highest homicide rates and employment of deadly police force in the country² (Lourenço, 2015; Moore, 2020). The surprising low prison rate just provides elements for thinking about the peculiar dynamics of punishment and social control taking place in that part of the globe.

To make sense of this paradoxical situation, the idea of a Bahian enigma (Aguiar, 1958; Dantas Neto, 2006) is borrowed to address the criminal justice system. While the original concept referred to the economic lack of development in comparison to the rest of the country, in terms of punishment and crime control, the Bahian enigma translates into a situation of low imprisonment rates among states displaying much higher numbers. The state of Bahia thus presents apparently lenient institutions against the backdrop of a highly violent and conflictive context, pervaded with social

inequality and abuse against the most deprived sectors of the population. While official rhetoric depicts the state as a harmonious and joyful tropical community, members of lower classes have to navigate the formal and informal violence and abuses of the state apparatus (Moore, 2020).

This article attempts to shed light on this apparent contradiction of punishment in Bahia, seeking to understand the reasons behind the discrepancy of prison rates in relation to other subnational units. The contention of this article is that the criminal justice apparatus in the state has not kept pace with the modernization thrust taking place around the country since the turn of the century. It also discusses more generally the situation of Bahia and more closely the context of its respective southern region, which might operate as a metonym for the entire state. It focuses on changes taking place in this part of the territory, as a way to offer a glimpse into the undergoing contradictions of subnational variation around the country. Besides a summary depiction of the imprisonment situation in the state and its southern region, the argument strives to analyze the historical background of the state political organization, the privatization of prison institutions and the outlook of the criminal justice apparatus, as their characteristics would bear an imprint on the way penalty takes shape in the state and provide elements to comprehend its exceptional situation.

The Situation of Imprisonment and Crime Control in Bahia (2010–2020)

The state of Bahia is situated in the North-eastern region of Brazil, occupying a territory of 567,295 square kilometers. It is slightly bigger than France and the fifth largest Brazilian state. It holds a population of more than 14 million inhabitants, featuring as the fourth most populous state in the federation. Its capital, Salvador, was also the first capital of the country during the initial years of Portuguese colonization. The state was allegedly the place of the first disembarkment of Portuguese seafarers during the Age of Exploration and was an important region in economic cycles during the colonial period. It possesses a rich and diversified culture, in which there is a conjugation of different heritages and a strong presence of indigenous and afro-Brazilian influences. In this sense, the importance of Bahia for the entire Brazilian federation is far from negligible, but, on the contrary, it represents a rich and vast tradition quintessential to the self-image of the country.

The state of Bahia has 27 prison facilities under the supervision of the Secretariat of Penitentiary Administration and Rehabilitation (SEAP). Many of them are part of the expansion of the prison system endeavored from the beginning of the century around the country, intensifying the construction of new facilities and the reform of existing units through

² The combination of low imprisonment rates and high level of police brutality might constitute a different assemblage of social control, which still requires further investigation.

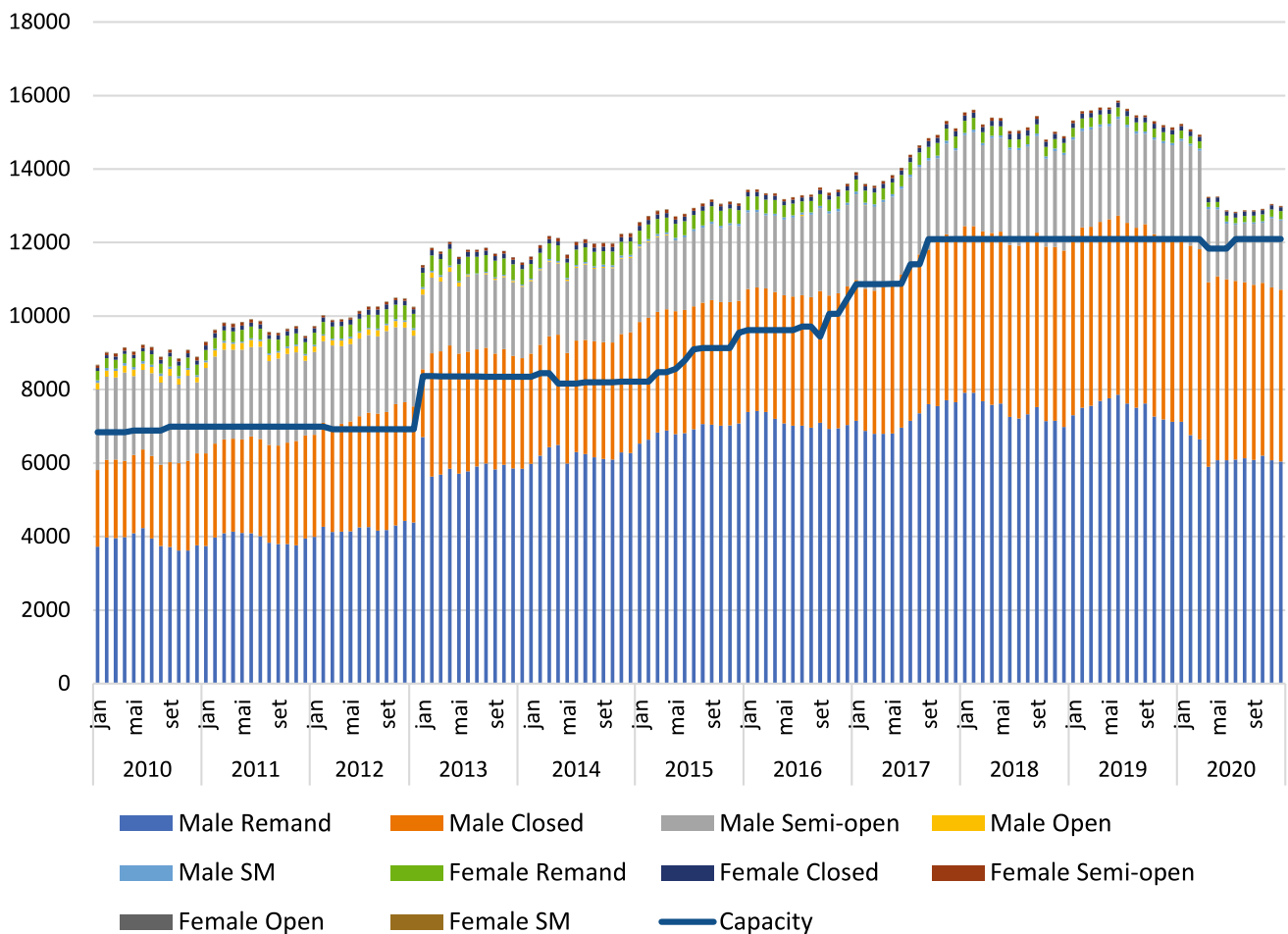


Fig. 1 Prison population—Bahia, regimes and capacity (2010–2020). Source: SEAP (2021) *População Carcerária do Estado da Bahia*

the incentives of the federal government. The state has been spearheading a burgeoning movement of prison privatization in the country. As of 2019, among these new prison units, nine facilities were under co-management with private companies, including four together with Reviver (establishments in Juazeiro, Eunápolis, Serrinha, and Valença) and five with Socializa (establishments in Lauro de Freitas, Itabuna, Vitória da Conquista, Barreiras, and the new male facility in Salvador).

The prison system in Bahia reached 15,863 people behind bars in June 2019, displaying an increase of 7193 inmates in relation to the beginning of 2010 (Fig. 1). It has thus witnessed a substantial growth of its prison population and vacancies in its establishments. Although showing an increase of almost 77% in the number of places in the system between 2010 and 2020, there was still a shortage of 3768 vacancies at the peak of incarceration in June 2019. The system is responsible for keeping prisoners in different regimes

of sentencing,³ but also pretrial prisoners and inmates detained under security measures (SM). The level of remand prisoners has been very accentuated, hovering around 50% of total inmates. Although the female prison population has represented just a small percentage of the prison population, ranging during this period from just 0.93% to 4.06%

³ In Brazilian Penal Execution Law (Lei 7.210/1984-BR), the legal regulations for carrying out punishment and detention in the country, there are basically three types of prison regimes for convict offenders, organized in a progressive system from greater to lesser restrictions upon inmate freedom. The closed regime is the strictest model in which there is the so-called penitentiary rigor and in which prisoners stay enclosed in their cells and wings. The semi-open regime is characterized by a step towards progressive return to social life as the prisoner has greater freedom of movement and may reach the right to work outside the establishment, returning in the evening to a medium security establishment. The open regime consists of night reclusion for the inmate in a low security facility. The recurring lack of places in the prison system has resulted in the conversion of semi-open and open regimes into house arrests and electronic tagging. [STF, RE 641.320, rel. min. Gilmar Mendes, j. 11-5-2016, P, DJE de 1º-8-2016, Tema 423].

of inmates, the dire situation of their incarceration and their special situation of vulnerability have become an important topic of concern (DPEB, 2022).

Although Brazil has extremely high rates of imprisonment, the state of Bahia retains a rate significantly lower, which would be hard to characterize as a situation of mass incarceration. As a matter of fact, in comparison to the rates at national and state levels in the federation, the state has consistently displayed the lowest imprisonment rate, ranking in the last position in the moment of highest incarceration in the country during this period (Fig. 2).

To comprehend the situation of imprisonment in Bahia, the argument here departs from a closer inspection of the prison situation in the southern region of the state and tackles three different fronts: trends in state politics, dynamics of prison privatization, and the outlook of the penal state. While the analysis of a more circumscribed part of the territory aims at providing a more detailed picture of imprisonment practices and conditions, the interrelation of these other aspects is meant, if not to solve, at least to make better sense of the Bahian penal enigma.

The investigation of the southern region of the state thus aims at bringing more vivid understandings of this scenario behind walls, as a way of illustrating the contradictions and paradoxes involved in a situation of low prison rates but gruesome prison conditions. The goal here is to explore this region of Bahia, comprising three Identity Territories, in the classification from the state government, bringing together the territories of Litoral Sul, Costa do Descobrimento, and Extremo Sul (roughly translated as Southern Shore, Discovery Coast, and Extreme South). These territories have 47 municipalities and, according to IBGE population estimates for 2019, had a population of 1,575,832 inhabitants.

The southern region of the state also suffers with the operation of criminal justice institutions and broader social dynamics involved in the outlook of the state at large. Since the beginning of the present century, its criminal justice and prison systems have been through an incipient process of transformation, causing a direct impact on the total population behind bars and the respective rates in the state. The relative importance of the region for the situation of imprisonment in Bahia is clear, as the southern region has lodged a significant number of inmates during the period under analysis. Although the proportion of inmates in relation to the rest of the state has oscillated between 2010 and 2020, it ranged between 15 and 25% of the total state prison population (Fig. 3). It also witnessed the construction of three new prison facilities over the last quarter of the century. In that regard, it might provide a privileged standpoint through which to examine and comprehend the imprisonment in Bahia.

The conditions of imprisonment in the southern region of Bahia also represent a part of the incipient movement of modernization. Prison establishments in the region have a great number of inmates and operate in a situation of constant overcrowding, in line with other regions of the state and the country. The two companies in charge of private management of prison establishments during this period were also present in the southern region of the state, namely the prison in Eunápolis (Conjunto Penal de Eunápolis) and also the prison in Itabuna (Conjunto Penal de Itabuna). They largely indicate the rationale behind the timid prison expansion in the state. Rather than a coveted business opportunity for the private sector and the provision of better public services for the state, this privatization process through co-management has meant simply relegating punishment and

Fig. 2 Imprisonment—sub-national variation, Rate per 100,000 inhabitants (2019). Source: MJSP (2024) Sisdepen-Relatórios analíticos

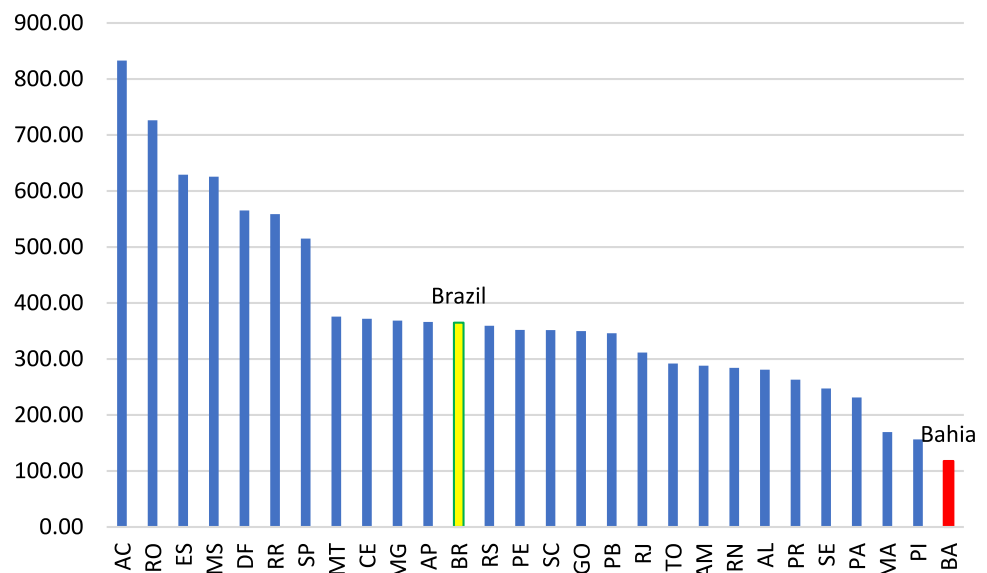
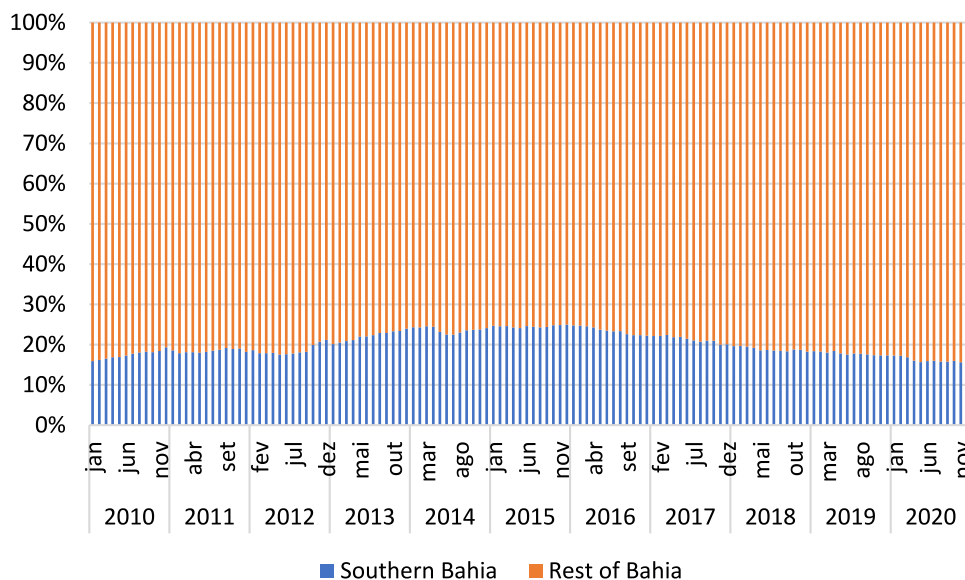


Fig. 3 Prison population ratio—Southern Bahia, (2010–2020). Source: SEAP (2021) População Carcerária do Estado da Bahia



imprisonment to a lower priority status in the governmental political agenda.

The Prison Context in the South of Bahia

The current century brought in its wake a reconfiguration of imprisonment in the southern region of the state. In a few visits between 2018 and 2022,⁴ establishments in the region were the object of examination, revealing the dire situation of imprisonment in the region. Combined with numbers provided by the Secretariat of Prison Administration and Rehabilitation (SEAP), a brief look at these establishments might reveal some of the developments taking place in the Bahian prison system over the last years.

In the southern region of Bahia, there are primarily four different prison facilities currently in operation. Besides the older establishment in Ilhéus (Presídio Regional Advogado Ariston Cardoso), it is also possible to find in operation the prison facilities in Itabuna, Eunápolis, and Teixeira de Freitas. According to data from December 2019, these four establishments kept behind bars 2605 people in establishments with 1623 places (SEAP, 2021). It represented 17.2% of the number of prisoners and 13.4% of all places in the state. Although these establishments are relatively new, the shortage of 982 places in the region corresponded to almost a third of the total number of places required within the state prison system to avoid overcrowding. The extent of

imprisonment, hence, is not trivial in the southern region and its overcrowding is clearly pronounced.

The oldest prison establishment in the southern region of Bahia, still in operation, is the facility situated in Ilhéus, but it has been increasingly decommissioned over the last years. More recently its main purpose is to keep prisoners in remand in the region (Fig. 4). Since 2018, its occupation has been below the official capacity. Although there are places within the facility, it has not been deployed to alleviate overcrowding in the units around it, mostly the overcrowding of the unit in nearby Itabuna. The prison population was exclusively composed by male offenders.

Among the relatively more recent establishments, the prison establishment in Teixeira de Freitas began its operations in 2001.⁵ The main reason behind its implementation was the need to replace the old city jail, which had been consistently overcrowded. Nowadays, this establishment would receive male prisoners from 13 judicial districts around the facility, but also women from a wider geographical area.⁶ The physical structure of the establishment had two main wings. Besides these wings, there was also a small unit for female inmates. In another internal subdivision, as another class of imprisonment in this mixed facility, there was lodging for prisoners in the semi-open regime.

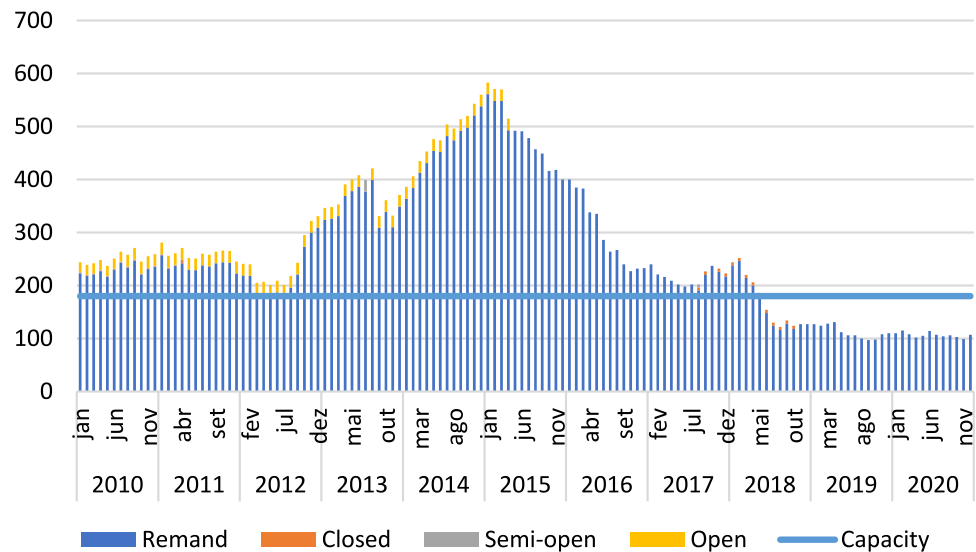
According to the prison administration, during a visit in June of 2019, the establishment lodged 761 male and 53 female inmates, in a clear situation of overcrowding. This excess prison population had already reached a higher level

⁴ The present argument emerges from a research project conducted during this period in the region, providing an opportunity to visit prison facilities and observe some of their practices and characteristics. Most empirical statements about each facility in the following pages has been gathered in these visits.

⁵ The facility has been created through Bahian legislation (Lei 7.621/2000-BA).

⁶ In accordance with internal regulations of the judicial system in Bahia (Provimento CGJ 01/2023-TJBA).

Fig. 4 Presídio regional Advogado Ariston Cardoso, Regimes of Prison Population and Capacity (2010–2020). Source: SEAP (2021) População Carcerária do Estado da Bahia



in past years, when the facility reached almost a thousand prisoners. The establishment maintained the same capacity during the last decade, keeping 316 places in the unit. The level of overcrowding was staggering, reaching 250.6% of its original capacity and prompting the state administration to build the prison in Eunápolis to host offenders from the region. The flow of new inmates was highly pronounced, as this establishment would receive an average of 30 new inmates every week. There had been a clear increase in the number of remand prisoners from August 2012, which surpassed the number of total available places in the facility already in 2013 (Fig. 5). From that moment onward, prisoners awaiting trial became the bulk of individuals in the facility. Therefore, the proportion of remand prisoners was astoundingly high, gravitating around 62.5% around the time of the visit. Differently from the other establishments in the region, there has been no major change in the prison population, except for the arrival of the pandemic. The beginning of the Covid pandemic led to a pronounced decrease of prisoners, mostly by a significant reduction in the numbers of remand custody for men and the release of male convicts in semi-open regimes.

Unlike the other two establishments constructed this century in the region, the management of the unit is exclusively public, even though some of the activities are outsourced, such as the provision of meals for inmates. Most importantly, prison guards were almost exclusively tenured public servants, recruited to service through public admission exams in 2010 and 2014. However, as a small downside of this more technocratic recruitment process, most of the staff were not originally from the region, leading to a higher degree of transiency in their posts.

The unit has operated with internal working opportunities for the prison population. Some jobs were available to inmates, who could be hired in the workshops of broom,

cement blocks, and cookie factories within the establishment. These jobs were paid in accordance with the legislation of inmate labor, prescribing a remuneration of at least 75% of the minimum national income.⁷ According to the prison administration, they have managed to get up to 90% of the prison population in working activities.

The participation of judicial actors and community councils has also helped in the creation of job opportunities, as partnerships have been established between the prison and surrounding companies. Educational and cultural initiatives have also provided activities for the inmate population, providing access to educational resources up to secondary education and occasional cultural events. In one of the wings, a set of cells has been converted into a classroom for inmates to prepare for accreditation exams. A partnership with the municipality and private companies has also enabled the formation of a musical band in the establishment.

In 2009, the facility went through a major renovation to expand its structure and lodge prisoners in the strictest type of maximum-security confinement. However, the state policy has changed to accommodate these inmates in a single maximum-security facility in the prison unit in Serrinha,⁸ exclusively destined to these inmates. The new area has been retrofitted to accommodate female prisoners. Meanwhile, inmates under threat and secluded from the rest of the prison population were housed in different areas of the facility, subject to longer periods in cell confinement and having their yard time in small areas next to their own cells.⁹

⁷ Article 29 of Law of Penal Execution (Lei 7.210/1984-BR).

⁸ Serrinha is a maximum-security facility built closer to the capital for keeping inmates in more austere prison regime.

⁹ Vulnerable wings in Brazilian prisons confine prisoners whose lives and well-being might be harmed by fellow inmates, usually

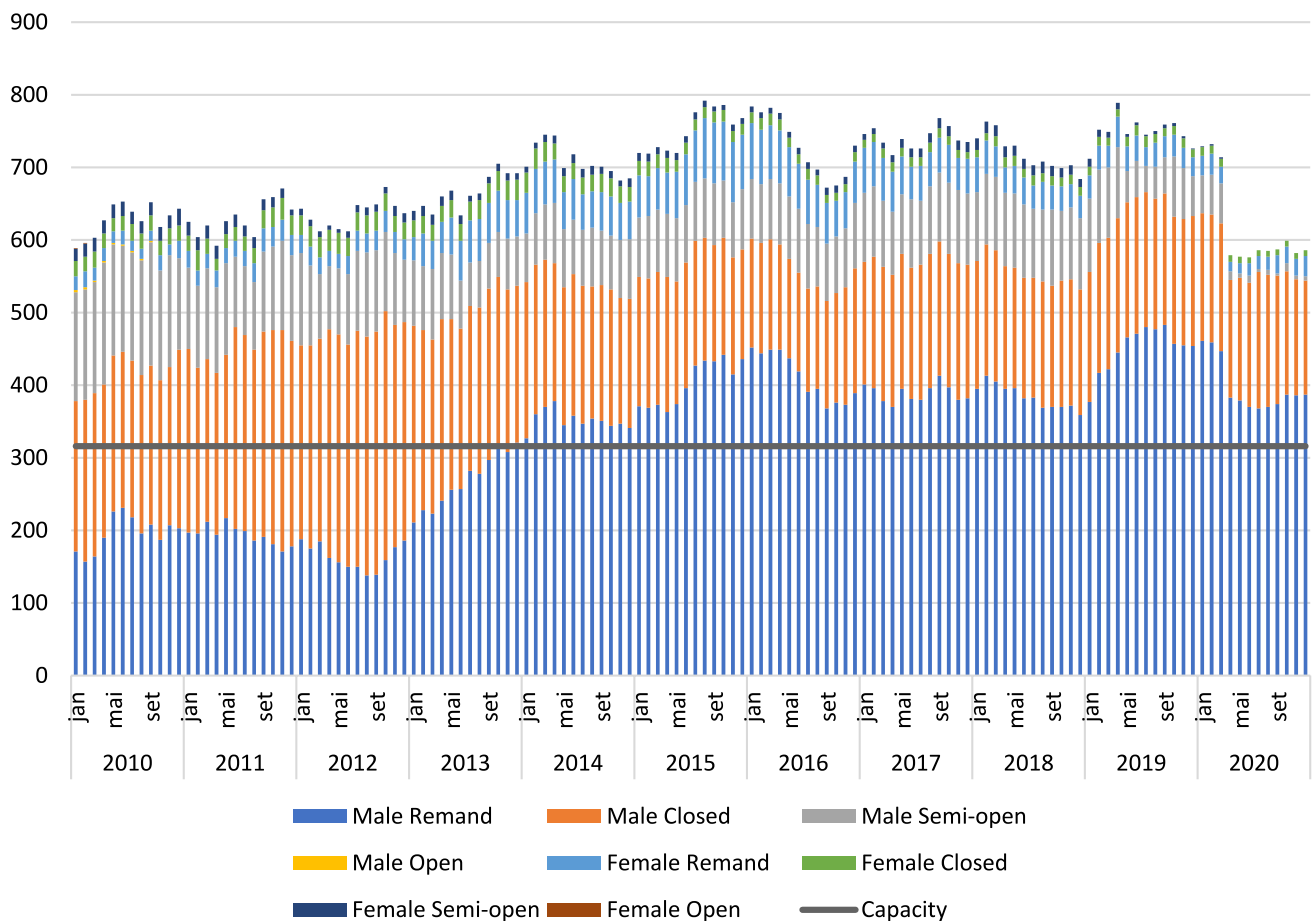


Fig. 5 Conjunto Penal de Teixeira de Freitas, regimes of prison population and capacity (2010–2020). Source: SEAP (2021) População Carcerária do Estado da Bahia

The city of Itabuna also hosts in the district of Nova Feradas a prison establishment created in this wave of prison expansion in the region. The prison in Itabuna is the result of governmental initiative and legal deliberation in 2006.¹⁰ The architectural design of the building follows the basic blueprint implemented in the region at the beginning of the century. The main building had two wings, in which most prisoners were housed. Additionally, it had three small buildings in its entrance, sparing one of them to house female prisoners while the others would lodge inmates from the closed and semi-open regimes. The institution attempts to separate prisoners from the semi-open regime from closed regimes, but only a fraction of prisoners in that regime could take advantage of its less severe imprisonment conditions.

Footnote 9 (continued)

comprising sexual offenders, snitches and former personnel from police and prison institutions.

¹⁰ The prison establishment emerges from the state legislation (Lei 10.248/2006-BA).

The facility was under a co-management agreement, through the participation of the private company Socializa. In this arrangement, only three positions were held by public servants within the administration, while all the other functions were performed by employees from the private company. The private enterprise, thus, was responsible for the complete administration of the unit, including its internal security. In terms of services for prisoners, besides the provision of basic medical services, it was within the purview of the private management the provision of psychological, juridical, and social assistance to the inmate population.

The establishment has a large building in the rear area of the prison complex, destined for activities of rehabilitation. This recently renovated area, put together by the work of the inmates, holds a few classrooms for each of the wings and some workshops. Visiting areas of each of the wings have been converted into cells for those under threat and secluded from the rest of the prison population, granting them more space for daily exercise than in other facilities. Each of the wings also has smaller areas for this type of inmates, but these ones suffer with intense overcrowding. Newly arrived

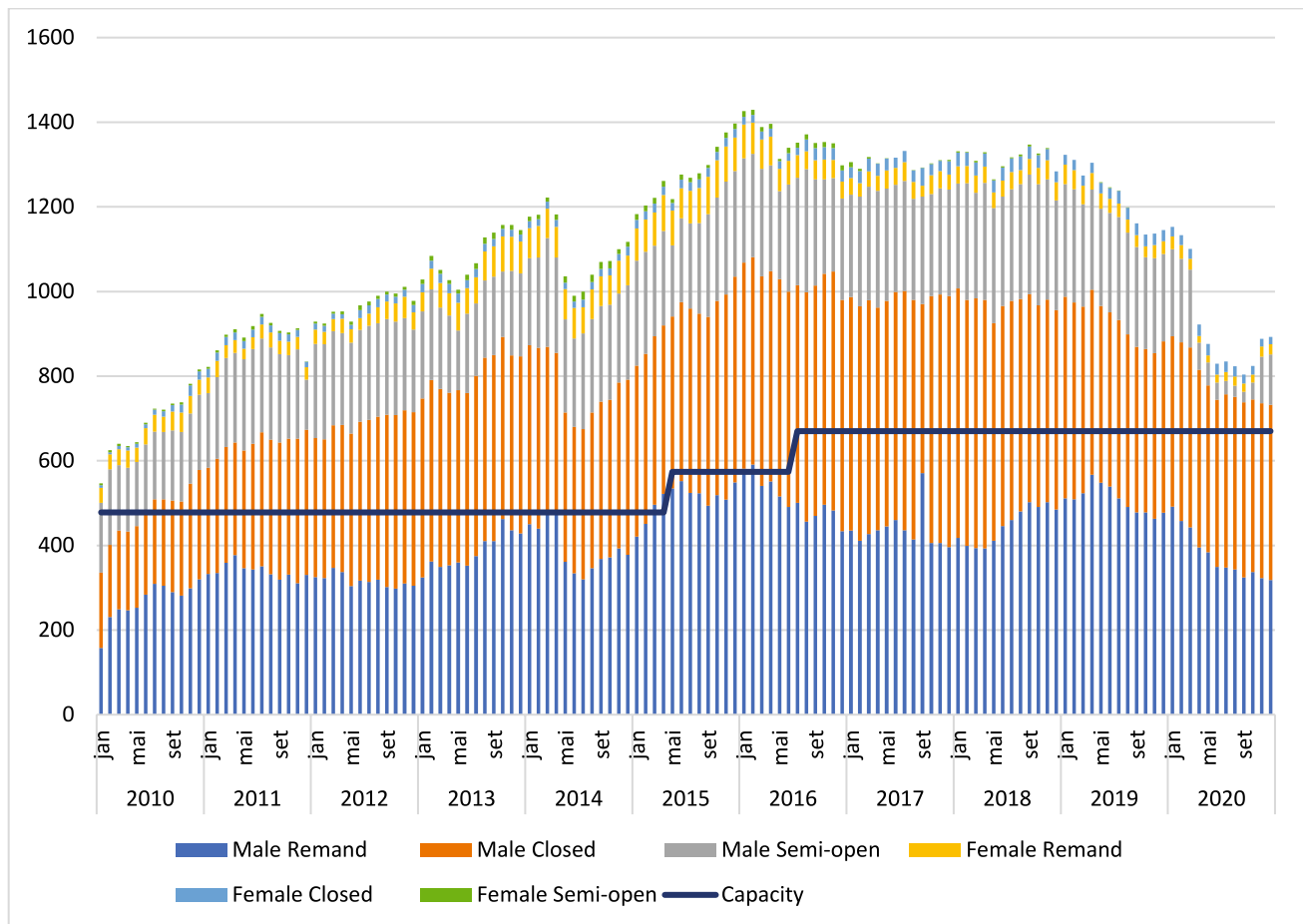


Fig. 6 Conjunto Penal de Itabuna, regimes of prison population and capacity (2010–2020). Source: SEAP (2021) *População Carcerária do Estado da Bahia*

inmates get screened through a side entrance to one of the wings and receive objects of personal use from the private company.

In May 2014, the unit went through a large rebellion, but, according to the administration, it had been much more peaceful in recent years. Right after these riots, many prisoners have been transferred to other facilities in the region, reducing the number of inmates in the establishment. After this rebellion, the prison population witnessed, thus, a marked drop, but resumed its expansion subsequently to reach its peak in the beginning of 2016 (Fig. 6). Consequently, the prison facility went through a few reforms to expand its capacity in 2015 and 2016, reaching 574 and 670 places in each of these reforms. According to official numbers, overcrowding reached its peak in February 2016 at 248.95%, but the later expansion of official capacity was not even remotely capable of solving the issue of overcrowding. The arrival of the pandemic also meant a drastic prison reduction, decreasing the number of male prisoners in remand custody and mostly in the semi-open regime.

Finally, the prison establishment in Eunápolis began its operations in 2011 after a legislative deliberation in support of its creation took place in the year before.¹¹ The main purpose of the new prison was to house inmates from the neighboring judicial districts and reduce the overcrowding from the prison in Teixeira de Freitas. The architectural style is similar to other prison buildings in the region. It has two distinct wings, in which cells are organized in a two-storey construction surrounding a small football court. The unit would only lodge male prisoners in the closed and semi-open regimes, as well as those in remand.

The capacity of the establishment has changed a few times during the period under observation, first reducing its capacity from 477 to 468 places at the beginning of the operation and further reducing it to 447 places right after a major rebellion took place in 2014 (Fig. 7). In 2015, the prison reached 457 places in the unit, but overcrowding was

¹¹ The establishment was created by law (Lei 11.903/2010-BA).

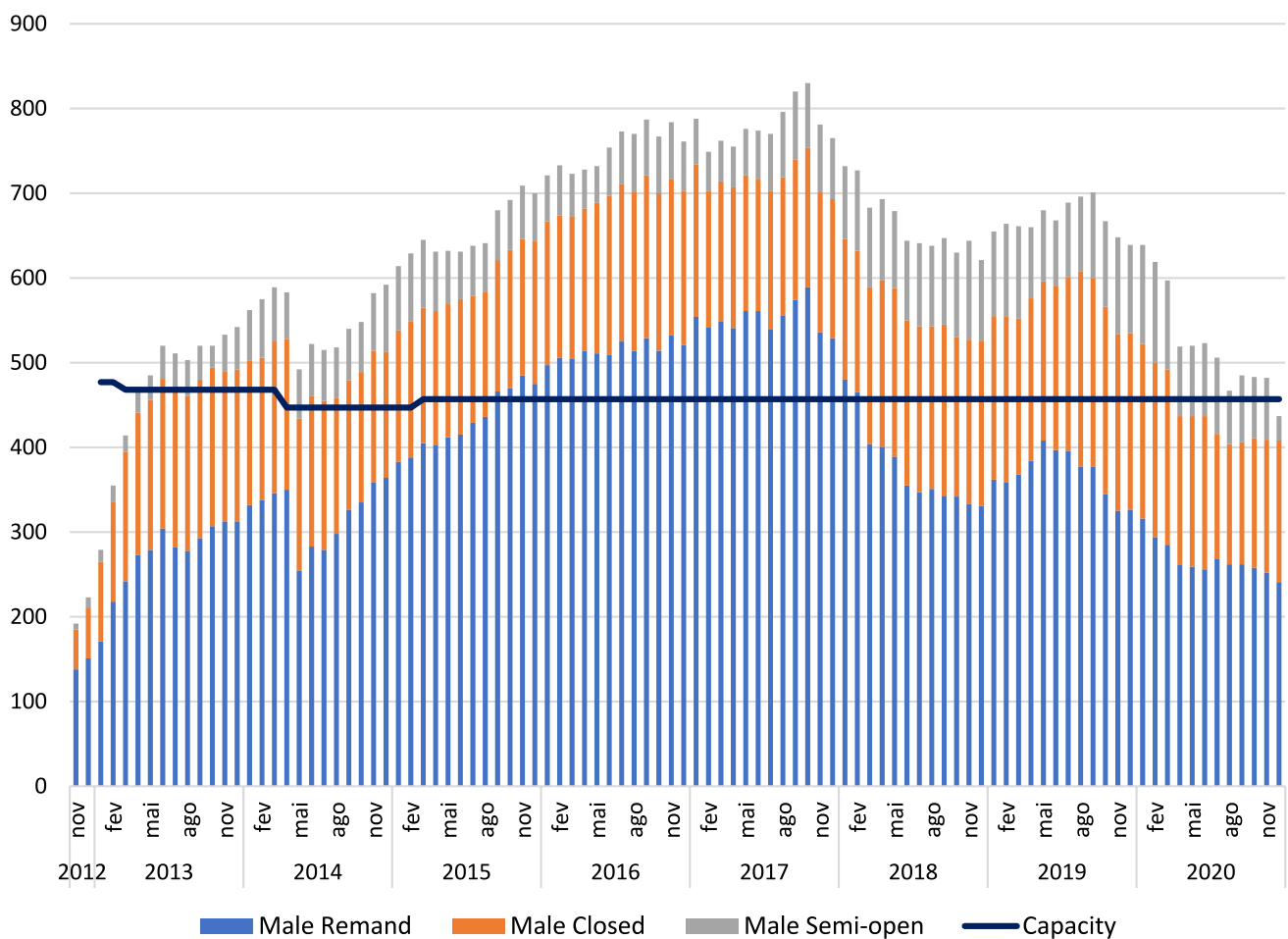


Fig. 7 Conjunto Penal de Eunápolis, regimes of prison population and capacity (2010–2020). Source: SEAP (2021) População Carcerária do Estado da Bahia

still extremely high. In October 2017, the facility reached its maximum occupancy with 830 inmates behind bars and an occupancy rate of 181.62%. The facility already begins its activities with a high percentage of remand prisoners and, at the height of its occupancy, pretrial prisoners represented around 71% of the total population behind bars.

The prison facility was also managed by the private sector, a company named Reviver. In the prison administration, the governor and adjunct governor are public servants, but all the other activities were entirely carried out by the private company. The security team operating in the establishment was also composed of private security guards. Representatives from the private company claim the situation of private management has depended upon exceptional contract extensions, as the original contract had already expired. State payment was usually late. The administration suffered with understaffing and private employees had to perform multiple roles in prison management.

New inmates would receive their basic hygiene products, their uniforms and a new mattress in their initial screening.

The inmates in the closed and semi-open regimes would be lodged in the same wing of the facility, subject to undifferentiated treatment. In these wings, remand prisoners were also housed together with convict offenders. The activities in the prison establishment almost did not offer prison labor opportunities. The rate of employment within the prison population was extremely low. All the activities performed by inmates were subject to a great degree of oversight from security agents. The prison also went through major riots in May 2014, just one week after the occurrences took place in Itabuna.

In these three more recent facilities, there is an astounding number of prisoners and a high degree of overcrowding. Given their carceral conditions, basic rights were neglected and denied to the inmate population in these establishments. The situation seemed slightly worse in the institutions under private management, as the precariousness of their contract extensions, the delay in public payments, the lack of personnel, the deployment of private security added pressure to the daily challenges of prison administration. In the publicly

run facility, prison officials, holding the status of tenured public servants, have greater autonomy and latitude in performing these activities.¹² The three facilities have faced problems with discipline and rebellions. Two major rebellions in the two privately run facilities in the region during the period under analysis have resulted in significant drops in the number of prisoners in each unit. Explanations for their occurrence tend to gravitate around specific issues in the everyday lives of the prison facility, usually referring to disputes among rival gangs within the system (Lourenço & Almeida, 2013).

The Bahian Enigma: Conservative and Authoritarian Politics

For understanding the situation of punishment in the state of Bahia, it would be important to unveil its historical specificities, addressing its political background and cultural characteristics. The notion of the Bahian enigma has been formulated to discuss the difficulties involved in the historical economic lag of the state in relation to other parts of the country (Aguar, 1958). The Bahian enigma is characterized by the delay in industrialization in the state in comparison to other states in the north-eastern region of the country, but above all the concealment of socioeconomic inequalities and violence behind this state backwardness (Dantas Neto, 2006). Since then, this idea has become a way to understand more generally the situation of the state. It is possible, thus, to adapt this concept to understand the present landscape of punishment and social control unfolding there.

Politics in Bahia, since at least the middle of the last century, follows an arrangement between national and regional elites, in which a regional elite group has managed to achieve hegemony in the state government, endeavoring into a process of conservative modernization¹³ (Dantas Neto, 2003). This political current, as an articulated political force, begins its long haul in the midst of the 1960s, in the first years of the authoritarian military government, when it begins to dissociate itself from past oligarchical groups (Dantas Neto, 2006). In that regard, although symbolizing a modernization of structures of oligarchical rule, this group has also grown out of a conservative and authoritarian political background.

In this initial period, this state political group, to attain regional hegemony, realized it had to take part in the national spheres of influence, since the federal government centralized almost every aspect of political decision-making and attempted to weaken the importance of regional groups confined to their regional circles of influence and disconnected from power circles in the national capital (Dantas Neto, 2006). The presence of this group in national political spheres of influence has enabled its longevity in the power structure, striking a balance between regional and national levels. The dominance of this political machine has been achieved through a high concentration of power and the restriction of access to decision-making (Borges, 2007), galvanizing its elite position in the state and dismantling any opposition to its interests.

During the military dictatorship, the economic expansion in the state has been associated with a political consensus, in which working and middle classes have been subject to strong political restraint and to policies that did not attempt to address the iniquity of high-income concentration and social exclusion (Dantas Neto, 2006). At this moment, the idea of a peaceful and idyllic social life, bringing harmoniously together people from different classes, religions and races began to be envisaged and disseminated. The dynamics of conservative modernization adopted by this dominant political group attempted to create an image of a social setting antipodal to social conflict, depicting the state as a land of cordiality and accord.

Bahia is one of the states in which there was a clear continuity between authoritarian and democratic rule, where political bosses have managed to contain and retard the process of political fragmentation and electoral competition (Borges, 2007). In the 1980s, the political transition to democracy spurs this group to redefine the orientation of their policies, moving from an exclusively conservative approach to the embrace of neoliberal inclinations. Accordingly, in the subsequent decade, this group began to introduce a model of governance combining fiscal restraint and cultural celebration of local overtones. It has also fostered greater participation of the private sector in the provision of public services (Dantas Neto, 2003), involving the outright privatization of specific activities and the adoption of co-management in a few areas of the public sector.

It is a moment in which the dominant political group becomes a paragon of regional and national politics. In this decade, the relationship of politicians from Bahia and the federal government made even clearer the interdependence between the national and the state levels of politics, as the hegemonic group has managed to bring together the diversity of local interests and provide support to the national governing coalition (Dantas Neto, 2006). Their support and political articulation in national politics have helped to cement the adoption of nationwide neoliberal economic

¹² For a different perspective, identifying better prison services in a private facility in comparison to a public one in Bahia, see Cabral and Azevedo (2012).

¹³ Derived from the work of Moore Jr. (1966), the concept has been quite influential in explaining the maintenance of existing political and economic hierarchies in the country, while keeping the members of the lower classes from proper democratic participation (Pires and Ramos, 2009).

policies and even managed to secure support for the legislative approval of a Constitutional amendment to introduce the reelection for incumbent heads of mayoral, gubernatorial and presidential offices in the country.

Up to the end of last century, the hegemony of this group dominated the political landscape, sidelining the opposition just to a marginal position in which they could only achieve just meager and eventual electoral victories. Violence has been swept under the rug in a system of domination which has included the collusion of authorities, and political elite groups. Besides the accommodation of interests from diverse local and regional groups, the control of media outlets has also been a fundamental aspect of this strategy of dominance, in which the most important TV channel and media news in the state have been under the direct control of this political group (Câmara dos Deputados, 1992; Herrmann, 2016).

As a result of changes in national politics, fissures begin to appear in this long-established political arrangement in the state, primarily because of the waning influence of its most influential overlord. Despite its weakening, the political structure remained hierarchical and verticalized, liberalism still prevailed as an organizing principle and social conflict remained subdued through either coercive means or assimilation (Dantas Neto, 2003). The Workers' Party began to crack the existing political arrangement and to have ascendancy in the beginning of the current century (Herrmann, 2017). The party managed to win the election for the state government in 2006 and has remained in power since then, reaching almost 20 years of political presence in the state apparatus. The arrival of left-wing forces to the gubernatorial office was part of a wider change also taking place in other poor and least developed states in the country (Borges, 2007), signaling a power change in relation to the old traditional oligarchy. However, the arrival of the Workers' party to power is also pervaded with a set of important contradictions in the criminal justice arena. The overall embrace of human rights by the new administration of the Worker's Party did not translate into a more consonant practice in the criminal justice system (Herrmann, 2017).

Instead of promoting an insurgent and revolutionary change in the articulation of politics in the state, a process of political accommodation has taken place among the old political groups and these newcomers. In that sense, the arrival of new players to the leadership of politics in the state, in spite of their progressive leanings, did not result in any substantial change of policies. Despite this political change, the emergence of a new political group has still depended upon existing structures of coexistence and composition. As a matter of fact, the presence of older political moguls from the past hegemonic groups epitomizes the continuity with former practices of clientelism and patronage (Herrmann, 2017). The political heritage of the older

conservative group to current contemporary politics resides exactly in the accommodation of diverse interests of local and statewide groups under a broader umbrella structure of governance.

It is no surprise to witness, then, the maintenance of old structures and institutions of social control in their original place. The outlook of the criminal justice system, as a stronghold of existing power arrangements and political interests, has been greatly impervious to change and opposed to broader modernization efforts. In this respect, the result of relatively low imprisonment rates in the state might be a direct consequence of this more conservative and authoritarian political heritage, which prevents reform and the incorporation of conflicts into the official channels of the criminal justice system.¹⁴

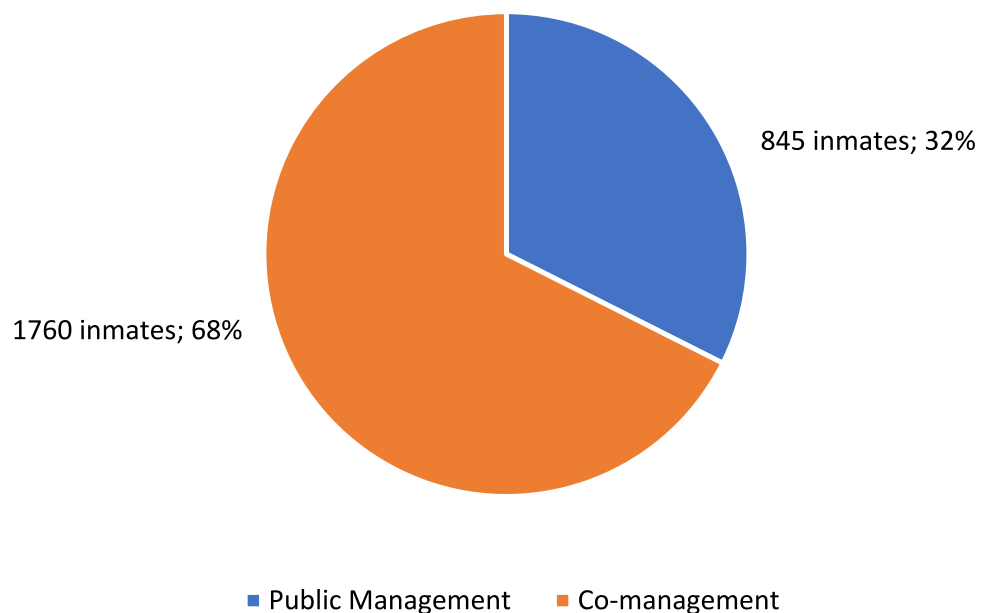
Privatization (Co-management) in the Prison System of Bahia

Since new managerial rationalities infiltrated governmental structures in many jurisdictions around the globe in the 1990s, the presence of the private sector in the provision of public services in different areas of state action, including here the prison system, has been enlarged (Burkhardt, 2019; Garland, 2001; Wacquant, 2001). This new form of state action is intimately connected to the type of neoliberal governance, which becomes determinant for the reduction of the state apparatus and its potential of intervention in social life. This new logic consists of establishing a new market rationality, in which the provision of public services becomes partially independent from government, emphasizing efficiency and competition (Burkhardt, 2019). In the face of the resounding failure of state delivery of liberty deprivation, the participation of the private sector in prison administration has been heralded as an attempt to enhance its quality and reduce its costs (Pompeu & Ferreira, 2018).

The participation of the private sector into the criminal justice system is usually understood as the consequence of the emergence of the penal industrial complex, as the arrival of the private sector within the criminal justice system creates operational and profit opportunities for companies from different areas (Christie, 2000; Davis, 2003). The delivery of auxiliary services, such as the provision of meals, garments, cleaning, and laundry services, is a consolidated practice in the Brazilian prison administration (Matos, 2017). The establishment of manufacturers and

¹⁴ This forces the creation of spaces of extra-legality, as in the interstices between the legal and the illegal, members of lower classes have to navigate the formal and informal violence and abuses of the state apparatus, often mobilizing networks of kin and acquaintances (Moore, 2020).

Fig. 8 Management of prison facilities, South Region of Bahia (2019) Source: SEAP (2021) *População Carcerária do Estado da Bahia*



small businesses in prison settings for the recruitment of prison labor, in accordance with legal regulations, is also a longstanding and traditional characteristic of the prison system in the country. In Brazil, the private management of prison establishments came to be implemented only by the end of the 1990s, although still sparingly adopted at that time (Cabral & Lazzarini, 2010; Matos, 2017; MJ, 2015). However, this direct administration of prison establishments by the private sector represented a step further in an even more robust interference in the everyday lives of the prison system. The dynamics of the penal industrial complex would put together the interest of private businesses and governments with the goal of establishing high profitability and enhanced social control.

There are two basic modes of private sector participation in the management of prison establishments. The Public–Private Partnership (PPP), initially adopted from 2009 in the state of Minas Gerais, consists in the construction of the prison establishment through the investment from the private sector and its subsequent amortization throughout long-term contracts (Mânica & Brustolin, 2017; Matos, 2017). Already adopted in other states in the federation, the other model of private sector participation in the management of prison establishments is co-management, a mode of outsourcing, in which private companies act upon every aspect of the prison administration under the direct supervision of public servants only in the positions of governor and chief of security (Cabral & Lazzarini, 2010). The practice of co-management of prison facilities is clearly an example of this model of governance through privatization. In this case, the establishment is built exclusively with public funds, but subject to a bidding process among private companies for the operation upon its conclusion.

During the period under analysis, the state of Bahia was one of the only subnational administrations still insisting on the model of privatization. In 2019, it had a few facilities under this arrangement of prison administration together with the private sector in co-management. In the southern region of the state, as above mentioned, there were two establishments operating in this fashion. The adoption of co-management in the Conjunto Penal de Eunápolis and in the Conjunto Penal de Itabuna represents the logics of state retrenchment and the implementation of governing-at-distance strategies. In this sense, 68% of the prison population in the region were under the structure of co-management (Fig. 8).

The adoption of co-management practices in the prison system in Bahia might be the result of different interests. Pressures from several sources might have led to choosing this model, such as the attempt to enhance prison practices, the adoption of new economic rationalities, the influence of interest groups and the need to accommodate issues of fiscal responsibility.¹⁵ To make sense of this process of

¹⁵ In this sense, the Law of Fiscal Responsibility (Lei Complementar 101/2000-BR) established an upper limit for expenditure with personnel in the public sector. State administration, because of this legislation, cannot go beyond 60% of their net current income with this type of personnel expenses. There is a pressure, thus, for the government to adopt measures which allow the provision of public services without increasing personnel expenditure and, hence, suffer with the consequences of violating this legislation. The adoption of co-management practices in the prison system, according to the administrative jurisprudence of the Brazilian Federal Court of Accounts [Tribunal de Contas da União—Acórdão 2444/2016—TCU—Plenário; Processo: 023.410/2016-7 Sessão: 21/9/2016], helps to circumvent this problem, as expenditures under this rubric would not be subject to the cap for personnel expenditure.

implementation and operation of these establishments, it is important to check the reason behind this administrative restructuring.

Initially, one of the most evident justifications advanced for the change in prison administration is based upon theories of punishment, particularly the issue of rehabilitation. Privatization in this sector is heralded as a mechanism to solve the managerial difficulties of the system and implement its rehabilitative objectives. However, the effect on prison practices and rehabilitation might be exactly the opposite. The adoption of co-management might help to displace the objective of rehabilitation to the margins of the system, as it privileges the management and reduction of risks (Feeley & Simon, 1992; Garland, 2001). The provision of services, mostly those related to the rights of the inmate population, requires investment in the structure and personnel of prison facilities. However, private management tends to emphasize greater efficiency in their operations (Cabral & Azevedo, 2012). While unencumbered with the heavy bureaucracy of purchases and contracts in the public sector, companies might be more competitive in reducing operational costs and adopting innovative solutions. The concern with the reduction of costs and the respective increase of profits might be one of the most fundamental goals of the private sector.

The most crucial aspect for the incorporation of co-management in Bahia resides in the ingrained liberal political orientation still guiding the operation of many of the policies in state administration. As a matter of fact, the authoritarian components of the apparatus of punishment and crime control in Bahia (Herrmann, 2017), which also form the overall rationality still dominating the formulation of penal policies in the state, help to conceal the shortcomings and abuses occurring in prison establishments, particularly those under co-management, such as the problems of overcrowding and poor prison conditions encountered in Itabuna and Eunápolis in the southern region of Bahia.

The interesting aspect of privatization in the state, yet another paradox adding to the Bahian penal enigma, is that it did not constitute a force capable of overturning the corresponding low imprisonment rate in the state. Privatization is usually a driving force behind the expansion of imprisonment, as it would allegedly configure a set of private interests pushing for the establishment of an imprisonment pipeline feeding potential clients to a privatized prison system (Davis, 2003). Although representing one of the few states advancing the privatization agenda, Bahia sits at the bottom of imprisonment rates in the country, contradicting these overall logics.

Surprisingly, the lack of a more robust attempt at modernization may lie at the heart of an incipient process of privatization and the situation of low imprisonment rates. Rather than a pretense for improving prison conditions,

the introduction of co-management seems in line with a retrenchment of the state from a highly contentious area of governance, pervaded with acute problems and prone to constant crisis, but having low visibility in the political agenda. As Cabral and Azevedo (2012) have identified in their research, the government wants to get rid of the problems involved in prison administration. Instead of a contrived plan to reform the prison system and undertake partnerships with the private sector, it has rather demonstrated an intensified neglect with the situation of imprisonment and the criminal justice system in Bahia.

The Apparatus of the Penal State in Bahia

One of the underlying assumptions in the current work is that dynamics of mass incarceration in Brazil have relied on a consistent process of modernization and the respective strengthening of the criminal justice apparatus (Fonseca, 2018). The situation of subnational administrations which did not endeavor into this more robust process and display lower rates of imprisonment might help to shed light on this process. This is exactly the situation of the state in Bahia, which represents a peculiar configuration within the national dynamics of punishment. The operation of the criminal justice system suffers with its inefficiency and incapacity to deal with challenges in the state. Clearance rates for homicides, for instance, hovered around 12% for 2020 numbers, placing Bahia as one of the lowest rates in the country (Instituto Sou da Paz, 2023). Thus, the most crucial aspect for understanding the situation of imprisonment in Bahia resides in the outlook of its penal state.

The robustness of the governmental administration in Bahia did not seem to have expanded in the last years, as the overall number of public servants has dwindled (Fig. 9). However, the personnel involved in the police forces and prison administration, against this more general tendency, has not followed the same pattern, keeping a more stable number of officials. From a first glance, then, the strength of the penal state should not have been affected in this more general downsizing trend of the government.

In 2011, the state government created a specific institution for managing the prison system. This new secretariat has been created from a subdivision of the Secretariat of Justice, Citizenship and Human Rights, the former governmental institution in charge of managing prison establishments. The creation of this institutional structure of governance symbolizes the direct pressure of the Federal government on the state administration to address the predicament of imprisonment in the state. Although the Secretariat of Prison Administration and Rehabilitation did not witness a regular growth of personnel (Fig. 10), the conferred autonomy to this new apparatus represents an effort of densification of the

Fig. 9 State administration, personnel (2010–2020) Source: SEPLAN. (2024) Orçamento (2013–2020). Demonstrativos Orçamentários Consolidados. Anexo I. Quadro de pessoal

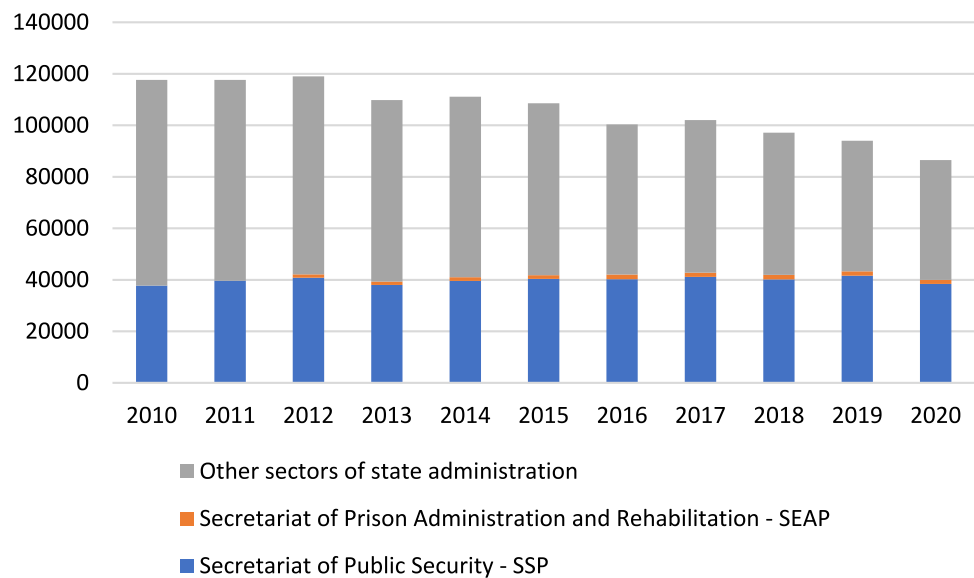
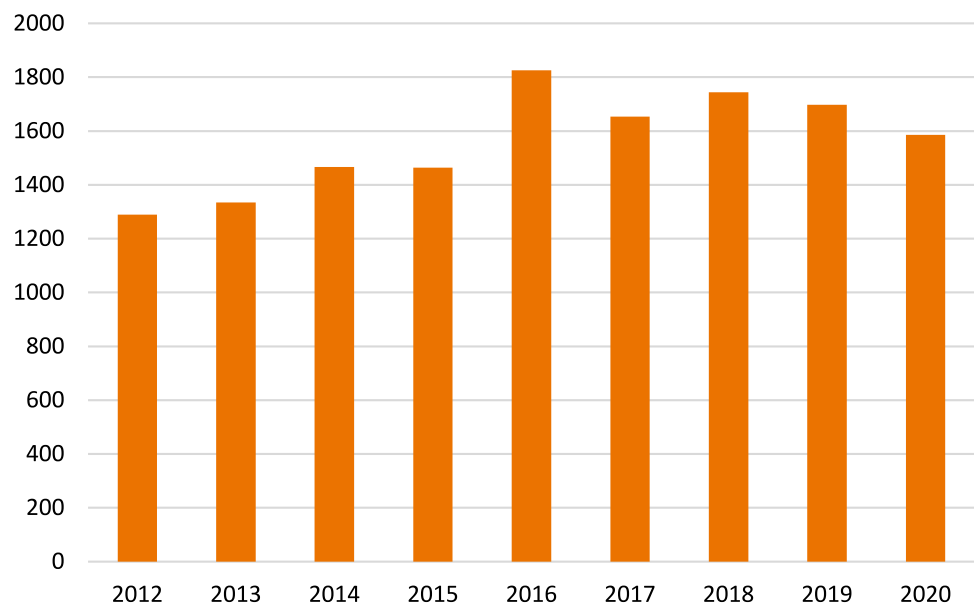


Fig. 10 Secretariat of prison administration and rehabilitation (SEAP), personnel (2010–2020)



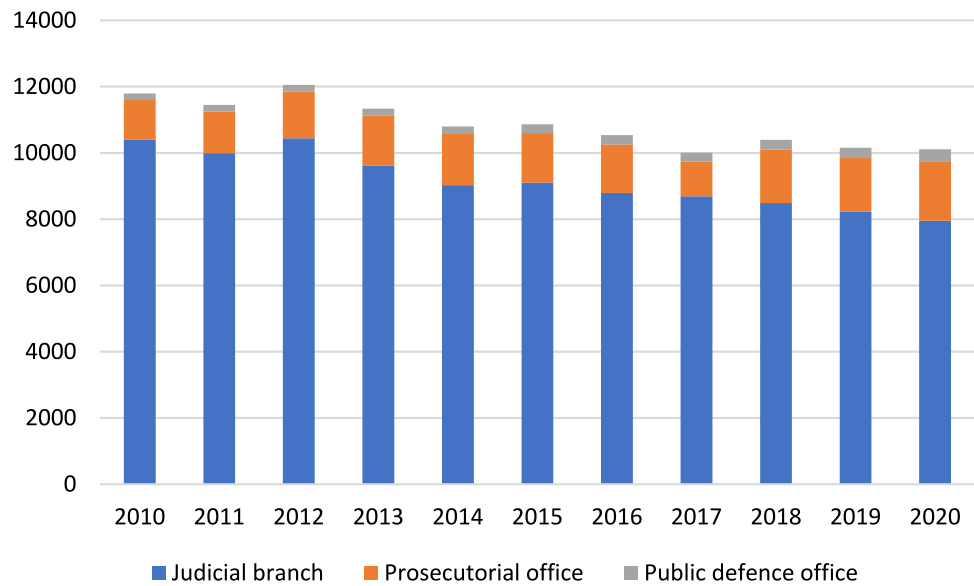
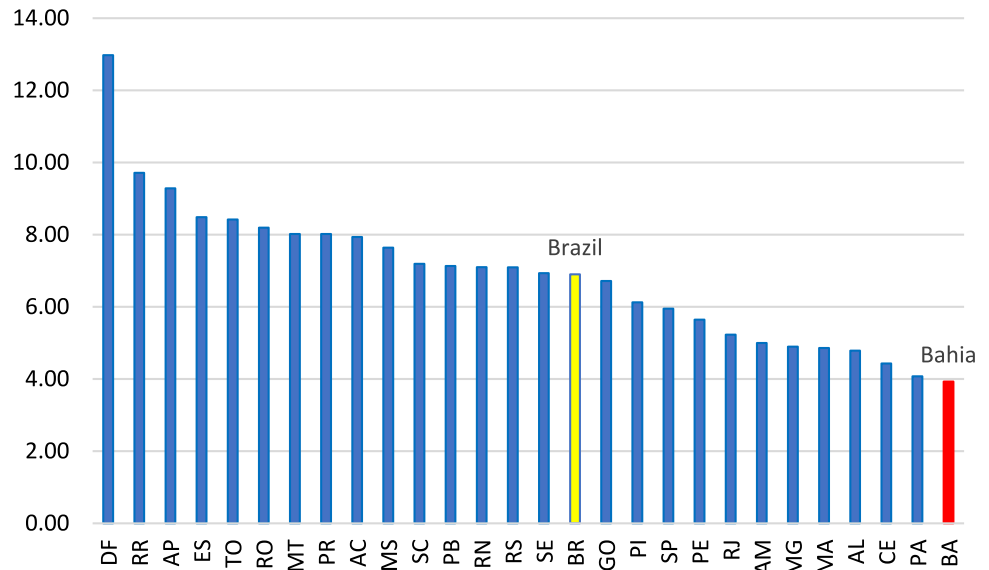
penal system, in which a new institution focuses on specific problems and concentrates its resources on this newly created mandate (Fonseca, 2018).

However, a closer look at the configuration of the justice apparatus, directly affecting the outline of criminal justice operations, would provide a different picture. In the justice system, it is interesting to notice a slight decrease in personnel during recent years (Fig. 11). As a matter of fact, the number of people working in the judiciary might provide a glimpse into the reasons behind the situation of relatively low imprisonment in the state. It is possible to notice that the overall size of the justice apparatus, including the judiciary, the prosecution, and the public defense office, went through a process of downsizing over the years. Effects of

imprisonment are most likely a direct consequence of these transformations.

Analyzing the situation with other sources and sitting the state against the background of subnational variation offers a more interesting portrayal of the situation. The rate of judges in relation to the population is the lowest in the country in comparison to other states in the federation (Fig. 12). This also bears a direct impact on the prison population. The rate of judges epitomizes, thus, the situation of the criminal justice apparatus in Bahia, in which its relative strength appears to be weaker than in the rest of the country.

In the same vein, the number of public prosecutors is also lower than in other states, also ranking in the last position in their relative ratio in relation to the population (Fig. 13). As

Fig. 11 Justice system, personnel (2010–2020)**Fig. 12** Judges—subnational variation, Rate per 100,000 inhabitants (2018). Source: CNJ (2024) *Justiça em números 2024* (ano-base 2023). CNJ

the office responsible for pressing charges and demanding pretrial arrests, the reduced number of prosecutors heavily contributes to a less robust criminal justice apparatus and consequently lower imprisonment rates.

The Civil Police force, in charge of criminal investigation and the provision of evidence to criminal trials, also displays a rate of officers among the lowest in the country. They perform a fundamental role in the operation of the criminal justice system because judges and prosecutors depend on their investigative powers to unfold criminal proceedings. In this sense, they are the entrance doors of criminal cases to courts and tribunals. Their meager workforce may also contribute to a weaker criminal justice apparatus in the state (Fig. 14).

From this more detailed view of the criminal justice apparatus, it becomes possible to discern some elements in the

prison system of Bahia. To begin with, pretrial detention in Brazil usually extends beyond legal provisions and reasonable amounts of time (Macaulay, 2019). However, the percentage of prisoners in remand custody is significantly higher in Bahia than in the rest of the country, as around half of the prison population are not convict offenders but prisoners awaiting trial. The reduced number of judges might result in less arraignment hearings and consequently higher imprisonment of pretrial inmates, contributing to the inefficiency of this oversight mechanism (DPEB, 2020). Conversely, the relatively smaller number of judges also leads to lengthier criminal processes and a decreased flow of convictions. This is commensurate with the outlook of imprisonment in Bahia, in which a downsized judicial apparatus does not manage to deliver a high output of criminal trials and

Fig. 13 Public Prosecutors—subnational variation, Rate per 100,000 inhabitants (2017). Source: CNMP (2018) Ministério Público: um retrato 2018. CNMP

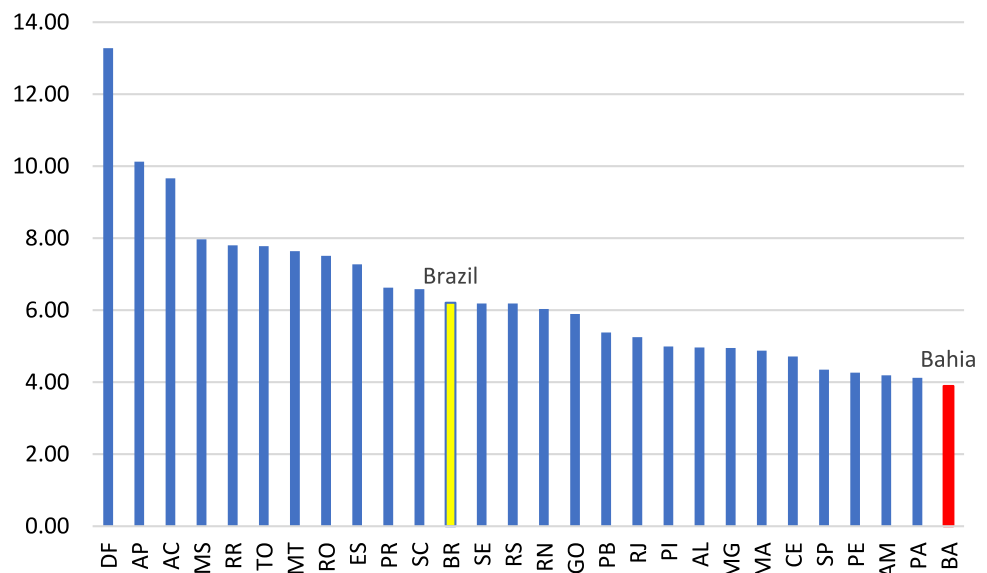
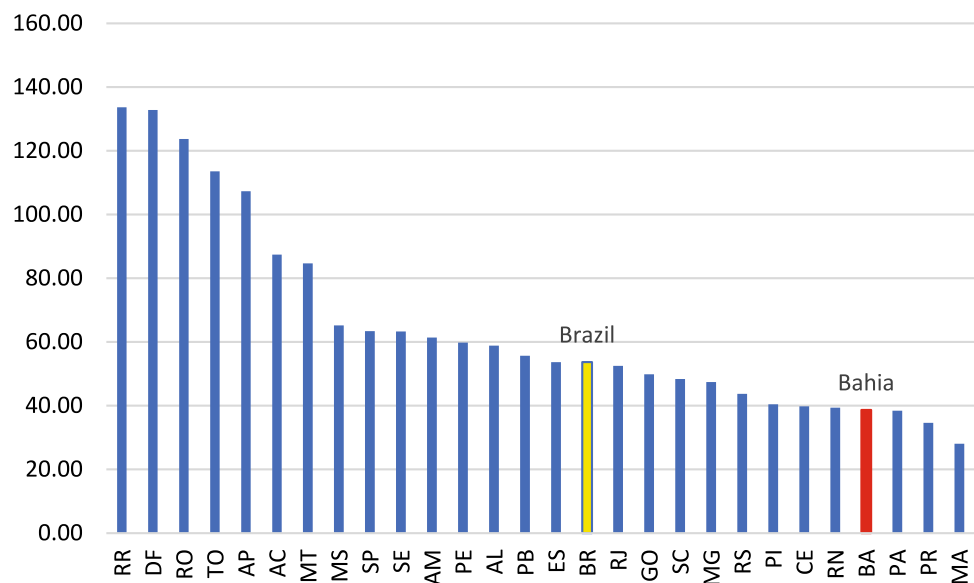


Fig. 14 Civil Police—subnational variation, Rate per 100,000 inhabitants (2018). Source: MJSP (2020) Pesquisa Perfil Polícias Civas do Brasil-ANO-BASE 2018. MJSP



convict offenders while keeping a large number of remand prisoners behind bars.

In this regard, it is possible, thus, to understand that the initial assessment of a still robust criminal justice apparatus refers to the relatively stable numbers of officers in the Military Police force. In Bahia, the rate of Military Police officers in relation to the population is not particularly low if compared to other states. This branch of the police is responsible for surveillance and patrolling, in charge of crime prevention and arrests. It is clearly the most conspicuous and pervasive institution of crime control, responsible for the state deployment of force. Although outside the scope of the argument here, the more pronounced presence of this type of police might offer an interesting departing point to analyze the style of crime control adopted in the

state, one in which resorting to unlawful state violence still surprisingly plays a distinctive role.

There is an apparent bottleneck in the criminal justice system in Bahia, encompassing investigative police officers, prosecutors, and judges. This relative lack of personnel surely contributes to the situation of imprisonment in the state, as the strength of the apparatus is relatively small in comparison to other states in the federation. The result is a surprisingly lower rate of imprisonment, as the state still did not manage to go through a more comprehensive overhaul of its structures of social control. Confirming the Bahian enigma, the state is not capable of keeping pace with the rest of the country, falling behind in its modernization of the criminal justice system.

Conclusion

The situation of imprisonment in Bahia corroborates some of the conundrums existing in the historical developments of this state. As a place of paradoxes and inequalities, low imprisonment rates and overcrowding in a state riveted with high levels of criminality and police violence do not seem to escape this more general contradictory outlook.

One of the contradictions is the situation of low imprisonment in a place adopting privatizing practices in the prison system. Privatization is usually considered a driving force behind mass incarceration, as a strong component of the prison industrial complex. However, the state of Bahia, one of the few states to advance privatization in the country in the period under analysis, did not witness the escalation of prison rates.

The long-lasting effects of a conservative political background surface in the concealment of social conflict, which did not seem to fit the more positive depiction of social relations in Bahia. This idyllic depiction of the state has been an embedded feature of its folklore and self-image, construing a benevolent and harmonious portrayal of social life. The state has been characterized as a land of a laid-back atmosphere, in which tourists mingle with locals to enjoy the delights of a paradise coastline of warm and clear waters, a rich and refined culinary, and a splendorous rhythmic musical tradition. In such a tropical paradise, there would be no room for conflict, violence, criminality, and punishment.

Despite the presence of the Workers' party in the gubernatorial office, the modernization of the criminal justice system did not receive greater incentives. Above all, the thrust of modernization did not reach the expansion of personnel in the judicial system. The power balance among political groups and the respective political compromise is so embedded in the political landscape that a change in electoral politics was not sufficient to overcome the conservatism and authoritarianism of state institutions and policies. The consequence was the limitation of reforms and long-lasting transformations in the structure of social governance.

There is a confluence of two divergent tendencies that helps to create a situation of relatively low imprisonment rates. On one side, the conservative and authoritarian sectors would resist the implementation of modernizing efforts, as, while modernization would bring more resources, there would also be a greater degree of undesired accountability. On the other hand, the current administration would still share much of the assumptions about crime and punishment of progressive circles, resisting the expansion and empowering of criminal justice institutions. Instead of an indicator of progress and moderation,

however, the relatively low rates of imprisonment in Bahia might just symbolize the state is maintaining an unequal social structure, upholding police brutality and neglecting the predicament of its criminal justice system.

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Declarations

Conflict of interest The author has no competing interests to declare that are relevant to the content of this article.

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