Migrant people in criminal and socio-educational systems: guidelines for the implementation of CNJ Resolution n.º 405/2021

SERIES FAZENDO JUSTIÇA | MANAGEMENT AND TRANSVERSAL THEMES COLLECTION

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PREFACE

The National Council of Justice (CNJ), in partnership with the Ministry of Justice and Public Security (MJSP) and the Brazilian office of the United Nations Development Programme (UNDP Brazil), develops the Program Fazendo Justiça (Doing Justice) establishing a significant milestone in the search for innovative solutions in the field of criminal and juvenile justice.

The program works to qualify structures and services, promotes training, supports the drafting of regulations and public policies, and develops informative documents. These materials include guides, manuals, researches and models that combine technical and normative knowledge with the reality experienced in different places across the country. These products identify good practices and offer guidance to facilitate the immediate and effective implementation of interventions.

The program is aligned with the decision of the Supreme Court in the Claim of Non-Compliance with a Fundamental Precept Lawsuit (ADPF) No. 347, which in October 2023, recognized that Brazilian prisons are in an unconstitutional state of affairs and demanded national and local plans to overcome this situation. The program also carries out various actions in the juvenile justice field, following the principle of absolute priority guaranteed to adolescents and young people in the country's norms and laws.

At present, 29 initiatives are being carried out simultaneously, taking into account challenges considering the complete cycle of criminal and juvenile justice, as well as cross-cutting initiatives. Among them is the International Articulation and Protection of Human Rights, which facilitates the exchange of experiences between Brazil and other countries in public policies related to the criminal and juvenile justice cycle.

We recognize that each country faces unique contexts and challenges. We also believe in sharing knowledge and experiences as a tool for collective transformation. To this end, titles selected from the program's different collections have been translated into English and Spanish, such as this publication.

The strategy behind international articulation also includes support for events, courses, and training in collaboration with international partners, as well as the translation into Portuguese of standards and publications aligned with the topics worked on by the program. This promotes a necessary exchange of ideas and practices for a future in which dignity and respect for fundamental rights are common values for all of us.

Luís Roberto Barroso

President of the Supreme Court and the National Council of Justice

PRESENTATION

The Brazilian Constitution underpins our aspirations as a society founded on the democratic rule of law while fostering social advancement with respect for fundamental rights and human dignity. In this sense, it is the indelible duty of the institutions, especially of the Judiciary, to ensure that our actions point to this civilizing north, not only by rejecting deviations from this purpose, but also by acting now to transform the present we desire.

In 2015, the Supreme Court (STF) recognized that almost 1 million Brazilians live outside the country's maximum law while inside our prisons, with harmful effects on the degree of inclusive development to which we have committed to through the United Nations Agenda 2030. This is the scenario addressed by the Program Fazendo Justiça, a partnership between the National Council of Justice (CNJ) and the United Nations Development Program, with support from the Ministry of Justice and Public Security, represented by the National Penitentiary Department.

Even during the Covid-19 pandemic, the program has been making structuring deliveries based on collaboration and dialogue between different actors across the country. There are 28 actions developed simultaneously for different phases and needs of criminal and socio-educational cycles, which include the facilitation of services, reinforcement of the regulatory framework, and production and dissemination of knowledge. It is in the context of these objectives that this publication is inserted, as part of a robust catalog that brings together advanced technical knowledge in the field of accountability and rights assurance, with practical guidance for immediate application throughout the country.

This volume is part of a collection of contents on Management and Transversal Themes prepared by the Program Fazendo Justiça as part of a set of initiatives aimed at strengthening actions throughout the criminal and juvenile justice cycles, with the perspective of looking at vulnerabilities that deepen in the context of deprivation of liberty, such as those affecting migrants.

This manual provides guidelines for the implementation of Resolution n.º 405/2021, which establishes procedures for the treatment of migrant people in custody, accused, defendants, convicted or deprived of liberty, including those under house arrest and other forms of open-ended sentences, in compliance with alternative sentencing or electronic monitoring, and provides guidance to ensure the rights of this population within the scope of the Judiciary.

The objective is to safeguard rights and guarantees that are compatible with Brazilian and international legal systems, in another step so that the Judiciary, with the support of the National Council of Justice, acts to implement the constitutional objectives of promoting the good of all people without prejudice of origin and the prevalence of human rights in international relations.

Luiz Fux

President of the Supreme Court and the National Council of Justice

INTRODUCTION

INTRODUCTION

International migration is a constant and stable phenomenon in the mobility of people around the world. Factors such as the pursuit of new life opportunities; the need to flee from conflictive contexts and persecution; the displacement motivated by environmental disasters and climate change; the actions of illicit networks related to the international traffic of drugs, weapons, and people, among others, are examples of situations that historically lead people to move around the world.

Brazil's territorial and sociopolitical characteristics shape the country as a possible destination for people of different nationalities to visit, stay in, and transit through. Brazil's vast territorial extension in South America places it as the only country that shares borders with ten other countries - Paraguay, Bolivia, Argentina, Uruguay, Peru, Colombia, Venezuela, Guyana, Suriname, and French Guiana. In addition, it is home to the largest airports and port networks on the continent.

Data from the International Migration Observatory (OBMigra), which works in cooperation with the Ministry of Justice and Public Security, points to the accentuated growth of migration in Brazil in recent years. OBMigra's annual report reveals that between 2011 and 2019, 1,085,673 migrants were registered with Brazil's official migration control bodies. Among them, about 660 thousand were people who had lived in Brazil for more than a year, mostly from Latin American countries (BRASIL, 2021, p. 9).

It is in this context that the *caput* of Article 5 of the 1988 Federal Constitution established **equal treatment and rights between Brazilian people and "foreigners" living in Brazil**. In these contours, the current Brazilian migration policy, instituted by the **Migration Law (Law n.º 13,445/2017), regulated by Decree n.º 9,199/2017,** began to regulate the rights and duties of non-Brazilian people living or visiting the country, as well as **consolidated the use of the nomenclature "migrant" for their treatment**.

The elaboration of the principles of the Resolution considered the constitutional parameter of equal treatment and the protective paradigm in terms of human rights that structure the national migration policy. In this movement, **it was necessary to overcome the term "foreigners", linked to a normative treatment focused on national security and coined by the revoked Foreigner Statute (Law n.º 6,815/1980), and make use of the category "migrants".** It is worth stating right away that the term "migrant" requires a look that considers that mobility and displacement underlie the history of humanity, as much as the permanence and rootedness of people.

The current Migration Law guarantees equal and free access of migrant people to rights, the non-criminalization of migration, and the repudiation and prevention of xenophobia, racism, and any form of discrimination. **The normative also advances in the sense of guaranteeing rights to the migrant population in the criminal justice and socio-educational system.** According to the text, "it is possible to authorize residence for immigrants, border residents, or visitors who are on provisional release or serving a sentence in Brazil" (SESTOKAS, 2020, p. 47).

The Law, however, prohibits the authorization of permanent residence for a person who has been criminally convicted in Brazil or abroad by a sentence that has become final and unappealable, since **migrants who have been convicted by final and unappealable decisions are subject to expulsion**

from the national territory, except in cases of minor offenses, of residency requests for reasons of health treatment, humanitarian shelter, family reunion, or if the person is a beneficiary of a treaty on residency and free circulation. **It is possible to cancel the expulsion** "in cases where the expelled person has a Brazilian child under his/her guardianship or economic or socio-affective dependence, or has a Brazilian person under his/her guardianship, has a spouse or partner residing in Brazil, without any discrimination, legally or judicially recognized, has entered Brazil up to the age of twelve, residing in the country since then, or is a person over seventy years of age who has resided in the country for more than ten years, considering the gravity and basis of the expulsion" (Ibidem).

Still on the subject, it is worth noting that it is possible to interpret the expulsion of adolescent migrants apprehended or processed for committing infractions or serving socio-educational measures as being forbidden, in the absence of an express provision.

The provisions of the law currently in effect consolidate proposals for advances that had already been occurring in the matter, such as **Normative Resolution n.º 110, of April 10, 2014, of the National Immigration Council (CNig)**, regulated by Ordinance n.º 6, of January 30, 2015, of the Ministry of Justice, which authorizes the granting of temporary stays, on a special basis, for the purpose of establishing equal conditions for "foreigners" to serve sentences in the national territory. It was from these regulations that "non-nationals serving sentences were now able to file a request for provisional stay with the Federal Police" (CUNHA, 2018, p. 127).

In light of the **unconstitutional state of affairs of the prison system and the emergence of a specific attention to the flows that involve the institutions of the criminal and socio-educational systems**, the imprisonment of migrants has been consolidated as one of the priority issues to be addressed by the Judiciary, especially **due to the specificities that involve the imprisonment of these persons**, such as the need for the presence of interpreters in judicial acts and translation of official documents, the evaluation of the contact of consular reference authorities, the right to migratory regularization while serving a sentence, the contexts of separated or unaccompanied children and adolescents in the country[1], and a series of other situations. Moreover, the imprisonment of migrants has unique consequences for judicial institutions in terms of the establishment of alternative measures to provisional imprisonment and the punishment, since these decisions will reflect on the conditions whether or not these people remain in Brazil.

Therefore, CNJ Resolution n.º 405/2021 was drafted with the purpose of contributing to the consolidation of the rights of migrants in the criminal justice system, providing for the procedures for the treatment of migrants in custody, accused, defendants, convicted or deprived of liberty, including those under house arrest and other forms of open-ended sentencing, in compliance with alternative sentencing or electronic

1 As defined by the Manual on Legal Assistance to Migrants and Refugees (IOM, 2022): "unaccompanied child or adolescent: one who is not accompanied by any adult person upon his/her entry into the national territory" and "separated child or adolescent: one who is accompanied by an adult person who is not the legal guardian holding family power upon his/her entry into Brazilian territory".

monitoring, as well as providing guidelines to ensure the rights of this population within the scope of the Judiciary.

It is important to point out **that CNJ Resolution n.º 405/2021 is also intended for the socio-educational system, by virtue of Article 17 of the normative**. In this sense, the provisions described here must consider the principles and specificities in the treatment of the adolescent person who is accused of committing an infraction or who is in compliance with a socio-educational measure. We recall **Law 12,954/2021, which institutes the National System for Socio-Educational Care (Sinase)** and establishes the duty of individualized execution of socio-educational measures. Together with other markers, such as age, gender, ethnicity, and social class, **nationality is one of the characteristics to be taken into account, with the aim of not incurring any discrimination** (Article 35, VIII).

The treatment of migrant adolescents within the socio-eduactional system can never be more severe than that for adults. It is also important to emphasize that the judicial authority will need to adopt singular measures in conjunction with a multidisciplinary team and other reference services in order to guarantee the **principles of family and community life, consideration of the developing person's condition, and absolute priority**, especially when the adolescent migrant is unaccompanied or separated.

At the end of the introduction, we must highlight the methodological steps that were adopted to prepare this Manual. After the accurate study of the CNJ Resolution n.º 405/2021, the steps described below were implemented and, together, made the construction of the document possible:

1

Research and systematization of quantitative information from data made available by the National Council of Justice (CNJ) regarding the general statistics on migrants in prison in the states of Brazil, especially in relation to the states located in border regions and with high flow of international traffic at airports;

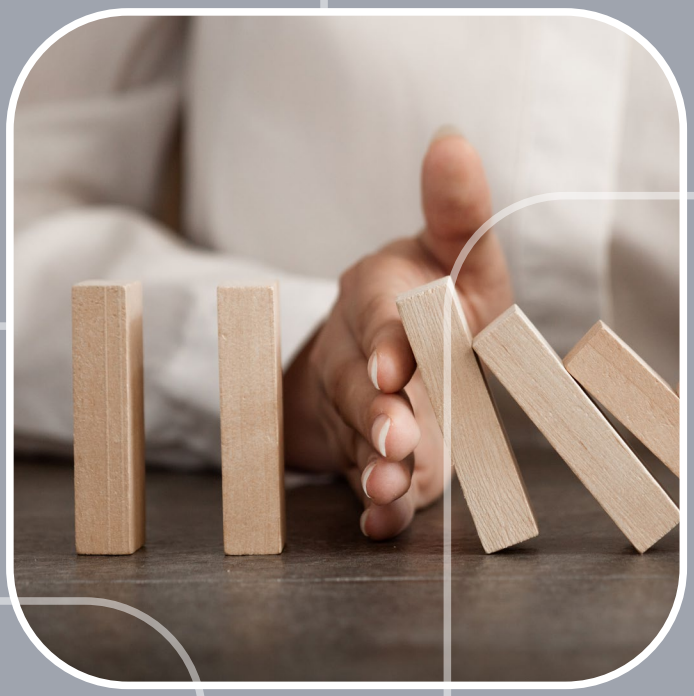
2

Research and systematization of documentary information on policies of attention to migrants in the criminal and socio-educational systems, including international, national, and state regulatory frameworks;

3

Collecting qualitative perceptive information gathered through in-depth dialogues with references on the theme, such as federal and state judges, public defenders, civil servants, and professionals working in the Program Fazendo Justiça (UNDP/CNJ), as well as representatives from civil society.

This Manual has been divided into 10 sections. The next**, Section II**, analyzes the general principles for the performance of courts and magistrates in the criminal and socio-educational systems involving migrant people. **Section III** deals with the permanent support structure for magistrates and courts on migration issues in criminal and juvenile justice. **Section IV** describes the guidelines for decision-making in cases involving migrants. **Section V** elaborates on issues concerning the treatment of migrants deprived of their liberty. While **Section VI** is dedicated to presenting guidelines for migrants who are pre-released and released people in the criminal and socio-educational systems, **Section VII** presents other particularities



GENERAL PRINCIPLES FOR THE PERFORMANCE OF COURTS AND MAGISTRATES IN CRIMINAL AND SOCIO-EDUCATIONAL SYSTEMS INVOLVING MIGRANTS

of migrants in the criminal and socio-educational systems. Finally, **Section VIII** proposes indicators for monitoring the application of CNJ Resolution n.º 405/2021, **Section IX** lists a selection of precedents and paradigmatic decisions, and **Section X** lists the bibliographical references used to develop this Manual.

1 GENERAL PRINCIPLES FOR THE PERFORMANCE OF COURTS AND MAGISTRATES IN CRIMINAL AND SOCIO-EDUCATIONAL SYSTEMS INVOLVING MIGRANTS

Attention to migrants deprived of their liberty is relatively recent in Brazil. Data on this population has only been included in the National Survey of Penitentiary Information (Infopen) since 2005, presenting information, such as "the quantity of women and men within the national penitentiary system (...), level of education, nationality, marital status, type of offense committed by these people, among other categories" (CUNHA, 2018, p. 33). At the time, however, more in-depth data was not provided, and it was only since 2008 that "Depen's surveys began to also include the countries of origin of 'foreign' persons arrested in Brazil" (CUNHA, 2018, p. 75).

It is noteworthy that there is still little information available about the number of adolescent migrants apprehended or prosecuted for committing infractions or serving socio-educational measures in Brazil. It is expected that the implementation of CNJ Resolution n.º 405/2021 represents an important step to dimension the impacts of the socio-eduactional system among adolescent migrants.

Within the scope of the National Council of Justice, **Resolution n.º 162, dated November 13, 2012,** was the first to specifically deal with the topic. **The Resolution provided for the communication of foreign person's arrest to the diplomatic mission of his/her respective state of origin, to be executed by the judicial authority**.

The topic appeared more specifically in other regulations, such as **CNJ Resolution n.º 213, of December 15, 2015**, which provides for custody hearings. It highlights that **the denial of consular access to a person in custody of foreign nationality may be considered as evidence of torture and other cruel, inhuman or degrading treatment,** as set forth in the definition of torture in Protocol II, which deals with procedures for hearing, recording, and forwarding allegations of torture and other cruel, inhuman or degrading treatment within the scope of the Judiciary. The text guarantees access to an interpreter, as provided in the conditions for the hearing of the person in custody at the custody hearing.

Also, **CNJ Resolution n.º 307, of December 17, 2019**, which establishes the Policy of Attention to Persons Egressed from the Prison System within the scope of the Judiciary, provides for attention to the non-national released person, who must have their specific demands met.

Within the framework of International Human Rights Law, several **normatives** deal with guarantees for migrants in conflict with the law. The United Nations Standard Minimum Rules for the Treatment of Prisoners, known as the **Mandela Rules**, have provided, since 1995, for specific attention to prisoners of foreign nationality. Rule 62, for example, guarantees the right to communication and consular assistance.

The United Nations Standard Minimum Rules for Non-Custodial Measures, the **Tokyo Rules**, dated 1990, state in its general principles that the scope of the use of non-custodial measures must be applied without discrimination of age, nationality, language, or religion.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, known as the **Beijing Rules**, of 1985, have as one of their parameters the non-discrimination of adolescents based on nationality, as well as extending the provisions of the Mandela Rules to the protection of children and young people in the field of juvenile justice. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the **Havana Rules**, from 1990, also apply to adolescent migrants. Rule 24, for example, states the importance of providing methods of understanding the procedures and relevant information to the apprehended adolescent when they cannot understand the spoken language, while Rule 56 establishes the duty to notify the consular authorities when an apprehended adolescent is ill, suffers an accident or dies.

The **Bangkok Rules**, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, of 2010, pay attention to the rights of women and girls deprived of their liberty by providing access to consular representatives and information in an understandable language, according to their Rule 2. They also ensure that consular officials accompany the separation of the mother from her child, as provided for in their Rule 52, and the care to be taken when transferring "foreign" prisoners, according to Rule 53.

In order to offer a look at the multiple issues involved in guaranteeing the rights of migrants in conflict with the law, the CNJ prepared Resolution n.º 405/2021, specifically to establish procedures and provide guidelines for the treatment of migrants in custody, accused, defendants, convicted, or deprived of their liberty, including those under house arrest and other forms of open-ended sentencing, in compliance with alternative sentencing or electronic monitoring, as well as migrant adolescents apprehended, prosecuted for committing an infraction or serving a socio-educational measure.

Initially, the text explains that it is considered migrant, for the purposes intended, "every person who is outside the territory of which they are a national, regardless of the migratory status, intention or duration of their stay or permanence". Furthermore, it must be noted that the concept includes stateless persons.

The said concept comes from the Inter-American Principles on the Human Rights of all Migrants Refugees, Stateless Persons and Victims of Human Trafficking, approved by the Inter-American Commission on Human Rights (IACHR) through Resolution n.º 4, of December 7, 2019.

Therefore, we chose not to replicate literally the conceptualization presented by Law n.º 13,455/2017, given the unproductiveness of merely transcribing the legal provision. Differently, the resolution sediments the concept brought by the most recent normative coming from the IACHR, which shows itself in full conformity with the legal concept, in order to add value to the internal legal system.

The use of the concept brought by Resolution n.º 4/2019 of the IACHR is in line with the proposal of the CNJ, as an organ of the Judiciary, to contribute to the performance of the Brazilian State's commitments before the Inter-American Human Rights System – it was, in this context, the recent structuring of the Unit for Monitoring and Supervision of decisions and deliberations of the Inter-American Court of Human Rights (UMF/DMF), by CNJ Resolution n.º 364/2021.

Having made these considerations, we now present a **brief description of the principles that are fundamental to the treatment of people addressed by CNJ Resolution n.º 405/2021**, which meet international and national standards, and which may be the basis for judicial authority actions in all procedural acts involving a migrant person:

1.1. Non-criminalization of migration

The principle of non-criminalization of migration is based on Article 3, III, of Law n.º 13,445/2017, established as a national parameter in adaptation to the recommendations and reports of the Inter-American Commission on Human Rights. It is a characteristic principle of the protective migratory legislations for migrant people, opposing the normative parameters that mobilize exclusively security paradigms to the detriment of the promotion of human rights.

The incorporation of the principle of non-criminalization of migration into Brazilian legal system means that **no person can be arrested, apprehended, or criminally prosecuted for migration reasons**, so that a migrating person, whether an adult, adolescent, or child, cannot be arrested or apprehended on the grounds of their migration status in the country. In this way, even if the person is being charged for a crime or for committing an infraction, his/her migration status cannot be used as a justification for the restriction of rights. Furthermore, looking in depth at this principle, it also means observing that it takes on specific meanings when it comes to migrants, especially with regard to the **maximum premise of non-discrimination in comparison with nationals when it comes to treatment in criminal proceedings and the execution of sentences, as well as within the socio-educational system**.

The non-criminalization of migration also implies practical consequences for migrants, who are perceived as having similar rights as Brazilian peolpe when deprived of liberty or exiting the prison or socio-eduactional system. Examples of these rights are: access to free justice and to the Public Defender's Office, the rights to resocialization, to education, to health and hygiene, to religion, to temporary leave, family visits, interpreter and translation of all procedural acts, consular assistance, among others expressed in the Criminal Execution Law. It is important to reinforce, in the contours of Article 14, single Paragraph, of CNJ Resolution n.º 405/2021, and the Migration Law, that migrants have the right to regime progression and parole, which are not hindered by other conditions, such as the existence of an expulsion procedure.

Furthermore, specifically with regard to adolescent migrants in the context of the socio-eduactional system, the principle is similar to that of adults, but must be considered in consonance with other regulations, such as the Advisory Opinion OC-21/14 of the Inter-American Court of Human Rights on the rights and guarantees of children and adolescents in the context of immigration and/or the need for international protection, which states that migration policies for children and adolescents must prioritize a human right approach and priority treatment for them.

Thus**, the principle of non-criminalization of migration in the socio-educational system must take into consideration the most protective migration parameters for adolescents, especially for those who are in compliance with socio-educational measures or restriction of liberty unaccompanied**

or separated in the country. Moreover, we also resort to the provisions of Law 12,594/2012, which establishes the National Socio-Educational Care System.

1.2. Repudiation and prevention of xenophobia, racism, human trafficking and any forms of discrimination, equal treatment and opportunities, considering the various social markers of difference, such as race, ethnic or national origin, gender and sexual orientation, social status and exposure to poverty, among others

One of the basic principles of Brazilian migration policy is the repudiation and prevention of xenophobia, racism, and any form of discrimination related to race, ethnic or national origin, age, gender, sexual orientation, social condition, and exposure to poverty. In the context of this Manual, it is **important to reinforce the principle of non-discrimination regarding the marker of criminal history in the lives of migrants**. This means that institutions and society, in general, must respect and not discriminate adult migrants who are accused, defendants, or convicted, as well as adolescent migrants who are apprehended, prosecuted for committing an infraction, or in compliance with a socio-educational measure. As far as adolescents are concerned, it is noted that, even though the commission of an infraction may not be considered as criminal record when they reach adulthood, many times the passage through the socio-educational system can generate stigmas. It is recalled that Article 3, XVII, of Law n.º 13,447/2017, prescribes full protection and attention to the best interests of children and adolescent migrants.

Thus, Article 3, IV, of Resolution CNJ n.º 405/2021 is in dialogue with Brazilian migratory policy when it states that **the criteria or procedures by which the person has been admitted to the national territory, such as by being caught in *flagrante delicto* or apprehended in *flagrante delicto* for an infraction, cannot give rise to discriminatory actions.** This also corresponds to the provision contained in item VI, which guarantees due legal process and non-discrimination during the knowledge process or at any phase of the criminal and socio-educational measure execution. The principle is encouraged to be considered in all practices of the Judiciary, always in dialogue with the principle of non-criminalization of migration.

The theme finds prominence in international norms, such as the Universal Declaration of Human Rights of 1948 and the Inter-American Principles on Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking, approved by the Inter-American Commission on Human Rights in 2019, whose Principle 13 also provides for the prevention against stigmatization, racism, xenophobia, and other forms of intolerance.

1.3. Promotion of documental regularization, with access to the necessary documentation for migratory regularization and the exercise of rights

Migratory regularization is a practice to be mobilized by the Brazilian state in all its instances, with the aim of enabling access to the rights and duties of the migrant person in the exercise of acts of civil life, including when the person is accused, defendant or convicted by the criminal justice system or apprehended, prosecuted for committing an infraction or is in compliance with a socio-educational measure in the juvenile justice system.

Encouraging migration regularization is one of the provisions of the **Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking** (2019). According to the document, States must encourage migration regularization, avoiding the consequences of irregular migration status. Law n.º 13,445/2017, similarly, has as one of its **founding principles the promotion of regular entry and document regularization**.

It is from the access to regularization and documentation, such as the **National Migratory Register (RNM)**[2], **the Registry of Individuals (CPF), and the Labor and Employment Card (CTPS)**, for example, that the migrant will be able to exercise rights, such as access to public policies for housing, health, and social assistance, among others. **Civil documentation also enables the social, educational, and labor inclusion of migrants who are deprived of their liberty and are released from the prison and social-educational systems**. As assured by the Federal Constitution, public services of universal character, such as the Unified Health System (SUS) and the Unified Social Assistance System (SUAS) must provide care to all people, regardless of the situation of documental (ir)regularity in the country; that is, the lack of documentation, according to constitutional precepts, cannot represent a justification for denying access to fundamental rights. It is reinforced that migratory regularization is essential for the migrant to achieve full access to rights in all instances in the criminal and socio-educational systems, as well as to provide greater security for the Judiciary in the application of non-custodial or liberty-restricting measures.

1.4. Guaranteeing the right to consular assistance

The principle reflects the **right to consular assistance, considered by the Supreme Court (STF) as a clause that integrates the due legal process**, including in the scope of legal-penal treatment. The position of the STF follows the understanding of the Inter-American Court of Human Rights expressed in Advisory Opinion n.º 16/1999, regarding the right to information and consular assistance within the framework of the guarantees of due legal process

2 Law n.º 13,445/2017 (Migration Law) changed the nomenclature of the former "National Alien Registration", popularized as RNE, to National Migration Registration (RNM), under its Article 117.

The right to consular assistance for persons deprived of their liberty was already reflected in the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules):

Rule 62

1. Prisoners of foreign nationality shall be granted reasonable facilities to communicate with the diplomatic and consular representatives of the state to which they belong.

2. Prisoners who are nationals of States without diplomatic or consular representation in the country, and refugees or stateless persons, shall be allowed similar facilities to communicate with diplomatic representatives of the State responsible for looking after their interests or with any national or international authority responsible for their protection.

Along the same lines, Article 36 of the Vienna Convention on Consular Relations, dated 1967, states the duty of the State to inform the consular offices of the detention of a national and provides for the right of consular employees to visit and communicate with the person deprived of liberty.

The principle of guaranteeing consular assistance in CNJ Resolution n.º 405/2021 applies both to consular representations present in Brazil and to cases where there is no representation, in which the magistrates are instructed to report to the diplomatic representation and, in its absence, to the Ministry of Foreign Affairs (MRE in Brazilian Portuguese). It is important to emphasize that this principle unfolds into general guidelines for the Judiciary to act in this field, such as by maintaining records of consular authorities, embassies and diplomatic missions, and by verifying in practice the non-applicability of this right in concrete cases, based on listening to the migrant person.

It is noted that the principle of guaranteeing consular assistance must observe the will of the person in custody. After being informed of this right, the person may choose whether or not to contact the representation of his/her country of origin, especially in view of cases of **refugee or refugee applicants, who may have suffered or still suffer persecution in their country.**

Finally, it is observed that the guarantee of the right to consular assistance works in conjunction with the **principle of integral protection**, and must be extended to adolescent migrants under deprivation or restriction of liberty measures. Article 5, "g", of the Vienna Convention states that consular functions include "safeguarding, within the limits set by the laws and regulations of the receiving State, the interests of minors and incapacitated persons who are nationals of the sending country, particularly when the institution of guardianship or curatorship is required for them". In this context, the **right to consular assistance in the socio-educational sphere must also observe the adolescent's wishes**, especially in situations where there is a possible need to request refuge and/or humanitarian shelter, which is even more sensitive when the children have been apprehended, prosecuted for committing an infraction, or are serving a socio-educational measure unaccompanied or separated from their legal representatives in Brazil.

These premises, with regard to adolescent migrants, are supported by the IACHR's Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of HumanTrafficking, especially Principles 12 and 13.

1.5. Universality, indivisibility and interdependence of human rights

This principle mirrors the Brazilian migration policy, which is guided by the universality, indivisibility, and interdependence of human rights, a perspective consolidated from different international norms, among them the Universal Declaration of Human Rights of 1948, which already stated that all people are born equal in dignity and rights, and the American Convention on Human Rights of 1969, which expressly guarantees that access to rights is universal, regardless of nationality, as stated in its preamble:

> *Recognizing that the essential rights of the human person do not derive from the fact that he or she is a national of a particular State, but rather from the fact that they are founded on the attributes of the human person, for which reason they justify an international protection, of a conventional nature, adjunct or complementary to that offered by the domestic law of the American States.*

In the Covenant on Economic, Social and Cultural Rights, and the Covenant on Civil and Political Rights, approved by the United Nations General Assembly in 1966 and internalized by decree in 1992, there is mention of the indivisibility of economic, social, and cultural rights, as well as civil and political rights.

The Tehran Proclamation of 1968 expressly mentions the principle of indivisibility: "since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights is impossible without the enjoyment of economic, social, and cultural rights." The Protocol of San Salvador, approved in 1988 and internalized by decree in 1999, also reinforces that the "rights constitute an indivisible unity, based on the recognition of the dignity of human beings, for which permanent protection and promotion are necessary for their full realization, and the violation of some rights in favor of others can never be justified".

1.6. Guarantee of the right to family reunion and the exercise of maternity or paternity

The guarantee of the right to family reunion is provided for in Law n.º 13,445/2017, as well as equal treatment and opportunity for the migrant person and his/her family members. By law, migrants are assured the right to family reunion with their partner and their children, family members, and dependents.

The Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of HumanTrafficking provide for the protection of family, family unity and family reunifi-

PERMANENT SUPPORT STRUCTURE FOR MAGISTRATES AND COURTS IN MATTER OF MIGRATION, CRIMINAL AND SOCIO-EDUCATIONAL JUSTICE

cation. To this end, they state that the migrant family is entitled to protection by society and the State, noting that there is no single model of family, and that non-discrimination is guaranteed (Principle 32).

Specifically in Principle 33, it is enshrined that states must ensure family reunification, and prevent the separation of families. The provision expressly provides for the duty to guarantee the best interests of children and adolescents, who must be free from any deprivation of liberty, that family separation must not be used to coerce any of the family members, and that in **determining the custody of migrant children, the migratory situation must not be used as a reason to terminate custody or parental rights.**

1.7. Promotion of the right of access to information about the rights and obligations of the migrant person, including those arising from his or her condition as a prisoner, defendant, convict, deprived of liberty, in compliance with alternative sentencing, electronic monitoring, and socio-educational measures depriving or restricting liberty

According to Law n.º 13,445/2017, the right of access to information is guaranteed to the migrant person, expressly providing for the person the right to be informed about the guarantees that are ensured for the purposes of migratory regularization. The right to information must be ensured from the moment the migrant is arrested or apprehended, with a minimum understanding of the functioning and procedures adopted by the criminal and juvenile justice institutions, respectively, since the beginning.

Furthermore, it is reinforced that the right to information must reflect information relating to criminal proceedings and criminal execution, the process of investigating the commission of offenses and the execution of social and educational measures, as well as the administrative procedures to which the migrant person is subject, in order to also consider that such information is provided through an interpreter and/or delivered in a duly translated form, whenever the person does not have mastery or fluency in the Portuguese language. The right to information provided in the native language extends to adolescent migrants, especially when unaccompanied or separated in Brazil.

2 PERMANENT SUPPORT STRUCTURE FOR MAGISTRATES AND COURTS IN MIGRATION, CRIMINAL AND CIVIL JUSTICE SOCIO-EDUCATIONAL

The purpose of this topic is to serve as a tool to subsidize the performance of courts and magistrates by presenting proposals to guide the permanent activity of creating and maintaining a network of relevant entities and professionals to support the Judiciary in cases involving migrants, whether adults or adolescents.

In view of the need to inform and mobilize the institutions of the Judiciary, the Resolution that is the object of this Manual aims at strengthening the existing rules, which have great institutional value to support the performance of magistrates and minimize the specific vulnerabilities that the migrant population may face when in contact with the criminal and juvenile justice systems.

We address **six guidelines of the permanent structure**, systematized separately in attention to the diversity of local contexts experienced by Brazilian courts, which may require greater or lesser attention to certain components. For example, border regions that encounter a large movement of people of certain nationalities across land borders have particular needs when it comes to processing people from specific countries close to Brazil, when compared to cities that host large airports and enable the movement of people from all over the world.

They are among the six guidelines of the permanent support structure to be described in detail in the following items:

1. The systematization of contacts for consular assistance purposes;
2. The mapping and establishment of the social assistance network;
3. The implementation of telephone and virtual mechanisms to enable contact between the migrant person arrested or apprehended for an infraction and their family and/or affective circle;
4. The express identification of the location of the passport or personal document in the judicial records; and
5. The promotion of courses and training on migration, criminal and juvenile justice

2.1. Registration of interpreters to act in court proceedings and translation of court decisions, including virtually

Under the contours of Article 19 of CNJ Resolution n.º 405/2021, the courts are responsible for keeping a register of interpreters and translators with experience in forensic work,and are encouraged to promote constant training[3].

It is important to ensure, whenever possible, that the **roster of interpreters is composed of people with experience in acting in oral judicial proceedings. Ideally, the lists of translators should also include professionals qualified in the translation of written communications or in pounds of procedural acts**, especially of orders scheduling investigation and trial hearings, conviction or acquittal sentences, or judicial decisions that deal with regime progression in penal execution and their sentence calculations, as well as judicial acts in the scope of the social-educational system.

As shown in a survey conducted by federal judge Paulo Marcos Rodrigues de Almeida and by interpreter Jaqueline Neves Nordin (2017), only in the Federal Forum of Guarulhos/SP, more than fifty different languages were identified present in criminal hearings. Once the different realities are understood, it **is important that the roster of interpreters and translators be prepared in accordance with the local needs of the courts, which must imply an initial mapping of the most present demands**. It is commendable that the first mapping takes into consideration a historical series of at least five previous years, regarding the main nationalities and languages of the migrants who have already been processed in the locality, not excluding the possibility of **collaboration between courts and instances** for better access to these professionals, especially regarding uncommon languages and/or nationalities.

Even if the migrant is fluent in Portuguese or in another second language, such as English or Spanish, Article 4 of CNJ Resolution n.º 405/2021 provides for the person to have access to an interpreter or translator in the language of their effective understanding. This provision is based on several international regulations, such as the Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking (Principle 50), the Inter-American Convention on Human Rights (Article 8, 2, a) and the UN Standard Minimum Rules for the Treatment of Prisoners (Rule 41).

Another aspect of the creation of a database of interpreters and translators must be the definition of parameters that can mediate the technical qualification to perform these functions, since the performance of these professionals is fundamental to the performance of all those involved in the criminal and juvenile justice systems. **It may also be interesting that other migrants are included in these registers, even those who have stated that they have a criminal record in Brazil**. This is because factors, such as culture and the life context in which the person is inserted, may contribute to a better understanding by the migrant of the Brazilian justice system itself. Regarding this last hypothesis, it is worth mentioning that Article 12, 3rd Paragraph, II, of the Resolution, **authorizes and encourages migrants**

3 As far as training is concerned, the School of Magistrates of the Federal Court of the 3rd Region (TRF3) promoted, in 2022, for the first time, the training course for court interpreters. More information about the initiative at: *https://www.youtube.com/user/ emagtrf3.*

in prison to act as interpreters in other languages, including for purposes of sentence remission. It is important to emphasize that such a measure can be considered, by analogy, within the scope of the socio-educational system, according to the individual service plan (IAP) of each adolescent during the execution of the socio-eduactional measure.

It is suggested that the use of more than one interpreter or translator during the same judicial procedure is executed with caution, as well as the mobilization of virtual mechanisms for the work of these professionals. It is recommended to prioritize the work of only one interpreter who is proficient in the native language and Portuguese, for the purposes of speed and procedural economy, **as well as the exceptional use of these professionals in a virtual setting** - the **personal contact** of the person who interprets the proceedings is the most recommended way to ensure a better understanding of the migrant person in the criminal and social-educational systems.

It is important to note that, for the purposes set forth in Article 43, 1st Paragraph, I of Law n.º 12,594/2012 (Sinase), migrant adolescents may only work as interpreters if the provisions of Article 7, XXXIII of the Federal Constitution (prohibition of child labor) are respected, so that if migrant adolescents perform such activities, they must be considered positive and learning activities to be described in the individual service plan (PIA) of each adolescent in order to possibly contribute to the reevaluation of their compliance with the socio-educational measure.

Finally, it is worth noting that, in the socio-educational scope, **the procedure to investigate an infraction is governed by the principle of celerity,** especially because the purpose of the procedure is not the application of a state sanction, in the contours of Article 152 of the Statute of the Child and Adolescent, but the achievement of full protection of the adolescent. However, in the case of migrant adolescents, it is suggested that the speed must take into consideration the guarantee of rights, such as access to an interpreter and translation of court documents.

2.2. Systematization of consular reference contacts, embassies, diplomatic representations and the Ministry of Foreign Affairs (MRE)

The systematization of consular reference contacts, embassies, diplomatic representations or the Ministry of Foreign Affairs (MRE in Brazilian Portuguese), provided for in Article 7 of the Resolution, is recommended with the objective of guaranteeing the right to consular assistance to the migrant in the criminal and socio-educational systems in a quick and effective manner.

It is **important to highlight that the presence and the locations of the representations of other countries in Brazil may vary,** that is, there are representations of countries that help their citizens who are deprived or under liberty restriction by means of consulates that are located close to prison and social-educational units, while others rely only on embassies or specific missions. The systematization of these contacts can be done by accessing the information made available by the Ministry of Foreign Affairs, so it is suggested that fundamental information be compiled, such as physical and

electronic address and telephone number, among other essential data. If no information is available, it is suggested to contact the Ministry of Foreign Affairs in order to solve eventual doubts about the diplomatic representation of a certain country. It must be noted that the Ministry of Foreign Affairs is also the part responsible for sending information on administrative or procedural acts in the absence in Brazil of diplomatic representation of a migrant's country of origin (Article 1 of Decree n.º 9,683/2019).

It is noted that the systematization of these contacts may enable, when requested, the presence and accompaniment of consular and diplomatic representatives during judicial acts, especially during custody hearings, **provided if the migrant agrees**, and that they may also support the magistrates in the necessary referrals after the conclusion of the judicial act.

Finally, there is an exception in the application of the principle of guaranteeing consular assistance when the **migrant is also a person arrested or apprehended by Brazil**. In this context, the consular or diplomatic authorities will only be activated upon **express manifestation by the person in custody.**

2.3. Mapping and permanent contact with the public social assistance network and civil society organizations that operate in the location of the courts

The activity of mapping and establishing contact with the public social assistance network (municipal, state, and federal) and with civil society organizations that operate in the location of the courts are recommended initiatives, since they may serve to support the magistrates in **establishing an integrated service protocol between the Judiciary and these networks**. The contact can help to provide greater certainty for the judicial authority in guaranteeing the migrant's right to access non-custodial measures in the criminal and juvenile justice systems.

For migrant adolescents, this contact is even more relevant, since the purpose of the infraction investigation procedure is their full protection, which must include the social assistance networks of reference, and their family and socio-affective nucleus.

It is recommended that contact with the network is made continuously and periodically renewed, in order to identify the myriad of specific demands of the population served, as well as new public policies and civil society organizations.

The creation of contact networks is encouraged, especially in view of the situation of migrants who have been arrested or apprehended as a result of infractions in Brazil, but who **do not have previous ties or support networks in the country**. The consolidation of a local protocol for action in these situations can enable the release of these people from detention, especially after the custody hearing or presentation, and the **referral** to the **social protection network, including reception centers or public shelters and/or initiatives by religious organizations or civil society**, whose target audience is vulnerable populations, including the migrant population.

The creation of committees, inter-institutional work groups, or similar spaces that promote the exchange of experiences between the institutions and equipment involved is encouraged, with the aim of building flows and an integrated care protocol, taking into account the local contexts.

The mapping and articulation of this network can be done through the multidisciplinary teams at the courts, working together with the criminal services now available and structured with the support of the Doing Justice Program - Care Service for Detained Persons (Apec)[4], Integrated Center for Penal Alternatives (Ciap)[5], Electronic Monitoring Center (CME)[6] and the Social Offices[7] -, municipal, state, and federal public services that operate in the locality, especially those dedicated to serving migrants.

Thus, it is proposed that this mapping and articulation work take into consideration the performance of various equipment and civil society organizations, including already consolidated instances that deal with issues related to this Resolution, such as the State Committees for Migrants and Refugees, State Committees for Combating Trafficking in Persons, State Committees for Combating Slave Labor, centers for the defense of the rights of children and adolescents, special reception centers for migrants, among others.

It is recommended that contacts be initiated directly with the municipal, state, and federal networks operating in the locality, considering that, in general, they act in a predefined region and have predefined areas of operation. Finally, it is observed that mapping as a continued practice will contribute to the solidification of these networks in a more permanent way, becoming permanent support structures.

4 The Service for Attending to Persons in Custody (Apec) is a public facility run by the Executive, Judiciary and other institutions, made up of a multidisciplinary team exclusively for people arrested and brought before the Judiciary, both before and after the custody hearing. This is a voluntary, non-compulsory service, which is not tied to a court decision. More information is available at: *https://www.cnj.jus.br/wp-content/uploads/2020/10/Folder-Audi%C3%AAncia-de-Cust%C3%B3dia.pdf.*

5 The Integrated Center for Penal Alternatives (Ciap) is a public equipment managed by the Executive Branch, based on the articulation with the Justice System for the referral of people serving alternative sentences and measures. More information is available at: *https://www.cnj.jus.br/wp-content/uploads/2020/10/Folder-Alternativas-Penais.pdf.*

6 The Electronic Monitoring Center (CME) is a service that aims to accompany the electronic monitoring measure judicially ordered, ensuring the compliance of the decision, the treatment of incidents, the protection of the rights involved, and the rationalization of the Judiciary's work. In this way, it favors the effective compliance with the measure and the judicial conditions eventually imposed, while also aiming at social protection referrals.

7 Instituted by CNJ Resolution n.º 307/2019, the Social Office is a public equipment of shared management between the Judiciary and Executive branches, responsible for carrying out reception and referrals of people who are exiting and pre-egresses from the prison system and their families to existing public policies, articulating an intersectoral and interinstitutional policy of social inclusion that correlates with and demands initiatives from different state and municipal public policies, systems, and civil society actors. More information is available at: *https://www.cnj.jus.br/wp-content/uploads/2020/10/Folder-Escrit%C3%B3rios-Sociais.pdf.*

2.4. Implementation of mechanisms that enable the contact of the migrant with his/her family by virtual or telephone means, especially in the scope of custody and presentation hearings

The contact of the person in custody with the outside world is guaranteed by several national and international regulations.

The Mandela Rules indicate in its Rule 58 the permission of periodic communication with family and friends, whether by correspondence, using, as available, telecommunications and digital means, or through visits, which must be guaranteed in a fair and equitable manner, noting that no disciplinary sanctions or restrictive measures must impact the right to family contact. They also provide for the right of the arrested person to immediately inform their family or other designated person about their arrest, which must be guaranteed by the State. The Bangkok Rules foresee in its Rule 26 the need to adopt measures to alleviate the problems of female prisoners and adolescents detained in institutions far from their places of residence, and to allow that women guardians take the necessary measures in their regard, including the possibility of suspending the deprivation of liberty for a reasonable period whenever necessary, taking into account the best interests of the children, as provided in Rule 2.

The right to contact with family members is provided for all people deprived of their liberty, as stated in the Criminal Execution Law, which also provides for the right to a visit, from the moment of arrest. As stated in CNJ Resolution n.º 213/2015, it is the responsibility of the judicial authority to question, at the time of the custody hearing, whether the person had the right to communicate their arrest to family and/or friends. The CNJ Resolution n.º 405/2021 also provides that during the custody hearing, the judicial authority may act to facilitate contact with family members or persons of trust in the country of origin or the country of residence, being able to use equipment designed for virtual visits and telephone contacts.

The Resolution states in its Article 12 that, in penal establishments where there are migrants deprived of liberty, it is the responsibility of the judge of penal execution to ensure and supervise the guarantee of the right to face-to-face and virtual[8] visits, observing the inclusion of people in the list of visitors without being limited to those officially recognized**, and the availability of other means of contact with the outside world, including with people who are in other countries, through virtual means and in an unbureaucratic way**.

As far as debureaucratization is concerned, it must be said that it is possible that migrants arrested or apprehended for an infraction may not have support networks in the country or rely on

8 With the Covid-19 pandemic, since 2020 prison and social-educational units across the country have started programs to implement virtual visits for imprisoned persons or apprehended adolescents. See, for example, the initiative of the CNJ together with the organization Instituto Humanitas 360 in the state of Maranhão, May 2020, available at: https://www.cnj.jus.br/visitas-virtuais-amenizam-impacto-de-fechecamento-total-de-presidios/. This, in turn, requires caution and a careful look at the advances that virtual visits provide for maintaining the bond and contact of migrants with their families and emotional nuclei in their countries of origin. While face-to-face visits are a priority, virtual technologies are important tools to be maintained and enhanced, especially for migrants in custody or apprehended, even with the end of the Covid-19 pandemic.

networks of friends and acquaintances, so that, in these situations, the creation of a wider list of declared socio-affective relationships is suggested. In the same vein, due to the migratory flows and causes of displacement of these people to Brazil, it is necessary to note that the migratory irregularity of the families and networks of friends and acquaintances of migrants deprived of their liberty or under detention order must not be a cause for the discontinuity of ties, and the use of telephone sets and other technologies to maintain ties must be facilitated

As for migrant women, the normative establishes that, in case of application of home detention to a woman whose family has no residence or support network in the country, the social protection network, the consular and diplomatic representations, as well as civil society organizations, should be mobilized to ensure the maintenance of ties and family life, in accordance with Article 23 of the Statute of the Child and Adolescent..

In the socio-educational field, the right to family and community life becomes even more central. The Statute of the Child and Adolescent foresees in its Article 4 that "it is the duty of the family, the community, society in general, and the public authorities to ensure, with absolute priority, the realization of the rights to life, health, food, education, sports, leisure, professionalization, culture, dignity, respect, freedom, and family and community life", as well as in Article 111, VI, that the adolescent may request the presence of their parents or guardians at any stage of the procedure. Thus, migrant boys and girls are also entitled to the right to family and community life, and they have the right to request the presence, even virtually or by telephone, of their father, mother, or legal guardian at any time during juvenile court proceedings.

2.5. Identification and express registration about the existence of a personal identification document (Brazilian or from the country of origin), and the location of a document that has been seized in the judicial proceedings, especially the passport

According to Article 5, I, of Law n.º 13,445/2017, the passport is a personal and non-transferable document, classified as one of the travel documents accepted by the country when non-Brazilians enter the national territory. This is the identification document presented to the Brazilian authorities by most of the migrants who arrive in the country, especially by air, even though there are legal hypotheses that allow entry with the identification document of the country of origin, especially those who fall under the agreements established by the countries that constitute the Mercosur Agreement or Associated States.

When migrants are arrested or apprehended in *flagrante delicto* in Brazil, their passports, as well as other personal identification documents and all of their belongings that were with them at the time of their arrest or apprehension, **may be retained by the police authorities and remain so throughout the criminal process, the investigation of infractions, and the execution of the sentence or socio-educational**

measure, even if their authenticity has to be verified. For this reason, it is encouraged that the support structure of the Judiciary includes the activity of recording the location of the document seized in the judicial process, preferably on the physical or electronic cover of the records. In the hypothesis of electronic processing of the processes, it is suggested that the clerks accurately register the physical location of the document.

In this context, it must be noted that passports or personal identification **documents are fundamental documents for access to migratory regularization, especially while serving a sentence or in open-ended socio-educational measures**. Often, due to the absence of consular authority or diplomatic mission of the country of origin, adult migrants who have been charged, accused or convicted, or adolescent migrants who have been apprehended, prosecuted for committing an infraction or serving a socio-educational measure, do not even have the possibility to apply for a new passport or even cannot afford the consular fees and emoluments due to the vulnerable conditions in which they find themselves.

Nevertheless, a scenario commonly identified before the advent of CNJ Resolution n.º 405/2021, was that of convicted migrants who only recover their passports in the moment of regime progression, upon request for release in the case file, often executed by the Public Defender's Office.

Thus, Article 9 of the Resolution recommends as a priority that the document is delivered to the migrant or to their legal representative in the case of adolescents, even if the document is held in the administration of the prison or socio-educationall facility, without the need for a petition in the case file.

In the situation where the person is released or placed under a precautionary measure other than imprisonment, the judicial decision that ordered the measure may **expressly determine that the Judiciary, or whoever is holding the document, deliver it directly** to the person. In the exceptional case in which **the judicial authority considers it impossible to return the passport**, it is suggested that a **complete copy is made available (cover, back cover, and all pages of the passport, even if they are blank) and authenticated** by the registry office where the corresponding criminal proceedings or penal execution are taking place. One initiative indicated is the recording of the passport number in all procedural acts that mention the person in custody, defendant or convicted, and the possibility of recording it in the computerized systems of the Judiciary or implementing an identification label in physical records.

It is especially worth mentioning that in situations involving adult or teenage pregnant women or mothers, the identification document is extremely important so that the child born in Brazil can be registered in the civil registry offices, by means of the birth certificate.

In cases where non-Brazilians are allowed to enter the country without a passport, especially those who fall under the Mercosur Agreement and its associated countries, it is encouraged that the same orientation applied to the passport be used in the identification documents issued by the countries that integrate it.

Finally, in the case of adolescent migrants who are apprehended, prosecuted for committing an infraction, or serving a socio-educational measure, the location of their passport is equally fundamental.

It is important to note that once an adolescent is the recipient of a decision on provisional internment, internment-sanction or a sentence on a socio-educational measure of internment or semi-freedom, there is the available flow from the Vacancy Center, to which the responsible magistrate will request the vacancy by sending documentation, in the terms of Article 8 of CNJ Resolution n.º 367/2021, including those of a personal nature that prove their age, which in the case of migrant adolescents may be passports or documents from countries that are part of Mercosur or Associated States.

2.6. Promotion of courses and training on migration, criminal and juvenile justice

In accordance with Article 20 of CNJ Resolution n.º 405/2021, courses and training on migration issues and their interrelationships with the criminal and socio-educational systems are encouraged for judges and justice officials, especially in federal units characterized by larger border or airport migration flows.

These initiatives may be made available to the Judiciary in general, taking into account the actions at federal and state levels, ranging from the judicial units that conduct custody hearings, criminal courts, special criminal courts and courts for domestic and family violence against women, and Criminal Execution Courts, as well as those with competence to investigate infractions and enforce socio-educational measures, especially in the districts and judicial sections with a larger presence of migrant population.

Another characteristic for the promotion of these courses and training may be the definition of specific themes and priorities based on local diagnosis and exchange of experiences among judicial authorities, which can be done with the help of the Monitoring and Supervision Groups of the Prison and Socio-Educational Systems (GMF).

These courses and training can be promoted with local and national organizations in cooperation. At a local and national level, civil society organizations that work with migrant populations[9] stand out, especially those that offer legal assistance, as well as universities, especially in the scope of International Relations courses and extension groups that involve migratory themes. At the international level, we highlight the International Organization for Migration (IOM), United Nations (UN) agencies - for example, the UN Refugee Agency (UNHCR) and the United Nations Office on Drugs and Crime (UNODC) - and civil society organizations that work with these issues in other countries, for the purpose of exchanging experiences.

Another initiative that can be adopted in this field is the dialogue of the Judiciary with other institutions, such as the Schools of Magistrates, or even in partnership with sectors and organs of

9 The IOM launched an updated mapping of organizations offering legal assistance to the migrant population in Brazilian states in 2020. More information is available at: *https://repository.iom.int/bitstream/handle/20.500.11788/2304/BRL-OIM%20013._pdf?sequence=1&isAllowed=y.*

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professional updating and technical improvement of members of the other entities of the justice system, such as the Public Prosecution Offices and the Public Defender's Offices.

In particular, the Federal Public Defender's Office (DPU) provides full and free legal assistance, from criminal proceedings, demands for migratory regularization, and defense in administrative proceedings involving measures of compulsory removal, for a large number of accused, defendants, or convicted migrants[10].

It is relevant that the training courses have a multidisciplinary character, with professionals from different areas, especially law, information technology, psychology, social sciences, international relations, social assistance, public policies, and criminology. It is important to consider that the course contents include the presence of migrant people, especially those who have criminal records and/or are family members of migrant adolescents in the socio-educational system, since listening to the experiences lived by these people can also be transformed into knowledge and help in the effective implementation of the guidelines of this Resolution.

Table 1 - Suggested roadmap for training events

Suggestion of a script for training events for magistrates and civil servants on the theme:
• Particularities of the public benefited by the Resolution
• Creation of contact registers and network mapping
• Provisions of Law n.º 13,445/2017 and Decree n.º 9,199 of November 20, 2017
• Systems operated by the CNJ Department for Monitoring and Inspection of Prison and Socio-Educational Systems (DMF/CNJ), instructions on how and when to collect the data and how to fill out and register it in order to comply with the forecasts
• CNJ monitoring activity regarding compliance with the provisions and decisions of the superior courts about the public benefited by the resolution

10 As an example of courses and training on this topic, two good practices stand out: the course promoted by the School of Magistracy of the Federal Justice of the 3rd Region, entitled "Female incarceration seen from up close: Gender, maternity and foreigners' prisons", held in 2018 in the city of São Paulo; and the virtual course on migration law held by the IOM in partnership with the National School of the Federal Public Defender's Office. More information about the good practices mentioned is available at: *https:// www.trf3.jus.br/emag/cursosemag/cursos-2018/441-442-encarceramento-feminino-visto-de-perto-genero-maternidade-e-prisoes-estrangeiras/* e *https://brazil.iom.int/news/oim-e-dpu-promovem-curso-sobre-direito-migrat%C3%B3rio-brasileiro.*

3 DECISION-MAKING IN CASES INVOLVING MIGRANT PEOPLE

Adopting as a starting point the constitutional framework that establishes **equal treatment between Brazilian persons and migrants**, as well as Law n.º 13,445/2017, which now recognizes "foreign" people accused, defendants or convicted as subjects of rights and, therefore, "migrants" themselves, CNJ Resolution n.º 405/2021 seeks to facilitate the performance of magistrates regarding decision-making in proceedings involving migrant accused, defendants, or convicted in the criminal justice system, as well as adolescent migrants apprehended, prosecuted for committing an infraction or serving a socio-educational measure.

The path taken by these people in the Judiciary is tied to six minimum parameters regarding access to rights. They are:

1. **The inquiry and registration** in the court records of the person's **nationality, native language, and other languages spoken;**
2. The **presence of an interpreter** in court proceedings and **access to documents translated** into the native language;
3. The guarantee of **consular assistance**, whenever requested by the person;
4. The express identification of the **location of the passport and/or personal identification document** issued by the country of origin, when retained in the case file or sent to other institutions, such as prison administrations and social-educational units;
5. The consolidation of **contact networks with public authorities and civil society organizations**, to guarantee a minimum level of assistance, especially with regard to housing for migrants without a fixed residence in the country and for unaccompanied or separated adolescents; and
6. The facilitation of contact between the migrant and his/her family, by telephone or virtual means, especially when the family is outside Brazil and in the case of unaccompanied or separated adolescents.

These **minimum parameters**, when observed in all the nuances of the criminal and socio-educational systems, may help the judicial authority during the decision- making in cases involving migrants and will make possible the interlocution of the Judiciary with other organs of the Executive Branch and with consular authorities, fundamental to the administrative and judicial procedures involving these people.

Besides these minimum parameters, **a basic premise for judicial action involving migrants is that the migratory situation of the person cannot serve as an obstacle** to provisional release or house arrest, the imposition of alternative measures to prison, regime progression, and the granting of other rights in penal execution, such as temporary release and parole.

Likewise**, in the socio-educational context, the migratory situation of adolescent migrants, especially those who are unaccompanied or separated, is not foreseen by law as an element to prevent the application of socio-educational measures other than internment**.

Still regarding decision-making, it must be noted that the Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking, from Inter-American Commission on Human Rights (IACHR) provide guidance on the application and interpretation of standards in migrant cases:

Principle 3: Pro persona

When there are two or more provisions that are applicable to a particular case or situation, States must use the provision that is most favorable to protect the rights of all migrants, regardless of their migration status. Similarly, when there are two or more interpretations of a provision, states must use the one that is most favorable to the person and offers to them the broadest protection. Furthermore, States must apply the most favorable interpretation to guarantee human rights, and the most restrictive interpretation to limit these rights (free translation).

It is recommended that the judicial authority pay special attention to the vulnerabilities that may be observed in the concrete case and that have specific meanings, both at the different moments of decision-making in the judicial sphere, as well as in the administrative developments, especially for purposes of migratory regularization and the possibility of remaining in Brazil. Among these possible vulnerabilities, three situations stand out: **the presence of elements suggesting** that the migrant is a direct or indirect victim of human trafficking; the presence of indications that may configure **the need to request refuge or other forms of complementary protection;** and the **verification of other specific vulnerabilities,** such as disability, exclusive responsibility for the support of the family nucleus, and serious illnesses, which may require other judicial measures.

In relation to **precautionary measures other than prison, it is important to understand that being a migrant does not prevent them from being used**. In this context, the analysis of the adequacy of the migrant's situation must take into consideration, for example, the possibility of having access to migratory regularization in the country, even if the person is imprisoned; the identification of a support network in Brazil and/or the possibility of articulation of penal services, such as the aforementioned Apec, Ciap, CME and the Social Office, with the local public network and/or civil society organizations that work on the issue.

In cases where it is not possible to apply precautionary measures and/or alternative measures to imprisonment in the course of criminal proceedings, three other contexts can be considered in the case of migrants: the possibility of **transfer to serve a sentence in the country of origin**; the possibility of **being granted judicial authorization for voluntary return to the country of origin**; and the **effectuation of measures of compulsory removal**, such as expulsion, **before the end of the sentence has been fully served**, including during provisional release, house arrest, or other precautionary measures.

As far as adolescent migrants are concerned, **priority is given to measures other than detention**. Such measures, which assume a primordial character regarding the protection of the interests of the adolescent, such as family reunification in the country of origin, also have primacy when the adolescent has family in Brazil or is unaccompanied or separated, in view of the absence of legal grounds for migratory conditions to serve as the sole justification for maintaining the internment in a socio-educational unit.

It is important to highlight that adolescent migrants do not respond for crimes, but for infractional acts, they are not subjected to criminal proceedings, but to socio-educational proceedings, in the terms of Article 103 of the Statute of the Child and Adolescent. Thus, it is concluded that adolescent migrants **cannot be subjected to the administrative measures of expulsion and extradition**, in the strict terms provided by Articles 54 and 81 of Law n.º 13,445/2017. This guideline is based on joint observance of the principle of the best interests of the child and the principle of family and community life, requiring a concrete analysis of the situation in order to understand the best interests of the adolescent. The principle of legality (Article 5, II, of CF/88) also applies, in the sense that these are administrative measures applicable in the face of crimes and, in the case of adolescents, this requirement is present.

Also with regard to **extradition**, Law n.º 13,445/2017 prevents the measure when the fact motivating the request is not typified as a crime in Brazil. Therefore, if the extraditee's conduct is considered an infraction under Law n.º 8,069/1990, considering the agent's age at the time of the facts, the requirement of double criminality of Article 82, II, of Law n.º 13,445/2017 will be absent. In this sense, the jurisprudence of the Supreme Court (exemplified in the unanimous judgments of Extradition n.º 1135, Full Court, rapporteur Justice Eros Grau, judged on October 1, 2009, and Extradition n.º 1395, 2nd Panel, rapporteur JusticeTeori Zavascki, judged on November 17, 2015).

As for the possibility of transfer to serve a socio-educational measure in the mother country, it is necessary to verify the terms of any bilateral agreement signed between Brazil and other countries[11]. Furthermore, Law n.º 13,445/2017 allows for the repatriation[12] of persons under eighteen years of age who are unaccompanied or separated from their families, as long as the adolescent is heard in the concrete case and it is observed that the measure is favorable to guarantee their rights or to make reintegration with the family of origin possible, or to those who fit the hypothesis of humanitarian reception, as long as the return of the person does not cause risk to their life, personal integrity, or freedom (Article 49, 4th Paragraph).

11 By way of example, mention is made of the "Treaty on the Transfer of Prisoners" concluded between Brazil and Spain in 1996, which provides in its Article 9 for the possibility of applying the terms of the treaty to adolescents: "This Treaty may extend to persons subject to surveillance or other measures, in accordance with the legislation of one of the Parties with respect to juvenile offenders. The Parties shall, in accordance with their legislation, agree on the type of treatment to be accorded to such persons in the event of transfer. Consent for the transfer must be obtained from the legally authorized person. 2. Nothing in this Article should be construed as limiting any ability that Parties may have, independently of this Treaty, to grant or accept the transfer of juvenile offenders or other prisoners.

12 The definition of repatriation is supported by Law 13,445/2017, in its Article 49: "repatriation consists of an administrative measure of returning the person in a situation of impediment to the country of origin or nationality.

In general, when it comes to adolescent migrants, especially when the apprehension and investigation of the infraction occurs in border contexts, **it is suggested that monitoring is carried out in cooperation with the country of origin, especially when family reunification is possible**. In this sense, the Individual Assistance Plan (IAP) - subsidized by the ECA and by Articles 52 et seq. of Law n.º 12,594/2012 (Sinase) - to be prepared by the technical team responsible for monitoring, must also take into consideration the cooperation with the country of origin, local judicial and social welfare facilities, and the participation of the father, mother and other members of the adolescent's support network in the plan, even if they are not in Brazil. In addition to establishing cooperation, it is important to consider, depending on the concrete analysis, the possibility that the representation against the adolescent will not be received, and, if it is received, to evaluate the possibility of granting a suspensive remission or the application of a non-custodial or liberty-restricting socio-educational measure in the sentence.

With the conviction, the Judiciary is also responsible for ensuring the observance of all rights, especially the migratory regularization to ensure the exercise of citizenship during the stay in Brazil, during the course of criminal proceedings or the investigation of an infraction, the criminal execution or socio-educational measure, and while waiting for the effectiveness of administrative measures of compulsory removal, in the case of adults.

The same procedure applies to adolescent migrants apprehended, prosecuted for committing an infraction, or serving a socio-educational measure. It must be noted that Article 3, 4th paragraph of CNJ Resolution n.º 412/2021, based on Laws n.º 8,069/1990 and n.º 12,594/1990, prohibits the use of electronic monitoring measures for persons between 18 (eighteen) and 21 (twenty-one) years of age.

It must be noted that the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) determine **the extreme exceptionality of pre-trial detention for adult and adolescent migrant women**. According to Article 10, I, of CNJ Resolution n.º 405/2021, the rule of criminal proceedings is not to imprison women, especially pregnant women, mothers of children up to 12 years old, or women with disabilities.

The aforementioned provision is in line with the provisions of CNJ Resolution n.º 369/2021 - which establishes procedures and guidelines for replacing the deprivation of liberty of pregnant women, mothers, fathers and guardians of children and persons with disabilities, pursuant to Articles 318 and 318-A of the Code of Criminal Procedure, and in compliance with the collective *habeas corpus* orders granted by the 2nd Panel of the Supreme Court in *Habeas Corpus* Nos. 143.641/SP and 165.704/DF - which are applicable to migrants, whenever the situations described therein are present.

It is also worth noting that in cases where migrant women are pregnant, mothers of children up to 12 years of age and/or disabled, **home detention without the use of electronic monitoring is recommended.** The CNJ Resolution n.º 412/2021, in Article 8, sole Paragraph, II, prioritizes the adoption of measures other than electronic monitoring, in conjunction with the voluntary referral of the person to the social protection network in specific situations, among them women mothers and those in caregiving positions. According to the document "Electronic Monitoring of People: Information for the Justice System" (2020), the use of an anklet:

a. It hinders or makes difficult the routines of pregnant women who necessarily need medical follow-up during prenatal care, being absent from their homes for imprecise intervals of time due to the demands of the public health service;

b. It violates or hinders the continued access to rights that must be guaranteed to children, due to of the restrictions imposed on mothers;

c. It enables new processes of criminalization of mothers who, due to their restrictions, can be prevented from assuming all their responsibilities and duties toward the children;

d. It violates the right to health, because the inexistence of studies capable of assessing the physical and psychological damage caused by electronic monitoring puts the integrity of women and children at risk;

e. It creates embarrassment and stigmatizes women and also children;

f. It hinders health treatment, care for mental disorders and terminal illnesses. (p. 55)

We also encourage the judicial authority to equalize other vulnerabilities experienced by migrant women, based on the intersection with social markers such as race, age, class, gender, sexuality, and belonging to an ethnic group, among others, when deciding whether to maintain the deprivation or restriction of liberty.

Moreover, we must take into account other norms of the National Council of Justice, such as CNJ Resolution n.º 287/2019 and CNJ Resolution n.º 348/2020 - which establish guidelines and procedures to be observed in the treatment of indigenous people and people from the LGBTI population, respectively, - that affect the cases of intersectionality with the migrant condition.

For all the above reasons, based on this general overview of the possible outcomes of criminal and infraction proceedings involving, respectively, adult and adolescent migrants, we will now describe the procedures by which the judicial authority may be guided for decision-making, pursuant to CNJ Resolution n.º 405/2021.

3.1. Tools required for decision making: active listening and multidisciplinary assistance to identify signs of specific vulnerability, human trafficking or refugee situations, and consultation with the social assistance network of reference

According to the Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking[13], a high level of vulnerability is directly correlated with situations of discrimination and structural exclusion. As stated in principle 16, these population groups include, **irregular migrants, refugees, stateless persons or persons at risk of statelessness,**

13 Resolution n.º 4 of 2019, adopted by the Inter-American Commission on Human Rights on December 7, 2019.

children and adolescents, indigenous people living with HIV or medical needs, LGBTI people, women, pregnant women, groups vulnerable for racial or religious reasons, persons with disabilities, survivors of torture, older persons, persons deprived of liberty, among others. It is responsibility of the state to consider the specific vulnerabilities that accompany people from their country of origin and offer the protection and assistance they need.

It is essential to bear in mind that the migrants targeted by CNJ Resolution n.º 405/2021 already represent a population group with an accumulation of vulnerability markers. Moreover, these markers are often simultaneously implicated with elements of race, class, gender, sexuality, age, *etc.* Thus, the actions of the Judiciary require the analysis of the presence of these multiple elements in order to guarantee full access to rights.

As the International Organization for Migration points out, migrant status may come with situations of specific vulnerabilities, "with limited capacity to avoid, resist, cope with, or recover from the potential risk or situation of violence, exploitation, and abuse that they are exposed to or experience in the migration context" (IOM, 2018, p. 16). It also considers that this reduced capacity results from the interaction of individual, family, community, and structural factors. The Organization highlights as vulnerable migrant groups people who are victims of human trafficking, unaccompanied or separated migrant children and adolescents, and refugee and refugee seekers.

In this regard, the latest Global Human Trafficking Report, published by UNODC in 2020[14], recognizes that in addition to cases of sexual and labor exploitation, victims of human trafficking may be forced to take part in criminal activities, such as drug trafficking. This results in double victimization, which has differentiated impacts on populations with specific vulnerabilities, such as women, children, and migrants, among others. In this sense, it is essential to keep in mind that **people who are undergoing criminal or infraction proceedings, even if convicted, can also be victims**.

The existence of a criminal process or the investigation of an infraction should not impact the guarantee and the access to rights associated to the condition of victim, for example, of human trafficking, labor exploitation and/or persecution in their country of origin, elements of refugee status and other situations that may give rise to humanitarian reception.

In order to offer subsidies to help judges to make informed decisions in complex situations, it is **indicated the possibility of consulting experts who are able to issue technical opinions that contribute to the understanding of possible specificities in certain cases.** Therefore, one suggestion is to encourage the registration of experts and organizations that can serve as references on key topics. Cases in which people in situations of refuge are arrested or apprehended for using false documents, as well as cases in which victims of human trafficking and labor exploitation are arrested or apprehended transporting drugs can benefit from specialized views that provide subsidies for the identification of signs of vulnerability to be considered in the judicial decision.

14 Available at: *https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_15jan_web.pdf.*

Furthermore, it is noted that **Convention n.º 182 of the International Labor Organization (ILO)** classifies, in Article 3, among the worst forms of child labor, the "use, recruitment, and offering of children for illicit activities, particularly for the production and trafficking of narcotics as defined in relevant international treaties". Thus, **the vulnerabilities faced by adolescent migrants with regard to international drug transportation flows are also addressed.**

In this field of action, the CNJ *Manual for the Incidence of the Theme of Drug Trafficking as one of the Worst Forms of Child Labor* stands out, which, in addition to delving deeper into this problematic, also "seeks to support judges in order to provide them with legal and argumentative instruments to reinforce the application of adequate measures for the protection and guarantee of adolescents' rights as opposed to the application of measures that not only punish them, but that greatly damage their life trajectories" (CNJ, 2021, p. 81). The Manual describes at least five distinct referral flows for adolescents in these situations. It is also worth noting that adolescents who experience child labor in the illicit drug market and other related situations may also be subject to **risk and life-threatening contexts**, in which cases it is responsibility of the Judiciary to verify the need for referral to **protection programs** at the state level and, in their absence, to activate the federal program.

Finally, in relation to adolescents, it is recommended that they have access to other support documents specialized in **qualified listening of** children and adolescents, taking into consideration **the possibility of apprehended adolescents being heard in court using the special deposition modality** if they have witnessed a situation of violence. The *Listening Manual for Children and Adolescents,* prepared for use by the Federal Public Defender's Office, has a model questionnaire with specific questions (MIEUX, 2020, p. 74) to be answered by adolescent migrants who have been apprehended, prosecuted, or are serving a social and educational measure.

3.2. Possible outcomes of criminal proceedings brought against a migrant person

Regarding the possible outcomes of the criminal process, situations were selected with the purpose of orienting and helping magistrates in the elaboration of their judicial decisions, based on the norms in effect. Although the situations exposed are not exhaustive, we have listed some elements of attention that can be considered in judicial decisions made in custody hearings, presentation hearings sentences, judgments and other decisions in the process of criminal execution or in different instances involving migrants[15].

15 Similar proposals were published as part of Statement 3 of the First National Human Rights Forum of the Association of Federal Judges of Brazil (Ajufe): "It is recommended that 1) sentencing sentences against foreign defendant or defendant provide on: a) access to a residence permit, with this recommendation also applicable to provisional release or alternative precautionary measures; b) authorization of expulsion or deportation as soon as the execution court grants progression to an open regime or conditional release; d) determination of enrollment in the Registry of Individuals (CPF); 2) in the event that a sentence restricting rights is imposed on a foreign defendant with no ties to the national territory, it is recommended that two monetary payments be made to enable a swift return to the country of origin; 3) a complete copy of the passport be extracted before it is returned to the consular office.

It is noteworthy that, although Chart 2 was prepared based on the criminal justice system, the recommendation themes can be transplanted to the treatment of adolescent migrants, subject to the nuances and specificities of the socio-educational system:

Table 2 - Thematic recommendations

RECOMMENDATION THEMES	Recommendations that can be considered when drafting judicial decisions involving migrants in custody hearings, sentences, judgments, in criminal execution and other instances and corresponding Articles in CNJ Resolution n.º 405/2021as, sentences, judgments, in penal execution and in other instances and corresponding Articles in CNJ Resolution n.º 405/2021
Migratory regularization	• It is suggested that there be specific mention of the possibility of access to a residence permit in Brazil (Article 13) • It is suggested to foresee a judicial determination for the person's enrollment in the Registry of Individuals (CPF) (Article 13) • It is suggested that the passport be foreseen as follows: authorize the delivery of the document to the person (Article 13 and Article 9, I) or make available a certified copy (Article 9, 2nd Paragraph) or, in the event of a decision justifying the reason of do not deliver directly to the person (Article 9, II and III), record the location of the document (safekeeping in the prison, police station, or court of knowledge process).
Voluntary return	• Authorization of expulsion or other compulsory removal measures before extinction of the penalty (art. 11, III) • Authorization of voluntary return (Article 11, II)
Translation	• It is suggested that the judicial decision should expressly state whether the migrant was informed of its contents, preferably in the native language, and alternatively, in case of complete impossibility of translation into the mother tongue, in the language of fluency (Article 3, XII)
Application of alternative measures to provisional incarceration and/or restrictive penalties of rights in sentences	• It is suggested, based on the analysis of the local context where the judicial authority is and in view of the circumstances of the concrete case, the feasibility of the virtual monitoring of the fulfillment of the measures through the available criminal services and the determination of a deadline for the presentation of address and phone number which can be done via communication applications (Article 8, 1st Paragraph). This recommendation is especially aimed at magistrates who work in border regions[16] with large movements of people between Brazil and other countries on land borders.

16 Law n.º 13,445/2017 also applies to migrants who are considered border residents, defined as "a person who is a national of a bordering country or a stateless person who maintains his or her habitual residence in a municipality of a neighboring country" (Article 1, IV).

In the case of migrant adolescents, from the presentation hearing, but also during the concentrated hearings for the reassessment of the socio-educational measures involving deprivation of liberty, it is suggested that the judicial authority pay attention to elements such as:

- Identification of country of origin, languages spoken, and place of residence;
- Contact information for family members or other people who can provide psychological, emotional, and financial support in Brazil and/or at a distance;
- Verification of the need to request an interpreter for oral judicial acts, as well as for eventual multidisciplinary assistance, even without the presence of the judicial authority - taking into consideration the principle of celerity and the absolute priority of adolescents in the socio-educational system;
- Establishment of cooperative relations with mother countries, so that a viable and protective plan can be drawn up for the adolescent, especially when there is the possibility of family reunification in the country of origin;
- Complete prohibition of the application of measures of compulsory removal from the national territory, especially repatriation, explicitly forbidden by the 4th Paragraph of Article 49 of Law n.º 13,445/2017 to children or adolescents unaccompanied or separated from their family, except in cases where it is shown to be favorable for the guarantee of their rights or for the reintegration to their family of origin, and expulsion, since the measure presupposes a final conviction for a crime, which is not configured in view of the agent's lack of responsibility;
- Guarantee of the right to migratory regularization in Brazil, even if the adolescent is serving a semi-probation or internment social-educational measure and unaccompanied or separated from their legal representatives.

The following sections are dedicated to describing the possible results together with measures suggested for programmed action in the Judiciary, both in concrete cases and generally in the performance of magistrates and courts. These items describe guidelines aimed at migrants within the criminal justice system, without prejudice to scores of attention for the socio-educational system.

3.2.1. Application of precautionary measures, provisional freedom or substitute house arrest, with or without electronic monitoring

During the custody hearing, pursuant to Article 8 of CNJ Resolution n.º 405/2021, it is suggested that the judicial authority, together with the multidisciplinary team, be able to identify specific contexts and/or situations that warrant the application of precautionary measures, provisional release, or house arrest, with or without electronic monitoring. It is important to emphasize the possibility for the person in custody to access the Service of Assistance to Persons in Custody or similar, before or after the hearing, if it exists in the district or subsection.

When the judicial authority decides to apply precautionary measures, provisional liberty or house arrest, with or without electronic monitoring**, it is encouraged that the person in custody has access to the translated judicial decision or, if this is not possible, that the pronouncement is translated by an interpreter and reduced to writing, with the purpose of clarifying the modalities for monitoring the established measure.**

In addition, it is important that the decision contain specific provisions that, in addition to establishing the requirements for monitoring the precautionary measure, also take into consideration the minimum conditions for the migrant to remain in the country and the psychosocial conditions for compliance with each specific measure. They are:

- Permission for the migrant person to access the passport or personal identification document or, in the face of the need to seize it in the records, the provision of a full authenticated copy or judicial authorization to waive the presentation of the document for access to the residence permit/migratory regularization in Brazil;
- Determination of the issuance of documents necessary for access to basic rights and services, such as the National Migratory Register (RNM), CPF, CTPS, CadÚnico, SUS card, and Covid-19 vaccination card;
- Authorization to comply with the measure of compulsory removal from the country, before the end of the sentence, upon prior questioning of the migrant, as well as the possibility of voluntary return, pursuant to Article 11, II, of CNJ Resolution n.º 405/2021;
- Provision for the monitoring of alternative measures to imprisonment that take into consideration the needs or difficulties of access to public services of health, education, work, social assistance, *etc*., for the accused migrant person or his family members and dependents, such as authorization to leave the residence at times adequate to the possibilities of public transportation, mention of emergency and urgent situations, among others.

3.2.2. Application of deprivation of liberty measures

When applying prison sentences in closed, semi-open, open, or house arrest regimes, it is proposed that judges, especially those who work in the first instance, take into consideration the issuing and sending of the removal order to the court responsible for processing the provisional or definitive execution of the sentence. **This first recommendation requires a specific alert regarding accused, defendants or convicted migrants, since they are often sentenced by Federal Courts, but serve their sentences in state-run penal establishments.** There is, therefore, a need for constant adjustment of the communication channels of the criminal justice spheres.

These measures can contribute to speeding up the application and supervision of future sentences and to relieving the burden on the courts of penal executions and penitentiary units. It is also possible that the condemnatory sentences, judgments, or decisions of the higher courts authorize the serving of the custodial sentence under home detention, which it is suggested, under the terms

of CNJ Resolution n.º 412/2021, not to be cumulative with the electronic monitoring measure. The imposition of home detention without electronic monitoring[17] may be necessary in situations in which the migrant, for example, is pregnant, is a father or mother or disabled, or has a health condition that requires periodic and constant treatment, is elderly and/or indigenous, among other situations. It is worth pointing out the possibilities of triggering the social protection network whenever the person declares not to have a fixed residence in the place.

3.2.3. Application of restrictive rights measures

In case of application of penalty of restriction of rights to the migrant person with no ties to the national territory, **it is recommended that only two monetary payments are established, with express indication of the authorization of voluntary return, in the contours of Article 11, II, of CNJ Resolution n.º 405/2021**, in order to enable the person to return more quickly to their country of origin.

It is important to note that, although this recommendation is intended to enable a faster return, the relaxation of the deadline for the payment of the monetary benefit may be necessary, since most of the accused, defendants, or convicted migrants are in a situation of economic insufficiency and may need to mobilize support networks, in Brazil or abroad, as well as seek work positions, in order to be able to comply with the judicial obligation and, at the same time, organize their exit from Brazil.

Given the impossibility of complying with the pecuniary sanctions, it is recommended that they are replaced by community service. However, it is worth remembering that, once the person has no ties with Brazil and is in a situation of social vulnerability, the imposition of service provision may increase this vulnerability, since it is a procedure that extends over time, does not provide transport assistance for travel to the place of performance, and is not remunerated. These elements can hinder the achievement of the intrinsic objective of service provision, which is to reintegrate the person into the social environment.

Furthermore, it is recommended that, in case of the imposition of penalties restricting rights, such as, for example, two cash payments, the monitoring of their compliance is carried out in conjunction with the criminal service of the Integrated Center of Criminal Alternatives, regulated by the CNJ Resolution n.º 288/2019, which performs the monitoring of compliance with criminal alternatives; the

17 Article 8, sole Paragraph of CNJ Resolution n.º 412/2021 prescribes that "the adoption of measures other than electronic monitoring will be prioritized, together with voluntary referral to the social protection network, in cases in which: I - the socioeconomic circumstances of the investigated, defendant or convicted person make the proper functioning of the equipment unfeasible, such as: (a) when dealing with people living on the streets; and (b) when dealing with people who reside in housing without regular electricity supply or with limited or unstable coverage as to the technology used by the equipment; II - the conditions of the investigated, accused or convicted person make the measure exceptionally severe, due to locomotion difficulties, physical conditions or the need to provide care to others, such as a) in the case of elderly persons; b) in the case of persons with disabilities; c) in the case of persons with serious illnesses; and d) in the case of pregnant or nursing women, mothers or persons responsible for children up to twelve (12) years of age or persons with disabilities. III - the circumstances of the person being investigated, accused or sentenced hinder compliance with the measure, due to cultural issues, difficulty in understanding how the equipment works, or any conditions that may be imposed, such as a) mental health condition; b) abuse of alcohol or other drugs; and c) when dealing with indigenous people or members of traditional communities".

reception and guidance of people from psychosocial and legal services; and the referral to different public policies of social protection.

Also with regard to the penalty of restriction of rights, a case-by-case evaluation of the beginning of the execution of the restrictive penalty is suggested, in order to prevent the convicted migrant from waiting indefinitely for the conclusion of the trial process in Brazil before beginning the execution of the penalty of restriction of rights. This waiting often prevents the person from being expelled from the country and achieving social reintegration, since after serving the sentence, the person may no longer have a residence permit in the country.

3.2.4. Communication of the conviction and final decision to the Ministry of Justice and Public Security for deportation purposes

The communication of the conviction, whether in the first or second instance, together with the certificate of *res judicata*, to the Ministry of Justice and Public Security is a measure to be adopted by the judicial authority based on the concrete analysis of the circumstances of the case and of the convicted migrant. This communication is related to the possibility of the migrant's expulsion, motivated by the commission of a criminal offense. It is recalled **that, due to the principle of legality and the principle of the best interest of the adolescent, recognized by the Migration Law, the deportation and extradition of apprehended migrant adolescents, prosecuted for committing an infraction or serving a socio-educational measure**, is not **possible.**

It can be seen that Article 54 of the Migration Law establishes that a final sentence for a crime of genocide, crime against humanity, war crime, or crime of aggression, in accordance with the Rome Statute of the International Criminal Court, or in the case of an intentional crime punishable by deprivation of liberty, taking into account the gravity of the crime and the possibilities of re-socialization in the country, can lead to deportation. Regarding the last hypothesis, the analysis of gravity is done on a case-by-case basis by the judicial authority, considering the person's bond in the country (educational, work, socio-affective, cultural, and other relationships) and their desire to remain in the national territory.

It should be noted that Law n.º 13,445/2017 establishes that expulsion will not be carried out (Article 55,II) when:

- The measure configures extradition that is inadmissible under Brazilian law[18];

18 The legal provision regarding the non-granting of extradition is found in Article 82 of Law n.º 13.447: "extradition will not be granted when I - the individual whose extradition is requested from Brazil is a native Brazilian; II - the fact that motivates the request is not considered a crime in Brazil or in the requesting State; III - Brazil is competent, according to its laws, to judge the crime imputed to the extraditee; IV - Brazilian law imposes a prison sentence of less than 2 (two) years for the crime; V - the extraditee is being prosecuted or has already V - the extraditee is undergoing a process or has already been convicted or acquitted in Brazil for the same fact on which the request is based; VI - punishability is extinguished by prescription, according to Brazilian law or that of the requesting State; VII - the fact constitutes a political or opinion crimeVIII - the extraditee must answer, in the requesting State, to a court or jurisdiction of exception; or IX - the extraditee is a refugee beneficiary, under the terms of Law n.º 9.479, of July 22, 1997, or of territorial asylum".

- The person has a Brazilian child under their guardianship or economic or socio-affective dependence, or a Brazilian person under their guardianship; **(Examples:** a migrant father in prison who has a Brazilian daughter and sends her money to support her from his prison work; a migrant neighbor who is the de facto curator of an elderly Brazilian person with serious health problems, among others).
- The person has a spouse or partner residing in Brazil, whether the union is legally or judicially recognized; **(Example:** a de facto stable union between an egressed migrant woman and her Brazilian partner).
- The person has entered Brazil by the age of 12 and has remained residing in the country; and
- The person is an elderly person over 70 years old who has been residing in Brazil for more than 10 years, considering the gravity and grounds for the expulsion.

Finally, it is worth reinforcing that the effectiveness of the expulsion measure must obey some guarantees. As defined in Article 62 of Law n.º 13,445/2017, **no person must be expelled when there are reasons to believe that the measure could endanger his or her life or personal integrity**. In this sense, in cases where people in a refugee situation, refuge seekers, or those who present characteristics that lead to believe that they may be victims of persecution in their country of origin are expelled, it must be guaranteed that the country of destination is not one where their life may be under threat.

Also, according to the same Law, the contradictory and ample defense must be guaranteed in the expulsion process, with the possibility of reconsideration of the expulsion, and the Federal Public Defender's Office must be notified of the opening of the process. Thus, it is responsibility of the Judiciary to control the legality and reasonableness of the aforementioned procedures.

3.2.5. Application of suspensive remission, adolescent's release in the presentation hearing and application of open measures in the socio-educational system

The indicated measures deal with protective situations for the adolescent migrant, so that if the judicial authority decides for the application of suspensive remission, release or open measures in the socio-educational system, and if the adolescent migrant is unaccompanied or separated from their legal representatives, it is recommended that the local network of attention to migrant groups is activated to accompany them especially if the adolescent migrant is received in institutional shelter entities, thus ensuring greater protection.

In these situations, it is extremely important for the judicial authority to guarantee the permanence of adolescents who intend to live in Brazil, taking into account the referral to a referenced network and the specificities when dealing with adolescents who are unaccompanied or separated from their legal representatives.

In the hypotheses of application of the suspensive remission and of the adolescent migrant's release, it is recommended to observe if in the concrete case the person would like to return to the

country of origin, and it is necessary to verify the links that they maintain in the country, as well as the agency responsible for funding the return and other resources necessary for this.

3.3. Possible consequences of serving a sentence imposed on a migrant

Once a migrant has been convicted by final and unappealable decision, whether deprived of liberty or not, there are situations that must be considered regarding the consequences of this conviction before the Executive Branch. These are: transfer, voluntary return, compliance with compulsory withdrawal measures, and remaining in Brazil.

The matters of transfer for completion of the sentence, voluntary return and compliance with compulsory withdrawal measures are addressed in some national regulations, mentioned below.

According to Decree n.º 9,662 of January 1, 2019, it is the responsibility of the Department of Asset Recovery and International Legal Cooperation (DRCI), of the Ministry of Justice and Public Security, to structure, implement and monitor government actions and promote articulation with regard to international legal cooperation in criminal matters, including extradition, transfer of convicted persons, transfer of sentence execution and of criminal proceedings[19].

The Migration Law establishes the possibility of transfer of sentence execution (Articles 100, 101 and 102, of Law n.º 13,445/2017 and arts. 281, 282, 283 and 284, of Decree n.º 9,199/2017), and transfer of convicted person (Articles 103, 104 and 105 of Law n.º 13,445/2017). The regulation provides for expulsion, characterized as an administrative measure of compulsory withdrawal of migrants or visitors from the national territory, combined with the prevention of re-entry for a determined period (Articles. 54 to 60 of Law n.º 13,445/2017 and Articles 192 to 206 of Decree n.º 9,199/2017); it is noted that **expulsion no longer has a perpetual character, as was provided in the old legislation**. It is also worth noting that **collective expulsions are prohibited**, as well as expulsion in **cases where there is reason to believe that the measure could endanger the migrant's life or integrity.**

According to Article 11 of CNJ Resolution 405/2021, it is responsibility of the judicial authority to consider, observing the migrant's peculiar condition, the possibility of adopting procedures, such as the transfer of the convicted person, voluntary return, and compulsory withdrawal measures. Such procedures, especially in the hypotheses of serving a non-custodial sentence or during open regime and conditional release, as well as complying with compulsory withdrawal measures after the sentence has become final and unappealable and before the sentence has been extinguished, following specific rules, as discussed in the topics below.

19 More information is available at: *https://www.justica.gov.br/Acesso/institucional/sumario/quemequem/departamento-de-recuperacao-de-ativos-e-cooperacao-juridica-internacional.*

3.3.1. Autorization of transfer to serve a sentence in the country of origin, in accordance with international legal cooperation measures

The transfer of a convicted person happens when a migrant person imprisoned in Brazil requests to be transferred to their country of origin, in order to serve the remainder of the sentence imposed by Brazilian justice, or when a Brazilian person imprisoned in another country requests to be transferred to a prison establishment in Brazil. In such cases, the sentencing state retains exclusive competence for reviewing the sentences handed down by its courts. The execution of the sentence, including regime progression and conditional release, however, is the responsibility of the State that receives the convicted person, and the Federal Justice in Brazil is responsible for the processing. Once the sentence is extinguished, the receiving state must inform the state that issued the sentence[20].

To enable the transfer of a convicted person, the existence of a treaty or promise of reciprocity between the countries involved is necessary, as well as the fulfillment of the following requirements, provided in Article 104 of Law n.º 13,445/2017:

- The person convicted in the territory of one of the parties must be a national, have habitual residence, or personal ties in the territory of the other party, in order to to justify the transfer;
- The *res judicata* of the conviction;
- The length of the sentence to be served or remaining to be served is at least one (1) year on the date of submission of the application to the sentencing state;
- The fact that gave rise to the conviction constitutes a criminal offense under the laws of both states;
- The expression of will of the convicted person or, when applicable, of his representative; and
- The agreement of both states.

In turn, the transfer of the execution of the sentence takes place in cases where a person has fled the country in which he or she was convicted. The state that issued the sentence may ask the country to which the person has escaped to transfer the execution of the sentence so that he or she may serve it in the country of origin. The transfer can be made without the consent of the convicted person, observing, however, the prohibition of more than one trial for the same crime[21].

The transfer of the execution of the sentence can happen when the competent authority requests enforceable extradition through diplomatic channels or through central authorities. The request will be received by the Ministry of Justice and Public Security, currently competent body of the Executive Branch, and, after examining the presence of the formal assumptions of admissibility required in Article

20 More information is available at: *https://www.gov.br/mj/pt-br/assuntos/sua-protecao/cooperacao-internacional/transferencia-de-pessoas-condenadas.*

21 More information can be accessed at: *https://www.novo.justica.gov.br/sua-protecao-2/cooperacao-internacional/transferencia-de-execucao-da-pena.*

100 et seq. of Law n.º 13.445/2017 and in eventual bilateral treaty, it will be forwarded to the Superior Court of Justice for a decision regarding the homologation. In these cases, criminal execution will be the competence of the Federal Court. To enable the transfer of sentence execution, the following requirements must be met:

- The person convicted in foreign territory must have habitual residence or personal ties in Brazil;
- The *res judicata* of the decision;
- The length of the sentence to be served or remaining to be served be at least one (1) year on the date of submission of the application to the sentencing state;
- The fact that gave rise to the conviction constitutes a criminal offense under the law of both parties;
- The existence of a treaty or promise of reciprocity.

Thus, it is important to note that, with a few exceptions, Brazil adopts the penalty conversion system and, thus, from the moment the transferred person is inserted in the prison system of the receiving state, he/she is subject to the laws and regulations of penal execution of the latter, including with regard to regime progression, conditional release, and other rights. On the other hand, for the concession of amnesty, grace or pardon, there is a direct dependence on the agreement of the countries involved in the transference of the person arrested, since these are acts of exclusive competence of the Executive (pardon and grace) and Legislative (amnesty) Branches.

It is worth noting that the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) provide specific safeguards for the transfer of women migrant. According to its Rule 53, transfer to the country of origin must be considered as soon as possible, especially if they have children, after prior request or the informed consent of the woman. In cases involving children who are with their mother in a situation of deprivation of freedom, sending the child to their country of origin may be considered, respecting their best interests and after consulting their mother. These provisions are in CNJ Resolution n.º 405/2021, whose Article 10 provides for the transfer of imprisoned migrant women to their country of origin and the sending of the child to their relatives, which **necessarily requires the woman's request or informed consent**.

Although the transfer is carried out by the Executive Branch, the performance of the judicial authority is fundamental, to the extent that it is responsibility of the judicial authority to consider, observing the peculiar condition of the migrant, the possibility of transferring the convicted person. It is worth noting that, in the case of the exceptionality of maintaining pre-trial detention or serving a sentence in a closed regime, the judge must consider transferring the migrant mother to her country of origin, especially if her children are there.

3.3.2. Authorization of voluntary return, especially while serving a sentence under house arrest, open regime or parole

The judicial authority must evaluate the possibility of authorizing voluntary return, as described in Article 11, II, of CNJ Resolution n.º 405/2021, at any time during the criminal process, making this specific provision in the sentencing decision, judgment, or in decisions made during the course of criminal execution.

Once the voluntary return is authorized, the accused, defendant or convicted migrant can travel internationally before his/her punishment is extinguished.

The voluntary return is supported by Article 60 of Law n.º 13,445/2017, which prescribes that the existence of an expulsion process does not prevent the person's voluntary departure from the country. Decree n.º 9,199/2017, which regulates the Law, also states that the voluntary departure does not suspend the administrative procedure of deportation. In other words, the judicial authority may allow the voluntary return to the country of origin in situations it deems appropriate, such as, for example, humanitarian justifications, which will not harm the progress of the other measures to be adopted by the Executive Branch.

The situations of migrants who wish to return to their countries having already served their full sentences in Brazil, while the instauration of the expulsion procedure or the publication of the federal government's decree authorizing the measure is still pending, also require action by the judicial authority, which can authorize their voluntary return. It is important to remember that, in the case of voluntary return, the Executive Branch does not pay for the migrant's return ticket.

Once the voluntary return is authorized at any stage of the process, the departure procedure will be carried out by the migrant in conjunction with the Federal Police. According to the determined procedure, in cases in which the person has already had his/her deportation decreed, a term must be drawn up and the person's departure from national territory registered as soon as they appear at the inspection point with the objective of voluntarily leaving the country.

Finally, **in the case of the imposition of a sentence restricting the rights of a convicted or accused migrant who has no ties with national territory,** it is recommended that only pecuniary benefits are imposed, with express indication of the authorization to return, in order to make possible the person's return to their country of origin in the cases in which they desire.

3.3.3. Authorization for the execution of compulsory withdrawal measures before the full accomplishment of the established sentence

The compulsory withdrawal measures are based on Chapter VI of Law n.º 13,445/2017. These are deportation, expulsion and repatriation. With regard to migrants who have been convicted by final judgment, deportation is the most relevant compulsory removal measure. It requires attention from the

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judges in terms of communication with the Executive Branch agencies that work in the administrative processing and enforcement of the measure, in cases that fall under the legal hypotheses.

The Migration Law defines expulsion as an administrative measure of compulsory removal of a migrant from the national territory, combined with the impediment of re-entry for a determined period (Article 54). The Law also provides for situations that prevent expulsion:

Article 55. Expulsion will not be carried out when:

I - the measure sets up extradition inadmissible under Brazilian law;

II - expelling him:

a) has a Brazilian child under his/her guardianship or economic or socio-affective dependence, or has a Brazilian person under his/her guardianship;

b) has a spouse or partner residing in Brazil, without any discrimination, recognized judicially or legally;

c) has entered Brazil by the age of 12 (twelve), residing in the country since then;

d) is a person over 70 (seventy) years of age who has resided in the country for more than 10 (ten) years, considering the gravity and grounds for the expulsion.

It must also be ensured that the expulsion decree is not used as a justification for any measure of deprivation of liberty. According to Article 123 of the Migration Law: "No one shall be deprived of his liberty for migration reasons, except in the cases provided for in this Law". It is important to emphasize, at this point, that the new legislation removed from Brazilian legal system the administrative detention for deportation, provided for in the revoked Foreigners Statute (in this regard, the decision of the Sixth Panel of the STJ in RHC n.º 91,785/SP, Reporting Justice Maria Thereza de Assis Moura).

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As for the treatment of migrants in detention, Article 12 of CNJ Resolution n.º 405/2021 recommends that the authorities responsible for criminal execution and the execution of social and educational measures ensure consular, material, educational, social and religious assistance, as well as access to health care and comprehensive legal assistance. **Each of these rights unfolds in specific contexts of attention for migrants in the criminal justice and socio-educational systems**. It is emphasized that, although the supervisory competence lies with the courts of justice[22] and the criminal enforcement court, the guarantee of the rights, set forth in this section, must reach all migrants within the criminal and socio-educational systems, including those in provisional detention or under a socio-educational measure of provisional internment.

Another situation that deserves to be highlighted includes those foreseen in **CNJ Resolution n.º 404/2021**, which establishes guidelines and procedures within the Judiciary for **the transfer and relocation of persons imprisoned within the Brazilian territory**. It is important to point out, however, that this normative rule does not apply to the socio-educational system.

Transfer, for the purposes of the mentioned resolution, means the movement of the person arrested to another prison establishment within the same state of the federation, while relocation implies the movement of the person arrested to another state. Thus, the right to transfer or relocate migrants, when requested, is guaranteed for those who live in other countries in border regions with Brazil.

This recommendation aims to enable family reunion and access to places and networks of support for people who have been arrested in locations or states far from their homes, in regions characterized by large daily movements across land borders. The measure is in line with international norms, such as the Mandela Rules and the Bangkok Rules, which state that people in custody should be allocated, as far as possible, to prisons near their homes or the place of their social rehabilitation.

For the purposes of guaranteeing the rights of migrants, priority is given to access to basic civil documentation, preferably free of charge, which can be intermediated by the prison administration or socio-educational unit with the judicial authority, if necessary. It is commendable, at the request of the migrant, to have access to migratory regularization, even if the person is deprived of liberty in a penal or socio-educational institution. Basic civil documentation allows the person to access educational and labor opportunities in the prison and socio-educational systems.

Thus, all the guarantees and duties of persons deprived of their liberty in the criminal justice and socio-educational systems apply equally to migrants. In this sense, the following items of this Manual will address the specific guidelines and orientations for the treatment of specific recipients, such as

22 As stated in CNJ Resolution n.º 367/2021: "it will be up to the Court of Justice, through the Group for Monitoring and Supervision of Prison and Socio-Educational Systems (GMF) or the Coordination of Childhood and Youth (Coordenadoria da Infância e Juventude (CIJ), to inspect and supervise social and educational units, in order to ascertain the quantity and quality of vacancies available, under the terms of Article 6, X, of CNJ Resolution n.º 214/2015".

the right to civil documentation; to face-to-face or virtual visits; the right to religion and freedom of belief; the right to material assistance by consular and diplomatic representation; the right to receive or send resources abroad; the right to work and education; the right to translation of documents and interpreter; and the right to exercise transnational maternity and paternity.

4.1. Right to basic civil documentation

Adult and adolescent migrants must have access to basic civil documents, which will enable them to exercise their rights and use the services promoted by public policies in Brazil. The CNJ, through the Program Fazendo Justiça, has been making efforts in this direction, along the lines of CNJ Resolution n.º 306/2019.

Law n.º 13,445/2017, in its Article 30, II, "h", and Decree n.º 9,199/2017, which regulates it, provide for the possibility of authorizing residence for people on provisional release and serving a sentence, from a request addressed to the Ministry of Justice, through the Federal Police.

According to Article 15 of CNJ Resolution n.º 405/2021, the Judiciary must ensure that migrants have access to these rights, and it is therefore important that this provision is included in judicial decisions. Thus, documents such as the RNM, the CPF and the CTPS are essential and can be issued with the support and guidance of magistrates in their judicial decisions, at all levels of jurisdiction.

It is important to emphasize that the Judiciary has assumed an extremely relevant role in guaranteeing the right to basic civil documentation for migrant people, expressly provided for in Law n.º 13,445/2017.

It must be noted that the regulation of the aforementioned Law, such as Interministerial Ordinance n.º 3, of February 27, 2018, establishes the documents required for the request. Nevertheless, it is essential that the magistrate is attentive to each concrete situation, considering the possibility of specific requirements that are difficult for migrants to fulfill, especially due to differences in the rules of the consular offices regarding costs and procedures for issuing documents.

Regarding the subject, it must be noted that the Inter-American Principles on the Human Rights of all Migrants, Refugees, Stateless Persons and Victims of Human Trafficking stress the need to relativize the requirements that compromise the effective exercise of human rights by migrants (Principle 59).

In this sense, and in view of the Judiciary's attribution to control the legality and reasonableness of administrative acts, it is responsibility of the judicial authority to evaluate, in the concrete case, eventual permission to process the requests with exemption of certain documents from the country of origin.

Furthermore, it is worth mentioning that, in the case of unaccompanied or separated adolescent migrants, there are guidelines available to enable migration regularization. The Joint Resolution between the National Council for the Rights of Children and Adolescents (Conanda), the National

Committee for Refugees (Conare), and CNIg and DPU n.º 1/2017[23] is based on the principles of full protection, non-return, and the best interests of children and adolescents, and aims to establish preliminary identification, care, and protection procedures for unaccompanied or separated children and adolescents, which can be used as a parameter in the socio-educational sphere.

4.2. Right to face-to-face and virtual visitation

The right to visitation for people in prison is foreseen in Article 41, X, of the Criminal Execution Law (LEP in Brazilian Portuguese). As for the socio-educational system, reference is made to Articles 66 and et seq. of Law n.º 12,594/2012 (Sinase). However, the specific rules for registration and entry procedures for family members and/or people who make up the affective circles of people in prison are regulated by the prison administrations of the states and the Union, in the case of federally-run prisons. In brief summary, people deprived of their liberty have the right to receive visitors and to maintain correspondence and contact with the world outside prison, insofar as the maintenance of ties configures a true support network inside and outside prison.

Thus, it is proposed that the judicial authority, if directly provoked by means of a request for measures in individual cases, or during inspections of prison and juvenile detention facilities, observe unique parameters to guarantee the right of visitation to adult and adolescent migrants in detention, especially those whose families live in other countries and are unable to visit them. Among the unique parameters, it is possible to list at least three:

- The authorization and analysis to include friends and acquaintances in the list of declared socio-affective relationships, also assuring the right to intimate visits;
- Ensuring that migrants can receive visits from their home country's diplomatic or consular representations, provided they expressly agree; and
- The provision of means for virtual visits and other forms of contact, such as electronic mail exchange. We highlight the importance of reducing bureaucracy, especially with regard to not requiring documents issued in Brazil, so that these virtual visits and/or other means of contact can take place in a concrete way, with a reasonable length of time and with minimal privacy.

The judicial authority is encouraged, when in contact with a person arrested or apprehended for an infraction, to inquire whether the right to visitation is guaranteed, in person or virtually. If the answer is no, it is suggested that the multidisciplinary team from the judicial court or subsection is activated to at least facilitate a virtual visit during the hearing, which can be held by videoconference or telephone call, with the presence of a court interpreter, if necessary - according to Article 8, IV, of CNJ Resolution n.º 405/2021. Alternatively, we suggest the possibility of the judicial authority determining the sending of a letter to the consular and diplomatic representations of the country of origin, requesting the inter-

23 Available at: *https://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/19245715/do1-2017-08-18-resolucao-conjunta-n-1-de-9-de-agosto-de-2017-19245542.*

mediation to locate the persons indicated and facilitate contact, if the person arrested or apprehended desires.

It is noteworthy that the contact of the migrant person in prison or under socio-educational measure with their socio-affective networks may help in sending documentation that contributes to prove the facts that make up the narrative reported by the person in court and, in the face of the body of evidence, demonstrate the possible presence of specific situations of vulnerability, such as health conditions, contexts of political or religious persecution, and direct or indirect evidence of human trafficking, among other legally relevant situations.

It must be noted that men and women migrants in freedom deprivation who have their children in Brazil living under institutional shelter also have the right to receive visits from their children, which must be mediated by the technical teams of the shelter spaces - a right that is provided by Article 19, 4th Paragraph, of the Statute of the Child and Adolescent.

The right to visitation, which integrates the principle of family and community cohabitation of adolescents in the socio-educational system, foreseen in Article 104, VII of ECA, must be equally respected for migrant children whose family members or legal representatives have irregular documental situation in Brazil. In these cases, it may seem reasonable to relax the rules for entry for visits in juvenile detention units, in order to prioritize the contact of the adolescent in freedom deprivation with people from their family and social circle.

4.3. Right to religion and freedom of belief

The Federal Constitution prescribes the inviolability of freedom of conscience and belief, and ensures the free exercise of religious services, as well as guarantees, in the form of the law, the protection of places of worship and their liturgies, according to Article 5, VI. The right to religion and freedom of belief apply equally to persons in detention. On this point, the Migration Law determines that no person can be prevented from entering Brazil for religious reasons (Article 45, sole Paragraph).

It is, therefore, one of the focuses of attention for the Judiciary work with migrants in the criminal and socio-educational systems. It is important to remember that the CNJ approved **Recommendation n.º 119/2021,** which promotes the adoption of procedures and guidelines to be observed by the Judiciary in order to guarantee the rights to religious assistance and religious diversity in its most diverse matrices, and to freedom of belief in the units of deprivation and restriction of liberty of the criminal justice and socio-educational systems.

This normative recommends that the judicial authority ensures that the harmonization of administrative procedures and routines of people who manifest a belief or religion is guaranteed, so as to allow religious assistance, if requested. During judicial inspections, the Recommendation also indicates, in its Article 5, that the existence of adequate ecumenical space for the exercise of religious freedom and diversity in institutions of deprivation and restriction of liberty is verified, as well as a

proper place for the storage of objects, items and instruments used in rituals and celebrations of each religious segment.

Still on the right to religion, it is worth pointing out that there may be specificities among the migrant population, such as the profession of religions that are little known and diffused in Brazil. In addition, attention should be paid to the right to receive objects, such as religious books in languages other than Portuguese, and to exercise religious assistance through virtual means.

The CNJ Resolution n.º 405/2021 guides that, in relation to the material assistance of migrant prisoners, many times respect and freedom of belief may imply the need to provide differentiated food, relaxation of dress code, adaptation of prayer times, among other hypotheses to be appropriate based on the religion or cult exercised, as provided in Article 12[24].

In the context of the socio-educational system, Law n.º 12.594/2012 (Sinase), establishes the "non-discrimination of adolescents, notably on the basis of ethnicity, gender, nationality, social class, religious, political or sexual orientation, or association or belonging to any minority or status" (Article 35) and that the adolescent in compliance with a socio-educational measure must be "respected in his personality, intimacy, freedom of thought and religion and in all rights not expressly limited in the sentence" (Article 39, III).

4.4. Right to supplementary material assistance by consular and diplomatic representation

It is common for people in deprivation or restriction of freedom to receive, during visits or through correspondence, from their families or other people in their socio-affective networks, items for personal use such as clothes, dry food, hygiene products, among other essential items. In the case of migrant people, there is a greater difficulty in having these items sent by their families and/or close people. This difficulty prevails for three main reasons: economic difficulties, especially to pay for shipping from abroad or to buy in national currency; cultural and material differences between the items migrants usually consume and those that Brazilian penitentiaries and juvenile detention centers allow them to consume; and difficulties in performing the bureaucratic procedures to authorize the shipping of parcels, especially when the families are in other countries.

It is important to mention that some embassies and consulates have policies of attention for the assisted citizens. Some offer, even during the imprisonment period, material assistance, including, for example, supplementary cash or *in natura* aid, the delivery of basic items directly to the prison unit or socio-educational unit upon request, among others. Thus, it is responbility of the judges, especially

24 An example of material that seeks to contemplate freedom of religion and belief is the booklet *Religious rights, duties and customs of Muslim prisoners in penitentiaries*, prepared by the Office of the Federal Public Defender's Office in partnership with other organizations. Available at: https://www.dpu.def.br/images/stories/arquivos/PDF/cartilha%20muculmanos.pdf.

in the context of criminal execution, in the exercise of their supervisory powers, to ensure that such consular assistance is allowed for accused, defendants, or convicted migrants.

4.5. Right to receive or send resources abroad

Similar to Brazilian prisoners, often migrants in detention are breadwinners and their families in the host countries depend on their contribution to make ends meet. In the case of migrants, there is a complicating factor, in view of the need to implement means to send financial resources abroad.

In the field of material assistance, judges may, by judicial decision, guarantee the right of migrant prisoners to receive or send financial remittances, in accordance with Article 12, 2nd Paragraph, II, of CNJ Resolution n.º 405/2021. These transactions can be carried out, with the express authorization of the person deprived of liberty, through the actions of civil society organizations and consular and diplomatic representations. During inspections in prison units, it is suggested that the judicial authority verify the guarantee of this right in the administrative practices of these spaces.

4.6. Right to work and education

In order to guarantee non-discrimination and equal opportunities for Brazilian and migrant prisoners, it is important to make Portuguese courses available during pre-trial detention and in all sentencing regimes, as well as during the period of pre-trial detention and compliance with socio-educational measures. It is also encouraged that the work initiatives offered take into consideration the cultural specificities, skills, and previous experiences of migrants in detention in the country.

We highlight, in this context, the proposal that the library collections of the prisons and juvenile detention centers have books written in different languages. In the case of adults, it is suggested that the availability of these books should also make possible the remission for reading for the migrant public, in the contours of Article 5, 4th Paragraph of CNJ Resolution n.º 391/2021: "in the composition of the library collection of the liberty deprivation unit should be ensured the diversity of authors and textual genres, including collection for access to reading by foreigners, being forbidden any form of censorship."

There is also the need for the recognition of interpreting activities among people serving sentences, with the consequent right to remission, pursuant to Article 12, 3rd Paragraph, II, of CNJ Resolution n.º 405/2021. This prediction is justified by the fact that, in the daily life of prison units, many migrants help others in their communication, as they speak more than one language and have accumulated experiences of daily prison life. Thus, it is suggested to the judicial authority with competence for prison inspection to harmonize the procedures with the administration of the units, in order to ensure the proper record of the performance of this work.

According to LEP, the objective of penal execution is to "provide conditions for the harmonious social integration of the convicted and the internee," as well as to "carry out the provisions of the

sentence or criminal decision". The legislation provides that educational assistance should include professional training for prisoners. Work, in turn, is described as a social duty and a condition for human dignity, which will have an educational and productive purpose that, in turn, provides other possibilities for life and opportunities. It should be noted that the work performed inside prison units is not subject to the parameters of the Consolidation of Labor Laws (CLT) regime, but must be paid, by force of the provisions contained in Article 28 and following of LEP.

Similarly, the National Policy of Work in the Prison System (PNAT), through Decree n.º 9,450, of July 2, 2018, has as its principles respect for ethnic-racial, religious, gender, sexual orientation, and origin diversities, among others (Article 2), and establishes that the agencies and entities of the direct federal public administration must require their contractors to employ labor formed by prisoners and released persons from the prison system, including temporary prisoners, in closed, semi-open and open regime, which also applies to the migrant population in the criminal justice system.

Thus, it is suggested that the magistrates of the courts of criminal executions, as well as other actors in the Judiciary, are closely accompanied when conducting inspections in prisons, including, when necessary, by provoking the proper inspection bodies of work environment, such as the Labor Prosecution Office (MPT). In this context, reference is made to the Term of Technical Cooperation n.º 037/2020 between the CNJ and the MPT[25], signed with the objective of promoting "mutual cooperation to carry out studies, development of prison inspection methodologies and improvement of resolving and structuring elements for the implementation of the National Labor Policy within the scope of the Prison System (PNAT), with a view to expanding the employability project for people deprived of liberty and released from the prison system", which in turn originated Joint Technical Guidance n.º 1 with the purpose of promoting the implementation of legal quotas for hiring people arrested or released from the prison system, expanding the scope of the PNAT.

With regard to the socio-educational system, the Havana Rules state that "all national and international standards of protection applicable to child labor and young workers must apply to young people deprived of their liberty" (Rule 44), which includes adolescent migrants. Still, the CLT, in its Article 429, 2nd Paragraph, states that the socio-educational units must offer apprenticeships to adolescent users of Sinase, under the conditions to be established in cooperation instruments signed between the establishments and the managers of the local Socio-Educational Care Systems.

In relation to the study, it is noted that access to education must be universal, and that the Havana Rules provide that it is obligatory for the adolescent person to have access to education appropriate to his/her needs and abilities. Rule 38 provides that access to education, whenever possible, should be implemented outside the juvenile facility, in schools in the community.

When it comes to adolescent migrants, one has to observe if the available study offered takes into consideration the possible need to learn Portuguese, as well as the availability of classes, books and other materials in the adolescent's native language. Furthermore, it is important that, for the individualization of the adolescent's follow-up, the teaching conditions that they have experienced in the

25 Available at: *https://www.cnj.jus.br/wp-content/uploads/2020/11/TCOT_037_2020.pdf.*

country of origin is mapped and understood, including with the participation of the family and other people who make up the adolescent's affective circle.

The National Plan for Socio-Educational Care, prepared in 2013, with guidelines and operational axes for Sinase, presents criteria that guarantee access to quality education and that must be safeguarded by the competent judicial authority during and after the completion of the socio-educational measure. It is fundamental that, besides the availability of quality studies, the possibility of teaching the Portuguese language to non-speaking adolescent migrants, activities that promote intercultural exchanges, as well as sports, cultural and leisure activities, are offered. The judicial authority will be responsible for analyzing how to provide adolescent migrants with study and training opportunities under the same conditions as Brazilian people serving a socio-educational measure, taking into consideration other social markers such as race, ethnicity, and sexuality, among others, without any form of negative discrimination and in accordance with CNJ Resolution n.º 405/2021.

4.7. Right to translation of documents and interpreter

People who do not have Portuguese as their native language have the right to an interpreter in their communication with institutions, in order to guarantee real access to information, during criminal or infraction investigation proceedings, as well as in prison and socio-educational environment. As Federal Judge Paulo Marcos Rodrigues de Almeida and interpreter Jaqueline Neves Nordin (2017) point out, there are several procedural moments when the interpreter is necessary: "a) the prior reserved interview with the defender; b) the judge's preliminary explanations; c) the hearing of witnesses; d) the interrogation of the foreign defendant; e) the closing arguments and the reading of the sentence; f) the discussion of any appeal with the defender" (ALMEIDA; NORDIN, 2017, p. 6).

The right to an interpreter at the time of interrogation and during the hearing of witnesses is expressly mentioned in the Code of Criminal Procedure:

Article 193. When the interrogandee does not speak the national language, the interrogation will be conducted through an interpreter.

Article 223. When the witness does not know the national language, an interpreter will be appointed to translate the questions and answers.

CNJ Resolution n.º 405/2021 reinforces the need for access to an interpreter during all stages of the criminal process, including the timing of the custody hearing:

Article 4 The presence of an interpreter or translator in the language spoken by the migrant will be guaranteed at all stages of criminal proceedings in which he or she appears as a party, including custody hearings.

[...]

Article 8 In the custody hearing involving a migrant person, to be conducted pursuant to CNJ Resolution n.º 213/2015, the judicial authority must:

[...]

VI - promote the attendance by a psychosocial team, whenever necessary with the participation of an interpreter.

The same Resolution mentions the need for the execution court to supervise the offering of interpreter in the prison environment:

Article 12. In prisons where there are migrants deprived of their freedom, the judge of penal execution, in the exercise of his supervisory powers, must ensure that consular, material, health, legal, educational, social and religious assistance is guaranteed, considering, especially:

[...]

3rd Paragraph. Regarding work, education and other policies offered in prisons:

[...]

IV - availability of an interpreter or translator, including virtually, in institutional interactions within the unit, when necessary, for the exercise of rights.

In Technical Note n.º 80/2020/DIAMGE/CGCAP/DIRPP/DEPEN/MJ, which deals with the procedures related to the custody of migrants in the Brazilian prison system, the provision of a translator is recommended in the entrance procedure of the prison establishments, to be observed by the responsible prison manager[26]. The Mandela Rules provide for the provision of interpreters in the prison environment, as well as translated materials, such as legislation and regulations concerning the prison unit and the prison system, and the rights and duties of the prisoner:

Rule 41 3. The prisoner should have the right to defend himself/herself in person, or through legal assistance, when the interests of justice so require, particularly in cases involving serious disciplinary offenses. If the inmate does not understand or speak the language used in the disciplinary hearing, they must be assisted free of charge by a competent interpreter.

[...]

Rule 55 1. The information mentioned in rule 54 must be available in the most widely used languages according to the needs of the prison population. If an inmate does not understand any of these languages, the assistance of an interpreter must be provided.

26 The Technical Note is entitled "guidelines regarding procedures for the custody of foreigners". It is important to point out that, although the Technical Note foresees the possibility of using technological translation resources, it is worth emphasizing the need for caution in the use of these tools. As pointed out by Almeida and Nordin (2017), "relegating forensic interpretation to improvisation or treating it as a simple 'translation' between languages (to be done by anyone who 'knows' the foreign language or, worse, by electronic translators such as the 'Google Translator') can cause serious damage to the criminal process and the fundamental rights of the foreign defendant, who will find himself immersed in incomprehensible formulas, speeches, and procedural acts, being truly prevented from fully exercising his defense before the Brazilian judicial authority" (p. 7). Available at: http://rbepdepen.depen.gov.br/index.php/RBEP/Article/view/403/233.

The Havana Rules provide similarly for adolescents deprived of their liberty:

> *6. The Rules should be made readily available to juvenile justice personnel in their national language. Juveniles who are not fluent in the language spoken by the detention facility staff should have the right to the free services of an interpreter whenever necessary, particularly during medical examinations and disciplinary proceedings.*

It is also worth reiterating that CNJ Resolution 405/2021 provides for the possibility of interpreting by other people serving time in prisons, which must be considered for remission purposes.

Given the relevance of the role of interpreters in ensuring access to rights for migrants in conflict with the law, the Resolution provides for the preparation and maintenance of a registry of these professionals by the courts:

Article 19. The courts must prepare and maintain a register of interpreters with forensic experience at the court's disposal, as well as a list of consular authorities, embassies and diplomatic missions, and institutions and services in the field of social protection, as well as civil society organizations, to enforce this Resolution.

Understanding the specialization involved in the activity of forensic interpretation, it is interesting to keep in mind the possibility of training for the development of the activity. As Almeida and Nordin (2017) point out, there is a:

> *The need to professionalize the interpreters of the Brazilian Federal Courts, proposing guidelines for the institution of a permanent training program to be implemented within the Federal Regional Courts or, even, on a national level, by the Council of Federal Justice or the National Council of Justice. (p. 4)*

In addition to training directed at interpreters, the authors point out the need to observe some guidelines in the performance of law operators, such as, conducting the questions directly to the defendant and not to the interpreter. In this sense, the Resolution states that:

Article 20. In order to comply with the provisions of this Resolution, the courts, in collaboration with the schools of magistrates, may promote courses aimed at the permanent qualification and functional updating of the judges and employees who work in the judicial units that hold custody hearings, in criminal courts, special criminal courts, courts for domestic and family violence against women, and courts for criminal execution, as well as in those with competence to investigate infractions and enforce social and educational measures, especially in the districts and judicial sections with a large migrant population.

[...]

2nd Paragraph. The courts may promote training actions for judges and public servants working in the criminal area with the objective of disseminating the forecast of international norms and the jurisprudence of international mechanisms on human rights and the rights of the migrant population, in order to enable discussion on the rules of interpretation to be adopted, with regard to the harmonization and compatibility of international human rights treaties signed by Brazil.

4.8. The right to exercise transnational maternity and paternity

The right to maternity and paternity for people in prison is guaranteed in several normative and judicial instruments, especially in the case of people in prison. **Although there is a predominance of women as breadwinners in the profile of the Brazilian prison population**, the means for **maternity and paternity must** be guaranteed for people serving time, especially if the specificities of the migrant condition are considered.

Bruna Bumachar (2016) points out that migrant women in detention in a country other than the one where their children are, continue to exercise maternity, constituting what she calls **transnational maternity**; maintaining contact with their families guarantees the exercise of maternity, even if at a distance. It is worth noting that the possibility of accessing alternative measures to prison directly impacts the intensification of this contact, as shown by the experience of the Instituto Terra, Trabalho e Cidadania (Alana Institute, 2019).

The preference for alternative measures to prison for mothers and women with dependents is the subject of a number of legal instruments. **Thus, the exercise of maternity and the maintenance of the bond with their children in freedom does not depend on whether they live in Brazil.**

The CNJ Resolution n.º 369/2021 establishes procedures and guidelines for replacing the deprivation of liberty of pregnant women, mothers, fathers and guardians of children and people with disabilities, and also applies to adolescents and youth apprehended, processed for committing infractions or serving a socio-educational measure. The norm, which was drawn up based on the collective *habeas corpus* orders granted by the 2nd Panel of the Federal Supreme Court in HCs 143641/SP and 165,.704/DF, reinforces the extreme exceptional nature of the deprivation of liberty in these cases, with evaluation of the need to apply other measures alternative to prison or internment, and only in the prison or internment and, only as a last resort, emphasizes the guarantee of the necessary structure for the exercise of the right to maternity in prison units.

It must be noted that the principle of integral protection of the child promotes the guarantee of the mother's permanence with her child after birth and the coexistence during the first six months of life, at least. When it comes to the specifics involved in the exercise of motherhood and fatherhood by migrants in pre-trial detention or serving a sentence, there are some other considerations to be noted.

In case the family is in another country, the possibilities of providing means to ensure family contact, especially through the use of technological inputs, must be analyzed. On the other hand, if the

POINTS OF ATTENTION CONCERNING THE SITUATION OF PRE-RELEASE MIGRANTS AND EX-OFFENDERS FROM THE PRISON AND DETENTION SOCIO-EDUCATIONAL SYSTEMS

migrant's family lives in Brazil, it must be considered that often the family nucleus present is small, and the person may also have a wider support network in the country of origin. Therefore, it is important always the even greater relevance of the presence of mothers and fathers for the care of daughters and sons and the maintenance of family ties through the priority application of alternative measures to incarceration, such as provisional release and home detention.

In addition to remote maternity, as Isabela Cunha (2018) describes, the Law of Criminal Enforcement guarantees in its Articles 82 and 89 that penal establishments for women are equipped with a nursery where mothers can take care of their children up to at least six months of age, as well as space for pregnant and parturient women, and a daycare center to house children older than six months and younger than seven years of age. As the same author describes, in the case of migrant women, the moment of separation between mother and child is especially delicate. According to national and international standards, the best interests of the child will be taken into consideration, and the preference for assigning the child's care to a close relative is more usual.

In case the immediate family is in another country, it is recommended that special care is taken in this process. Yet another possibility is to send the child to a family or institutional shelter, in which case the right to periodic visits between mother and child must be guaranteed. However, it is worth reinforcing the prioritization of measures to ensure that mothers, especially of young children, serve their sentences in the open regime. In the case of migrant women, the lack of a fixed address, by itself, does not constitute an impediment to access to this right, and the permanence of the mother with the child in public shelter spaces must be guaranteed, including when the mothers are under house arrest as a substitute for preventive detention.

5 POINTS OF ATTENTION CONCERNING THE SITUATION OF PRE-RELEASED AND RELEASED MIGRANTS FROM THE PRISON AND SOCIAL-EDUCATIONAL SYSTEMS

The Mandela Rules provide for the need for specific post-prison assistance. According to its Rule 108, released prisoners must be ensured access to their proper identification papers and documents, adequate housing and work, adequate clothing, taking into account the climate and season, and sufficient means to reach their destination and to support themselves in the period immediately after release. According to the Bangkok Rules, the uniqueness of women will be observed in the process of leaving the prison unit. Under its Rule 47, psychological, medical, legal, and practical help should be offered to ensure their successful social reintegration, in cooperation with community services.

Civil society organizations such as the Instituto Terra, Trabalho e Cidadania (ITTC) focus on the specifics of caring for migrant women released from prison. As stated in the document *Pathways to Freedom: guidelines for the assistance to migrant women in conflict with the* law[27], the main demand of this population is associated with the lack of a fixed address, which ends up making it difficult to be placed at liberty, followed by the need to access Brazilian documentation and the hindrance that the possibility of expulsion offers to those who wish to remain in the country. The Black Initiative for a New Drug Policy and the Amparar Association show in the publication *Freedom is a Constant Fight*[28] that, besides the difficulties of access to public policies faced by people released from prison, migrants still encounter additional obstacles, such as access to specialized shelter, opening an account to receive social policies, access to the to the Brazilian Health Unic System (SUS) card, and understanding the restrictive measures of freedom to which they are submitted, among other issues.

Because of these and a series of other difficulties, a fundamental step towards guaranteeing the rights of migrants is to consolidate release procedures that take into consideration the individuality of the people and the local contexts, so it is essential to link or refer pre-released and released people to specialized care services, such as Social Offices and other similar ones.

In turn, the Policy of Attention to People Exiting the Prison System, established by CNJ Resolution n.º 307/2019, ensures that pre-released prisoners - considered to be those who are in the six-month period prior to their release from the prison unit, even if by virtue of regime progression or conditional release - have a specific program to prepare them for freedom, such as the Social Office equipment[29].

27 Available at: *https://ittc.org.br/caminhos-da-liberdade-orientacoes-atendimento-mulheres-migrantes-em-conflito-com-lei/.*

28 Available at: *https://iniciativanegra.org.br/wp-content/uploads/2021/10/Pesquisa-Liberdade-Luta-Constante-Sumario-Executivo.pdf.*

29 Other examples of actors that can act with pre-release migrants and ex-offenders from the prison system are prison councils; associations of imprisoned persons, friends and family members; universities; Public Defender's Office; Public Prosecution Office; civil society organizations; S System organizations; business organizations; Councils (Social Assistance, Health, Education, etc.); among others.

The Social Office, in the contours of CNJ Resolution n.º 317/2019, consists of:

> *It is a public equipment of shared management between the Judiciary and Executive Branches, responsible for welcoming and forwarding people who have left the prison system and their families to existing public policies, articulating an intersectoral and inter-institutional policy of social inclusion that correlates with and demands initiatives from different state and municipal public policies, systems, and civil society actors.*

In this context, since Social Offices are intended to serve people who have been released, they can play a key role in preparing for release and adopting release protocols. In case the locality does not have a Social Office, the participation in the process of preparing pre-released people for their liberty will be the responsibility of other institutions that act as references in the follow-up of egressed people. Thus, it is up to the Social Offices to perform articulation activities between instances of the Judiciary and the Executive Branches, the sensitization and articulation with the prison management, the construction of exit flows between prison units and the existing equipment, among other attributions, described in detail in the Management Notebooks of the Social Offices I, II and III, prepared by the National Council of Justice.

Taking into consideration the referral of pre-released migrants to Social Offices or other similar facilities that exist in the locality, it is suggested that this monitoring is conducted to ensure the preparation of the "exit map "[30] of the pre-released person, according to the Methodology for Mobilization of Pre-released Persons, and taking into account their migratory condition, so that the person has a roadmap of the places they need to access in the first days of freedom, such as the specialized services of attention to the person exiting the prison system; residence or vacancy in a reception center; conditions for the use of public or private transportation to move to the future home; copy of the judicial decision that set them free; among other preparatory arrangements to be evaluated in the concrete case.

It is also suggested that the accompaniment of pre-egress migrants includes migratory regularization, observing the difficult access to information, in view of the language barrier and the lack of knowledge about the functioning of the organs and the national legal system. In order to facilitate access to public shelters, the Judiciary can act in such a way to not immediately require proof of fixed address for homeless people, such as migrants with no ties in Brazil, for example. It is possible to enable their release from prison in an articulated manner with other policies and services, such as the Social Offices and related services, in order to ensure an extended deadline for presenting the place of residence or proof of address of the migrant.

By all of the above, the guarantee of rights for migrants is not limited to the situation of deprivation of liberty, but involves broader issues, such as the migratory condition itself. Thus, the structuring of an "exit map" has the potential to become an orientation tool for the migrant to understand the con-

30 The exit map, to be delivered to the pre-release person, will contain "the route to be followed in the first days at liberty, elements of referral to the network of social policy services, according to individual demands, as well as referrals to judicial equipment when necessary" (CNJ, 2020, p. 34).

sequences of the sentence they are serving in Brazil and to be able to comply with the requirements and conditions established by the Judiciary.

Regarding the transits of migrant people imprisoned in Brazil, anthropologist Natália Corazza Padovani (2018) points out that those "arising from the drug trade may not be directly related to an intentionality to migrate, but that imprisonment and the time of the sentence open migratory possibilities and perspectives" (p. 131). Thus, for the researcher Lucia Sestokas (2021), who focused on the theme by conducting ethnographic work in the Federal Court of Guarulhos/SP, this means that "in practice, they must either find legal means to stay in the country, that is, find ways to fit into regulations that allow their migratory regularization and the revocation of their expulsion, or adopt strategies that allow them to stay without necessarily depending on regularization, usually through support networks" (p. 137).

Under Articles 54, II, and 57 of Law n.º 13,445/2017, migrant persons on provisional release and serving a sentence must have their conditions of re-socialization in Brazil evaluated. It is common for migrants to spend years serving open prison sentences in Brazil, forbidden to return to their countries, and, after long periods of time, end up being subjected to expulsion proceedings from the national territory, especially when they do not fit expressly into the taxative hypotheses of non-refoulement.

For this reason, it is recommended that the judicial authority, when asked about the legality or otherwise of the deportation, analyze factors that, under current legislation, point to the re-socialization of the migrant in the national territory, especially with regard to access to work, education, the construction of socio-affective bonds, and contribution to national development.

It is important to point out that, in relation to adolescents, the post-socio-educative measure of restriction or deprivation of freedom follow-up must be done through a voluntary adhesion program. The organizational and methodological guidelines of the program are set out in a guidebook with three booklets that encourage a service that is centered on the needs of the adolescents being monitored, which should contemplate the specificities of migrant adolescents[31].

For all of the above reasons, the following sections explore three themes of action by the Judiciary on access to rights for migrant egresses: **access to civil documents retained or issued during the period of deprivation of liberty**; **the link to a social assistance network of reference that may provide minimum subsidies, depending on the needs of the migrant; and the issues concerning the forwarding of the sentence for purposes of deportation**.

31 Booklet I - Guidelines and Bases of the Program, available at: *https://www.cnj.jus.br/wp-content/uploads/2021/03/Guia_Socieducativo_CadernoI_1603.pdf*; Booklet II - Governance and Institutional Architecture, available at: *https://www.cnj.jus.br/wp-content/uploads/2021/03/Guia_Socieducativo_CadernoII_1603-1.pdf*; Booklet III - Methodological Guidelines and Approaches, available at: *https:// www.cnj.jus.br/wp-content/uploads/2021/03/Guia_Socieducativo_CadernoIII_1603-2.pdf*

5.1. Delivery of all civil documents that have been retained or issued during the period of deprivation of liberty

The right to Brazilian documentation for migrants is provided in Article 30 of the Migration Law, stating that "residence may be authorized, upon registration, to the immigrant, border resident, or visitor. Thus, it is through the residence permit that migrants are identified, which enables their access to public services, their participation in social programs, and the performance of their duties. The importance of guaranteeing access to Brazilian documentation is based on the fact that the National Migratory Register, the Registry of Individuals, and the Employment and Social Security Card are indispensable for the identification and economic insertion of the migrant, conditions for their subsistence in the country. Moreover, migration regularization can also serve as a guarantee and enable greater control by the judicial authority when it chooses to apply alternative measures to imprisonment.

It is important to emphasize that, depending on the person's country of origin, the visa or authorization to enter Brazil as a visitor has a validity period, which tends to be shorter than the duration of the criminal process.

As mentioned before, access to civil documents is not only a right foreseen in countless regulations, but also a condition for the exercise of other rights.

Everyone has the right to carry their own passport or personal identification document with photo, once its authenticity has been verified by the Judiciary. In the specific case of passports, the exception occurs only in the case of Article 320 of the Code of Criminal Procedure, since it is a document of fundamental importance to the exercise of citizenship by migrants, especially in access to personal documentation for purposes of migratory regularization. Besides this, documents such as the CPF or the SUS card are also essential.

It is important to note that, in the scope of the Policy of Attention to Persons Enrolled in the Prison System, established by the CNJ, it is oriented that, at the moment of release, every person must be in possession of his/her civil documentation, which, in the case of migrants, will be mainly the passport or certified full copy, civil identification document from the country of origin, proof of application for a residence permit for purposes of serving a sentence or other purposes, CPF, CTPS, SUS card and/or proof of vaccination against Covid-19.

As for teenagers, their civil documents must be given to their father, mother, or legal representative at the time. In the case of unaccompanied or separated adolescents, the judicial authority must ensure that the service that will receive this young person after they leave the detention unit (such as a family or institutional shelter program) receives and keeps their civil documents, so that the migrant adolescent can have access to the rights and policies offered by the shelter spaces. If it is impossible for the teenager or legal representative to receive the teenager's civil documents, the judicial authority may, if authorized by the teenager, contact the consular authority to assist in the demand.

5.2. Connection to a social welfare network of reference that can offer minimum subsidies, depending on the migrant's needs (shelter, housing, among others)

As already developed in Sections III, "c", and V, "a", the mapping and the performance of the Judiciary with the public social assistance networks and civil society organizations in the locality are essential instruments to compose the permanent support structure and to integrate the decision-making process of the judges.

It is recommended that the migrant is connected to specialized services for the care of released persons, such as Social Offices, which will, in turn, receive the demands and make the necessary referrals, as provided in detail by CNJ Resolution n.º 307/2019. Thus, equipment, such as Social Offices and similar facilities may coordinate the institutions involved in monitoring the migrant, such as the prison administration, the Public Defender's Office, civil society entities, and people who make up their families, in order to enable the consolidation of essential minimum subsidies for the moment when they become egresses from the prison system.

It is suggested the adoption of release procedures, as described by Article 9 of CNJ Resolution n.º 307/2019, and the delivery of items for leaving the prison unit, such as: civil documentation, transportation voucher or equivalent, clothing that does not expose the condition of an egress person, emergency supplies (food and drinking water sufficient for the period of displacement between the place of release and the destination informed), in addition to informative material with guidelines on available public services written in the languages understood by migrants. The aforementioned Resolution also states that it is responsibility of the Judiciary to supervise the availability of inputs when the release occurs on its premises, as well as to supervise its supply when the release occurs in a penal establishment.

For the foregoing, it is stressed that the adoption of release procedures for migrants is a fundamental component for the exercise of citizenship, the achievement of the goal of social reintegration and the specific rights described by CNJ Resolution n.º 405/2021 and Law n.º 13,445/2017, especially when it comes to people with no previous ties or fixed residence in the country.

The disconnection of the adolescent migrant person from the socio-educational measure must also take place in a planned manner, including the possibility of joining the Follow-up Program for adolescents after compliance with the socio-educational measure of restriction and deprivation of liberty.

5.3. Forwarding of the final conviction to the Justice and Public Security Ministry and information about the opening of administrative procedures for expulsion

Once the sentence has become final and unappealable, the judicial authority will send the decision and respective certificate to the Ministry of Justice and Public Security, preferably by electronic

SPECIFICITIES OF THE SITUATION OF MIGRANTS WITH CHILDREN AND DEPENDENTS, INDIGENOUS, ELDERLY, LGBTI AND WITH SERIOUS HEALTH CONDITIONS

means, in the cases foreseen in Article 54, 1st Paragraph of Law n.º 13,445/2017. The communication is intended to cooperate with the exercise of the powers of the Executive Branch agencies, considering that, according to Article 193, 1st Paragraph, of Decree n.º 9,199/2017, it is responsibility of the Federal Police of the corresponding locality to initiate police investigation of expulsion. The next step in the inquiry, when opened, is to notify the person being expelled, the consular office of the person's country of origin, the person's defense counsel, if any, and the Federal Public Defender's Office, when a situation of vulnerability is present.

As previously developed in Section VI, b, iv, a number of factors may be considered by the judicial authority regarding the communication of the *res judicata* of the conviction to the Executive Branch, pursuant to Article 54 of Law n.º 13,445/2017 and excepted, also, the cases in the following Article. Remember that in administrative acts, the rights to adversarial proceedings and to a full defense are reserved to the migrant, assuming the participation of the Federal Public Defender's Office in their defense when they does not constitute a lawyer.

Except for the possibilities explained in item IV, c, sub-items ii and iii, regarding the possibility of authorizing voluntary return while serving a sentence under house arrest, open regime, or parole, as well as compulsory withdrawal through deportation before the sentence is fully served, the administrative procedure of deportation ends with the publication of the deportation decree in the *Federal Official Gazette* (DOU) and the purchase of tickets by the Brazilian State for the procedure to be carried out, and may, furthermore, be revoked in the event of the supervening of impeding or modifying causes of the situation.

Finally, the migrant's access to migratory regularization must be taken into consideration while the deportation procedure continues, and the judicial authority, if called upon to analyze the pertinence of executing the measure, must also observe aspects of the migrant's life that point to their re-socialization in the national territory, which may demonstrate that compulsory removal is unnecessary.

6 SPECIFICITIES OF THE SITUATION OF MIGRANTS WITH CHILDREN AND DEPENDENTS, INDIGENOUS, ELDERLY, LGBTI AND WITH SERIOUS HEALTH CONDITIONS

The condition of the person as a migrant is not the only one that defines them as a subject of specific rights, which is why it is relevant that the look at the person in prison or released from the prison system is carried out in an integral way. Thus, a migrant may also self-declare as LGBTI, as belonging to an indigenous population, as a parent, a person with a disability, and a number of other categories that have peculiar legal consequences.

In this sense, CNJ Resolution n.º 405/2021 takes into consideration the conjunction of personal factors that can influence the experiences of a person deprived of liberty. Therefore, it is suggested that the judicial authority consider them simultaneously, making it possible to delineate situations in which the custodial measures are even more exceptional, as well as to impose the electronic monitoring measure, in order to prevent the accentuation of these vulnerabilities.

Therefore, when faced with the self-declaration of the migrant as part of a traditional population, such as an indigenous or quilombola, as a LGBTI person, as someone who exercises parenthood and/or has a dependent, as well as other factors that may indicate specific vulnerabilities, such as advanced age or experiencing serious health conditions, several legal provisions applicable to the specific case come to the fore. Table 3 presents examples of the regulations that can help judges and courts analyze the elements and make decisions that take these peculiarities into account:

INDICATORS FOR MONITORING THE IMPLEMENTATION OF THE CNJ RESOLUTION N.º 405/2021

Table 3 - Examples of normative

SELF-DECLARATION AND/OR IDENTIFICATION OF SPECIFIC SITUATION	Examples of regulations
Persons belonging to traditional populations, such as indigenous peoples	• CNJ Resolution n.º 287/2019 and its manual; • Technical Note n.º 53/2019 from the National Penitentiary Department (Depen)[32];
LGBTI people	• CNJ Resolution n.º 348/2020 and its manual; • Technical Note n.º 9/2020 from Depen[33];
Elderly People	• Technical Note n.º 16/2020 from Depen[34] which deals with the procedures regarding the custody of elderly people in the Brazilian prison system;
Pregnant women, mothers, fathers, and persons responsible for the care of children up to 12 years old or with disabilities	• CNJ Resolution n.º 369/2021 and its manual;
People with Disabilities	• Technical Note n.º 83/2020 from Depen[35];
People who exercise religion and/or beliefs	• CNJ Recommendation n.º 119/2021.

32 National Penitentiary Department. Technical Note n.º 53/2019/DIAMGE/CGCAP/DIRPP/DEPEN/MJ, aiming to recommend to the state prison administration bodies the adoption of necessary and effective measures for the custody of indigenous people deprived of their freedom in penal establishments. Brasilia, 2019. Available at: *https://www.gov.br/depen/pt-br/centrais-de-conteudo/ publications/technical-notes/procedures-with-custody/Treatment%20of%20indigenous%20incarcerated-Publication-December-2019.pdf/view.*

33 National Penitentiary Department. Technical Note n.º 9/2020/DIAMGE/CGCAP/DIRPP/DEPEN/MJ, deals with the procedures regarding to the custody of LGBTI people in the Brazilian prison system. Brasília, 2020. Available at: *https://www.gov.br/depen/pt-br/centrais-de-conteudo/publicacoes/notas-tecnicas/procedimentos-com-custodiados/Procedimentos%20quanto%20a%20custodia%20de%20pessoas%20LGBTI%20no%20sistema%20prisional%20brasileiro%20-%20marco-2020.pdf/view.*

34 National Penitentiary Department. Technical Note 16/2020/DIAMGE/CGCAP/DIRPP/DEPEN/MJ, deals with the procedures regarding the custody of disabled people in the Brazilian prison system. Brasília, 2020b. Available at: *https://www.gov.br/depen/pt-br/ central-de-conteudo/publicacoes/notas-tecnicas/procedimentos-com-custodiados/Procedimentos%20quanto%20a%20custodia%20 de%20pessoas%20pidos%20no%20sistema%20prisional.pdf/view.*

35 National Penitentiary Department. Technical Note n.º 83/2020/DIAMGE/CGCAP/DIRPP/DEPEN/MJ, deals with the procedures regarding the custody of disabled people in the Brazilian prison system. Brasília, 2020b. Available at: *https://www.gov.br/depen/pt-br/centrais-de-conteudo/publicacoes/notas-tecnicas/procedimentos-com-custodiados/A%20custodia%20de%20pessoas%20com%20 deficiencia%20no%20sistema%20prisional%20brasileiro.pdf/view.*

7 INDICATORS FOR MONITORING THE IMPLEMENTATION OF CNJ RESOLUTION N.º 405/2021

As pointed out in the *Methodological Guide for Indicators* of the Ministry of Planning, Development, and Management's Secretariat for Planning and Economic Affairs, "the success of public policy implementation is directly related to the State's management capacity" (BRASIL, 2018, p. 8), which includes from the strategies chosen for the design and implementation of the policy, to its following-up, monitoring and evaluation. In this sense, "indicators are instruments through which we can carry out this monitoring effectively" (BRASIL, 2018, p. 8.). For its conception, the reality from which the requested information is extracted must be considered. Also, for the effective application of indicators, "the sources of data and statistical information associated with the indicator must be reliable, as well as the main technologies for their use must be available as part of a process that is different for each program or policy" (BRAZIL, 2018, p. 8.).

The indicators for monitoring purposes have as one of their objectives to establish the steps taken and the evolution of each federative unit (UF)[36] with regard to the practices recommended by CNJ Resolution n.º 405/2021, as well as to assess the results of the implementation, when analyzed from a historical series and a specific look at the benefits of the target audience of the regulation[37].

It is suggested that the indicators described below should be implemented as a priority in the states with the highest numbers of imprisoned migrants, according to the information contained in the National Inspection Register and other complementary data, and filled out annually in these federal units. It is also important that monitoring is done systematically and periodically.

As for the monitoring indicators, they aim to track the degree of implementation of the Resolution's provisions, as well as the level of adherence of each analyzed Federal Unit in relation to the listed points of attention and good practices suggested in this Manual. To this end, some indicators have been selected, in a suggestive and exemplary way, based on the elements dealt with in CNJ Resolution n.º 405/2021 and explained in this Manual, without prejudice to others being instituted by the CNJ in the scope of the monitoring activity, through the DMF:

36 The regional information will be collected and organized by the Monitoring and Supervision Groups of the Prison System and (GMF), based on the information produced by the state policies of the care system.

37 The indicators proposed in this Manual were inspired by the proposals of process and result indicators contained in the Manual of the CNJ Resolution n.º 627/2021, which deals with the Central Vacancy Center of the State System for Socio-Educational Care.

RECEDENTS AND PARADIGMATIC DECISIONS

1. Presence of an interpreter in court documents

1.1. The presence of an interpreter in court documents (Article 4, caput);
1.2. Institution of a register of interpreters (Article 19).

2. Access to Consular Assistance

2.1. Survey regarding consular authorities, embassies and diplomatic missions (Article 19);
2.2. Communication to the consular representation (Article 7, II).

3. Social Protection

3.1. Survey regarding institutions and services within the scope of social protection, as well as civil society organizations, for the reception and referral of the egressed migrant and his/her family members (Article 15, 3rd Paragraph, and Article 19).

4. Supervision of the provision of assistance in places of deprivation of liberty

4.1. Supervise whether material assistance is guaranteed, the right to visits, as well as access to work, education and other policies offered in prisons (Article 12).

It is important that the monitoring of these indicators is done by separating criminal justice from juvenile justice, since, for the most part, they are distinct judicial units, in addition to the other actors in the justice system, the social protection network, and spaces for deprivation of liberty.

8 PRECEDENTS AND PARADIGMATIC DECISIONS

The recognition and diffusion of precedents and paradigmatic decisions impact individual court cases as well as contribute to the legal order and practice collectively. Decisions on issues of socio-political relevance, regarding the intersections between the migration issue and the Brazilian penal and socio-educational systems, may gain an extra-procedural dimension, and may become paradigmatic and contribute to the transformation and consolidation of a true legal heritage.

Therefore, in order to complement the guidelines contained in this Manual, willing to follow judicial decisions from the Brazilian Judiciary that were selected with the purpose of implementing CNJ Resolution n.º 405/2021.

Table 4 - Judicial decisions to implement Resolution. CNJ n.º 405/2021

Judicial Instance	Theme	Lawsuit	Overview of the Decision
Supreme Court (STF)	Inexpulsion of a migrant with a Brazilian child.	Extraordinary Appeal (R.E) n.º 608,989	Plenary of the STF decided that the expulsion of national territory of a migrant who has a Brazilian child, regardless of whether he/she was born or adopted after the fact that generated the request for deportation.
Supreme Court (STF)	Transportation of drugs in the "mule" case.	Habeas Corpus (HC) n.º 131,795/ SP	STF accepted the understanding that the fact that a person is considered a "mule" cannot be considered, in isolation, participation in a criminal group.
Supreme Court (STF)	Migrant status cannot be an obstacle to access to rights in penal execution.	Habeas Corpus (HC) n.º 94,016/SP	The fact that the person convicted of drug trafficking is a foreigner and is in prison, has no residence in the country and is the object of deportation proceedings does not constitute an obstacle to the progression of their sentence.
Supreme Court (STF)	Impossibility of extradition of a migrant person who was under eighteen years old at the time of the fact.	Ext n.º 1,135	If the extraditee was under eighteen years of age at the time of the fact, the conduct is equated to an infraction and the requirement of double criminality will be absent, implying the impossibility of extradition.

Judicial Instance	Theme	Lawsuit	Overview of the Decision
Superior Court of Justice (STJ)	Migrant status cannot be an obstacle to access to the right of regime progression.	HC n.º 309,825/ SP	The progression of a sentence cannot be denied because the convict is in an irregular situation in the country or because there is an expulsion decree issued against them.
Superior Court of Justice (STJ)	Migrant status cannot be an obstacle to the granting of provisional release.	HC n.º 193,060/ SP	The alleged possibility of escape, because the person is a foreigner who has no link with Brazil, as well as unfounded conjectures about the possibility of repetition of the criminal conduct due to the abstract gravity of the infraction do not, in themselves, constitute sufficient grounds to justify precautionary arrest.
Superior Court of Justice (STJ)	Illegality of arrest for deportation purposes.	RHC n.º 91,785/ SP	With the entry into force of Law n.º 13,445/2017, imprisonment for the purpose of ensuring compliance with the decree of expulsion of a foreigner was abolished from our legal system.
Federal I Court of the 3rd Region (TRF3)	Failure to provide a background check criminal for residence permit application must not prevent access to regularization.	MS n.º 5012110-2720184036100	The requirement to present a criminal record certificate for the purposes of instruction of the request for authorization to residence cannot override the principles inherent to the more effective protection of human rights. Denying a residence visa to a person serving a sentence is totally unreasonable, especially because, without the regularization of their migratory situation in national territory, they will not have the means to provide for their own subsistence, nor will they have the financial resources to request the expedition of a criminal record certificate. Also because the residence permit for migrants is not about an individual will to stay in the country, but about the need to fulfill a punishment imposed by the Brazilian State itself, preventing them from voluntarily leaving the country.

Judicial Instance	Theme	Lawsuit	Overview of the Decision
Federal I Court of the 3rd Region (TRF3)	Migrant status cannot be an obstacle to the substitution of preventive detention by house arrest.	ApCrim n.º 0000898 47.2012.4.03.6119	The principle of isonomy, a constitutional guarantee that extends to foreigners, prevents non-nationals convicted of the crime of illegal drug trafficking from being denied the benefits provided by law, in this case, the substitution of preventive detention by home detention.
Federal Court of the 4th Region (TRF4)	Application of rights-restricting penalty with pecuniary benefit in case of migrant defendants with no fixed residence in Brazil.	ACR n.º 5012466-10.2015.4.04.7002	The sentence that imposed the penalty of restricting rights with pecuniary benefit is correct, because the defendants are foreigners without fixed residence in Brazil.
Federal Justice of the Sub-Section of Campinas/SP	Home detention based on the exercise of transnational motherhood for women with children under 12 years of age.	Sentence infile n.º 0000241-06.2019.4.03.6105	Sentence that substituted preventive detention by house arrest of a Paraguayan woman who is the mother of children under 12 and has no fixed residence in Brazil. Children lived in Paraguay and mother would remain under house arrest in center and accompanied by a civil society organization.
Federal Justice of the Sub Subsection of Guarulhos/SP	The person's status as a refugee can lead to the dismissal of the criminal action.	Sentence in file n.º 0002471-8.2015.403.6119[38]	Absolute verdict that dismissed the punitive claim in a situation of using a false document in the situation of a group of people fleeing from a conflict zone and ethno-religious persecution in Iraq.
State Court in the District of Bauru/SP	Possibility to return to the country of origin even without a deportation decree, if the migrant wishes do so.	Court decision number 0001823-09.2015.8.26.0026	Since the sentenced person wished to return to their country of origin, even though deportation was unacceptable, they will be allowed to return as soon as they will be released.

38 It is a judicial decision that is part, with honorable mention in the category of judicial decisions and judgments on promotion of illegal migration, of the book Decisões Paradigmáticas: IOM-Ajufe competition of judicial decisions and judgments on *human trafficking, promotion of illegal migration and reduction to a condition analogous to slavery*. Available at: https://www.ajufe.org.br/images/2021/pdf/OIM_decisoes_ paradigmaticasWEB.pdf.

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