Swiss Initiative to Commemorate the 60th Anniversary of the UDHR

Protecting Dignity: An Agenda for Human Rights

RESEARCH PROJECT ON DETENTION:

"Democracy, Human Rights and Prison Conditions in South America"

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The year 2008 marked the 60th Anniversary of the Universal Declaration of Human Rights. To commemorate this occasion, and in order to make a meaningful contribution to the protection of human rights, the Swiss Government decided to launch "An Agenda for Human Rights". The initiative aims to explore new ways of giving human rights the weight and place they deserve in the 21st century. It is designed as an evolving and intellectually independent process.

The text *Protecting Dignity: An Agenda for Human Rights* was authored by a Panel of Eminent Persons, co-chaired by Mary Robinson and Paulo Pinheiro. This *Agenda* and the Swiss Initiative are designed to achieve two objectives: firstly, to set out some of the main contemporary challenges on the enjoyment of human rights, and secondly, to encourage research and discussion on a number of separate topics linked to the *Agenda*. These include: Human Dignity – Prevention – Detention – Migration – Statelessness – Climate Change and Human Rights – the Right to Health – and A World Human Rights Court.

The project is sponsored and financed by the Swiss Federal Department of Foreign Affairs. The Ministry of Foreign Affairs of Norway and the Ministry of Foreign Affairs of Austria have actively supported the project. The Geneva Academy of International Humanitarian Law and Human Rights is responsible for the coordination and organisation of the Initiative.

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Democracy, Human Rights and Prison Conditions in South America

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Human rights and human development share a common vision and a common purpose: ensure freedom, welfare, and the dignity of all people everywhere.

Amartya Sen

PRESENTATION

This paper is part of the Swiss Initiative "Protecting Dignity: An Agenda for Human Rights" to celebrate de 60th anniversary of the Universal Declaration of Human Rights, a partnership with the Academy of International Humanitarian Law and Human Rights of Geneva supported by the Governments of Norway and Austria.

The project "Democracy, Human Rights and Prisons Conditions in South America" was selected to approach the theme "Detention" based on Swiss Initiative considerations to discuss the right to personal liberty as one of the oldest and more fundamental desire of human beings. According the launching text, "there are over 9 million detainees and prisoners worldwide with a large proportion kept in inhuman and degrading conditions. Many are arrested without sufficient reasons, held in pre-trial detention for excessive periods and often subjected to torture. More must be done to address the forgotten human rights abuses experienced by people in detention".

In this way, in order to contribute with the proposal of promote discussions and actions which looking for improve the guarantee and respect to human rights of these individuals, we present here the Final Report of the project.

The report was developed with the contribution of the Center for Citizen Security Studies (Centro de Estudios de Seguridad Ciudadana - CESC) of University of Chile, and of the Center for Legal and Social Studies (Centro de Estudios Legales y Sociales – CELS) of Argentina. Each one of these institutions prepared a partial report about your own country that was adapted to preparing the final report, under co-ordination of Center for the Study of Violence (Núcleo de Estudos da Violência – NEV) of University of São Paulo.

The objective of the research presented in this paper is to describe and analyze the conditions in the prison system in three countries in South America - namely Brazil, Chile, and Argentina - and those social, political, and institutional aspects that contribute to gross human rights violations caused to the individuals in the places used for detention, even it been constitutionally institutionalized democracies.

The paradox of violation of human rights within democratic States in addition to the complexity of prison's functions in the contemporary world provoke a deep debate which the present paper hope to be a first contribution resulting from the CESC, CELS and NEV partnership.

INTRODUCTION

Provided with every legal right, the arrest of individuals and the restriction of their freedom can occur in different situations: individuals that were sentenced by court, individuals suspected of perpetrating a crime, individuals waiting trial, migrants waiting deportation. Nevertheless, the sites of detention are only object of concern domestically or even internationally when prisons are used as an instrument against political rivals during authoritarian regimes that remove from the political arena the democratic rules. Every time there is a routine arrest, mainly of ordinary offenders, prisons become territories of little interest for the public opinion, they have little social visibility, little relevance to the media, little importance to public policies, and only find some room in the political debate when the seriousness of prison conditions reach such levels that can no longer be hidden or ignored.

Although bad detention conditions are found even in countries with consolidated democracies, more serious violations, the extremely bad conditions of existence in such environments – unhealthy conditions, overcrowded cells, abuse, and torture – are found in the prisons in those countries with weak democratic organizations, few controls in the hands of civil society, and heavy social and economic inequalities

South America can be presented as an example of such region where continuous violations of human rights in the prisons have a close relationship sometimes with the difficulties to run a democratic regime, with the continuous development of authoritarian regimes that were present throughout their history, and sometimes with the deep impacts of poverty and social inequalities. Between 1960 and 1990, several military regimes like those in Brazil, Argentina, and Chile were responsible for many iniquities, among which imprisonment, torture, and the death of political opponents. In the past twenty years, though, the region is in a considerable political stability. Although the authoritarian culture has not been totally overcome, democratic regimes predominate with free elections and continuous renewal of administrations in most of the countries.

The new legal statute in these countries does not accept the existence of political prisoners or of prisoners of conscience any more. Nevertheless, currently ordinary prisoners are subject to conditions that hurt human dignity in the prisons, where essential principles established in local legislations are not respected, and

basic provisions in international instruments of protection and promotion to human rights are violated.

This paper attempts to point out and analyze the political, social, and cultural reasons presents in the contemporary world and that provide the grounds on which ordinary prisoners are subject to severe imprisonment conditions. It also tries to understand how democratic regimes accept the serious violations of human rights that are practiced and that hurt human dignity on a daily basis in such places. It also tries to promote a reflexion on that issue of deep social inequalities in these new democracies that promote disrespect to basic requirements for a dignified life for all citizens, and how such inequalities are related to mass imprisonment. And last but not least, considering the scope of values, perceptions, and sensitivities, it tries to understand how feelings of intolerance and of vengeance grow against these offenders, feelings that are translated into severe life conditions in prisons, into long periods of imprisonment, into harsher disciplinary regimes, just like the support to overdated punishment methods, death penalties, and public exposure of sentenced prisoners has increased.

There are two main pillars to support the situation of imprisonment contrary to the respect to human rights in the contemporary world. On one side, there are the deep changes that took place in crime control culture since the early 70´s following a wave of neoliberalism that changed some of the standards in the organization of the market and of the State. On the other side, the events that lead to September 11th, 2001 in the US. In the name of national security and under the pretense of constant risk of terrorist actions, a cloudy-grey field of activities was structured around police activities and imprisonment conditions that did not match with the principles of human rights and domestic law.

Although imprisonment conditions introduce a picture of degradation that is not restricted to Southern countries, it is in this hemisphere that such conditions are more serious, and where violations to civil, political, economic, social, and cultural rights are more severe.

In South America those that are in prison because represent 731.814[1] people of the 9 million estimated for the population imprisoned all around the world, i.e., nearly 7.8%, highlighting that the United States (with 2.3 million), China (with 1.5 million), and Russia (with 887 thousand) alone are responsible for nearly 50% of this

[1] International Centre for Prison Studies, 2008

total, and that Brazil ranks 4th on that list (with 440.013). The three countries in South America that are being analyzed on this paper, Argentina, Brazil, and Chile show rates of 154, 227, and 305 prisoners per every 100 thousand inhabitants, respectively. Because of the deficiency in the operations of the criminal justice system in these new democracies, many of these people are arrested arbitrarily by the police, kept in prisons beyond the legal term in inappropriate institutions, tortured in sessions prepared to extract information, or simply as extra-legal punishment applied by public agents. In addition, in these countries conservative trends in the justice system promote punishment for marginalized groups that have no equal access to resources to ensure their fundamental rights in due legal process.

To tackle on such issues, the current paper starts by discussing on its first part a more structural context of penal policies in the contemporary world showing their main characteristics and trends. It follows with the analysis of how new drivers of penal policies become part of a more specific contemporary context of democracy in Latin America, with emphasis on those barriers for a full effect of a Rule of Law.

On a second part, and to corroborate with the previous discussion, cases from Argentina, Brazil, and Chile will be introduced to discuss the penal policies and the scope of the criminal justice system in South America including the profile of criminality the trends of penal legislation, the set-up of the institutions and the evaluation of their operations, the participation of civil society, the profile of the prison system, and the main violations of human rights that occur in the criminal justice system in those countries .

On the conclusions, the discussion on actual trends and penal policies is resumed to reinforce their impacts on the new southern democracies, highlighting the difficulties and the possibilities to deal with the problem of human rights violation in prisons all over the world.

PART I

THE NEW PENAL POLICIES IN THE CONTEMPORARY WORLD

There is a consensus in the international literature (Garland, 2008; Wacquant, 2001; Bauman, 1999; De Giorgi, 2006), about the important social, economic, and cultural changes that started in the 70´s and that caused a deep impact on the experiences in effect at the time on crime, lack of security, and order. This scenario – that originated from new arrangements in the market and from new ways of social organization- brought other form of risk and lack of security that gave place to substantive changes in the mechanisms of crime control and operations of the criminal justice. During the past thirty years, social responses to crime, to risks, and the feeling of being insecure gave way to a rupture of standards and principles that were the foundation present throughout the 20th century, but specially between 1950 and 1970 and that were strictly connected to Welfare State.

New market arrangements based on new technologies and on internationalization brought changes to tax standards and to the use of public resources forcing a deregulation of work and a broad reconfiguration of the characteristics of employment. Changes that also reflected on the way the State was organized, and on the type of regulation of social relations that it started developing. The Welfare State approach, the protector of the individual that had been mainly built after the 50´s is weakened and a new kind of "Penal State" emerges with more repression and punishment to bring a response to "the disorders rising from the deregulation of the economy, by the desocialization of labor and wages relations and standards, and the relative and absolute poverty of great masses of underpaid urban workers. The State starts increasing the means, amplitude, and the intensity of the police and of the judiciary power intervention with an actual *dictatorship on the poor* (Wacquant, 2001: 10).

Bauman (1999) reinforces that such changes that come with globalization in this period change not only the ways work is organized but also the spatial mobility of capital, goods, and people. A deep social segregation is being produced by an economy that on one side expedites and internationalizes the circulation of assets, capital, and capitalists but that on the other side becomes more deregulated and pushed by high technological standards produces a growing mass of immobilized and

unemployed people. Without counting on the protective activities of the Welfare State any more to these millions of outcasts the only thing left is a search for survival in informal activities, underemployment, and illegal markets in constant growth. The privileged answer of the State for this scenario and for these people left without their inheritance comes as repression, punishment, and above all imprisonment that separate productive individuals – included in the system – from a surplus of unproductive beings. It is not, therefore, without meaning that the prison has been recollected as an instrument of "efficient social control" during the last decades.

David Garland (2008) said that the changes that took place in criminological theories, in sentences, in crime prevention activities, in private security, as well as the changes in penal policies are part of what he called the structural field of crime control and criminal justice. Crime control field is "characterized by two pillars of action entertwined and mutually conditioned: the formal ways of control enforced by governmental agencies that belong to the penal system, and the informal social controls that receive support from the daily activities and interactions of civil society" (2008: 47).

According to this theoretical order, it is possible to see a steep fall in the ideal of rehabilitation, on the willingness to bring a sense of correction to sentences. The emphasis in the rehabilitation of criminals that gave momentum to a modern punishment system in opposition to medieval punishment practices, failed in holding a central position in the organization of the criminal justice system. Treatment and rehabilitation programs have not vanished but remain on standby and subject to other penal objectives, such as "risk retribution, neutralization, and management" (Garland, 2008: 51).

The ideal of rehabilitation is left aside and on the same token a feeling of revenge becomes present on sentences that are imposed, making them harsher and resuming their scope of vengeance. Death penalty, public exposure of prisoners, severe disciplinary regimes with long periods of imprisonment receive more attention and are more accepted now after remaining aside during most part of the twentieth century. Experiences like "Tolerance Zero" kind of policies, and legislation like "Three strikes and you're out", reduction of penal full age, and also special prison units, such as supermax for maximum security and that immobilize the prisoner in a cell, alone, for 23 hours to a full day come to surface without any educational activity or any work (Bauman, 1999). Strict sentences that condemn prisoners to death, to life

imprisonment, or that keep them immobilized in their cells without any perspective of returning to society, are in harmony with a social set-up that includes millions of unemployed people, that does not need that these criminal individuals be included as prospect workers any more, object of social rehabilitation work. During the past thirty years following the logic of the new penal policies, the "success" of prisons remains in withholding criminals from circulation, in preventing them from representing a risk to society, and in keeping them immobilized excluding them from social interaction definitely if possible.

Gilles Chantraine (2006a) makes his remark, though, that this kind of prison of maximum security that immobilizes prisoners as mentioned by Bauman has to endure new standards of organization, such as a post-disciplinary or governmentalized prison. After analyzing a prison experience in Canada, he observes that the prisoners are encouraged by the prison institution administration to have representatives, to appoint leaders to negotiate prisoners' demands with the State, thus establishing a complex structure of privileges, concessions, and restrictions. The administration tries to encourage the prisoner to cooperate; they want to teach the prisoners a sense of cooperation, accountability, and empowerment. The rights of the prisoners are object of negotiation and conditioned to the risks of a violation that the prisoners might promote of their commitments for an empowered management. A complex engineering of intervention of technicians and managers in an attempt to strengthen a kind of a "dynamic" security that supposedly might minimize coercitive provisions, and at the same time encourage the prisoners towards a self-management[2] condition. Nevertheless, these new arrangements actually are based on a broad scale risk management activity and on the maintenance of order and security – internally and externally – to which the organization and self-management of the prisoners is subordinated.

For a long time, at least formally, the trust on the means to fight crime and the rationalization of justice prevailed in penal policies, and the issue of the rights of the prisoners was always there and they were considered "less fortunate", and a constant

[2] This standard of intervention in prison units analyzed by Chantraine was subject of vile arrangements, yet little studied in countries such as Brazil where criminal groups get organized inside prisons, control their daily activities, establish their own limits of control by the authorities, and organize the life of the other prisoners. Such groups are able to install a vile, tyrannical order, imposing their sovereign power over life and death of other prisoners because the authorities lack the appropriate mechanisms to control such management activities of these groups on prison daily life. More details on Part II in this study "THE NEW PENAL POLICIES AND THE PANORAMA OF THE CRIMINAL JUSTICE SYSTEM IN SOUTH AMERICA".

pledge for a principle of humanity that should guide such policies was also present. The feelings that are now conveyed to the public opinion and the political address are full of fear of crime, of anxiety, of insecurity. With such feelings, the offender is not considered a less fortunate individual any more, a person in need, or a subject victim of society itself but rather as a dangerous individual, incorrigible many times, and to whom the solution must be retribution for the damaged he/she caused. Penal policies acquired what Garland (2008) called the "emotional touch". In democracies, this aspect is even more exacerbated considering the fact that formally every one is entitled to the right of using the democratic benefits, and criminal behavior within this political system is seen, therefore, as sheer individual choices.

This scenario is also integrated by the role that the victim takes in the end. In the past, the victim was only a less fortunate citizen, now he/she occupies a central position in a new dramatization of crime, and consequently in the debate on penal policies, in the adoption of laws, and in the operations of the criminal justice system itself. The victim is now a representative of the whole public and his/her rights start attracting all the attentions leaving the rights of the offender aside. An environment where the rights of the victim and those of the offender exclude each other, are contrary to the logic of universalization, and promoters of social disintegration, giving room to theories, such as "Enemy Criminal Law" (Jakobs, 2003).

Insecurity and fear of crime are providing the structure to penal policies that place the defense of society, public protection, security, and risk contention as aspects that justify measures that render sentences harsher, strengthen the importance of prisons, and restrict the use of parole. Under the pretext of this defense of society, civil liberties are sacrificed, several mechanisms of surveillance for the streets, cities, or in-companies become common things; police procedures and judicial measures can be changed or neglected provided they ensure that the risks of crime exposure and to criminals can be reduced.

Crime control according to this situation became the target of political interests that in their turn received a strong pressure from public opinion. There is in this sense a politization of crime control because long term planning loses its relevance and immediate political opportunities come to scene under the argument of society defense against crime. This politization, nevertheless, implied in the standardization of positions among the different parties, and a "new and strict

consensus was formed around those penal measures that can be perceived by the public as harsh, flexible, and appropriate" (Garland, 2008: 58).

These changes came together with a new type of criminal philosophy. In general terms, criminological theories that prevailed until the 70´s were those that pointed to explanations about criminals showing them as people with psychological abnormalities, hurt by deprivations, lack of rules, and because of their insertion in subcultures. Criminality was understood as a situation that reached individuals and families in need, with no adjustment and that were going through social deprivations. This situation was seen as social injustice that society should correct through the appropriate socialization, the creation of opportunities, and the due psychosocial assistance. The issue of criminality was, therefore, understood as a responsibility that the State should take over, providing to the individuals the social conditions to prevent it from emerging and if this happened the State should provide the right support in terms of treatment and follow-up.

During the 70´s, new concepts are broadly included into criminological theories. The main focus is no longer placed in delinquency as a result of deprivations, as a drift caused by social interferences, but mainly as a result of lack of control. The discussion is now centralized on social control mechanisms and in mechanisms of self-control. The social issues that might favor crime perpetration are no longer relevant in the new theories, and what is important in the explanations is the arrest of individuals as bearers of rational choices and that deprived of social controls, of discipline, and of self-control are driven by selfishness, and by anti-social behaviors. Crime is no longer a drift; something associated to insufficient socialization, and is understood as an opportunity in daily life, an individual option. As a consequence there is the need of control mechanisms that might inhibit the situations that favor its perpetration. The sense that now prevails includes crime opportunity prevention and no longer a prevention of those social conditions that favored the emergence of individuals that were not fit, or of vulnerable social groups.

In addition, such control mechanisms are no longer a monopoly of the State and are shared with other sectors in society. On one side, the private sector companies have their turn with millionaire revenues and shady relationships with the public sector, and on the other side civil organizations to which the co-sharing of public security management accountability was forced as part of their democratic role.

This new set-up of social arrangements where the competencies of the State, of the market, and of society are modified includes different consequences worldwide. In the case of Latin America, the mix of historic internal processes with recent contemporary penal policies trends highlights the criminal justice and security system with harsher legislation, deep restrictions to the fundamental principle of freedom, and consequent increase in prison population. As a result, there was in the last two decades an extraordinary increase of violations to human rights in prison institutions, mainly in those countries where imprisoned mass lives subject to contradictions between recent democratic regimes and authoritarian cultures that still prevail, as we shall see ahead.

DEMOCRACY AND THE NEW PENAL POLICIES IN THE CONTEXT OF LATIN AMERICA[3]

Democracy means a society of citizens as individuals that bear rights (Bobbio, 1992). Rights that have been defined and formalized in historical contexts characterized by political struggles that redefined the condition of the individuals from subjects that pledged allegiance to a sovereign to citizens bearers of a Rule of Law through which they could be promoted and should be protected. While democracies in Europe and in the US were basically formed in this process of acquisition of individuals and social groups fighting despotic governments, democracy arrived in Latin America just like capitalism did, as an "external" structure, "from outside to inside", without the political, social, and local economic components to guarantee a basis for the process of political organization or even of corresponding economic dynamics. The elite that has driven the governments of countries in Latin America has always kept aside the majority of the population, depriving this population of political participation, and of the access to rights that are the foundation of democratic regimes.

Throughout history, since the development of national States in the region in the 19th century, there were several that were administered by military regimes, or by authoritarian leaders that made democracy consolidation harder, maintained social and economic structures that reproduced poverty and social inequality, and inhibited the participation of citizens. It was only in the last two decades that democracy became the predominant political regime in the Latin American continent.

Important events in the arena of economy and international policy have, during this period, always caused an impact on internal structures of most of these countries. So, many dictatorships that appeared on the second half of the 20th century were deeply articulated with international dynamic policies related to the Cold War and to the contention for areas of influence by the superpowers.

[3] Latin America is a concept used to call a very broad area of the American continent that includes twenty states: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Equator, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Bolivarian Republic of Venezuela, Dominican Republic, and Uruguay, whose element of congregation is the origin of the countries that colonized them. The estimated population of this group of countries for 2008 was nearly 570 million people, in that Mexico (110 million) and Brazil (195 million) account for more than 50% of this total (ECLAC, 2009). In 2005, 77,8% of the Latin-American population lived in urban areas.

The battle for democracy fought by popular and democratic movements inside Latin American countries in the last decades, plus factors of the international situation, such as globalization, the end of Cold War, the fall of Berlin Wall, the dissolution of the soviet world favored the installation of democratic regimes in Latin America. Nevertheless, democracy in the continent comes with specificities when compared to those countries where traditionally experiences were built in this political regime. In Latin American countries there is a consolidation of free electoral processes supported by a legal guarantee that, nevertheless, has not been enough to ensure that democracy is carried out in its full sense. Other dimensions of democratic regimes are not strongly present, such as "efficiency, transparency, and equity in public institutions" (PNUD, 2004), and a political culture of respect to the Rule of Law.

In Latin America, therefore, the good performance of electoral democracy has not been followed by the proper conditions that ensure to citizens the exercise of their full rights. As a result, these limitations of access of citizens to civil, political, economic, social, and cultural rights end by transforming themselves in obstacles for their participation as political subjects, and at the same time favor a position of distrust on political institutions. The States in the region have difficulties many times in organizing themselves according to the principles of division, interdependency, and control among their powers to ensure the existence of an independent judicial power, thus subordinating the military power to civil power, and where principles of accountability of the administrators towards citizens do prevail. A considerable challenge for the democracies in the region is, in this sense, the guarantee of the effectiveness of legal systems forcing the State to organize social relations, to keep control of their institutions, and to provide equal treatment to all citizens. "All size considered, the legal system expects an efficient state that depends not only on the appropriate legislation but also on a network of state institutions that work to guarantee the actual sovereignty of a democratic legal system" (PNUD, 2004:58).

The current permanence of a certain political stability in the region does not exempt it from the risks that can bring instability. For many analysts of the Latin American continent (PNUD, 2004) there is an enormous paradox in the present context that mixes together democratic regimes in most of the countries in the region living with high levels of poverty of the population, high concentration of income, and irregular economic growth. Latin America presents steep social inequality that can be

confirmed by Gini[4] index and that during the 90´s had an average of 0.552 for the region, whereas Europe had 0.290, and the United States 0.344 (PNUD, 2004: 39). More recent data for 2007 show that no significant progress has been achieved in the sense of income distribution improvement and that the region continues with steep social inequalities[5].

According to Economic Commission for Latin America and the Caribbean (ECLAC)[6], every country in Latin America showed a GDP growth in 2007, although in different sizes. The region GDP grew 5,7%. Notwithstanding the phenomenon of the growth of GDP in the region repeating itself for at least five years in a row, no reduction on the levels of social inequality has occurred. While the 40% poorest in the region held only 15% of all income, the 10% richer held 35%. A situation that is also heterogeneous among the different countries. In Brazil and in Colombia for instance, the 10% richer hold more than 40% of the income, whereas in Venezuela and Uruguay the 10% richer hold levels below 28%.

Although the ECLAC shows that since 2004 a small reduction in poverty levels and in indigence is taking place in the continent, data for 2007 show the seriousness of the problem. There were 184 million people in the region living in poverty, of which 68 million living in extreme poverty conditions. These figures corresponded to 34,1% and 12,6% of the total population of Latin America and the Caribbean, respectively (ECLAC, 2008).

Unemployment and informality also faced an increase in the last twenty years in the region. As a consequence, social protection systems to workers have declined. Urban unemployment in Latin America that was 8.4% during 1981-90 turned into 10.4% from 1998 to 2002 (PNUD, 2004:42).

As a result, Latin-American societies present a problematic relationship between their citizens and the recently democratic States. Uneven levels of treatment to citizens predominate and reflect the social and economic inequality, little transparency in the way these not yet consolidated bureaucracies operate, and the

[4] The Gini index measures how much income distribution or the consumption among people or households in a country drifts from a perfectly equal distribution. The value 0.0 represents perfect equality, whereas the value 1.0 represents total lack of equality.

[5] According to the Economic Committee for Latin America and the Caribbean (ECLAC) the Gini index for 2007 would be 0.515 that shows that the region continues to show a strong income concentration and steep inequalities (ECLAC, 2008).

[6] ECLAC, *Latin America Social Panorama 2008* – available for download in http://www.eclac.org/publicaciones/xml/2/34732/PSE2008_Cap1_Pobreza.pdf

corruption and clientelism are still endemic in most part of Latin-American state administrations.

This entire situation became even worse in Latin-American countries, when starting in the 70´s neo-[7]liberal trends got spread around the world restructuring the presence and scope of action of the State. They produced a strong impact in Latin America because they increased the deficiencies in meeting citizens´ needs, and weakened the position of the State as an instrument to rectify social inequalities, in that private interests on governmental institutions grew running-over the general interest.

Therefore, the Latin-America citizen has placed little credibility in democracy because the State and its institutions show inefficiency and are not able to guarantee and universalize rights. Social basic rights and also civil rights are denied to many sectors in Latin-American societies. "They are not entitled to protection against police violence and against different forms of private violence. They cannot achieve equal and respectful access to State bureaucracies, courts included. Their households are invaded arbitrarily, and, usually, they are forced to live a life not only in poverty but also in humiliation and in fear of violence. These sectors are not only materially poor, but they are also legally poor" (PNUD, 2004: 65).

Because of the incapacity of governments of minimizing these complex problems, a profound popular insatisfaction becomes visible. As a consequence, the levels of adhesion and trust of the population on democratic institutions decline, and sometimes political actions that can bring crisis to the administration in these countries eventually are quite radical. The continuous monitoring performed by *Latinobarómetro* shows that these economic and social hurdles interfere on the perception of the individuals of democratic institutions. In 2002, nearly 54% of the people that were interviewed in Latin-American countries were willing to sacrifice democracy for authoritarian governments that could solve the economic problems. Nearly 56% believed that economic development was more important than democracy. Following this same line, 40% believed that it was possible to have democracy without political parties.

In addition to employment problems, poverty, and inequalities, *Latinobarómetro* confirmed that Latin American citizens pointed to criminality,

[7] Latinobarómetro Corporation is a private non-profit organization, based in Santiago, Chile, that is responsible for carrying out the ***Latinobarómetro*** survey and for distributing the data.

drugs, and public security as another big problem (PNUD, 2004: 195). The perception of a good part of the population concerning this problem arises on one side from the inefficiency of the State in maintaining the monopoly on the legitimate use of force, allowing that armed groups, militia, criminals, place in risk the life of citizens, and on the other side it also shows that the State itself in Latin America is considered a violent perpetrator because of the actions of its armed and police forces, because of the existence of termination groups, of illegal executions, arbitrary actions, torture, and abuse that happen inside public institutions.

In this sense, and according to Juan Mendez, an unquestionable characteristic of democracy in Latin America is that "violent and illegal behavior of state agents is so wide spread that can be considered a common practice on the *modus operandi* of many organizations responsible for law enforcement" (Mendez, O'Donnell & Pinheiro, 2000: 34). In Brazil, for instance, since 1980, despite a democratic regime in effect after 20 years of a military regime, the number of civilians killed by the police is quite high. In São Paulo, from 1990 to 1998, 6,218 people were killed by police forces, an average of 691 p.a. and 58 per month (Pinheiro, 2000). A recent visit of Philip Alston, UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions in November, 2007 confirmed that only that year in Rio de Janeiro 1,330 people had been killed by the police, and that represents 18% of the total number of homicides that occurred in the state in that period; an average of 3 people killed every day.

Guillermo O'Donnell (Mendez, O'Donnell & Pinheiro, 2000: 345ss) said that in addition to possible formal failures in the legislation of several countries that can give a clear cut biased treatment to some minorities or social groups making the adoption of fair processes difficult, in Latin America the application of the law in legal proceedings is biased and clearly selective. According to *Informe Latinobarómetro* 2000-2007, 75% of the population in 2007 believed in the existence of inequalities in the access to justice, and only 22% believed that they received equal opportunities from justice. Except for Venezuela where 38% of the people believe that opportunities of access to justice were equal to all, most of the countries in Latin America show a great disbelief in equal access to justice, as is the case in Brazil and Argentina (10%), and Chile (15%).

The most vulnerable groups receive law enforcement more severely, whereas more powerful groups are ignored, or they create mechanisms to avoid been reached

by the legislation. It is following this logic that relationships between the State bureaucratic apparatus and citizens are established as it was observed before, and that are stained by lack of respect to the legal structure with unequal treatments and inefficiency of public administration that reproduces privileges and weakens the democratic regime.

PART II

THE NEW PENAL POLICIES AND THE PANORAMA OF THE CRIMINAL JUSTICE SYSTEM IN SOUTH AMERICA

In geographical, economic, and political terms, South America represents a considerable part of Latin America. The thirteen countries congregated therein[8] include a population of approximately 385 million people[9] (almost 68% of the Latin-American population) and a GDP that went from 1.452.740 million dollars in 1998 to 3.232.140 million dollars in 2006.

Before it was able to stand as a region with reasonable empowerment, its long history of economic dependency and political subordination transformed South America in the faithful berth of ideologies that came out in developed countries, just like it happened with liberalism, and the positivism in the 19th century. With the objective of making progress that might place them in equal conditions with wealthier countries, South American nations transplanted to their States and societies countless lines of thought that, nevertheless, resulted in very controversial and inappropriate local impacts because of the different social and political structures that characterized so different countries.

In like manner, when criminology advanced around the world, mainly with the contributions of Lombroso and Ferri, this science was very well received in America in the late 19th century (Olmo, 2004). The local elite embraced this current and made it a tool of law and order resource to create conditions to include the continent in the international dynamics. In the name of "criminological science", the elite established a new type of control for crime, and new guidelines to organize criminal justice institutions that reached mainly those populations of indigenous and African origin.

Particularly on the first half of the 20th century, there were many initiatives to modernize the apparatus of criminal justice trying to create prison systems guided by those ideals coming from the European systems, based on the assumption of prisoners´ rehabilitation. But the initiatives of construction and operation of prison units driven by such ideals were burdened with contradictions concerning domestic conditions that countries in South America – holding a slave population and being

[8] Argentina, Bolívia, Brazil, Chile, Colômbia, Equador, Guyana, French Guyana, Paraguai, Peru, Suriname, Uruguay and Venezuela.
[9] ECLAC, Annual Statistics Book, 2008. French Guyana population not included.

elitist – presented, thus turning everything into another political speech rather than a common practice in those institutions.

In this sense, changes in the objectives of penal policies that happened in the past 30 years, forged mainly in the United States and Britain, were easily assimilated in South America. There were no consistent political or institutional obstacles and quite the contrary, they were received as new tools to help improve the forms of social control over the vast impoverished masses in the continent, and that brought a deep impact on the situation of criminal justice in those countries.

The increase of mass imprisonment as a solution for limiting misery, and of the urban disorders that were hence created, generated terrible conditions as those mentioned by Loïc Wacquant (2001) in his considerations about Brazil where, according to this author, there is "a frightening state of prisons in the country that seem more like *concentration camps for the poor*, or like government owned companies for industrial storage of social debris, than judicial institutions with some function of providing punishment – dissuasion, neutralization, or re-insertion" (Wacquant, 2001: 11).

Currently, criminality growth in Latin America is continuous, mainly with those activities related to homicides, drug trafficking, theft, and burglary. Homicides in the region sky rocketed between 1980 and 2006, going from a rate of 12.8 per 100 thousand inhabitants to 25.3 (Kliksberg, 2008), and in the Andean region[10] countries this rate tripled. The effective increase of criminality can be confirmed also by the fact that between 1995 and 2007 the number of people victims of some kind of felony increased. In 1995, 29% of Latin-Americans had been victims of some kind of felony, and in 2007 this percentage grew to 38%. The South American countries that presented the greatest percentages of victims were Venezuela (49%), Argentina (47%), Peru (43%), Brazil and Bolivia (42%), Paraguay (42%) and Chile (40%) (Latinobarómetro, 2007).

The responses to this increase in criminality have been diversified in the countries in the region but they all bring basically the same repressive characteristic within the logic of sheer control and repression of crime. "Tolerance Zero" policies were adopted, harsher legislations, better support for the police as a repressive force and not a preventive force that, nevertheless, have showed no success over the deep roots that foster crime (lack of job opportunities, social inequality, low levels of

[10] Bolivia, Colombia, Equador, Peru and Venezuela.

education etc.) and over the forms of dealing with it (selectivity of the criminal justice system, difficulty of access to legal system, guarantee of fundamental rights in the penal process).

This situation maintains and reinforces the feeling of insecurity of the population and the disbelief in public institutions, and consequently in democracy as the appropriate political system for South American countries. According to *Latinobarómetro 2007*, 63% of the Latin American population feel that they live in a place that is becoming more and more insecure, and only 9% claim to live safer. Among the countries where there was the lowest feeling of living in a safe place were Argentina (only 2%), Chile (5%) and Brazil (6%).

The pression for repressive measures and imprisonment gets worse with the intense use of preventive imprisonment and the increase of non-sentenced prisoners found in these countries. The deficient judicial system, its slow rate, its inaction, plus the lack of a defender for the defendants, the absence of strategies for the segregation of first time offenders from those recidivists, of temporary prisoners from convicted prisoners, force thousands of imprisoned individuals to live under sub-human conditions, and favor an insertion even deeper of prisoners into the world of crime. Countries like Bolivia, Paraguay, Peru and Uruguay show high percentage of prisoners without a sentence: 70%, 65%, 65% and 63%, respectively. Also high percentages found in Argentina (57%) and Brazil (45%). Chile in South America has the least percentage (24%) (Damert & Zúñiga, 2008).

Mass imprisonment as a result of such policies generates new and deeper problems, because the prison systems can no longer provide an appropriate solution for such new demand. The deterioration of prison conditions is generalized (overcrowded cells, bad food, medical service that does not exist, destitution of the families etc.). In addition, the difficulties to manage prison units increase. Unskilled professionals in small numbers cannot control minimally the daily routines in a prison and provide a safe place for society and for the prisoners themselves that remain at the mercy of groups that are becoming more organized, violent, and that take command of the dynamics of life in the prisons.

The presence of armed military police forces inside prisons increased in certain countries – such as Venezuela and Brazil –to maintain the order. Among the first reasons for this presence we find: insufficient number of technical professionals and security guards, the lack of organization of professional services, overcrowding,

and the absence of educational programs in the prisons and of work. Armed policemen control the daily routines, such as the movement of prisons in the yards, the distribution of meals, the transportation of prisoners to hearings. In these cases the prison fits in its role of sheer place of conviction, of security, without any subterfuge.

A long list of bloody mutinies is found in several countries in South America since the late 70´s. There are several examples, such as the deaths of prisoners in *Cárcel de Devoto*, in Buenos Aires, in 1978, the deaths in prisons in Peru in 1980, in conflicts involving the group *Sendero Luminoso*, the Carandiru event in São Paulo, in 1992, the dead of *Cárcel de Maracaibo (Sabaneta)*, in 1994, the dead of Santiago Del Estero in 2007 in Buenos Aires, among other many riots that resulted in hundreds of dead people caused by the prisoners themselves, or by police intervention (Elbert, 2000; Damert & Zúñiga, 2008).

The great number of imprisonment of criminals coming from the poor population in society, and the low efficiency of prison administration to control the daily activities of such places favors not only the appearance of groups of organized criminals but it has also established new forms of exchange among prison institutions and the surrounding neighborhoods in South American cities. Practices adopted by prisoners, codes of conduct, organization guidelines, forms of loyalty that interfere and sometimes even organize the daily activities of poor communities establishing a specific social ordered for these places overflow beyond prison walls. The same leaders that control the lives of all the prisoners inside the prisons also dictate how the communities and the neighborhoods where they control the criminal activities should get organized. In addition, the organization of the visits to the prisoners, the support for the defense of the prisoners with the hiring of lawyers, the networking that is assembled to receive those released from prison, the care and attention to the families of the prisoners, and a broad and complex matrix of relationships is established inside and outside the prisons (Telles, 2006; Cunha, 2005).

In South America the new models of penal policies that were adopted are failing because they do not react to the multifaceted forms of criminality found in the contemporary world, mainly the activities of organized crime, such as in illegal drug trade, and end-up dealing only with daily infractions that reach young people in a condition of social vulnerability many times favoring this group so that inside the prison system the ranks of organized crime increase. In addition, statistics have

confirmed that repression against young people and against some types of crime does not stop the trends of criminality increase in the continent and, quite the contrary; it mobilizes even more resources of the criminals in the diversification of their illegal activities. Such policies of harsher repression actually turn up criminalizing the poor, and become strategies that reinforce segregation between the rich and the poor, and renew the vicious cycle of criminality as a way of expression of social conflicts.

ARGENTINA, BRAZIL AND CHILE: DEMOCRACY, HUMAN RIGHTS AND NEW PENAL POLICIES

Modern penal policies should be analyzed in strict criticism not only in those countries where they originate, but mainly in South American countries where recent political reconfiguration and the social and economic characteristics supply a privileged *locus* of disrespect to the individuals´ fundamental rights. In this sense, Argentina, Brazil, and Chile are introduced as the focal point in this study not only because of their similarities and historical perspectives, but also because of the major importance that their justice systems have shown for their populations, governors, and for the new configuration of penal policies in the world.

Latin America´s democratic history is still very recent. In the past, the continent went through countless experiences of authoritarian regimes that, despite some peculiarities, were similar one to the other because of the prevalence of the Armed Forces in power, and by the wide spread disrespect to human rights. With the justification of promoting economic development and mainly of protecting the countries from the communist influence coming from the East, the military destroyed legitimally elected representatives and suspended many rights of the citizens starting an administration in a state of exception.

In Brazil the military regime began in 1964 with the removal from office of the president and the termination of the political parties that existed at the time with an attempt, nevertheless, of trying to keep up appearances of democratic normality. In this sense, another two allegorical parties were created, the Houses of Representatives and the Judiciary power continued working and the elections were maintained, although everything under control of the Executive where civilians and military members took turns supported by the regime. In Argentina, after the coup in

1976, a Military Joint that included the Army, the Navy, and the Air Force commanders in chief took over, closed the Parliament, suspended the elections (political parties continued to exist but ostracized), and put an end to union movements. In Chile since 1973, power remained concentrated in the hands of the commander in chief of the Army supported by a Military Joint that, in addition to the commanders in chief of the other two branches of the Armed Forces also included the commander of the Carabineros – the Chilean police. With absolute powers, the dictator closed the Parliament, terminated the activities of all political parties, and persecuted the organized movements in civil society.

During this period, these three countries had *ad hoc* legislations created, giving them broad space for the arbitrary actions that would be perpetrated by those in office. Police forces and the apparatus of justice had to serve mainly to fight political crimes committed by the enemies of the military regimes and, in addition several other actions of the State happened without legal support complicating the violations to citizens´ rights including those guaranteed by international instruments already in effect at the time. According to the records of the Organization of the American States – OAS, it is estimated that the number of prisoners in Chile climbed to 50 thousand, and the number of those missing or dead to almost 700[11]; in Argentina these figures are reversed: nearly 30 thousand missing or dead and 10 thousand arrested; in Brazil there were 300 dead or missing and 25 thousand arrested.

Currently, a few decades after democratic regimes were re-established[12], the legacy left by the dictatorships in those countries still remains. In the political ideology and culture that they left, or in the dissolution of the institutions and democratic processes with excessive use of repression – especially with physical violence – to guarantee the maintenance of order that happened in the past, or even because of the inefficiency of the State in promoting the rights of the citizens and influence in the consolidation of the Brazilian, Argentinean, and Chilean democracies. (Pinheiro, 1998)

Considering the social and economic conditions, all three countries belong to a group considered of high human development in the Human Development Index (PNUD, 2005): Brazil ranks 70th in the world ranking with a *per capita* GDP of US

[11] The number of people dead or missing in Chile varies: many civil society organizations mention between two and four thousand people killed and missing.
[12] The dictatorship ended in Chile in 1990, in 1985 in Brazil, and in 1983 in Argentina.

$4,297.00; Argentina ranks 38th in the world ranking with a *per capita* GDP of US $4,704.00; whereas Chile ranks 40th with a *per capita* GDP of US $7,351.32[13]. Nevertheless, the inclusion of these countries in the group of high human development has not been translated into the elimination of the serious violations to human rights.

The three Latin-American countries resumed the democratic life through a process of transition that included specific political arrangements in each country and that has, of course, contributed for the understanding of how the area of public security has been maintained or not under strong influence of the standards that were developed during authoritarian regimes. But, it is necessary to reinforce that this restoration follows a process of progress of the democracies in the world. The return of democracy to several countries was also followed by a central contradiction for the liberal traditions that can be seen in particular in the area of public security, among individual liberties, and in the growth of instruments of social control and repression.

Running opposite to the liberalization of the economy, to the strengthening of the market as a paradigm to regulate economic and social relations, social controls marched over the citizens in general, but especially over those segments that suffer more with unemployment, with the new economy centered on productivity that is increased with low assimilation of labor. A safeguard conception is wide spread through all fields of activities and drives actions to risk reduction. In the arena of public security, this concept turns into proposals of stricter social controls and consequently into harsher penal policies.

The penal policies adopted in Brazil, Chile, and Argentina are also strongly influenced by these new marks established mainly in developed countries. The hypothesis is that in these countries the democratic principles were not deeply rooted enough in the population and in the institutions. They were very sensitive to the adoption of harsher and intransigent penal policies even when they were in the midst of reinstituting democratic life after decades of authoritarian regime.

We shall now see, then, how is the current panorama of public security and criminal justice. This more detailed display serves not only to diagnosticate the situation in Argentina, Brazil, and Chile in this area but to reinforce the complex

[13] See Inter-american Development Bank - http://www.iadb.org

dynamics in need of attention that the situation of rights and human dignity presents in imprisonment spaces in these countries and also around the world.

1. Profile of Criminality

In the past two decades, the public security system and criminal justice became the focal point of concern for many countries in South America. This was the result of the failure of public institutions in withholding and solving the problem effectively, allied to a significant increase on crime rates, and to the diversification of illegal activities that fostered the disbelief of the citizens on the State and increased the sensation of insecurity and the generalized fear.

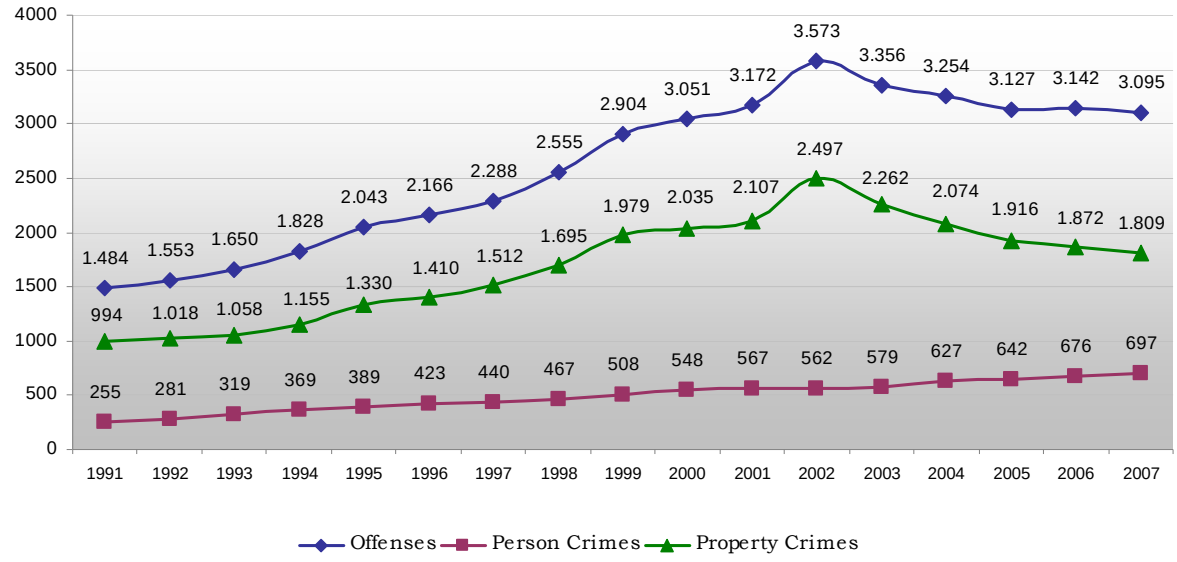
Argentina, Brazil and Chile have different systems of information about criminality both in terms of collection methodology and in terms of regularity in disclosing data, plus the use presented by such data for the development of new public policies. The agencies responsible for this work are: the Secretariat of Criminal Policy and Prison Affairs of the Ministry of Justice and Human Rights in Argentina; the National Secretariat of Public Security of the Ministry of Justice in Brazil; and the Department of Public Security of the Ministry of Domestic Affairs in Chile.

The data about criminality, although they refer to different periods and have variables that will be highlighted eventually, show on one end of the system of criminal justice how the already mentioned social and economic inequalities can have a strong influence on the figures of criminal occurrences, such as in the case of larceny with the greatest rates in these three countries. In addition, it is also possible to observe that criminal organizations that are created because of the carelessness of the State have contributed for the number of cases involving drugs (use, possession, and traffic) to increase in the past few years. Only homicides cases show significant differences among the three countries, in that Brazil records not only the greater absolute number of cases but also greater rates per every 100 thousand inhabitants in all its states. Argentina is showing an opposite trend since 2002 with a fall of almost 40% in this kind of felony compared to 2007, and in Chile in addition to homicides meaning only 0.1% of the charges of “felony of a greater social connotation”, they mean a rate of 1.6 occurrences of the kind per every 100 thousand inhabitants.

ARGENTINA

In Argentina, crime against property has increased (more than 80% of the total number of transgressions), as well as homicides (that did not increased in the same proportion but show peaks of successive increase), and mainly arm robbery that increased exponentially between 1994 and 1999 in the larger cities in the country especially in Buenos Aires and in the suburban surrounding areas (Ciafardini; 2005). In the same manner the practice of illegal activities has increased with the support of important ranks of organization, of capital investment, and of contacts with government agents, or sectors in the political and economic power[14]. Nevertheless, as shown in the chart below, the continuous growth of illegal activities stopped in 2002 when it started decreasing continuously until 2007 (last official data available for the whole country).

CHART 1. Offense Rates per 100.000 inhabitants, 1991-2007

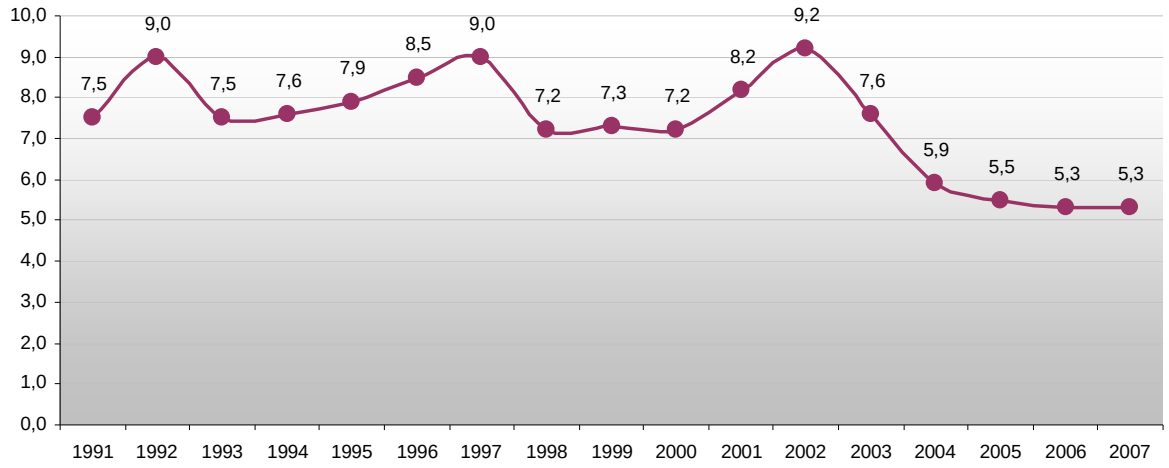


Source: Ministerio de Justicia y Derecho Humanos, Secretaría de Política Criminal y Asuntos Penitenciarios, Dirección Nacional de Política Criminal. SNEEP 2007. Available for download at www.polcrim.jus.gov.ar.

[14] In this sense, Ciafardini mentions for instance the increase of illegal drug trade, arms trafficking, trafficking of people, organized car thefts, bitumen piracy, major organized robbery, extortive kidnappings carried out by gangs. Also cases of systematic corruption of the administration, of the judicial system, and of the police, money laundry among other activities.

As for the homicide rate, a randomized trend is observed throughout that period. In 2002, it reaches a peak of 9.2, after which it starts decreasing continuously until it arrives to 5.3 in 2007.

CHART 2. Homicide Rates per 100.000 inhabitants, 1991-2007



Source: Dirección Nacional de Politica Criminal. Ministério de Justicia, Seguridad y DDHH.

The most concerning type of crime is the ordinary crime or the traditional crime, especially the crime against physical security or property of people in the immediate surroundings (Carranza; 2007). Criminal policy has focused its activities on these events. Judicial statistics show a pursuit driven to fight crime against property (especially when caught in the very act) and in many cases not harmful, and to fight those that hurt physical integrity.

The following chart displays – despite the serious deficiencies included in the method of collection and production of official data – the percentage of law transgressions during the year 2007 in the whole country and the greater number of property crimes, mainly thefts.

TABLE 1. Distribution of illegal activities and conviction sentences per type of transgression

2007 : Total of conviction sentences[15]: 29.804

Felony	2007		
	Number of Felony	Conviction sentences according to the felony[16]	Percentage
Homicides	2.071	1.025	49,54%
Person crimes	274.460	4.890	1,78%
Thefts	367.661	16.240	4,14%
Property crimes	711.987	20.007	2,81%
Defamation	624	23	3,69%
Sexual assault	10.557	1.347	12,76%
Crimes against civil status and the family order	9.266	12	0,13%
Crime against freedom	139.023	2.004	1,44%
Crime against Public Security	5.421	2.703	49,86%
Crime against Public Order	1.815	84	4,63%
Crime against Nation Security	112	0	...
Crime against Public Powers	767	0	...
Crime against Public Administration	13.258	2.279	17,19%
Crime against Authority	4.249	503	11,84%
Crimes listed in special laws	23.066	728	3,16%
Crime listed in Law n. 23.737	23.635	1.897	8,03%

Source: Sistema Nacional de Información Criminal (and also, SNIC 2007). Dirección Nacional de Política Criminal. Ministerio de Justicia, Seguridad y Derechos Humanos.
Available at: http://www2.jus.gov.ar/politicacriminal/TotalPais2007_sent.pdf

Although a more detailed analysis of the judicial power can be closely linked to a response on the persecution of urban crime, the unique characteristics of Argentinean judicial power and its connections with politics slow down the progress on the analysis of the structural deficiencies that impact on the low rates of cases solved. Like this, the mark of selectivity of the system is consolidated with these

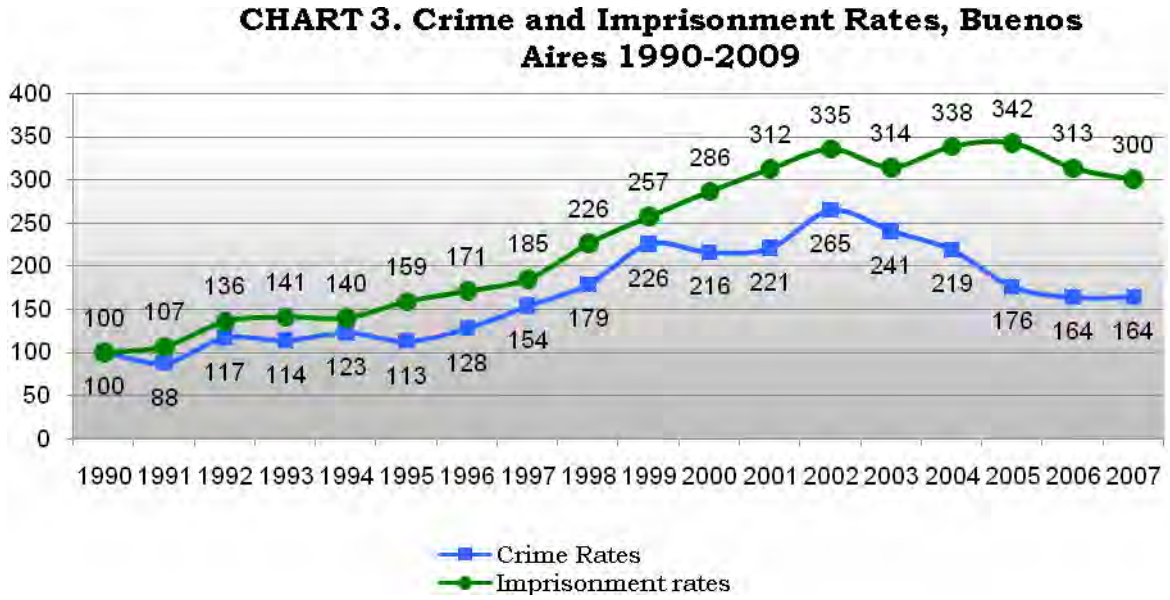
[15] Data concerning condemnations for penal cases are recorded in Registro Nacional de Reincidencia y Estadisticas Criminales. Acquittals are not included.
[16] The total number in this column does not match the total number of sentences because they can imply in more than one felony

characteristics of operations of the judicial system: almost only those cases brought to court by the police are tried; preventive imprisonment is applied automatically; very long periods are accepted for prosecution, and brief trials are deployed as a method to arrive to a sentence of conviction.

This *modus operandi* attracted attention with the identification of a practice that was called “casos fraguados” (forged cases). It was found out that some police departments in the Federal Police forged cases after a same *modus operandi* and that consisted in preparing a site where people with very few resources were caught “red handed”, or in the act with elements to commit a crime turning the event into the beginning of a penal cause. The penal justice was only able to identify these forged cases after the alarm given by NGO´s and public attorneys, and after a careful investigation of a representative of the Public Ministry that managed to match these cases when they were brought to court. These cases showed the continuous routines and the networking established among the agents (judges, law enforcers, secretaries, attorneys) and the police departments that favor the continuation of this particular way of penal intervention. (Eilbaum; 2008) As explained below, this way of intervention is strictly related with another practice perpetrated in the province of Buenos Aires where a person was falsely accused of an action that actually took place “forged causes” (“armado de causas”) The provincial justice prosecutes such cases formally and cannot clarify them before they are brought to court after several years in preventive custody.

As for the issue of drugs, it can be clearly seen the strong action of criminal persecution on the most vulnerable link of the illegal drug trade organizations instead of fighting organized crime. It is mostly about women (foreigners in most cases) that are stopped at the borders with small amounts of forbidden substances These people usually come from the poorest layers and they perform a job of easy accusation inside of the organization trading drugs, and in addition their own situation makes it difficult to obtain alternative means of imprisonment, such as house arrest.

This set-up created by the criminal policy, and of operations of the penal justice is creating deeper roots in the province of Buenos Aires where in the past few years new regulations and administration centralized on imprisonment, plus the attention of cases linked to street crimes can be observed on the chart below.



Source: Sistema Nacional de Información Criminal (SNIC) del Ministerio de Justicia y Derechos Humanos del a Nación, Ministerio de Seguridad de la Provincia de Buenos Aires y Ministerio de Justicia de la Provincia de Buenos Aires.

BRAZIL

Taking into consideration that only recently it was possible to design a general panorama of crime in Brazil since national data systematization started only five years ago, even though with the use of scarce pieces of information and information off-the-records, it is possible to confirm that crime rates followed a growing trend since the late 80´s.

Access to information about public security, such as the number of filed occurrences, types of crimes perpetrated, characteristics of the victims and aggressors, and closed cases of investigation among others were, in general terms, less reliable and more difficult to access. Bureaucratic barriers made by governmental agencies to inaccurate, hidden, or diverging data prevented a good configuration of crime reality in the country.

Nevertheless, the National Secretariat of Public Security - SENASP, linked to the Ministry of Justice disclosed in 2006 a document called “Map of Crime” (“Mapa

do Crime")[17], and although it is not a systematic and continuous research, and does not allow a longitudinal-historical analysis, it includes the occurrences registered in the country between 2004 and 2005, so as to help in a comparison among states, and reach a balance nationwide that has as a foundation a sole methodology of data collection.

According to the research, it is possible to see that larceny is still the most frequent crime and the one that increases more when compared to other types of crime. Called "violent property crime", robbery, and extortion with kidnapping add to a total of 903,773 occurrences in Brazil in 2005, which means a rate of 519.6/100 thousand inhabitants. São Paulo, Rio de Janeiro and the Federal District were the sites with the greatest rates for this type of crime, in that only São Paulo recorded 35% of the occurrences in the whole country. Thefts also occurred in most of the cases in the Southeast region (48%), and the total of 2,022,896 cases meant for the same year a rate of 1,163.1/100 thousand inhabitants.

Homicides, robbery followed by death ("latrocínio"), and injuries followed by death and that are considered "lethal and intentional violent crimes" according to SENASP included 40,974 occurrences. Of this total, 93% related to cases of homicides, with alarming rates in all states despite the decrease of some rates as shown on the table below[18].

[17] See the Ministry of Justice, National Secretariat of Public Security, Research Department, Information Analysis, and Personnel Qualification in Public Security, 2006. The information was conveyed by the states to the federal government, and its analysis should include the different forms of registration that each state has to systematize criminal occurrences, since there is no standardization, neither temporal nor in procedures to carry out data collection. In addition, it is also necessary to notice the large number of sub-notifications of occurrences, either because of the lack of access of the citizen to the agencies of security or because of the nature of the perpetrated crime, mainly those involving sexual violence and well known aggressors.

[18] Ministry of Justice, National Secretariat of Public Security, Research Department, Information Analysis and Personnel Qualification in Public Security, 2006

TABLE 2. Number and homicide rates per state, 2004-2005

Brazil, Regions and Units of the Federation	2004		2005	
	Total number of cases	Rate per 100 thousand inhabitants	Total cases	Rate per 100 thousand inhabitants
Brazil	**38.115**	**22,5**	**38.180**	**22,0**
Northern Region	**3.249**	**23,1**	**3.641**	**24,8**
Rondônia	498	33,7	446	29,1
Acre	151	24,6	116	17,3
Amazonas	412	13,3	499	15,4
Roraima	53	14,4	46	11,8
Pará	1.819	27,2	2.244	32,2
Amapá	133	24,0	106	17,8
Tocantins	183	14,6	184	14,1
Northeast Region	**11.358**	**22,8**	**11.895**	**23,3**
Maranhão	714	12,0	865	14,2
Piauí	213	7,2	281	9,3
Ceará	1.344	17,1	1.491	18,4
Rio Grande do Norte	380	13,0	549	18,3
Paraíba	679	19,2	649	18,0
Pernambuco	3.658	44,4	3.569	42,4
Alagoas	1.039	35,2	1.081	35,8
Sergipe	465	24,4	447	22,7
Bahia	2.866	21,1	2.963	21,4
Southeast Region	**19.017**	**24,9**	**17.953**	**22,9**
Minas Gerais	3.024	16,1	3.413	17,7
Espírito Santo	1.331	40,4	1.270	37,3
Rio de Janeiro	5.753	38,3	5.994	39,0
São Paulo	8.909	22,7	7.276	18,0
Southern Region	**1.830**	**11,2**	**1.770**	**10,6**
Paraná	Not informed	Not informed	Not informed	Not informed
Santa Catarina	477	8,4	418	7,1
Rio Grande do Sul	1.353	12,7	1.352	12,5
Mid-West Region	**2.661**	**21,2**	**2.921**	**22,4**
Mato Grosso do Sul	520	23,7	489	21,6
Mato Grosso	551	20,4	793	28,3
Goiás	1.037	19,2	1.124	20,0
Distrito Federal	553	24,8	515	22,1

Source: Ministry of Justice, National Secretariat of Public Security, Research Department, Information Analysis and Personnel Qualification in Public Security, 2006

Another concern in terms of crime are the rates related to "illegal activities involving drugs", such as trafficking, use, and possession of drugs that in the period of only one year increased almost 6% in number of cases. In this case, the highest rate per 100 thousand inhabitants is distributed among the different Brazilian regions with highlight on those states that border other countries, and for the capital of Brazil, the Federal District:

TABLE 3. Number of occurrences of "serious offences involving drugs", 2004-2005

Region	State	Rate in 2004	Rate in 2005
Norte	Rondônia	51,6	65,7
North	Acre	44,0	64,1
Southeast	Minas Gerais	49,0	50,6
Southeast	Rio de Janeiro	56,1	61,4
Southeast	São Paulo	86,9	88,3
South	Santa Catarina	71,2	50,0
South	Rio Grande do Sul	79,6	76,2
Mid-West	Mato Grosso do Sul	70,7	92,5
Mid-West	Distrito Federal	105,6	106,7

Source: Ministry of Justice, National Secretariat of Public Security, Research Department, Information Analysis and Personnel Qualification in Public Security, 2006.

During the same period and also as an innovation in the analysis of crime in Brazil, SENASP disclosed the profile of victims and aggressors involved in the cases that had been described to the date with the exception for the states of São Paulo, Rio de Janeiro, and Rio Grande do Sul that did not make available such information despite being considered as important centers of crime concentration on one side but very little transparent and accountable concerning the system of information on public security, on the other.

In general terms, it is possible to declare that the offenders are typically male, ranging between 12 and 30 years of age, with emphasis to the 18 to 24 years of age bracket. Only in cases of body lesions (18%) women appear significantly as responsible for the crimes. And in the case of victims, it is possible to differentiate them by gender and age. Men are more inclined to larceny, homicides, and attempts

to murder, whereas women suffer more with crime involving sexual violence and injuries. The chart below shows, broadly, how many are involved in cases recorded between 2004 and 2005, and it corroborates the proposal that great part of the Brazilian society is currently involved, directly or indirectly, in issues of criminality, and of the public security system and criminal justice.

TABLE 4. Number of victims and offenders involved in criminal cases 2004-2005

Crimes[19]	2004				2005			
	Victims	Rate per 100 thousand inhabitants	Offenders	Rate per 100 thousand inhabitants	Victims	Rate per 100 thousand inhabitants	Offenders	Rate per 100 thousand inhabitants
Homicide	20.825	19,19	14.172	13,06	24.349	21,07	15.144	13,11
Assault	239.661	220,81	223.101	205,56	308.952	267,39	257.030	222,45
Homicide Attempt	18.194	16,76	15.695	14,46	21.461	18,57	17.290	14,96
Kidnapping for ransom	201	0,19	205	0,19	617	0,53	317	0,27
Theft to transient	137.204	126,41	...	...	156.522	135,46	...	...
Robbery to transient	170.457	157,05	151.322	139,42	202.577	175,32	168.697	146,00
Carjacking	24.202	22,30	24.752	22,81	23.985	20,76	21.836	18,90
Rape	6.229	11,36	5.336	9,94	7.550	12,94	5.970	10,44
Indecent assault	5.296	4,91	4.561	4,20	7.172	6,21	5.076	4,39
Possession and use of drugs	...	...	12.607	11,62	...	...	16.970	14,69
Traffic of narcotics	...	...	8.850	8,15	...	...	11.943	10,34

Source: Ministry of Justice, National Secretariat of Public Security, Research Department, Information Analysis and Personnel Qualification in Public Security, 2006.

CHILE

In Chile, as in most countries in Latin America, criminality is concentrated in property crimes and person crimes rates are low when compared to what can be

[19] SENASP methodological considerations: São Paulo, Rio de Janeiro and Rio Grande do Sul have not sent information about the two years under scrutiny. Sergipe sent no information about 2005 and Santa Catarina sent no information about 2004.The relationship between the number of victims and the occurrence of sexual assault in 2004, plus the statistics sent by Acre showed no consistency of an appropriate statistics analysis, and therefore this information has been withdrawn from the analysis.

found in the rest of the region with a few exceptions, such as Uruguay. With the purpose of providing a good view of the size of criminality in Chile and determine its nature from the point of view of the type of felony that occurs with greater frequency, the Ministry of Domestic Affairs has been developping since 1999 several investigations and research.

In their methodology, the Ministry of Domestic Affairs decided to define which are those felonies that cause greater impact on the individuals and, therefore, impact on the sense of security of the population, trying to find among them the most serious felonies in terms of legal asset that is impaired (life and integrity) and those that occur repeatedly (property crimes in their different shapes). For the sake of this study, such felonies have been defined as "felonies of greater social impact" (delitos de mayor connotación social - DMCS) and include events of robbery, robbery with intimidation, robbery by surprise, forced burglary, theft, assaults (including serious and light lesions), homicide, and sexual assault[20].

With the use of these criteria, the Ministry of Domestic Affairs keeps a National System of Information about Crimes that is driven to the follow-up and monitoring of illegal activities and criminality, and based on the development of statistics of charges pressed in police precincts, and on arrests carried out by the Carabineros de Chile, both in terms of DMCS (felonies of greater social impact) and events of intra-family violence[21].

During 2008, then, the participation of each DMCS (felonies of greater social impact) in the total number of charges received by both police forces is the following:

[20] Ministry of Domestic Affairs, Public Security Department. Available for download at: http://www.seguridadpublica.gov.cl/InformacionDMCS.html [03-20-09].
[21] Includes charges pressed at the Police for Investigation in Chile and to Carabineros de Chile.

TABLE 5. Number of felonies in DMCS, 2008

Felony	% charges
Robbery[22]	38,2
Theft	22,0
Assault	21,7
Robbery with violence or intimidation	12,2
Robbery by surprise	5,3
Sexual assault	0,6
Homicide	0,1
TOTAL	**100**[23]

Source: Public Security Department, Ministry of Domestic Affairs, February, 2009.

As it was highlighted, it is easy to understand that larceny considered all together concentrates 77% of DMCS reported in this period. The following table shows these percentages according to rates per one hundred thousand inhabitants, always about charges that have been pressed, and introducing the two previous years for the purpose of a comparative analysis of their evolution:

TABLE 6. Rates of DMCS per 100 thousand inhabitants

	2006	2007	2008
Robbery	308,7	356,7	331,1
Robbery by surprise	113,2	143,3	143,1
Forced theft of goods	960,9	1.018,9	1.035,9
Theft	549,3	562,9	596,6
Injury	539,6	567,9	588,7
Homicide	1,9	1,9	1,6
Sexual assault	15,9	16,1	17,5

Source: Public Security Department, Ministry of Domestic Affairs, February, 2009.

Table 6 displays four types of felonies and it is possible to note a continuous growth of larceny (forced theft of goods, and theft), and of felonies against personal

[22] Includes house robbery, forced theft of goods, appropriation of cables of the electric network, theft of national assets of public use, theft of vehicle, burglary of non-inhabited places, and theft of accessories of motorized vehicles.

[23] Figures were rounded on this table and the total, therefore, is equal to 100,1.

integrity (injuries and violence). In the case of robbery by surprise, an event that defines that kind of robbery practiced against an individual caught off guard, there is an increase between 2006 and 2007 followed by stagnation during 2007-2008. Lastly, in those cases of robbery, or intimidation against people followed by homicide (that together with sexual assault are the most serious felonies in the group considering the legal asset that is protected) an important decrease during 2007-2008 can be noted.

Table 7 displays arrests of people caught in the very act and carried out by Carabineros de Chile in the year 2008 concerning DMCS.

TABLE 7. Felonies in charges by DMCS, in 2008

Felonies	% of arrests
Theft	57,3
Assault	20,0
Robbery	18,9
Robbery by surprise	3,2
Sexual assault	0,3
Homicide	0,3
TOTAL	**100**

Source: Public Security Department, Ministry of Domestic Affairs, February, 2009.

The situation where statistics include only arrests of those individuals caught in the very act, as it is possible to understand, restricts the universe of cases but helps identify that felonies that originate the great majority of arrests are those of larceny (79.4% all together), followed by arrests because of injuries caused, probably a significant part of which resulting from quarrels or confrontations.

Illegal activities involving drugs and narcotics[24], according to the statistics of the Ministry of Domestic Affairs developed after the information delivered by the Carabineros de Chile, the Police for Investigations of Chile, and the National Service of Customs, show an increase in the quantity of police procedures in the years 2004 to 2008 with a sole exception for the year 2007 as it can be seen on the table below.

[24] Law n. 20.000, of February 16th, 2005, replaces Law n. 19.366 that imposes sanctions on illegal traffic of narcotics and on psychotropic substances.

TABLE 8. Law enforcement on drugs 2004-2008

	2004	2005	2006	2007	2008
Law enforcements activities	8.901	13.122	21.176	17.976	26.386

Source: Public Security Department, Ministry of Domestic Affairs, February, 2009.

The law on drugs and narcotics impose sanctions not only on traffic and on micro traffic, but also on the consumption and possession of such substances and below on Table 9 it is possible to see the results – in number of people arrested – of the police activities mentioned on the previous paragraph.

TABLE 9. Arrest of people that violated the rules on drugs 2004-2008

Violation/Year	2004	2005	2006	2007	2008
Trafficking[25]	4.481	6.050	6.985	8.620	10.781
Possession	4.104	6.611	15.631	12.065	23.115
Consumption	3.198	4.365	4.037	3.572	3.267
Other illegal activities[26]	652	1.134	705	914	1.111
TOTAL	**12.435**	**18.160**	**27.358**	**25.171**	**38.274**

Source: Public Security Department, Ministry of Domestic Affairs, February, 2009.

The analysis of the figures shows very clearly that the illegal activity that originates the greater amount of arrests is drug possession followed by drug trafficking. As for the latter illegal activity, it is probable that most arrests are related precisely to micro trafficking activities.

As a general comment, the figures disclosed above confirm that criminality in Chile occurs essentially because oflarceny, and that there are moderate trends in the evolution of the quantity of felonies. Consequently, considering the growing number of arrests and procedures related to drugs, it would be possible to imply that there is a trend in this same sense in respect to this illegal activity.

[25] This item includes events of drug micro trafficking.
[26] For instance, Law n. 20,000 imposes sanctions on the producer, manufacturer, and trader of drugs (Articles. 1 and 2), and on the owner or keeper of a trading site that accepts drug trafficking in its premises (Article 12).

2. Penal Legislation and Repressive Trend

As mentioned in the first part of this study, contemporary penal policies have been used as a way of control applied to certain social groups. In order to achieve this purpose, more attitudes are being considered as criminal activities, and harsher are the penalties passed on to offenders with broad possibilities of freedom restriction even without sentences being passed.

Following this trend, Argentina, Brazil and Chile have staged a diversified action for the creation of laws in the area of criminal justice that supported by public pressure demanding more safety and less violence place the Executive, the Legislative, and the Judicial Powers at the service of punishment and segregation.

Legislative changes in this area take long to appear in the process of redemocratization and are rarely dealt with in a systematic way like other internal laws and international treaties are. When this coherence occurs, its focus is, as a general rule, pointed to the increase of discretionary actions of public agents concerning criminal activities; public agents that include policemen, judges, or agents that work on penal operations, and to the reduction of the guarantees to the right of defense and the freedom of the defendants.

Circumstances allowing temporary imprisonment increase, possibilities of parole are restricted, prisoners are piled-up in badly structured and unhealthy institutions in an attempt of building a "speech of efficiency" that at the same time that searches for an immediate response to fear and insecurity of the individuals, tries to pretend to be the evidence of the operations of an appropriate justice system of new democratic governments.

ARGENTINA

During the year 2004 because of all the uproar generated by the Blumberg[27] case (with a strong reaction on the media and mass mobilization) a set of reforms was

[27] On March, 2004, the death of Axel Blumberg was disclosed; a high middle-class young student that was killed after being kidnapped in the province of Buenos Aires. After this case and its broadcast by the media of the whole country, parades with multitude of people demanding more security took place.

imposed as sanctions bringing a very repressive impact.[28]. The renovation was guided to double the maximum time of imprisonment applicable for repeated felonies, in that maximum sentence possible would range from 25 to 50 years[29]; and increase the requirements to receive parole[30]; increase the sentences for felony against sexual integrity if the action caused the death of the victim[31], and increase the sentence in case of use and possession of firearms[32].

From 1999 to 2003 alterations to the penal code were introduced to make it stricter: sentences related to felonies such as being in possession of guns, for carrying guns, supplying and selling guns[33] were increased, as well as for those felonies carried out with violence or intimidation against people with the use of firearms[34]. Also, it was introduced as aggravating circumstance (with life imprisonment) the alleged perpetrator that killed "a member of the public security forces, either belonging to the police ranks or to prison staff, because of his/her function, position, or status."[35]. Also sentences in the case of kidnappings had their term increased[36] when the crime was committed with the help of minors[37].

The alterations established a trend for the strengthening of the Argentinean legal sentence system. Two questions that should be highlighted were identified because they are not included in this trend linked to the approval of the law that identifies the crime of slavery[38] and of the official initiative of resuming the debate on decriminalization of personal consumption of drugs.

The federal Penal Code received during these years several alterations that cannot be only identified as developed to make the penal system stricter but also to

[28] The haste for the approval of the alterations of the penal code brought together a series of legislative "mistakes" showing that with the lack of a broad discussion there was little seriousness in the way they were developed. For the development of the legislative work of the Congress during those months and a revision of the remaining alerations that were sanctioned refer to Informe Anual CELS 2004 (CELS 2004/a; CELS, 2004/b; CELS/2004/c).

[29] Law 25.928, that changed article 55 in the Penal Code. Approved: 8/18/04.

[30] Law 25.892, that changed articles 13, 14 and 15 in the Penal Code. Approved: 5/5/04.

[31] Law 25.893, that changed article 124 in the Penal Code. Approved: 5/5/04.

[32] Law 25.886 Approved: 4/14/04. This rule replaced article 189 in the Penal Code and introduced the concept of simple ownership of firearms for civilian use without the appropriate legal authorization, and the ownership of weapons of war. It also includes the expansion of federal competency for some concepts of ownership and possession of fire arms (article 189 bis, paragraphs 1, 3, and 5); some concepts of illegitimate deprivation of freedom (articles 142 bis, and 49 ter); and some concepts of crimes of public intimidation (articles 212, and 213 bis).

[33] Approved: 14/04/99, Partially Passed: 05/11/99, .Official Newsletter 05/14/99.

[34] Approved: 09/08/00, Passed after Due Date: 09/20/00, Official Newsletter 09/22/00.

[35] Approved: 23/05/02, Passed: 06/10/02, Official Newsletter 06/11/02.

[36] Approved: 04/06/03, Passed: 06/19/03, Official Newsletter 06/20/03.

[37] Approved: 06/08/03, Passed after Due Date: 08/29/03, Official Newsletter 09/01/03.

[38] Law n.26.364 for the Prevention and Punishment of Slavery and Assistance to Victims, Approved on 04/09/2008 and published on the Official Newsletter on 04/30/2008.

restrict a code that was already "born outdated". The alterations did not maintain a determined line; they were a reaction to certain political situations (some of which trying to make things tougher), and hold a very deficient legislative technique. This structure developed a penal system with many operational problems, and much incoherence. (Pastor; 2004/b).

The Code, for instance, did not determine a limit for preventive imprisonment although in the year 1994 the law established limits (not very concrete ones) to preventive imprisonment and the method to count days served in preventive arrest. This rule that was developed during social pressure for longer imprisonment periods, was soon modified and had its reach restricted. On the other hand, it was determined that certain types of crime could not receive prison sentence (Law n. 24.410, 1994), and police authority was increased to allow them to proceed without a judicial order and arrest, inspect, and interrogate (Law n. 25.434, 2001) and to perform forceful entries in case of urgency (Law n. 25.760, 2003). The concept of undercover agent was created to deal with drug trafficking. And other concepts, such as brief trial or trial without formalities were introduced, as well. Furthermore, this kind of police activity that was wide spread in the country (Eilbaum; 2004/b) became ratified by the jurisprudence when, for instance, police instincts were considered enough to justify an arrest.[39]

A recent alteration seems, nevertheless, to move in the opposite direction of such trend. By the end of 2008, a change was approved in the Penal Law to increase the hypothesis for allowing house arrest to pregnant women, and to mothers of children younger than five years of age or disabled children they took care of[40]; to people older than 70 years of age, and to terminal phase individuals. In Buenos Aires this same alteration was used to justify a restriction to the alternatives of preventive imprisonment and allow them only in these humanitarian cases. As one can see, these alterations cannot be analyzed outside the context where they have been created, since they represent a concrete progress for this group of people.

[39] Refer to "Navarro, Franco Maximiliano s/recurso de casación"; Room IV in the Cámara Nacional de Casación Penal, October 15th, 2008; suit Nº 8121.

[40] It is a change in article 33 in Law n. 24.660. The new context of the article goes as follows: "…A house arrest sentence can be imposed to: a) A sentence defendant older tan seventy years of age; b) The sentenced individual that suffers from incurable disease and in the terminal phase; c) The setenced individual that suffers from a very serious disorder or disability and that because f such condition needs special treatment or attention that could not be administered in prison or in a hospital; d) To pregnant women; e) To the mother of a child younger tan five years of age, or of a person with disability and that is under her care."

Whereas in the province of Buenos Aires, just like it happened in other important provinces such as Mendoza, it is possible to note that as of the year 2000 a more standardized trend for alterations took place, strongly highlighted by an agenda of limitations to the penal system.

The alteration had as objective the determination of the categories of crime that mandatorily needed preventive imprisonment (provincial Law n. 12.405, 2000). This catalogue provided a list not only for property crimes (robbery with deployment of guns, essentially) but also included every stereotype in the law and order movement of the time. The law listed several reasons why crime could not be prison driven[41]. As it is quite clear, this brought an indiscriminate increase to the number of people ousted of their freedom, even in cases involving low consequence such as repeated shoplifting in supermarkets.

On the other hand, this change brought new possibilities of investigation for the police. The legality of control operations ("operativos de control") without a special reason to justify them (commonly called “razzias” by the population), and the right and legitimacy of police interrogatory of those arrested were established. (CELS; 2002).

With a few exceptions, these alterations were also judicially ratified.[42]

On the other hand, during this same period the Ley de Ejecución Penal Bonaerense (Law n. 12.543) (penal law of Buenos Aires) was changed to restrict the regime of progressive penal system (that allowed early release from prison) for those cases of people convicted because of specific crimes, such as robbery with the use of guns, for instance.

During the year of 2004, following the situation of repercussion of the Blumberg case, these provisions received greater restrictions. A new law (13.177) changed the already altered article 100 of the Penal Law of Buenos Aires trying to provide greater restriction of crime hypotheses to the regime of temporary leaves, the establishment of freedom under close observation, and open regime. Finally, with Law n. 13.183 justifications to restrict release from prison were increased.

[41] Crimes that received a sentence longer than six years of imprisonment, or those crimes were several people got involved, or the partitipation of one or more people under the age of 18 was confirmed; if because of crimes perpretated repeatedly, made a sentence of parole imposible; if the defendant was on parole; if fire arms were used during the event, or it was a crime with a sentence longer than 03 years but there was no deployment of any kind of weapon (actual weapon or improvised); or in the event of simple theft with violence against people.

[42] Refer to “Un fallo que convalida el polémico olfato policial”, 15/02/2008, Page 12.

These alterations supported the growing trend of imprisonment rate in the province under the basis of a generalized application of preventive imprisonment. As one might presume, these alterations brought a direct impact on the judicial and prison systems. Prison population grew exponentially to a point when the executive power of the province declared state of emergency for the system. The alarming levels of overcrowding, the repeated violations of rights that occurred in prison cells in the province, and the absence of an effective judicial response caused the intervention of the Corte Suprema de Justicia de la Nación (Supreme Court) in 2005. This was a decision[43], where the highest court in the country maintained that it represented a structural situation of inhuman treatment, cruel and demeaning, caused mostly by those legal alterations that had been promoted by the government.

After this decision in March, 2006, the code of procedures was altered (law n. 13449[44]) to bring back the rule of freedom during the lawsuit and of the condition of exception for preventive imprisonment.[45] This legislative change contributed to a change of trend concerning the increase of the amount of arrested people in the province. This in turn brought changes to the judicial practices because new judicial decisions showed an inclination to allow the defendant to wait for sentence in liberty.

Nevertheless, two years after this alteration, and without resuming the high levels of overcrowding and abuse of preventive imprisonment, the province government started to promote regressive measures.[46]. On December, 2008, a project for reforming the penal process was approved to restrict, once again, the use of alternative measures to preventive imprisonment, and to restrict judicial decisions that allow prison release.[47]

The proposal developed by the minister of justice was a proposal to extend to four years the term possible for preventive imprisonment[48], and restrict the event of habeas corpus (writ against illegal imprisonment) to prevent this writ from being

[43] CSJN, suit nº V856/02, "Verbitsky, Horacio [representative of CELS] w/o habeas corpus", May 3rd, 2005.
[44] Law n. 13449, March 14th, 2006.
[45] The alteration of the regime of release of prison was also a consequence of the hearing carried out on March 17th, 2006 by CIDH upon request of the Republic of Argentina to deal with the situation of people divested from freedom in the province of Buenos Aires.
[46] This measure was passed after the tragic event known as "masacre de Campana" (the massacre of Campana), after which it was decided to bring to trial the Juez de Garantías (judge of first instance), Nicolás Schiavo that had granted obsequiousness in preventive imprisonment for the main defendant of the crime, and stated to the media that a possible solution for lack of security might be in lowering the age for imputability.
[47] CELS opinion on the project can be found in:
<http://cels.org.ar/common/documentos/reforma_CPP_Nov08final.pdf>.
[48] The proposal established two years of term for the preventive imprisonment, and that could be extended to another two "in the event of complex cases" up to the moment of verdict after which the period for the sentence would be determined according to "judicial ruling".

used in every illegal imprisonment. Although, parliament softened the original proposal, the project was finally approved with the alteration of the system of prison release.

The use of brief trial was increased (for crimes with sentences under 15 years). These two alterations complement each other in the process started some years before to establish "very straightforward" trials for those cases where the offender was caught in the very act and that could be included in simplified procedures that intended to shorten legal processes.[49]

BRAZIL

Brazilian penal legislation is a responsibility of the Federal Legislative Power, nevertheless, administrative contributions on this area can also be made by the State Executive Power. This means that despite major social and political differences among the states, they should all follow the penal guidelines created by the central power, differently from what takes place in the US, for instance. States administrations develop rules to organize the operations of the public security system and of the criminal justice, and to provide feasibility to law enforcement, here included the Police, the Judiciary Power, the prison institutions, and other agencies, as it will be detailed on the next topic.

The Federal Constitution of 1988 itself lists principles and stone carved guarantees[50] in concern to the fundamental rights of the individuals, trying to avoid the repetition of

arbitrary activities and excessive aggressiveness that occurred during the previous authoritarian period, or in case they do occur, trying to enable their legal prohibition. Among these rules, it is possible to highlight some related to criminal policies, such as the rule that prohibits the adoption of the death penalty, of sentences to life, of forced labor, of exile, and cruel sentences (Article 5, paragraph XLVII); those that ensure to

[49] The combination of the over use of preventice imprisonment, the long duration of preventive confinement, and the promotion of brief trials in practical terms result in unfair situations for the defendant: many people preventively arrested are forced to a quick sentencing, even at the costs of their own rights, to avoid an extension of the situation of the preventive measure.

[50] Stone carved clauses are those constitutional articles that cannot be modified in any circumstance, whatsoever, by any kind of legislative process, unless a new Constitutional Assembly is summoned to develop a new Constitution.

prisoners the respect to their physical and moral integrity (Article 5, paragraph XLIX); those that ensure that the sentence will be served in distinct establishments according to the nature of the crime, age, and gender of the convicted prisoner (Article 5, paragraph XLVIII); those that determine that the State will indemnify the prisoner in case of judiciary error, in addition to those that remain in prison after the sentence is served (Article 5, paragraph LXXV), among others.

More especificaly, the Penal Code[51] is the instrument that identifies criminal behaviours, that defines the respective punishment, and that characterizes the aggravating and the mitigating circumstances of a crime. Originally published in 1940, the Penal Code has been object of several alterations that try to overcome the obsolete context of many of its rules without, nevertheless, dealing with such alterations systemically. In parallel, it is also possible to verify a process of making laws that creates scattered laws that cause a multiplication of criminal behaviours, and reinforce the punishment approach of the justice system, like the Hideous Crime Law[52], that applies differentiated treatment to crimes such as kidnapping, rape, trading of narcotics, and qualified murder, and with its origin related to crimes that have as victims people of great national visibility like an entrepreneur or a tv actress[53].

For the legal process, the Penal Proceedings Code[54] establishes the legal rituals that have to be followed in every stage of the criminal justice system, from the police investigation through which the police begin the investigation of criminal activities, to the sentence and the appropriate appeals on superior courts that define a sentence or the pardon to the defendant. According to the Comissão Parlamentar de Inquérito

[51] Decree law n. 2.848, of 1940
[52] Law 8.072, of 1990
[53] According to Pinto (2006), "extorsions because of kidnappings and, mainly the kidnapping of the businessman Roberto Medina in Rio de Janeiro contributed as an immediate and determining factor for the development of Law 8.072 of July 25th, 1990. Under the impact of mass media, the great number of kidnappings served as a pressure mechanism to which the legislator could not resist. Therefore, theHideous Crime Law, was approved with extreme urgency". "The inclusion of homicide as a hideous crime only happened four years later as a remedy for the omission of the 1990 legislator that forgot to include murder, specially aggravated murder, in the list of hideous crimes. Law 8.930/94 that modified the list of hideous crimes had its origin linked to a notorious fact of broad national repercussion: the murder of Daniela Peres, an actress from Television Globo Network by a colleague of hers, Ghuilherme de Pádua. Glória Peres, her mother and famous soap opera script writer with the support of social communication means managed to articulate a strong movement of manipulation and motivation of public opinion for the inclusion of homicide in the list of hideous crimes. Sensationalism took over the media that started demanding a more severe punitory response for the killers. This created an intense and significant political pressure on the House of Representatives that in turn, motivated by a popular motion including one million and three hundred thousand signatures, ended by voting a penal law that once again represented a commitment with criminal repression based on the idea of a sentence as sheer retribution for the harm caused".
[54] Decree law n. 3.689, de 1941

do Sistema Carcerário[55] - CPI (Parliamentary Inquiry Commission of the Prison System), and taking lawsuits in consideration, the trend of the representatives has been to try to restrict the guarantees of the defendants, specially where it involves the right of appeals and of contradictions, and of placing priority on imprisonment without considering all the possibilities of freedom.

Most of the proposals presented by the representatives appear right after the occurrence of crimes of great social repercussion to which the media dedicates special attention. And, in the outcry of social indignity, changes that go against the most consolidated and inviolable principles in the Federal Constitution, such as life imprisonment, or death penalty, or the law that created the Differentiated Disciplinary Regime[56], for very dangerous crimes. In addition, there are those projects that increase the possibility of preventive imprisonment[57], that increase to four fifth the prison term to be met before parole is granted[58], or those that prohibit the conversion of a sentence that restricts liberty into a sentence that restricts rights[59].

On March, 2007, the President of the Republic approved two laws that were passed by the National Congress at all speed concerning public security. The first law identified as a serious disciplinary prisoner's offense, and crime of a public agent, the use and possession of cell phones and radiocommunicators inside prisons.[60]

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[55] Chamber of Representatives Parliamentary Inquiry Commission for the Prison System, Final Report, July/2008.

[56] Law 10.792, of 2003 – "Article 52. The practice of a fact anticipated as a felony is a serious fault and if it causes subversion of order or of internal discipline, it submits the temporary prisoner, or the convicted individual, without any decrease of the penal sanction, to a differentiated disciplinary regime (...) § 1 The differentiated disciplinary regime can also include temporary prisoners, or convicted individuals, either national persons or strangers, that represent a high risk to order and the security of the penal establishment or to society. This regime is being questioned judicially in the Federal High Court because of its inconstitutionality.
§ 2º The temporary prisoner or the convicted individual with suspition of involvement or participation under any circumstance in criminal organizations, groups or gangs will also be subject to a differentiated disciplinary regime "

[57] "Preventive imprisonment can be declared as a guarantee of public order, of the economic order, by convenience of the criminal instruction, or to ensure law enforcement whenever there is evidence of the existence of crime and sufficient indication of authorship" (Article 312, Penal Process Code)

[58] This period currently corresponds to two thirds of the sentence.

[59] "Sentences that restrict righs are independent and replace those that prevent freedom when: I) applied to freedom preventive sentence that does not exceed four years and if the crime has not been committed with violence or under serious threat to the individual, or no matter the term of the sentence, if it is a culpable crime; II) if the defendant is not a repeater of felony; III) the culpability, the records, the social conduct, and the personality of the convicted individual, as well as the reasons and the circumstances of the crime show that such replacement is not enough" (Article 44, Penal Code)

[60] Federal law 11.466, of March 28th, 2007, published in the Official Daily Gazette of the Union, 03/29/2007, Special Edition.

The second law restricted the rights of those authors of "hideous crimes" when it established that sentenced prisoners because of this kind of crime are entitled to the benefit of sentence progression and parole after they serve at least 40% (2/5) of the sentence for first time offenders, and 60% (3/5) for repeat offenders. A bill that remained on standby in the National Congress for a year was voted in a regime of urgency and approved in the Chamber of Representatives on March 14th and in the Senate by symbolical voting.[61] After that, the federal representatives that approved the law restricting the rights of perpetrators of "hideous crimes" to sentence progression, proposed a change to the law when they noticed that it had increased the rights of "hideous crimes" perpetrators because it allowed the appeal from the sentence of conviction in liberty.[62]

With the possibility of imprisonment wide open, the Judiciary Power, very much criticized because of its conservatism, share the ideology that offenders should be kept recluded from society not only as a way of punishment but as a "public security policy" that mitigates the sensation of insecurity of the population. But this repressive trend has not been able to restrict the activities of the offenders and has also been responsible for the exponential increase of prisoners, and consequently deterioration of prison conditions to which they are submitted.

Therefore, even with the existence in the country of a Penal Execution Law[63], which happens to be considered as international model for the regulation of the enforcement of sentences and alternative measures in the prison system, in practical terms it is a rule that very few follow, and many times even confronted.

The guidelines for the treatment of children and teenagers have also been based in intolerance and segregation even when supported by the Statute for the Child and the Teenager[64] that not only provides specific rights for this public but also regulates the treatment of offenders between 12 and 18 years of age. The discussion on the reduction of penal full age and criminal imputation is a continuous topic in public debates, and if any of the legislative proposals according to which there is an intention of reducing this limit to 14, 15, or 16 years of age happens to be approved,

[61] Federal law 11.466, of March 28th, 2007. *O Estado de S. Paulo*, "Lula sanctions harsher law for hideous crime", 03/31/2007.
[62] *Folha de S. Paulo*, "Representatives try to annul changes in the law", 04/10/2007. The right to appeal of a sentence of convition in liberty was denied by federal law 8.072, of July 25th, 1990 (Law on Hideous crimes).
[63] Law n. 7.210, of 1984
[64] Law n. 8.069, of 1990

the situation of the prison system and of the adolescent population already of extreme vulnerability, will surely only tend to get worse.

On the other side, the CPI (Parliamentary Inquiry Commission) with the negative diagnosis that was produced of the national prison system and of the behavior of the public powers in face of this reality, presented on its final report recommendations that reinforce the option for alternative sentences, that foster and regulate the model of a reparative justice (broadly used in other countries) and developed a classification of the worst and of the best prison units, and suggested individual and governmental accountability for the countless violations committed in the prison system. It also introduced alterations in the penal legislation, and a proposal for the creation of the National Prison Statute that, nevertheless, will still have to face a long scrutiny by the National Congress and do not find a favorable atmosphere for their approval.

In addition, the Ministry of Justice, through the National Prison Department, included in the National Program of Public Security and Citizenhip[65] – Pronasci, a Master Plan for the Prison System through which each state developed its own diagnosis of the prison situation and established targets to meet the Penal Execution Law to its full extent. To achieve this goal, the Federal government will make available financial resources from the National Prison Fund – Funpen, and the state government defined parameters of action, such as steps for its development and deadlines for the conclusion for the following items included in the LEP (penal execution law) and up to now, twenty five years after the law was created, not achieved or regulated: Patronage; Community Councils; Ombudsman; Internal Affairs; Disciplinary Councils, Technical Committee for Classification (of Prisoners); Bylaws and Regulations; Legal Assistance; Defense Office; Alternative Sentences; Agents, Technicians and Administrative Personnel; Staff; Prison Administration School; Health, Education, and Qualification Assistance; Libraries; Labor Assistance; Assistance to the Family of the Prisoner; IT; Increase Number of Places; Structures and Re-structuring; Women Prisoner, and Released.

[65] Pronasci was introduced in 2007 as an attempt to implement a Sole System of Public Security congregating structural and social actions to fight criminality and to guarantee of rights of citizens and of those professionals that work in the area of security. The participation of the states in those federal programs is voluntary and receives as a counter part resources from the National Fund for Public Security, and the advisory of the National Secretariat of Public Security in topics related to this field of public policies.

CHILE

In Chile the penal institution includes from the point of view of rules and regulations the Penal Code, that identifies general felonies and misdemeanours, and to complement, those penal laws that regulate specific matters[66].

With proceedings, the general rules of application are found in the Penal Proceedings Code that establishes the principles and basic rights that should be observed during the criminal investigation that regulates ordinary penal procedures, and highlights the available resources and special procedures, in addition to the stage of judgement execution. Also the Adolescent Criminal Responsibility Law[67] establishes proceedings rules that are specific to young people between the ages of 14 and 18 years and that perpetrated torts or penal transgressions.

As of 1990, time when democracy returns to Chile, the context in which criminal policies developed was strongly marked by the need of modernization of the rules and of the penal procedures, matching internal rules to the standards in international treaties. Among the main initiatives, an official commission developed a project for a new Penal Code with the objective of modernizing the penal legislation, and another one produced a draft of the code of penal execution but until now none has reached the stage to become a law of the Republic. The post prison stage is regulated in an inorganic and scattered way by rules developed long ago and many are obsolete, among which the most important is Decree Law409,from 1932, that regulates the elimination of criminal records.

Actually, the Reform of the Penal Proceedings in effect since Juno 16th, 2005 introduced deep changes in several aspects that are inherent to the right of access to justice, on the way judgements are conducted, and to the criteria that regulate penal proceedings in a democratic State with special attention to the respect of the guarantees of the defendants and to the protection of the victims. These new features turned into deep legislative changes that include the Political Constitution and come to the introduction of a new Penal Code[68]. Therefore, not only proceedings rules were changed to adjust to international standards found in documents that were signed

[66] Some examples are: Código de Justicia Militar (military justice code), Law 12.927 on Security for the State, Law 20.000 on drugs and narcotics, Law 18.314 that defines Terrorist Activities and Determine their Punishment (known as Anti-terrorist Law), etc

[67] Law 20.084 that establishes a Criminal Responsability System for Adolescent for violations against the Penal Law.

[68] Law 19.696, of October 12th, 2000.

and ratified by Chile[69], but new proceedings subjects were created such as the Public Ministry[70], the Public Penal Defense Office[71], and also the recognition of the rights of the victims. The judicial structure[72] was also diversified with the objective of developing principles to foster the renovation replacing the old judge of trials for a modern judge of first instance (that has as main activity to control the process), and a collegiate court (to promulgate the sentence).

Although the Government has introduced with full support a program to develop prison infrastructure with the participation of the public and the private sector to which it is added the performance of a considerable amount of work for the improvement of the old infrastructure in use, during the last two decades the sustainable growth of the prison population made the overcrowding of inmates worse[73] with a deterioration of their conditions of living not only in material aspects but also in the lack of respect for their rights of living and physical and psychic integrity[74], and the rare possibilities of having access to prison benefits and social reintegration.

Among other aspects, this results in a growing perception of insecurity by the individuals that in the past few years caused a hardening of the criminal policy since the last official reports show a "decrease in the rates of accusations against felonies of greater social context since the third quarter of 2005"[75]. This hardening appears in the plan of rules through the so called Anti-delinquency Brief Agenda ("Agenda Corta Antidelincuencia") that includes two laws: one with the objective to release the Chilean Police ("Carabineros") from administrative functions (Law 20.227, in effect since November 15th, 2007), allowing them to concentrate their efforts on tasks related to people security and to fight delinquency, and the other that changes the Penal Code and the Penal Proceedings Code with the objective of strengthening the abilities of the agencies in charge of penal persecution, also hardening prison

[69] Among which the International Covenant of Civil and Political Rights, and the American Convention on Human Rights.
[70] Law 19.519, of September 16th, 1997.
[71] Law 19.718, of March 10th, 2001.
[72] Law 19.665, that renovates the Organic Code of Courts and creates the trials of guarantees.
[73] About increase on overcrowding rates refer to: http://www.prisonstudies.org/ [08-20-2006]
[74] University Diego Portales (2006), "Annual Report on Human Rights in Chile 2006. Events of 2005", Law School, Santiago.
[75] Ministry of Domestic Affairs (2006), "National Statistics Report on charges and arrests of greater social context, and family violence. First Quarter of 2006", Department of Citizen Security, Santiago.

conditions and forcing the judges to restrict the possibilities of parole (Law 20.253, in effect since March 14th, 2008[76]), as shown below.

a. Reforms of the Penal Code

- Changes the aggravating circumstances of repeated felony (Article 12 Nº 15 and Nº 16 in the Penal Code), establishing that it becomes understood that a person will be considered a recidivist whenever he/she has been sentenced even if this person has served the whole sentence[77].
- The penal figure of the receiver of stolen goods is changed with the identification of new events, such as the transformation of goods and their transportation, and the scope of felonies involved in stolen goods reception is broadened (misappropriation, receiver) to facilitate the research and later punhisment of these crimes, specially when carried out after theft, giving new shape to the goods to render their identification impossible.

b. Reforms of the Penal Proceedings Code (CPP)

- New criteria for establishing preventive imprisonment are created (Article Nº 140 I the CPP).
- Stricter criteria to grant freedom to those liable of serious felonies are developed (Article Nº 149 Paragraph 2 in the CPP).
- The obligation of the judge of calling a hearing to discuss about the maintenance or termination of preventive measures is eliminated if two months since the last oral discussion when the maintenance of the preventive prison was sustained have passed (Article 144 CPP).
- The possibility of the judge to grant release passes to the prisoner during preventive imprisonment is restricted (Article 150 Paragraph 5 CPP).
- The staff of the Public Ministry is increased with the addition of 95 new professional positions and its ability in proceedings is strengthened with the authorization to assistant lawyers to formalize the investigation and request

[76] In this part the website of the Chilean Government is under development. Special Items. Visit: Agenda Corta Antidelincuencia at: www.gobiernodechile.cl/viewEspecial.aspex?idarticulo22848 [03-15-09], added with a revisión of the changes introduced in the Penal Proceedings Code.

[77] . In this case, in article 12 Nº 15 and 16 in the Penal Code, the word "punished" is replace by "convicted" to render the aggravating circumstance legal.

temporary restraining orders (Articles 132, 132 bis, 190, 191, and 332 in the CPP).

- The work of prosecutors is made easier with the permission to bring to their presence the prisoner arrested in preventive imprisonment whenever they see fit provided the objectives of the investigation are met and without any other procedural step than informing the judge and the defense lawyer (Article193 CPP).
- In felonies of special seriousness, it is established the possibility of the Public Ministry to access the Court of Appeals when an arrest is declared illegal, requesting the appropriate restraining order (Article 132 and 132 bis in the CPP)[78].
- A unified data base is created and uptdated for both police forces (Carabineros and Investigative Police) including those people with pending arrest orders with the objective of controlling their identity. This data base will include photos, fingerprint files, or physical characteristics.
- The time limit for crimes detected in the act is increased to twelve hours (Article 130 CPP)[79].
- The period for identity control is increased from six to eight hours. The police is entitled to control the identity of people without a request of a prosecutor to check if there are any indications that such people committed a felony or a transgression (Article 85 CPP)[80].
- It is expressly established that during the identity control the police are entitled –without the need of new indications – not only to record the clothing,

[78] Like this, every resolution where an arrest has been declared as ilegal can be brought to the Court of Appeals when dealing with serious offenses (kidnapings, abduction of minors, sexual abuse, parricide, manslaughter or murder, theft followed by homicide, or other circumstances of similar gravity, theft with intimidation or violence, theft of houses or of places used as houses, theft by surprise, and crimes against the Drug Law). In these cases, even when the arrest has been declared ilegal, the hearing may continue formalizing the case to the defendants, or requesting temporary restraining orders according to the case.

[79] , In such circumstances that it is extended to the immediate time after the felony – gap that characterizes a transgression caught in the very act – everything that occurs between the perpetration of the event and the arrest of the offender, and always before a period of twelve hours.

[80] The control of identity can only take place for cases with a basis, and such cases are characterized by the existance of an objective indication that serves to qualify it. The change allows the police to perform controls based on supposed indications that the person might have committed or tried to comit a simple transgression or felony, that the person intended to commit the felony, or that the person might transmit useful information for the investigation of a crime, a misdemeanour, or a transgression. The ability to control is also extended to those that cause impediment or hide, make it difficult, or conceal their identity.

equipment, or vehicles the person under investigation has but also to check for any pending orders of arrest (Article 85 CPP).

- The police is entitled to keep evidence and start the first investigative activities concerning felonies caught in the very act and committed in rural zones, or areas of difficult access (Article 83 letter "c" CPP), whenever there are police experts on the site where such events occur, and there is a possibility of losing the evidence, delivering such evidence to the Public Ministry as soon as possible[81].
- The prosecutor is entitled to request an early statement of minors of 18 years of age that are victims of sexual abuse (Article 191 bis CPP). While ruling, the judge should consider all the personal and emotional circumstances of such minor.
- The conditional suspension of the procedure should be submitted with the presence of the regional prosecutor in case of serious felonies (Article 237 Paragraph 6 CPP). In case of prisoners because of serious felonies (homicide, kidnappings, theft with violence or intimidation of people or use of force on goods, abduction of minors, abortion, drunk driving causing death or very serious lesions), the prosecutor in charge of the case should submit his decision of request of suspension of the procedure to the respective Regional Prosecutor. Even though, a new requirement is established for declaring the suspension to the offender where this procceding benefit is discussed and analyzed to see if there are no other suspensions for different activities involved.

c. Changes of other rules

On another topic, the new Anti Drug Law (Ley de Drogas) Nº 20.000[82], of Febrary 16th, 2005 have been included several innovations compared to the older legislation on drugs and narcotics. On the first place, it defines and punishes not only the trafficking but also the microtrafficking of narcotics, a specific figure for those trading small amounts of the drugs, establishing sentences of imprisonment for those that perpetrate this illegal activity. Punishment for minors has also been included, as

[81] In the past the pólice was restricted to securing the site until the arrival of a police expert.
[82] Biblioteca del Congreso Nacional (National Library of Congress), Actualidad Legislativa (legislative news). Available at: http://www.bcn.cl/actualidad_legislativa/temas_portada.2005-11-02.1419869238 [03-15-09].

well as mandatory assistance to programs of rehabilitation. Following this same line, the law increases the severity in the suspicion of the crimes. For instance, while in the past the person that had material resources to manufacture the drugs was presumed as author of the felony, in the new text it is considered immediately imputable. There is an increase of the sentences for illegal association in trafficking, and those convicted because of drug activites are not entitled to the benefits, such as restricted freedom and night reclusion.

Police assignments to investigate traffic are increased (undercover agents, interceptation of private communications, etc.), and the rules for the protection of witnesses, the performance of experts diligence, and the activities of informers are improved. Nevertheless, to investigate bank statements of people under suspicion after a request of the Constitutional Court and because of the respect to the rights of privacy (in this case banking privacy) a formal knowledge of such request is needed from the suspect.

The law creates a special fund with the resources obtained of seizures carried out by the police for the financing of programmes of prevention and rehabilitation. Lastly, the consumers that are dependent cannot occupy high places in the public administration, establishing that high rank authorities will be subject to randomized control, and eventually must submit themselves to programs of treatment and rehabilitations.

Finally, it is important to highlight that the Anti-Terrorist Law created in 1984 (during the military regime) has established a list of felonies related to attacks to transportation means and to public authorities, illegal terrorist association, and the use of explosive artifacts[83]. With democracy, the Anti-Terrorist Law passed through considerable changes, the first of which[84] established the circumstances that allow qualify as terrorists certain illegitimate events (the original copy of the rules did not include them), some activities that were considered as terrorists were eliminated, and the sentences were adjusted without any damage whatsoever, keeping their sense of aggravation of the sentence in one, two, or three levels[85], whenever trying to punish illegal activities identified in the Penal Code (homicides, lesions, kidnappings, etc.).

[83] Law 18.314 Art. 2º.
[84] Law 19.027.
[85] Law 18.314 Art 3º.

The second change[86] came to adjust the Anti-Terrorist Law to the Penal Proceedings Reform.

The reform of the Political Constitution started in 1991 with the crimes perpetrated by terrorists. In the first place, the origin of amnesty and of general pardon was established but with the approval of two thirds of representatives and senators (Article 63 Nº 16 in the Constitution), to establish a high quorum. As for exemption, also under change, it was determined that it would not be applicable in any case for events committed after March 11th, 1990, i.e., the time democracy is installed (Article 9 in the Political Constitution). On the other hand, Law 18.314 excludes the possibility of parole[87].

Other laws extended the term of imprisonment before the prisoner is illegible to parole. Law 20.230, that extended from 12 to 14 years the age brackets for minor victim of sexual abuse, excluded from the benefit of parole those convicted as author of said crime until they have served two thirds of the sentence imposed[88]. Similarly with the crimes of parricide, murder, theft followed by homicide, sexual abuse or sodomy followed by homicide, infancticide, and development or traffic of narcotics. Following this same sense, Law 19.734 that terminates with death penalty establishes that those convicted to life imprisonment are only ellegible to parole after they have served forty years in prison.

3. Configuration of the Institutions in the Criminal Justice System

The public institutions in charge of the criminal justice are essential tools in formatting the imprisonment conditions not only because of the bureaucratic instruments, their structures, processes, and resources but also because of the professionals working in this area.

The institution structure in each State and specially in those that like Argentina, Brazil, and Chile are in a process of reorganization based on democratic

[86] Law 19.806.

[87] For this reason and with the objective of solving the situation of certain people that were serving their setence during democracy, some because of events committed during the dictatorship, Law 20.042, of July 25th, 2005 changed Bill 321,of 1925, (that established rules for parole), allowing those convicted because of terrorist acts to choose for parole whenever they had served for ten years because of events that happened between the years of 1989 and 1998, and make a statement renouncing to such violence.

[88] The requisite established in Article 2 in Bill 321 is increased, and it highlghts that parole may be granted when the convicted individual, among other requisites, has served more than half of the sentence

principles define in great part how law enforcement will take place together with the respect to the rights and fundamental guarantees of the individuals. Therefore, the coherence between legal provisions and the political and administrative organization, autonomy, transparency, and responsiveness of these agencies play a fundamental role in the performance of the justice system.

In addition, it is necessary to keep attention on the intense levels of conservatorism and corporativism found rooted in the professionals in this area. After decades working without the appropriate enforcement and being recognized as developers of the lines of thought embedded in the authoritatian regimes, police, judges, xeriffs, and execution prosecutors find a hard time in changing their behavior and their ideologies, so that they could adjust to the new standards of operations of the State; it is a situation that helps increase the difficulty for the adoption of democratic practices, and also contributes with the illegal activities committed by the public agents themselves, authorized to perpetrated illegalities and abuse in times passed.

All things considered, the creation of new agencies, such as the Public Ministry and the Attorney´s Office must be highlighted as a necessary progress that the three countries developed in their recent institutional reforms. Effectively implemented and provided with the appropriate accountability, they will be important tools in the promotion and guarantee of rights, the restraint of abuse and illegalities, and a turnover in the civil servants´ staff.

ARGENTINA

As for the judicial court, the Supreme Court of Justice of the Nation - CSJN (Corte Suprema de Justicia de la Nación) is the top agency of the federal Judicial Power. Under the jurisdiction of the CSJN there is the National Chamber of Penal Disfranchisement (Cámara Nacional de Casación Penal), the Federal Chambers, the federal oral courts and the lower level courts for criminal and correctional federal matters. In turn, the national justice presents this same judicial structure with judges for trials of crimes that are not included in the federal sphere and are committed in the territory of the city of Buenos Aires.

Since the late 19th Century until 1992, the "Obarrio Code" (Código Obarrio) was in effect helping to establish an inquisitive, in writing, and classified system with the central role performed by the judge. In 1991, the penal proceedings system was reformed being currently in effect but in the opposite direction of the regional trend and of the rest of the provinces, with the choice of a mixed inquisitive system[89] (Maier; 2003). The most significant aspect of the reform was the introduction of the oral, public, and contradictory judgement. The preliminary investigation continued to happen in writing and classified, performed by the judge, although with a different approach in the proceedings, it was allowed to the judge the assignment of a prosecutor to the task[90].

In the past few years, several reforms of proceedings took effect producing incoherences in the rules and highlighting technical and political deficiencies in the judicial context (Pastor, 2004/b). These reforms incorporated to the Penal Proceedings Code tasks of persecution placed on the hands of prosecutors and figures such as the brief judgement. Nevertheless, these changes of rules and regulations did not come together with changes in the structures and in the organizations, or with the provision of the appropriate resources, and paid very little attention to the issue of implementation. As result, the Proceedings Code remained with several incoherences when it tried to include accusatory figures in a fundamentally inquisitive code.

After the constitutional reform of 1994, the Public Ministry (MP) became constitutionally regulated[91], and was transformed into an extra-power, independent agency with functional and financial empowerment. It includes the Fiscal Public Ministry (MPF) and the Public Ministry of Defense (MPD) as agencies with two operating administrators, the General Attorney and the General Counsel for Defense of the Nation. Recently in 1998, six years after the penal proceedings reform, the organic law of the Public Ministry (24.946) became effective.

According to the proceedings laws, the MPF is the authority in charge of the legal process and his intervention is required to start such legal process (even more, to have the judge of instructions performing the investigation). Actually, the principle

[89] Code approved by law 23.984 in August, 1991 and still in effect (with changes). It was mentioned at the time that the code was created old and obsolete. (Pastor; 2004/b).

[90] This system generates difficulties because the criteria for its performance are not clear, nor the assignment of responsibilities or resources.

[91] The initiative to change the constitution was questioned publicly because it had as the main objective the promotion of presidential reelection. The introduction of the public Ministry can be explained in such context that opened space with the intention of providing a balance in this political discussion with the incorporation of intitutions of control and international covenants of human rights in the constitution.

of legality requires the obligatory promotion of the penal process. The Public Ministry of the Defense is responsible for ensuring that justice is available for the accused and that this assistance is free. This governmental agency represents nearly 80% of the accused that come to trial[92]. The public defense is deeply rooted in Argentina and in addition to its judicial structure, it is expected that it meets not only the function of guaranteeing the defense in court of the accused but also a significant institutional role in the definition of the policies of defense to ensure equal resources, worthy imprisonment conditions, or the protection of groups in special conditions of vulnerability, such as migrants and minors of age. (Pena y Estado; 2002, CELS, 2005/e).

It is also important to highlight that in the federal arena there is no judicial police so the Federal Police is in charge of the tasks related to prevention and to help the judicial system in the criminal investigation.

The penal justice in the province of Buenos Aires

The province of Buenos Aires remained with an inquisitive model of proceedings system until 1998. After the judicial reform that started in 1997, the penal proceedings code, the organic laws, and the police laws were modified.[93] The main problems in this process of reform appeared during the implementation stage where countless pressures to stop the progress of the measures that touched directly in the core of the judicial and police corporation and their relation with the local police were made. The reform continued with a lot of resistance, difficulties, and in the middle of one of the most serious social and economic crisis in the country. These circumstances impacted on the current operations of the penal justice of Buenos Aires, and on the failure of many objectives that had been proposed at the time.

The discussion of the need to renovate the penal judgement system gained momentum in 1995 in the context of the demands for security and for a penal system that was showing clear signs of collapse. The political decision of implementing the reform of the penal proceedings was based mainly on the deterioration of the former penal judgement model and on the lack of capacity of the penal proceedings system in dealing with a complex reality and the growing rate of criminality that was occurring

[92] Source: Defensoría General de la Nación for 1999 to 2002.
[93] The judicial reform happened in parallel with the pólice reform, and both issues seemed linked in the political and administrative debate.

at the time in the province of Buenos Aires. From the early 90´s there had been a very important increase in the number of penal causes and the judicial system showed rates of performance that did not exceed 6% of these causes.

This lack of capacity in closing cases was solved with the deployment of the preventive prison that brought together a continuous growth of the rates of imprisonment in the province. This judicial jam was translated into rates of prison overcrowding that were growing even more. On one hand, the cases of police violence and abuse without judicial investigation showed that the assignment of the investigation to the police should be a priority among the issues to be renovated. In this sense, the provincial proceedings reform had as main objectives the increase of the capacity of resolution of the system, the decrease of preventive prison rates and of prison overcrowding, and the elimination of the assignment of the judicial investigation to the police of Buenos Aires. Nevertheless, the momentum for the reform remained restricted linked to the approval of the new code and of the organic laws that needed the necessary resources and political support for their implementation, which was left in the hands of traditional bureaucracies (CELS; 2004/d).

The proceedings reform of 1998 broke down the province of Buenos Aires into 18 judicial departments (a distribution also respected by the police). An accusatory driven proceedings systems was established with the preparatory penal investigation (IPP) in the hands of the prosecutors and under the control of a judge of first instance; an oral and public procedure was determined, deadlines for the proceedings were established, institutions driven to the abbreviation of the processes were developed, such as the brief trial and alternative solutions for conflicts, such as conciliation and mediation in addition to a greater support to the free public defense system.

Like this, the judicial organization was changed: on the summit there was the provincial Supreme Court. A Court for Penal Disfranchisement was created, and at a department level, the Chambers of Appeals, the oral courts, and the judgements of first instance. These changes introduce into the judicial arena the Public Fiscal Ministry that after the reform continues with the Preparatory Penal Investigation (IPP). The Organic Law of the Public Ministry[94] regulates and organizes a public ministry that includes prosecutors, official defenders and advisors for those who

[94] Law 12.061, of 8 and 9 of Jannuary, 1998.

need, and provides empowerment and independence but not in the level of autonomy because it remains subject to the Judicial Power. The reform established the structure of the judicial police, although without the appropriate organization and that is the reason why the Police of Buenos Aires is in charge of the operations of helping the justice in the criminal investigations.

It must be highlighted that after the reform, the guarantee of counting on a technical advisor from the beginning of the investigation is met in great part by official advisors[95]. Nevertheless, the public defense depends hierarchically on the General Attorney, who is at the same time in charge of the prosecutors.[96] In pratical terms, those institutional decisions are made by the same person in charge generating important operational problems for the public defense. This situation is translated into a series of deficiencies of access to justice for the accused.

And as for the impact of the process of implementation on the pre-existing judicial culture, it faced strong pockets of resistance. The social and political trends that we described and these organized resistances brought several renovations that eroded the reform of 1998, especially concerning the protection of guarantees of the accused, and the deformalization of the system. This counter-reform movement showed a judicial power that privileged its own corporate interests of self-protection, and that maintained a relationship of constant negotiation with local powers. (CELS; 2004/d)

BRAZIL

The Brazilian criminal justice system is quite complex and diversified. Because of the federative system of political organization, the Union and the states are responsible for the public agencies that make the penal institution structure.

The Federal Supreme Court – STF that includes eleven ministers is the top institution in the Judiciary Power, and it is in charge of the ordinary jurisdiction for

[95] In the province of Buenos Aires, nearly 90% of the people deprivide from freedom need the support of the Public Defense. Refer to "El 90% de los procesados `tiene defensor oficial" (90% of the defendants have an oficial lawyer), 03/23/2009, Diario Hoy (Hoy newspaper).

[96] The weakness of the public defense in the province is directly connected to its lack of autonomy. The daily activities of the lawyers in Buenos Aires show an important lack of homogeneity on the ranks and distinct judicial departments. In addition, some lawyers develop strategies of great creativity and inteligence that are not found in other jurisdictions. For more details, refer to CELS, Memorial presented to SCBA, and available at www.cels.org.ar.

the maintenance and protection of the Constitution and other cases of national importance[97], as well as the judgement of appeals forwarded by Superior Courts. In addition to the STF, the Judiciary Power is subdivided into "Ordinary Justice" - that includes the State justice and the Federal Justice with the respective Judges of first instance courts, and the Superior Courts with the High Court Judges (Desermbargadores)-, and the "Specialized Justice" that includes Electoral Justice, Labor Justice, and the Military Justice.

The criminal suits can be judged by the State Justice and by the Federal Justice both, depending on the nature of the transgression, or of the quality of the parties involved as determined by the Federal Constitution. The types of crimes listed in the Penal Code are judged by the State Justice Criminal Bench Courts[98] according to the rules defined by the Penal Proceedings Code, and the execution of the sentences will receive a follow-up of the Penal Execution Bench Courts supported by the Penal Execution Law[99]. The Federal Justice deals with, among other causes:

- *Political crimes and penal transgressions practiced against good, services, or interest of the Union, or any of its autonomous entities or public companies, contraventions excluded, and in compliance with the competency of the Military Justice and the Electoral Justice*; (CF, Article 109,IV);
- *Crimes defined in international treaties or covenants that after having the execution initiated in the Country, the result should or should have been declared abroad, or in reciprocation*; (CF, Article 109,V);
- *Causes related to human rights concerning paragraph 5 in this article*[100]; (CF, Article 109, V-A);
- *Crimes against the organization of labor and in those cases determined by law, against the financial system and the economic and financial order*; (CF, Article 109,VI).

[97] Mainly those involving members of the Powers of the Union

[98] The exceptions to this rule are clearly indicated in the Federal Constitution, and they have as basis the holders of political positions in high ranks, such as the President, Ministers, Governors, Mayors, and members of the Public Ministry, of the Parliaments, and of the Judiciary Power.

[99] Not every state (or counties within the states) have specialized bench courts for criminal suits, in that in these cases the same judge can try lawsuits of different natures.

[100] Article 109, paragraph 5 - In the hypothesis of serious violations of human rights the Republic Attorney General with the purpose of ensuring the fulfillment of the obligations imposed by international treaties of human rights and of which Brazil is signatory, may request from the Superior Court of Justice during any stage of the investigation or of the suit an incident of move of competence to the Federal Justice.

Since 2005, in those cases of penal transgressions of a lower offensive potential, in this case considered those where the maximum sentence is less than 02 years, accrued with a fine or not, it is also possible to appeal to Special Criminal Courts[101], created in the structure of the State Justice to operate according to the criteria of simplicity, expeditiousness, and, whenever possible, trying to reach conciliation or a transaction.

It is up to the Public Ministry the ownership of a public penal process after the petition of the victim of an offense, or a requisition of the Ministry of Justice[102]. The Public Ministry is considered by the Federal Constitution as an essential agency to Justice, and "it should render the defense of the legal order, of the democratic regime, and of the social and individual interests available"[103], with operational and administrative independence, and with positions available to those who pass a test performed as a public contest. Its structure includes the Union Public Ministry (subdivided Into Federal Public Ministry, Labor Public Ministry, and Military Public Ministry) and the Public Ministries in the states, each operating in the segment that corresponds to the Judiciary Power. Its functions also include the external control of the Policie, the request of investigation procedures, and the inauguration of a police inquiry.

Another essential institution is the Public Defense that is in charge of legal guidance and the defense of those individuals that deprived from financial sources cannot afford a private lawyer. A research carried out by the Ministry of Justice shows, nevertheless, that the number of public defenders is infinitely lower than what is needed to meet the demands of the poorer layers of the population. Em 2005, there were in Brazil 3.624 public defenders in activity[104] in the states and in the Federal District, which represented the rate of one defender for each 83,222 applicants for their services (older than 10 years of age and with an income of up to 03 minimum wage)[105]. In addition, despite the Federal Constitution preech an operational independence of the institution, three Defense Departments were still subordinated to some State secretariat[106], and another 21 were directly connected to the state

[101] Law 9.099, of 1995
[102] The presentation of a penal action is usually a public activity, unless the law declares it private, such as the case in crimes or perjury, slander, or seduction for instance.
[103] Federal Constitution, Article 127.
[104] Taking into consideration that Santa Catarina and Goiás had not installed the Defense Departments in their states, yet, and that the state of Parana did not answer the research questionnaire.
[105] Ministry of Justice, II Diagnosis of the Public Defense Department in Brazil, 2006.
[106] Federal District, Minas Gerais, and Pernambuco

governor with very little variance on the level of autonomy. The activity of each Public Defense Department is regulated by state complementary law that defines the assignments for each defender, as well as the territorial distribution of the services to be rendered, which includes or not the existence of specialized defenders in criminal and prison matters depending on the priorities established for each entity, and of the availability of human and financial resources to meet such priorities.

After the proceedings stage is over, there is no exclusive public agency that takes the responsibility for the fulfillment of the sentences and for the assistance to the sentenced individual, neither on the state or federal scope, and this task is assigned to different agencies that do not have a regular and standardized flow of activities. The security and control of the prison units are carried out by prison agents that are hired according to a method that employs tests called public contests, and are subordinated to the state secretariats that are responsible for the prison system, and that can either be a specific secretariat in charge of prison administration, or a justice secretariat, a public security secretariat, or a social defense secretariat depending on the administrative set-up of each state.

It has still to be highlighted that the recent creation of two federal prisons of maximum security included the creation of positions of federal prison agents that are subordinated to the National Prison System – Depen, connected to the Ministry of Justice[107]. In addition to the administration of the federal penal establishments, Depen also realizes a periodical data collection about the prison system in all states including therein structural data and information related to imprisoned population[108].

The National Council of Criminal and Prison Policy that includes public agents and members of the civil societywas created in an attempt to define the guidelines for an innovative criminal policy, and the National Prison Fund gathers together budgetary resources to finance the improvement of the prison system providing qualification of its profesionals, the purchase and modernization of equipment, the renovation and construction of prison institutions[109]. Both are strictely linked to Depen.

[107] Bill n.. 6.049, of 2007

[108] It is worth highlighting, nevertheless, that the data require accuracy and transparency when compared to data from other sources of research that are more focused, or performed with greater accuracy.

[109] In average, according to Depen data, 74% of the agreements of the states with Funpen were used in investments for infrastructure. Available at:

CHILE

The Political Constitution of 1980 that establishes that only justice courts are entitled to execute the operations of developing the trials, judge, and provide the execution of the sentenced individual, and that no authority from the Executive and Legislative Powers may "under any circumstances perform judicial operations, interfere in pending causes, review the foundations or the context of sentences, or resume cases already closed"[110].

The Supreme Court occupies the highest rank in the Judicial Power, and it includes 21 members called ministers that are in charge of the administrative, correctional, and economic superintendency of every court in the country, except for the Constitutional Court, the Court that Qualifies Elections, and the regional electoral courts that are not included in the Judicial Power because they are autonomous entities. In addition, there are 17 Courts of Appeals in the Judicial Power that operate as second instance courts, and 540 first instance courts in the whole country[111].

The qualification and training both to join the Judicial Power and to advance in the career are performed at the Judicial Academy (Academia Judicial), a Public Law Corporation created in 1994 and that develops programs of qualification, improvement, and skills needed for the application for positions in the judicial echelon. The administration of the human, financial, technological, and material resources that the Judicial Power has is performed by a specialized agency called Judicial Power Administrative Corporation (Corporación Administrativa del Poder Judicial), that depends on the Supreme Court.

The Organic Code of the Courts establishes in criminal matter that "the judges of first instance should (...) execute the sentences on crimes and the measures of security, and solve the requests and complaints related to such execution according to the penal proceedings law"[112]. The Penal Code[113], in turn declares that "no sentence can be executed in a different way than prescribed in the law ..."[114], with the exception that "it will also be observed, in addition to what is prescribed in the law, what is

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http://www.mj.gov.br/data/Pages/MJC0BE0432ITEMIDF71EFD0CC8494E40A44C4C9382D25C1FPTBRIE.htm

[110] Article 73, Political Constitution.

[111] Centro de Estudios de la Justicia (CEJA) (Center of Studies of the Justice), Justice Report 2006-2007. Available at: http://www.cejamericas.org/reporte/ [03-20-09].

[112] Article 14 letter f), Organic Code for Courts.

[113] Articles 79 and ss., Penal Code.

[114] Article 80 Clause 1, Penal Code.

determined in special regulations for the administration of the establishments that must enforce the sentences "[115]. In addition, it must be highlighted that the courts of justice have received the power of empire, that is, they have the capacity to make their rulings executed with the help of public force if necessary, or of those means convenient to meet their objectives.

In the Penal Proceedings Reform it is up to the judges the guarantee of the custody of the rights of the accused, of the victims, and of the witnesses. In addition, they conduct the preparation hearing; decide during hearings about authorizations concerning petitions of the attorney or the defender. They also participate and give their approval to alternative sentences, such as parole, or reparatory agreement. The Oral Courts in the Penal sphere are integrated by three judges and they have to be informed about the oral judgement, analyze the evidence, and provide the ruling.

The exercise of the public penal process is a responsibility of the Public Ministry, an autonomous agency that has to conduct the criminal investigation, establish witness protection programs and protection to the victims[116]. The coverage of the Public Ministry reaches the whole national territory with the help of ten regional offices that, in turn, are broken down into local offices and are administered by 647 assistant prosecutors. The National Prosecutor is in charge of the Public Ministry. The Enforcement Office is totally independent from the Executive Power and of the Judicial Power. In the new system, the stage of investigation of the prosecutor should be exempt of procedural steps and rituals. The relationship between the prosecutor, the police, and the Coroner´s Office (agency subordinated to the Ministry of Justice and in charge of forensic examinations) should be direct and flexible.

The Public Penal Defense Office is its counterpart of the Public Ministry.This service was created during the Penal Proceedings Reform and it is provided of legal personality and subordinated to the Ministry of Justice, with the objective of providing penal defense to the individual accused of a crime, a misdemeanor, or a felony. The Defense Office is a decentralized agency integrated by the National Defense under the responsibility of a National Defender located in the capital, and the regional defense offices, and sites located all around the country. Its function is to guide the investigation, require the deployment of temporary restraining order

[115] Article 80 Clause 2, Penal Code.
[116] Political Constitution, Article 80 A.

measures to ensure the presence of the accused in court, and execute the penal process during trial. The Public Penal Office tries to guarantee the appropriate defense to all accused needing resources to hire their own defense. The defense system is organized through lawyers hired by the Office, and by private agencies that perform the function of defense, and that are selected through public tenders.

During the criminal investigation, the Public Ministry is entitled to request investigation services from the Chilean Investigation Police - PDI (Policía de Investigaciones de Chile) or, if deemed convenient, it can also assign this task to the Chilean police (Carabineros de Chile), the sole police that exist in the country[117]. The PDI is a specialized police for scientific investigation of crimes, whereas Carabineros de Chile is a preventive police mostly but that also has specialized units in the matter of criminal investigation.

The stage of execution of the sentences is transferred to the prison administration and carried out by Gendarmería de Chile, an agency subordinate to the Ministry of Justice and regulated by special rules, such as the Organic Law of the Gendarmería (Ley Orgánica de Gendarmería) and the Rules and Regulations for Prison Institutions.

4. Evaluation of the Role of Prison System Enforcement Agencies

Accountability and transparency are essential elements for a political regime to become a democracy. Intra and inter public agencies control in addition to the participation of civil society entities facilitate the monitoring of the activities of the state, so as to adjust them to the interest of the individual and improve them when and how much it is necessary to meet the realities of daily life.

Exactly like in other public sectors, also for the prison system, it is necessary to establish criteria and instances of enforcement that not only detect problems of operations but also are legally and materially ready to propose and implement the appropriate solutions.

In the case of Argentina, Brazil and Chile the control over the operations of the prison system is usually performed *post factum*, after repeated charges about illegal activities and abuse related to the prisoners and to the establishments where these

[117] Political Constitution, Article 90.

are located deprived of their freedom. This happens because, despite the legal and administrative provision for the existence of several enforcement agencies, the accrual of competencies, the lack of corrective measures because of the non fulfillment of their assingments, and mainly because of the little importance given to the prisoners render the follow-up of the penal execution of secondary importance for such institutions.

In addition, the resistance of prison governors and staff in opening doors, so that the establishments might be evaluated in terms of the conditions to which the prisoners are submitted and to the fulfillment of operational obligations by the team of professionals also restricts the action of enforcement agencies.

Thus, irregularity and superficiality can be considered as main characteristics of the monitoring of the prison systems in Argentina, Brazil, and Chile. Enforcement varies not only as a function of the legal regulation and of the fulfillment of such regulations but also because of external pressures, such as from civil society and the media, with the commitment of the public agents, and mainly with political will – that is not always shown in favor of those that are convicted.

ARGENTINA

The general panorama shows judges, prosecutors, and defenders living with the hardening of the penal system and with the different expressions of institutional violence already described.

It is without question that this situation was also set-up because of the action of the penal instances, because of their special relationship with the political agencies and their own way of operating. This combination was translated into an absence of judicial sectors that could be able to resist effectively to such policies of restriction of rights. It is interesting to analyze how this process came to consolidation with a Supreme Court that since 2004 has failled and sent messages in the opposite direction to this method of penal intervention. Neverthelessthere are possibilities available in this arena because of other courts ready to accept the charges provide strategies that can generate at least some actions of change.

But beyond these few spaces, it is possible to note almost in a generalized way the absence of the figure of the judge in his duty of control of the judicial guarantees

during the process and the execution of the sentence. The application of the preventive imprisonment automatically, and the very little or nill control of the arrest conditions are clear cut examples of this situation[118]. The prosecutors, on their side, are used to requesting preventive imprisonment automatically without improving the investigative practices, and they do not promote serious investigations concerning prison violence. (CELS; 2005/d).

Attention should be paid to a steep administratization of the stage of sentence execution and of the measures of coercion. On the federal arena, for instance, although the execution law established a broad jurisdictional control on issues that formerly depended on the administration, in practical terms this control is seriously threatened because there are only 3 courts of execution and all of them located in the city of Buenos Aires, whereas 60% of the federal prison convicted population is found upstate in that country.

Following this context, the Public Defense Office that defends a high percentage of people deprived from their freedom, becomes an essential agent to drive possible changes or inform on illegal practices. Nevertheless, in many occasions it is easy to see that the defenders also reproduce traditional judicial practices that help maintaining this *status quo*.[119]

On the other hand, the problems of social legitimacy that are present in the penal justice find a strong repercussion in the instability of the staff (judges, prosecutors, or defenders) that tried to break this inertia and question this political trend and the judicial, political, and prison practices. During the past few months, immediate and political criticism against those judges that deployed early releases has increased. This social atmosphere brings momentum to actions of dismissal or of discipline against these employees and this spreads not only on their own activities but on those of most judges.[120]

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[118] During the execution of the *Verbitsky* event it was posible to see that the judges were far from taking over the guarantee they are responsable for. A report presented by CELS to the Supreme Court of the province of Buenos Aires during a public hearing performed by that court on November 1st, 2007 is available at http://www.cels.org.ar/common/documentos/audiencia_SCBA.pdf.

[119] For a better development, CELS, Report presented to SCBA, mentioned above.

[120] During these past few months, complaints against judges that deployed early releases were presented. Refer to, CELS, presentation to CIDH concerning the situation of people deprived of freedom in the province of Buenos Aires, March 24th, 2009, available at www.cels.org.ar. In face of such pressures, the Supreme Court of the province made a statement declaring its concern for the strong negative impact on the judicial independence. Refer to,
http://www.scba.gov.ar/prensa/Institucionales/La%20Suprema%20Corte%20considero.htm.

As for the judicial response concerning the events of institutional violence, the judicial power has traditionally neglected the control over places of detention and this can be observed in the low rates of judicial (and administrative) investigation existing related to cases of torture and abuse.[121]

It is possible to highlight, nevertheless, that some judicial actions are motivated by the public defense, NGO´s, or control agencies that find receptivity among the judges and that open some instances of solution to punctual topics. This means that after all these years the prison issue increased the level of consideration that it had before. Nevertheless, many of such cases are not finding an answer, or require the transportation of those arrested in a situation that produces no structural progress. Only some charges that were included as practices, or structural situations brought some innovative and founded response. (CELS; 2005/d).

BRAZIL

According to article 61 on the Penal Execution Law (LEP), the following agencies belong to the penal execution system: Judges, Public Ministry, National Council of Criminal and Prison Policy, Prison Council, Prison Departments, Community Councils, and Patronages. With the exception of the latter[122], to all the others, in addition to the specific competencies, it is also assigned the task of visits to prison institutions to check their operation conditions and the compliance with the execution of the sentences of those convicted individuals.

Judges

[121] Also on this topic, refer to Comité contra la Tortura (anti-torture commission), Final remarks on the fourth quarter in Argentina, December 10th, 2004, CAT/C/CR/33/1, paragraph 6. b. According to data from the Public Fiscal Ministry, during the year 2006 a total of 121 cases that started because of the crime of torture were informed by the attorney´s office in the city of Buenos Aires, and the federal attorney´s office, in that no case was brought to court, and only one conviction was reported for such crime. For the crime of ilegal arrest (simple and arrested under their guard) the total number of cases reported was 1107 of which 24 were brought to trial and 3 were convicted. The information concerning the 1st semester in 2007 records 40 cases were informed because of torture and only 1 was brought to trial, and no conviction was registered. For the crime of ilegal arrest, 451 cases were informed, 30 were brought to trial, and 1 conviction was registered. Information available at http://www.mpf.gov.ar/Informe%20Anual/Informe%20anual%20anexo%20estadistico%20delitos%20en%20particular.pdf. As for the province of Buenos Aires, from data collected after information from 2 departments (of the existing 18) for the period 2000-2007, there is a total of 1902 cases of torture and ilegal arrest with only 5 brought to trial. According to Comisión Provincial por la Memoria (provincial commission for historical memory), "El sistema de la crueldad III (cruel system III). Information on violations on human rights in places of detention in the province of 2006-2007", La Plata, December, 2007.

[122] The Patronages should perform a follow-up of prisoners released by the prison system

To the judge of penal execution, according to article 66, paragraph VII in the LEP it is established the assignment of "monthly inspection of penal institutions, making the necessary adjustments for their proper operations, and promoting, whenever it is the case, the finding of responsibilities". It is important to note in the first place that the Courts of Justice usually do not promote a specific preparation providing courses or training for this task of inspection of sites of detention, and for the follow-up of sentences applied to the convicted individuals. A second breach in the activities of inspections carried out by the judges is the effective absence of many of them in these sites of detention, or the practice of visits that simply follow a sheer protocol. The lack of knowledge of the actual existing situation inside a unit hurts the assignment of the judge when making recommendations for the governors, or when taking other providences under their responsibility.

The National Council of Justice itself - CNJ[123], an agency in charge of inspecting and providing consultancy for the operations of the Judiciary Power whenever it is informed of any problems about the prison system[124], decided to install in 2008 a *Temporary Commission for the Follow-up of the Prison System* with three main lines of action, namely: temporary prisoners and the regime of progression; alternative sentences; and institutional. Out of this work resulted the I National Seminar on Penal Execution, driven for representatives of all the Courts and their corresponding Internal Affairs Departments, in addition to three "task-force" of penal execution (in Rio de Janeiro, Maranhão, and Piauí) where it was possible to see the "high number of people kept in detention in penal institutions without need, either because their sentences had already been served, or because of the lack of

[123] The National Council of Justice that includes fifteen members among agents in the Judiciary Power, the public Ministry, the Brazilian Bar Association, and from the civil society was created by Constitutional Amendment (n.45) in 2004. In summary, Article 103-B in the Federal Constitution defines that it is up to the CNJ to: protect the autonomy of the Judiciary Power and the fulfillment of the Bylaws of the Magistrature, preparing rules, regulations, and recommendations; Define the strategic planing, the plans of goals, and the programmes of institutional evaluation of the Judiciary Power; receive complaints against members or agencies of the Judiciary including against its secondary services, offices, and agencies that render services as notaries and of registration that perform the job by delegation of the public power, or those officialized; Try disciplinary processes, with full defense ensured, being able to determine the dismissal, availability, or retirement with subsidies or payment proportional to time served, and apply other administrative punihsments; develop and publish a statistical report every semester about the proceedings movement and other indicators related to the jurisdictional activitiy in the whole country. Refer to (http://www.cnj.jus.br/index.php?option=com_content&view=article&id=4943&Itemid=319)

[124] About the interdiction of prison institutions in the state of São Paulo; reason overcrowding.

examination of the requests for benefits they were already entitled to, such as the regime of progression, external jobs, and temporary leaves"[125].

Through two Resolutions (n. 20 and 21), the CNJ has already indicated some changes belonging to the Judiciary Power scope in the process of penal execution, such as "the adoption of an electronic process in the control of the execution of sentences and social and educational measures; the structuring and regionalization of bench courts of penal execution; the recommendation to magistrates of those bench courts concerning a greater control on prison warrants; the introduction of measures for social re-insertion of those who served their sentence and leave the prison system, among others". Other proposals were presented in the final report of the *Commission*, in that one mentioned the creation of a national data base of convicted individuals, another about the creation of a national data base on the application of alternative sentences, and a third one proposing the standardization of the processes of penal execution among the states to facilitate the checking of data and the communication between state prison systems.

Community Council

The execution judge is responsible for the composition and installation of another agency in charge of inspecting the prisons that is the Community Council. To guarantee the presence of the civil society in the penal execution, LEP established that in every legal jurisdiction there should be a Community Council (article 80), including at least three members, whose main assignments are visits to penal institutions in the county, interviewing prisoners, and presenting monthly reports to the judges of execution and to the Prison Council, and also "expedite the collection of material and human resources for a better assistance to the prisoner or to the convicted individual, in harmony with the administration of the institution" (article 81, paragraph IV).

The result obtained from the activities of those councils in Brazil is that, in the first place, they were not present in every legal jurisdiction as required by law. Where they are present, they present an unequal situation either by their composition that sometimes is a mere formality without their members having actual time and interest of working in the council, or by the partial fulfillment of their obligations established in LEP. Since there is no legal provision for the allocation of minimum financial or

[125] National Counsel of Justice, Report on the Activities of the Temporary Committee for the Follow-up of the Prison System, 2009, page 7

material resources for their operations, their members present many times a very oscilating involvement in the activities.

Public Ministry

The same periodicity of the visit of judges (monthly) has been established for the members of the Public Ministry (article 68, sole paragraph in LEP), in that, it is necessary a registration on an exclusive book of such visit. It can be said, to the extent the Public Ministry is concerned that the situation is the same faced by the judges in practically all items above.

Judges and representatives of the Public Ministry, together wth Community Councils, are agencies that should work closer to prison institutions because of the legal assignments, and also because of their institutional composition and territorial distribution. The other agencies in charge of inspecting the prisons – the National Council of Criminal and Prison Policy (CNPCP), the Prison Council, the National Prison Department – each have a centralized administrative structure and, therefore, a physical distance from the institutions.

National Council of Criminal and Prison Policy

The National Council of Criminal and Prison Policy (CNPCP) also has the assignment of visiting the sites of detention but paragraph VIII in article 64 in LEP does not establish a periodicity for the inspections. Nevertheless, this task is performed in a very limited fashion for several reasons: inexistence of a specific agenda of visits programmed by the CNPCP itself, and many of these visits fall on the dependency of the initiative and interest of the council members; the high number of existing institutions in the country when compared to the number of members of the CNPCP; lack of resources necessary for the activities. In 2003, only 10 Brazilian states had their prison units monitored by the CNPCP[126]. The Council only has the capacity of proposing to the administrative authorities those measures they seem fit for the improvement of the conditions of sentence execution, or to request from the judge of execution, or even from the administrative authority the installation of an audit or administrative process, or even represent the competent authority in the interdiction on the whole or part of a penal institution, without any resolution competencies of their own.

National Prison Department

[126] Lemgruber, Julita. (2004) Institutional Architecture of the Sole System of Public Security – SUSP / Prison System. Firjan/Pnud. Unpublished.

The LEP establishes that the National Prison Department (Depen), subordinated to the Ministry of Justice, is the agency in charge of the execution of the national prison policy and also having, among other assignments, the function of "inspecting and enforcing periodically the penal institutions and services" (article 72, pargraph II, LEP). The states can create local prison departments (article 73, LEP).

Most of the states and their prison units do not receive representatives of this agency for inspections. The inspections that are performed are also motivated by punctual issues (issues related to civil work, release of federal resources for the construction and renovation of the institution, or major riots and cases of violation of rights of that become widely known) and they do not follow a routine, nor encompass the greater part of the institutions in a state. In this sense, the inspections carried out by Depen also fail to meet the concern of preventing disrespect to the Penal Execution Law, and usually happen *a posteriori* (after the event took place). Like the CNPCP, Depen staff is modest for this huge task of inspecting institutions around the country.

Prison Council

The Prison Councils created in the state arena are consultancy agencies that enforce the execution of the sentence. They provide opinions about parole, pardon, and sentence commutation, and are in charge of supervising the patronages. According to article 70, paragraph II in the LEP, they have also the duty of inspecting penal institutions but the periodicity for such inspections is not determined.[127]

In general terms, the prison councils are centralized and located in the capital of the states, and to perform their inspections they face different restrictions: they do not have a regular agenda of visits to the prisons in the state; there is lack of their own material and financial resources to do so; and the members of the council are not always inclined or have time to perform such tasks. They can count only on the annual report sent to CNPCP as an instrument for the description of their activities. The visits performed by this agency are not extended to all prison units in the state, and they do not have a regular time interval, either. Their scope of action depends heavily on the commitment of the members that are therein included and on the political circumstances under which they operate.

[127] According to a research by professor Julita Lemgruber (2004), 8 states did not have Prison Councils

CHILE

According to the legal structure in effect, in Chile the Courts of Justice and the Public Penal Defense Office are in charge of performing legal assignments and of meeting responsibilities linked to the follow-up of the conditions under which the work is developed in the prison system.

As for the Judicial Power and taking into consideration its legal assignments, staff of this Power of the State have performed activities monitoring the prison situation, with visits to the cells, especially in the metropolitan region. Actually, when referring to individual guarantees, as mentioned, the Chilean Political Constitutions highlights that the right of freedom of the individual[128] can only be restricted in those cases and according to what is determined in the Constitution and by the laws, and that only the courts of justice can perform the function of carrying out trials, try, and have the sentence executed[129]. The Organic Code of the Courts reproduces such capacity[130] and, in addition, establishes that "the judges have to provide the guarantees (...) to execute criminal sentences and the measures of security, and solve the requests and complaints related to such execution according to the penal proceedings law"[131], through which they order directly the vigilance of the penal execution.

But not only judges of first instance are concerned with prison conditions. By mid-June 2006, the Prosecutor of the Supreme Court, Mónica Maldonado, delivered a report to the Ministry of Justice of the time, Isidro Solís, stating that overcrowding was rising to 70% in the metropolitan region bringing together bad life conditions and the transformation of cells into "universities" of crime because of the lack of proper programs for rehabilitation and insertion[132].

On the other hand, the general approach of the rules that request the jurisdictional control of prison execution to the judges of first instance allow the existence of different interpretations of the reach it might have. It occuried in some instances, specially in the year 2006, when these actions acquired public fame because they disclosed the problem of cells overcrowding generating also some

[128] Article 19 Nº 7, Constitución Política de la República de Chile de 1980.
[129] Article 73, Political Constitution.
[130] Article 1º, Organic Code of the Courts.
[131] Article 14 letter f), Organic Code of the Courts.
[132] Cooperative Radio, June 29th, 2006.

friction between the Judicial Power and the Executive Power, since the latter is in charge of prison administration.

So it happened on June 23rd of that same year, the date when Daniel Urrutia, a first instance judge, paid a surprise visit to Santiago´s Center of Preventive Detention (formerly a Penitentiary) to check *in situ* the life conditions of the prisoners. As a result, the magistrate established a period of five days for the Gendarmería de Chile, an agency subordinate to the Ministry of Justice and in charge of prison administration, to deliver beds and mattresses to the prisoners; but the Judge of the Court of Appeals of Santiago rendered this measure without effect and qualified the action of the judge as "reckless" because of the negative impact that it could cause to the Executive Power. In addition, the Supreme Court "recommended" to the judge that he should inform his superiors in advance whenever he was going to adopt measures that might impact on other public services.

On July 21st, 2006, another judge of first instance, Jorge Norambuena, revoked the deprivation of freedom of two accused of robbery of a house, and that were in a prison institution taking into consideration the "unhealthy conditions of the Chilean prison system where some prisoners sleep under the inclemency of the weather...". The ruling of this judge was rejected by Santiago court of appeals too[133].

Therefore, even when the decision of superior courts do not support the actions of the judges of first instance, the Supreme Court showed the concern of the Judicial Power to the Ministry of Justice, making it clear the importance of the accused that are arrested of having their human conditions respected.[134] And so it happened that during the presentation of the 2006-2010 Justice Agenda prepared by the Ministry of Justice to the head of the Supreme Court on August 4th, 2006, the highest court took the opportunity to declare its concern with prison overcrowding.

In this context, the Public Penal Defense Office[135] has also placed its efforts to care for the situation of those deprived from freedom, supported in Article 102 in the Penal Proceedings Code. The above mentioned rules state, namely "that since the first action of the proceedings to the complete execution of the sentence imposed, the accused wil be entitled to assign freely one or more defenders whom he trusts. (...)".

[133] News.123.cl. Available at: http://noticias.123.cl/entel123/html/index.html [11-02-2009].
[134] El Mercurio, August 8th, 2006.
[135] Created by Law 19.718, of March 10th, 2001.

Therefore, the Public Penal Defense Office should qualify its staff among other topics in sentence execution[136] and keep permanent attention to the prison conditions.

The concern demonstrated by DPP for imprisonment conditions was publicly expressed in different ways. In August, 2006, the National Defender at the time, Eduardo Sepúlveda, said that the approval of the Congress of the Anti-Delinquency Brief Agenda (Agenda Corta Antidelincuencia) would increase the penal population with 9,000 annual prisoners[137], which, in turn, would increase the costs of maintenance and the number of oral trials. These statements generated a friction with the Ministry of Justice at the time, Isidro Solís, a strong advocate of the Brief Agenda that ended with the dismissal of the Public Defender. During the year 2008 and what has past of 2009, the current National Defender, Paula Vial, wrote articles to express her opinion on the media about the development of the Adolescent Criminal Responsibility Law and the conditions of deprivation of freedom included therein.

All things considered, it is obvious that both Justice Courts and the Public Penal Defense Office maintain a continuous concern for the prison situation, and also it is apparent that their faculties have restrictions, that is, that they originate from political or normative reasons. In this sense, and considering their efforts, it is clear that the core of the jurisdiction of first instance is not the stage of penal execution, like the Public Penal Defense Office does not mean a prison defender or umbusdman through which the jurisdictional control for the service of sentences represents one of the echelons less empowered in the Chilean justice chain.

5. Participation of Civil Society in the Monitoring of Prison Conditions

With the return of democracy to Argentina, Brazil, and Chile, the participation of civil society in public issues became more apparent. In different levels and in different ways, organizations formed by the most diversified sectors of the population took over significant space in the definition of the new democratic orders.

Despite the intention of many authorities being that of transfer instead of sharing responsibilities with civil society, the most successful enterprises in the

[136] Public Penal Defense Office. Defense Office figures 2007-2008, p. 20. Available at www.defensoriapenal.cl/Documentos/cuenta_publica/DEFENSORIA%20EN%20CIFRAS676.pdf [03-15-09].
[137] La Tercera, August 16th, 2006.

monitoring of the conditions of prisons have occurred with the exchange between the public-state sector and the public-non-state sector[138]. From information collection to the assistance to prisoners and their family members, through the evaluation of penal institutions, arriving at the development of public policies for the criminal area, the participation of civil society, whenever it occurs, represents a considerable progress in the prison conditions in those countries, as shown below.

In face of the violations of human rights perpetrated by public agents against prisoners, these organizations multiplied their attention on the domestic level, resorting to the administrative and judicial instances responsible for solving such irregularities. And they have also been present in the external arena, resorting to international instruments of protection and guarantee of rights, such as the courts and the rappouteurs of entities, such as the United Nations (UN), or the Organization of the American States (OAS) being an important counter weight in the repressive trend of the new penal policies.

ARGENTINA

The aggravation of the prison situation had as effect that in the past decades the organizations dedicated to work in prisons and with human rights multiplied and increased their scope of action. The situation of rights for people deprived from freedom became an issue more present in the agenda of these organizations and institutions. This was the cause and consequence of the size and visibility that violations of rights acquired.

Assuming that the prison problems cannot be restricted to detention conditions, and that the different powers in the state are responsible, the organizations tried to influence on the decisions they made for the political system concerning judicial, prison, and criminal policy matters.

Currently, there are non-governmental organizations, agencies of the executive power and/or parliamentary power that with different impacts and according to the region perform systematic work of monitoring of places of detention in the country.[139]

[138] Expression used by the doctrine to define entities of public interest that do not belong to the State administrative machine.

[139] A paradigmatic example in this sense has been the Committee against Torture of the Provincial Commission for the Memory that performs a continuous work of visits, monitoring, and accusation of the situation of

In addition to visits to the centers of detention, they also work in a greater or lesser extent in several activities related with the collection, systematization, and publication of information about the situation of people deprived from freedom; the analysis and the discussion of judicial and prison policies, and also the disclosure of penal and administratice accusations. Several organizations in civil society are developing spaces inside the units with social, cultural, or educational work. All these activities show a high level of activism for the control of places of detention, although this cannot always lead to the generation of structural changes.

These are not easy tasks because of problems to access information about the operations of the system, and more problems to enter the units. Although after some years this situation changed a bit, today the possibility to enter places of detention varies among the different provinces, or the federal system. In addition, this possibility is frequently restricted or frustrated by political situations, or resistance of the prison staff. In this context, access to places where minors of age are kept in detention are extremely restricted and even more problematic, state institutions included.

The activity of civil society was important to foster the progress of standards of judicialization of the conditions of detention. The judicial requests presented by the organizations questioned the way the judicial power performs related to the detention conditions. This made some employees open spaces and generate precedents that paved the way to important routes, and allowed the creation and strengthening of a series of agents that try to include other topics in the agenda, make the prison situation visible, and discuss the political lines that are adopted in judicial and penal matters. An example is the interaction and exchange with some Official Defenders of the PBA.

This was an articulation that made it possible to work on the implementation of Optional Protocol from the Convention Against Torture - OPCAT (Protocolo Facultativo de la Convención contra la Tortura) (). Since 2007, a group of organizations has placed momentum on several actions to open a broad and participative process of implementation that can be translated into an open and effective mechanism. During the first months in 2008, a concrete proposal of

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prisoners in the province of Buenos Aires, and participated in a group of organizations that tries to minimize the policies that harden the penal system in Buenos Aires. More information about this organization at www.comisionporlamemoria.org.

mechanism was discussed and delivered to the politicians in charge.[140] Until now, there was no official response to the proposal, although the situation mobilized the presentation of some Legislative projects.[141]

The proposal of the organizations is interesting because it requests that this mechanism be used not only to guarantee access to places of detention but also to generate new standards related to the access to information about the operations of the system, access to the detention places for NGO´s, protection of victims and witnesses, among other issues.

This same group of organizations stopped the process of selection of a new General Prison Attorney ("Procurador Penitenciario") () that was not legitimated to occupy the position. The opacity that the government was deploying to move forward with this procedure caused a strong reaction from civil society. This nomination remained stagnated politically.

BRAZIL

Like in Argentina, in Brazil the most difficult point, perhaps, for a continuous and effective participation of civil society organizations lies on the still existing resistance in different institutions of the justice system and its hierarquical levels concerning their role in penal execution and, in particular, in relation to the monitoring of the places of detention. The concerns of public agencies are quite modest, including from those that should care for the execution of the LEP, to

[140] This proposal was signed by the following organizations: Centro de Estudios Legales y Sociales (CELS), Comisión Provincial por la Memoria - Comité contra la Tortura, Casa del Liberado – Córdoba, Coordinadora de Trabajo Carcelario (CTC) – Rosario, Asociación por los Derechos Civiles (ADC), Asociación Xumec – Mendoza, Centro de Estudios de Ejecución Penal – Facultad de Derecho de Buenos Aires (UBA), APDH – La Plata, Fundación Sur Argentina, Asociación Pensamiento Penal (APP), ANDHES – Tucumán – Jujuy, FOJUDE – Pcia. de Buenos Aires, Colectivo por la Diversidad (COPADI), Colegio de Abogados de Lomas de Zamora, Asociación Zainuco- Neuquén, Fundación La Linterna, Observatorio de Derechos Humanos de la Provincia de Río Negro, Asociación Civil La Cantora, Centro de Estudios en Política Criminal y Derechos Humanos (CEPOC), INECIP, Asociación de Defensores de Derechos Humanos – Pcia. Buenos Aires, Grupo de Mujeres de la Argentina. The proposal is available at www.cels.org.ar.

[141] On one side the legislators in the government party presented a bill that includes most of the proposal made by civil society, and it is avaialable at http://www1.hcdn.gov.ar/proyxml/expediente.asp?fundamentos=si&numexp=4934-D-2008.
On the other side, a radical legislator prepared a proposal that determines that the National Mechanism will include a Federal Council of the National Mechanism for the Prevention of Torture, the Nation Prison Department, the provincial mechanisms for the Prevention of Torture, and the NGO´s that join the MNPT through a formal registration process. The text of this bill is available at http://www1.hcdn.gov.ar/proyxml/expediente.asp?fundamentos=si&numexp=5034-D-2008.

encourage and participate in a more intense dialogue with the organizations in civil society, or to help them in their involvement in these tasks.

There are civil society organizations in Brazil, such as Action by Christians for the Abolition of Torture (Ação dos Cristãos para a Abolição da Tortura - ACAT), Catholic Prison Pastoral, Teotônio Vilela Comission on Human Rights, the Group Torture Never More (Grupo Tortura Nunca Mais) and other entities that participate directly in the prisons performing an independent job of monitoring the prison conditions and the violations of prisoners´ rights. The Catholic Prison Pastoralis one of the few entities with a nationwide aproach, and is one of the few channels of participation of members of society in the prisons. Although it has scattered nuclei all over the country, Pastoral has levels of regional, state, and federal organization that facilitate a reasonably regular exchange of information among them, and also the development of common guidelines of participation and of great influence in public agencies. The ACAT, in turn, with a limited participation in the country, has also contributed to the fight against torture carrying on visits to the sites of detention together with experts (physicians mainly) that prove the existence of such practice.

Professional entities, such as the Brazilian Bar Association, and the National and Regional Councils of Psicology, Medicine, and Social Assistance also participate not only on the monitoring of the penal execution but also in the preservation of the guarantee of the rights of the prisoners. This participation happens through direct intermediations with the prisoners and the prison administrators, and also with the promotion of courses, events, presentations, and seminars on the topic, in addition to the participation in governemt official commissions that work in planning and in the implementation of prison policies, although these activities vary a lot specially because of the composition of the management in these agencies.

The universities are also other centers where the concern with prison conditions is present. Usually, they form specialized nuclei that are connected in great part to the general topic of public security and where research to check on the prison reality is performed, consultancy to public agencies is offered, and projects of intervention on the management of these agencies and in the defense of the legal guarantees of the prisoners are developed.

The non-governmental organizations (NGO´s) that participate in the area of human rights, and specially those with some level of involvement in prisons, are not many in the country and are marked by a local participation without much

articulation with other NGO´s from other cities and states. The scarcity of resources restricts their participation considerably, and they also deal witih difficulties in finding staff with knowledge and skills to perform inspections in the places of detention according to standards that facilitate the performance of evaluations and comparisons among the different realities in the country related to other countries.

CHILE

In Chile, the civil society organizations that care for the problem of imprisonment are more dedicated to the attention to the prisoners and family members as agencies outside the prison system but in collaboration with it. Among these organizations are those that belong to the catholic church and to the evangelical church, and it is also possible to identify cultural and groups of entities formed by the same family members of the prisoners. It is not, therefore, the case of agencies that dedicate their time and operations to the monitoring as such, but that occasionally find it as a consequence of the development of the activities of assistance intra and post prison to the prisoners and to family members that need support while the sentence is served.

Without jeopardizing the approach, in some universities and academic centers there are initiatives of follow-up and evaluation of the prison situation, such as it happens in the Universidad Diego Portales (that annually publishes a news letter on human rights, including a chapter dedicated to the monitoring of the prison situation) and the Centro de Estudios en Seguridad Ciudadana (CESC) (Center for citizen security studies) of the University of Chile. Nevertheless, it is important to mention that other academic organizations, such as FLACSO Chile and the Fundación Paz Ciudadana developed several studies on prison topics, and sometimes develop permanent projects on these issues.

Also some members of the Legislative Power became concerned with overcrowding in prison cells, and with social reinsertion, translating their interest into the presentation of bills through the *mensaje*, that is, initiatives developed by the legislators themselves. Nevertheless, taking into consideration that in Chile the capacity of making projects move is essentially in the arena of the Executive Power,

most of these projects have not been completed. This happened, for instance, with the initiatives that tried to improve the system to eliminate criminal records.

On the other hand, the representatives have also performed visits *in situ*. In August, 2006, some state representatives and senators carried out a visit without precedents to the former Penitentiary of Santiago (Penitenciaría de Santiago), with the purpose of evaluating the conditions of such center of detention.

6. Prison System

Despite the complexity of prison systems in Argentina, Brazil, and Chile, it is still possible to highlight some points in common that demonstrate the urgent need of development of specific public policies for the sector, specially looking to adjust it to the operations of new democratic regimes.

Except for Chile, the other two countries show a federative system of political organization that, consequently, defines the assignments of federated figures in relation to the criminal policy, too. In this case, competing legal competencies, or poorly defined competencies can create opportunities for omissions or desorganizations in the implementation of administrative guidelines. Just like the absence of legal parameters, the excess of regulations – with rules in opposition or that are incoherent – opens space for an environment not only with competition but, above all, with gaps that help authorities to avoid their own responsibilities.

Just like in other areas, the prison system is subject to the changes in management and government, and to the political and economic situations of each country that are increased by the new direction that the penal policies are showing in relation to the affront to rights, and the repetition of illegal activities and abuse. In this sense, it is necessary to keep attention in the new partnerships that are developing between the public and the private sector to manage prison institutions and render assistance to the prisoners, such as it is already taking place in Chile and in some states in Brazil. Notwithstanding, some positive aspects of these partnership cannot be left without being mentoned, such as the creation of more job opportunities, education, and better housing conditions. Nevertheless, the trend is the reinforcement of a minimal State in whose core new penal policies are formed, and the mercantilization of activities considered essential to the State, such as the

administration of social conflicts. And it is quite questionable if such interventions can be left freely under the care of private entities, even when they declare themselves as of public interest.

The set-up of an efficient prison system goes through the priority given to the qualification of staff members, just like it has been happening in Chile for a while, and that placed solely to meet the tasks concerned with penal execution, are separated according to their assignments, either of assistance to the prisoners or of control and restraint, and are subsidized by career benefits and professional recognition, yet to be found in Brazil and in Argentina. In these two countries, there is still a militarized and unqualified system of operations in the prisons, permeated by several accusations of corruption and institutional violence that the redemocratization process has not been able to change, yet.

Apart from the institutional aspect, the other criteria used to characterize the prison system in these countries in South America show many similarities. The prison population is, usually, increasing exponentially in a steeper way in major urban centers where, actually, is found most of the population in these countries. Meanwhile, despite the construction of new prison institutions being a priority for the sector, the deficit of places also tends to grow as more prisoners have their freedom restricted although without receiving a definite sentence. In average, Argentina, Brazil, and Chile have approximately 50% more prisoners than the capacity of their systems, which aggravates even more the housing conditions in prison institutions, and the poor assistance to the prisoners.

In addition, another common trend that can be highlighted, it is the growth in the number of temporary prisoners, and of women that add to the already imprisoned mass. Without the appropriate treatment that respects their specific conditions, these groups are currently an important element to be considered in the renovation of the political guidelines of these States.

Separated according to the type of felony committed, the information about the prisoners reinforces the data about criminality according to which property crimes and drug trafficking are responsible for most of the convictions. The use of alternative sentences is reduced, and more selective become the benefits for regime progression among convicted individuals that reinforces the importance given by the authorities both in the development of the policies and in the registration of

information about sentences of freedom deprivation as a way of restraint of offenders and consequent response to society insecurity.

The percentage of prisoners working and studying – rights guaranteed both by internal laws and international treaties – is very reduced. People joining the prison system with low levels of education and that come from the poorer brackets of the population will hardly ever find an improvement in their social and economic conditions, rehabilitation, and re-socialization inside these institutions, which becomes reinforcement to the practice of illegal activities and to their scanty conditions of life the moment they return to society.

ARGENTINA

It is a common characteristic to every prison system in Argentina to have institutions structure according to militarized models and with a strong resistance to civil administration[142]. In general terms, the greatest number of people is dedicated to tasks of security and not of treatment; as a general rule, everything is placed in a classified order, including areas such as health and work is carried out following a strict chain of command. Except for a few external controls, prison services are structures with very little transparency and kept behind closed doors. For instance, it is not possible to hace access to the processes of selection and promotion, and to disciplinary procedures, either. The democratic transaction has not led to important transformations in its structure, and institutional culture. Several investigations show the persistence of high levels of corruption and violence that still remain because of self-government and impunity.[143]

Below, there is a description of some very important rates that show the federal (and national), and boanarense (from Buenos Aires) prison situation with nearly 70% of all prisoners in the country

[142] In this sense, it is important to highlight that in the case of the Federal Prison Service the nomination of a governor allienated from the prison structure seemed to indicate a political intention of moving towards a civil control of the system. Nevertheless, this decisión did not succeed in providing a cappilary penetration in the administration, and does not seem to be among the main objectives to pursue this measure further on.

[143] There are cases of direct participation of prisoners in criminal organizations, or accusations of extorsions against prisoners to make them perpetrate felonies in Exchange of "benefits" (CPM; 2006, 2007/a). Refer to the following newspaper articles, namely at: http://www.lanacion.com.ar/nota.asp?nota_id=153142; http://www.pagina12.com.ar/diario/sociedad/3-82341-2007-03-26.html; http://www.clarin.com/diario/2003/11/27/um/m-666351.htm; http://www.clarin.com/diario/2005/12/28/um/m-01115376.htm.

It is important to highlight once more the difficulty in reaching a diagnosis of this situation because of the serious deficiencies in the production and disclosure of information that is found both in the prison system, in the judicial system, and in the control agencies. This is translated, for instance, in the uncertainty that exists because of a datum that is so basic as the total amount of prison population in the country.

The National System of Statistcs on Sentence Execution - SNEEP publishes that for the year 2007 (last official piece of information available) there were 52.457 people deprived from freedom in the country. Nevertheless, this datum does not include the situation of people arrested in police precincts, or in other forces of security, a situation where more than 10% of arrested people is found.[144] The lack of an appropriate registration for this problem becomes more serious if one notes that people arrested in police precincts are those who have to endure the worst conditions of detention.

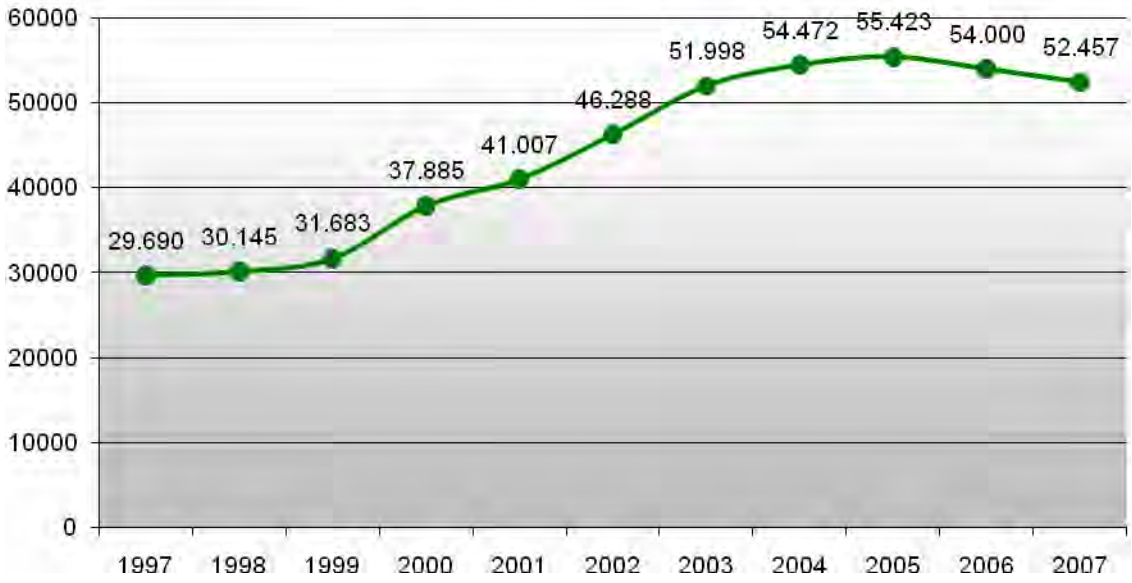
With all these limitations, it is possible to say that in the last 10 years the total prison population in the country has almost doubled, going from 29.690 in 1997 to 59.078 in 2007, which means a current imprisonment rate of 151 persons for each 100.000 inhabitants.[145]

The chart below shows the evolution of the total number of prisoners in the country, although without counting the people in police precincts.

[144] Those arrested in precincts and facilities of the Municipality and of the Gendarmería Nacional in 2006 were 6,621 in the whole country (data missing from Jujuy, Misiones and Salta). SNEEP 2007 makes no reference to this universe of people. This figure has surely increased when one considers that the amount of prisoners in precincts in the province of Buenos Aires, the district with greater prison population increased from 2,728 in 2007 to 3,448 in 2008. At the end of this study we estimated that the prison population in the whole country is 59, 078 people, considering the 52,547 prisoners in prison units, plus the data of those arrested in precincts and registered during 2006. Cf. SNEEP, Dirección Nacional de Política Criminal del Ministerio de Justicia, Seguridad y Derechos Humanos, available at http://www2.jus.gov.ar/politicacriminal/inicio.asp

[145] The estimated prison rate is different from the rate presented by SNEEP 2007, showing that the number of people deprived of freedom would be 135 for every 100 thousand inhabitants. This difference happens because this lower rate is estimated without considering the prisoners in precincts and premises of the Gendarmería, or the Municipality when these places hold people as if they were prison units.

CHART 4. Prison Population, Argentina, 1997-2007



Source: SNEEP

Although official data show no overcrowding in the system (refer to SNEEP 2007 for instance), data segregated per province, and considering the universe of people arrested and that are out of prison Units, show that this statement is unsustainable. Quite the contrary, the growth of the prison population that was shown above consolidated the high rates of overcrowding, especially in some cases, such as Buenos Aires or Mendoza[146].

In this panorama, the province of Buenos Aires (with 50% of the prisoners in the country) showed the greatest increase. During the year 2000, there was a point of inflexion associated with the renovation of the preventive prison regime. During this year, it was noted a 22% increase compared to the previous year, with the number of prisoners going from 16.598 to 20.305. During the year 2004, the province of Buenos

[146]The province of Mendoza was accused befre the Interamerican System of Protection of Human Rights (SIDH) because of the situation of overcrowding, and the sub-human conditions of detention found in their cells. The serious situation of the prisons in the province brought the involvement of the CIDH and of the Interamerican Court to díctate temporary restraining orders and provisional remedies, respectively. Nevertheless, since the adoption of the provisional remedies in the year 2005 until the current date, neither the province nor the federal government provided satisfactory responses to solve the question. (CELS; 2005/b; CELS, 2005/c).

Aires had a prison rate of 210 persons per every 100.000 inhabitants.[147] This level of imprisonment increased the consolidation of the policy of maintaining people for long periods of time in police precincts, whose facilities in practical terms were made similar to prison housing sites.

This situation triggered continuous accusations because of the inhuman conditions of detention that every one was subject to in such places. In this context, the province administration declared a state of prison emergency, and requested the intervention of the Buenos Aires Prison Services (Servicio Penitenciario Bonaerense) - SPB[148] and of the system of Execution of Sentences in Liberty that belonged to the Patronage of Released Prisoners of Buenos Aires (Patronato de Liberados Bonaerense).

In 2005, as it was already mentioned, the CSJN intervened in the prison issue of Buenos Aires, and determined that the conditions where prisoners were convicted in the province were inhuman, cruel, and deteriorated according to the terms in the international Convention. In their decision – atypical for a supreme court both because of the matter and because it accepted that the case had a structural connotation — they gave orders to the three powers on the province to implement actions to remove the prisoners from the precincts (specially children and sick persons), they modified the proceedings legislation concerning preventive prison matters and penal execution (for early leaves), and developed a prison policy that held the province accountable for meeting the international standards ruling on detention conditions (mentioning, for instance, the UN Minimum Rules for the Treatment of Prisoners).[149]

After this moment an important decrease in the number of prisoners kept in police precincts occurred, and there was also a change in the trend of the provincial imprisonment rate.Nevertheless, this trend, and above all, the number of people in police precincts came to a reversal in 2008 (first year of administration of the new government) because of the pressure practiced over the system with the increase of police arrests, and a greater application of preventive imprisonment. The 2.782

[147] This is one of the highest rates in the región, only exceded by Chile. Neverhtless, if one considers the increase recorded in this period, the province increased its prison population not only more than Chile but more than the US.

[148] Law 13.189 provided the legal basis for the intervention of the SPB, making the Ministry of Justice entitled to perform changes in the structure and composition of the prison organization, and to declare the dismissal of its members.

[149] The execution of the case can be followed at http://www.cels.org.ar/agendatematica/?info=homeMiniSitio&ids=158&lang=es&ss=171

people arrested in police precincts in December 2007, turned into 4.142 in March, 2009, that is, to these facilities more than 1.350 people were added in 15 months.

The rate of imprisonment in the province in 1994 was 95 people per every 100.000 inhabitants. In the year 2000, it increased to 149, and in 2005 to 210. In 2007, there is a decrease to 181 but it continues representing one of the highest rates in the region.[150]

There is no question that the impact of the prison situation and of the proceedings reform performed in 2000, and of the policies that came thereafter is far from being reversed. In 2008, the system lodged 24.166 people in its units, and another 3.448 in police precincts, that is, a total of 27.614. On the first quarter of 2009 this figure reached 28.322.

According to the information provided by the Ministry of Justice, in the province of Buenos Aires, in March 2008, there were a total of 17.858 places in the prison system[151]. On this base, the overcrowding in the SPB — without taking into consideration those people imprisoned in police precincts – was around 30 to 35% by the late 2008, if one considers that during those months new facilities called "alcaidías" were made available. According to the provincial Administration plans, 4.200 new places were going to be built (undetermined deadline) to be provided to a population of 24.000 people. This means that despite their plans, the overcrowding will not reach less than 20% for the next years[152], keeping stabilized the prison population, which is highly improbable according to data from 2009.

This analysis leads to another significant issue. The estimates are based on the official definition for prison vacancies, a point of serious confusion, what makes us presume that the overcrowding problem is even worse. There are important differences in the available official information because there is no clear evidence of what criteria were used to define the group of institutions. So, for instance, a comparison of daily data for the year 2006 and data for the year 2007 show disturbing differences: without much explanation the SPB counted in 2007, 1.249

[150] Source CELS, in SPB data base, the Ministerio de Seguridad of the PBA and the Instituto Nacional de Estadísticas y Censos (INDEC). The estímate of the rate of mprisonment in the province is carried out considering people deprived from freedom and that are in prison cells and in precincts, using population projections for he province of Buenos Aires performed by INDEC, and available at http://www.indec.mecon.ar.

[151] According to the last oficial information available at the time the newspaper edition closed, and according to the Plan Edilicio y de Servicios presented by the government to the Supreme Court of Justice of the province.

[152] According to the report developed by the Council of Europe of 1999, the prison systems with a density equal to, or greater than 120% are in a stage of "critical overcrowding" (Quoted in Penal justice and prison overcrowding. Possible responses, Elías Carranza (Coordinator). 21st Century, México 2001. Page. 20).

places, fewer than in 2006.[153] Paradoxically, the different and inaccurate information about the occupation of the penal units includes even recently built cells.[154]

What seems like the central aspect of the prison policy of the past few years, is the construction of units. This was the line supported by previous administrations and by the current administration, as it can be found in the "Plan of Services" that was presented to the provincial Supreme Court in March, 2008, and also with the presentation before CIDH of a special hearing with a topic about the situation of people deprived of freedom in Buenos Aires, and the impact of the reform of the penal proceedings.[155] For instance, according to the information provided by the provincial Executive Power[156], from 2003 to 2007, 145.703 m² were built, although they have not meant a solution for the current prison problems.

On the federal arena, although the situation of overcrowding is not excrutiating, it also brings serious problems. As soon as democracy was resumed, there were 2.369 people deprived from freedom, a figure that started increasing in the 90´s with a steep increase as of the year 2000. During the years 2004 and 2005 the level of imprisonment is at its peak with nearly 9.700 inmates, a figure that quickly decreases and reaches 9.100 prisoners in 2007. During 2008, it was possible to note a light increase in the population that reached 9.208 people.[157] The Federal Prison System – SPF lodges nearly 15% of all the prisoners in the country.

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[153] A comparison made between 07-11-2006 and 08-22-2007. During the second public hearing summoned by CSJN in 2005, the issue of the already mentioned HV case enabled the identification of at least 4 criteria used by the Province to estímate prison occupation. According to a presentation made by CELS to CSJN, available at http://www.cels.org.ar/common/documentos/audiencia_CSJN140405.pdf. The criteria used by the current administration to arrive at the estímate of the "ideal number of places" per prison unit have not been made clear, either, and they are not even mentioned in the plan, only some paragraphs that do not show uniform data for all the institutions and/or pavillions. For instance: to determine the occupation of collective pavillions, the parameters used for availability were $6m^2$ per inmate, and to define cell occupation, it was established that those for 2 people would become individual cels, and those for 4 would lodge only 3. According to the Plan of Services presented to the provincial Government, as mentioned.

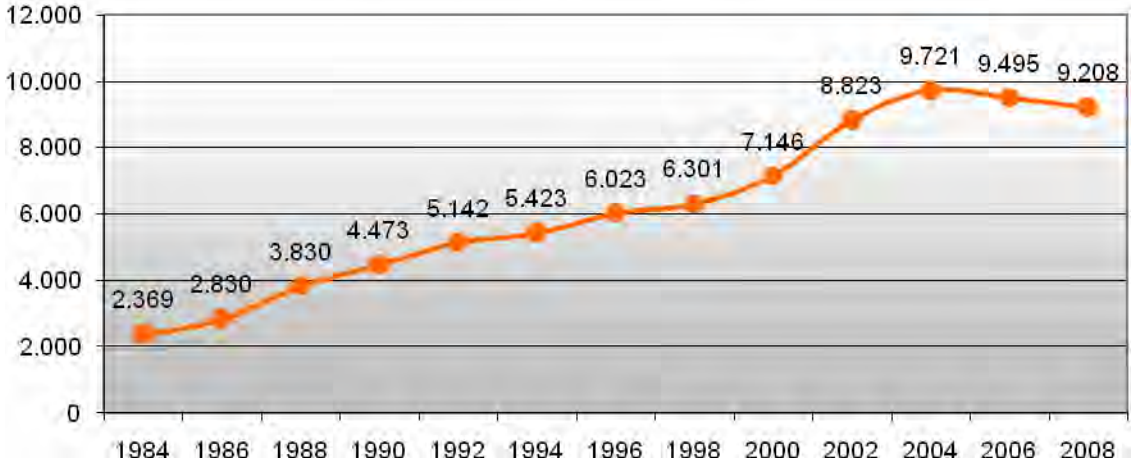
[154] This is obtained after the comparison of information from the provincial Management of architecture and the parts for the year 2007.

[155] Topic hearing before the CIDH requested by CELS and held in March 24th, 2009. Available at http://www.cidh.org/Audiencias/seleccionar.aspx

[156] Statistical information provided by the Ministry of Justice of the Province of Buenos Aires, "Criminal Records and the evolution of prison architecture", Attachment I.

[157] Data from SPF do not include federal prisoners located in provincial prison units, nor those lodged in the premises of the Gendarmería Nacional and Prefectura Naval, a population that is not quantified in any oficial record. According to information provided by some staff members that were interviewd, this figure broadly exceeds the thousands of persons, meaning that nearly 10% more than the officialy registered population.

CHART 5. Prison Population in Federal Penitentiary System, 1984-2008



Source: Servicio Penitenciario Federal. Note: Data for year 2008 collected until November 28th.

From mid 2007, the new SPF management decided to find a solution for the federal system overcrowding. One and a half year later, the official information presents a system that increased the number of available places to 10.348, and that lodges 9.208 people.[158] Nevertheless, without jeopardizing the actions performed, this statement can be questioned because there were serious problems to establish the occupation of each of the units (and the criteria used for lodging[159]), although it

[158] Refer to SPF, "Part of the news of November 28th, 2008". This progress was possible because of the standardization of the prison population in the federal system in the past few years.

[159] The Ministry of Justice and SPF National Board developed a resolution that established parameters to evaluate the capacity of the places of detention as "basic housing conditions". Resolution 2892, "Basic conditions of housing on the Institutions subordinated to the Federal Prison Service", October 2nd, 2008. Nevertheless, in such context a limited conception of prison occupancy is established because it only takes into consideration issues related to meters and toillets per prisoner in opposition to the international rule that includes broader requirements to perform this calculation. The rules include individual cells and collective pavillions, making a distinction between places built before and after the year 2000, and establishing in each case the characteristics that should be found. Individual cell before the year 2000 should provide a mínimum surface of 3.25 m^2, and those built after, 7 m^2 or more (room increases to 7,50 m^2 if the cell includes toilet). As for collective lodgings, places built before the year 2000 should have a mínimum room of 3,40 m^2 internally, although 2 m^2 is aceptable when the actual capacity of the institution is exceeded, and those built after the year 2000 should have an internal mínimum surface of 5,40 m^2. Likewise, parameters are established for toilets, day rooms, recreational spaces, facilities for people with disabilities, and conditions of natural and artificial illumination and ventilation. Nevertheless, the resolution does not include essential aspects of detention conditions, such as the provisión of the appropriate services of health care and of access to education and work. Refer to, among other articles, the European Committee, "Informe general", [CPT/ Inf. (92) 3], paragraph. 47, European Committee, "Informe general", [CPT/Inf. (93)12], paragraph 30 y ss., "Reglas mínimas", paragraph. 22 y ss.., 71 y ss.., 77 y ss. Neither does it include the parameters that were established by the Interamerican Committee of Human Rights in March, 2008. Among others, the principles X, "Health", XII, "Lodgings and hygiene conditions", XIII, "Education and cultural activities", XIV, "Work", and XVII, "Albergue y condiciones

has not been included in this universe of prisoners, those lodged in provincial units and in the premises of the National Gendarmería and of the Naval Municipality (Prefectura Naval) in the northern part of the country. Taking into consideration that the latter are lodged in very poor conditions, it is quite preoccupying when they are left out of the official considerations.

For years, the need for explicit criteria used to establish the number of places, and check the matching of these issues and legal standards has been the focus of discussion. The lack of clear criteria to determine the occupation of prisons in the province and the federal arenas turns into the verisimilitude of the official diagnoses that deny overcrowding and highlight the discretionary behaivor of the authorities in charge of establishing the capacity of the different places of detention.

In the federal arena, the importance for prison policy of the construction of new institutions is also highlighted[160]. In 1996, almost 3.800 places were created by federal initiative. It is important to highlight that part of these constructions were designed to replace units with serious problems of infrastructure, although ten years later they continue their operations together with the new units.[161]

BRAZIL

According to the determination of the Penal Execution Law, "penal execution has the objective of performing the provisions of the sentence, or of the criminal decision and *provide the conditions for the harmonic social integration of the convicted and the prisoner*" (Article 1, LEP, our highlight), and "the assistance to the prisoner is a *duty of the State with the objective of crime prevention and of guiding the return of the prisoner to society*" (Article 10, LEP), ensuring to the prisoner "*that all rights that have not been restricted by the sentence or by the law will be respected*"(Article 3., LEP).

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de higiene", XIII, "Educación y actividades culturales", XIV, "Trabajo" y XVII, "Measures against overcrowding". CIDH, "Principles and Good Practices about the Protection of People Deprived of Freedom in the Americas", Resolution 1/08, March 13th.

[160] Since 1995 that the focus is in this direction. Refer to Master Plan of the National Prison Policy of that year, where only the aspect of the costruction of new prison institutions has been exhaustively detailed in the Plan. (CELS, IA 1997).

[161] Prison institutions of Ezeiza and Marcos Paz were designed to replace the institutions of "Caseros" and "Villa Devoto", respectively. In 1999 they started operations.

In Brazil, because of the federative system of political organization every state, through direct administration or governmental agencies, it is responsible for the management of the prison system installed in its territory, and for the prisoners convicted inside its jurisdiction, except in those cases of transfers authorized by the Judiciary power.

Despite this administrative autonomy, it is the National Prison Department that is subordinated to the federal government that, based on the deliberations of the National Council of Criminal and Prison Policy, has the duty of defining the guidelines and principles of the national prison policy, and also to make available to the states the financial resources of Funpen (National Prison Fund), and inspect the institutions and penal services as already mentioned. Since 2007, Depen is also in charge of the management of two maximum security federal prisons that belong to the Federal Prison System[162], one located in the Southern region and the other in the Mid-West of the country and that lodged in that year 109 and 108 convicted prisoners, respectively[163].

The federal prisons are generically built for prisoners "whose admittance is justified for the interest of public security or security of the prisoner himself" (Article 3, Decree 6.049/2007) or to those submitted to a Differentiated Disciplinary Regime - RDD. Such regime is an answer to the countless riots and to the lack of control of the state on prison institutions, and is characterized by very strict rules for serving the sentence, such as isolation in the cell, permanent wear of handcuffs, restricted weekly visits, and two hour daily sunbath without contact with other prisoners (Article 58, Decree 6.049/2007).

On the federalist states, data from the mid 2008[164] show that the actual expenses with prisoners were R$ 3.571.726.992,00 (nearly U$ 1.552.924.779,00). Of all the 277.847 places, almost 92% belonged to the prison system and the remaining 8% were under the responsibility of state police[165]. The places in the prison system were distributed among 1.716 institutions, namely:

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[162] The constructionof another three federal prisons has already been planned, each with a capacity for 208 prisoners.

[163] Depen, Sistema Nacional de Informação Penitenciária (national system of prison information) – Infopen

[164] Depen, National System of Penitentiary Iformations (Sistema Nacional de Informação Penitenciária) – Infopen (http://www.mj.gov.br/data/Pages/MJD574E9CEITEMIDC37B2AE94C6840068B1624D28407509CPTBRIE.htm)

[165] Each state has two police institutions; a Military Police that has an ostensive and a preventive approach; and the Civil Police with a more investigative approach, and to help the Judiciary Power in their criminal

- 443 Penitentiaries or Similar Institutions[166];
- 46 Agricultural Prisons, Industrial Prisons, or Similar Institutions[167];
- 46 Lodging Houses or Similar Institutions[168];
- 14 Centers of Observation or Similar Institutions[169];
- 1.132 Public Jails or Similar Institutions[170];
- 28 Hospitals of Custody or of Psychiatric Treatment[171]; and
- 7 Other Hospitals.

The prison population of 440.013 prisoners was subdivided in the following way according to the type of sentence to be served, gender, or institution responsible for the custody[172]:

TABLE 10. Prison population in Brazil, 2008

Prison Population	Male	Female	TOTAL
Police	51.441	7.460	58.901
Temporary prisoners	124.892	5.853	130.745
Closed Regime	155.742	8.852	164.594
Semi-open Regime	57.012	3.283	60.295
Open Regime	19.779	1.747	21.526
Security Order – In-patient	3.019	394	3.413
Security Order – Out-patient treatment	406	133	539
TOTAL	**412.291**	**27.722**	**440.013**

Source: Ministry of Justice, National Prison Department

With these figures as a basis, it is possible to check that prison populational surplus reached 162.166 prisoners in 2008, that is, 58% more prisoners than the capacity of the system, in that among the men the deficit was of 149.519 places, and among the women it was 12.647. During the period between 2003 and 2007, the

investigations. There is a Bill (n. 4051/2008), that has not been approved, yet and that prohibits the use of the premises of the Civil Police for the custody of prisoners, even if temporary

[166] For those convicted to a sentence of reclusion in closed regime (Article 87, LEP)

[167] For those convicted to a sentence of semi-open regime (Article 91, LEP)

[168] For serving sentences with deprivation of freedom, open regime, and the sentence of week-ends restriction (Article 93, LEP)

[169] Institutions for the performance of general and criminological exams (Article 96, LEP)

[170] For detention of temporary prisoners (Article 102, LEP)

[171] For those with criminal incapacity or semi-capable

[172] Temporary prisoners in closed, semi-open, open regime, and with temporary restraining orders under custody of the prison system

national prison population grew more than 37% with special focus on the increase of 37.47% of the female population[173] and of 88,84% in the number of temporary prisoners[174].

In the year 2006, 61.256 people worked in the prison system of which more than 75% were prison security agents and more than 10% carried out administrative functions meaning that less than 9.000 professionals subdivided into physicians, psycologists, dentists, lawyers, and social assistants, among others assisted all the prison population in the country[175]. By determination of LEP every state should install a Prison Management School to graduate and qualify staff members, but until 2007, 8 out of the 27 states (including the Federal District) had not implemented this into their structures, reminding that such determination exists since the year 1984.

In the federal government level, the Prison System Ombudsman was created in 2004, an agency in charge of collecting complaints and taking care of the interests of the prisoners all over the country. To do so, after the complaints are filed, this General Ombudsman forwards them to the competent agencies, so that these can take the necessary steps to check and bring a solution to the problem. Formally, in addition to this function, the Ombudsman has other assignments, such as advisory for other agencies in the federal and state prison system concerning the improvement of services rendered[176]:

The State Ombudsman of the Prison System operate in the boundaries of their territories. Such Ombudsman are not subordinated to the General Ombudsman but maintain a close relationship with the latter. Currently, the plaintiff may count with the assistance of 10 State Ombudsman focus on the Prison System (Alagoas, Bahia, Ceará, Goiás, Minas Gerais, Paraná, Pernambuco, Rio de Janeiro, Rio Grande do Norte, São Paulo).

Specifically for the newly created Federal Prison System, an Ombudsman has also been established with assignments similar to those of the General Ombudsman

[173] Increase among men was 24,87%.
[174] Ministry of justice, Depen, Brazilian Prison Population (Five year period: 2003-2007) – Evolution & Prognosis, 2008.
[175]Ministry of Justice, Depen, *Quantitative of Prison Servants in the States of the Federation*, second semester, 2008. Refer to the site at (http://www.mj.gov.br/data/Pages/MJD574E9CEITEMIDC37B2AE94C6840068B1624D28407509CPTBRIE.htm)
[176] Ministry of Justice, Depen (http://www.mj.gov.br/data/Pages/MJD46457E9ITEMID9CD5A9161ABB49E299AFFC34B6AB9510PTBRIE.htm)

but dedicated solely to cases involving prisoners in federal penal institutions. In addition, an Internal CorrectionalAffairs Office was created that *ex officio* or in response to complaints from other entities or isolated individuals enforces the activities of servants of the prison system and prosecutes disciplinary cases if any drift or irregularity is found.

It is worth mentioning, though, that very little is known about the results of the operations of such agencies because in addition to being recent and rare, they have very deficient systems of information collection and results processing.

Now, Depen, the official agency of the Ministry of Justice counting on the collaboration of the states is able to disclose information regularly about the profile of the imprisoned population even with some divergencies, questions, or failures. National data that were consolidated more recently can be found in the same report that present information about prison institutions of June, 2008[177].

As it has already been seen, of the total 440.013 prisoners, more than 93% of the imprisoned population was composed mostly of men (155.742) that were serving their sentence in a closed regime, a regime that also prevails for women. For both genders, the age brackets where the greatest occurrence of prisoners are found lies between 18 and 24 years of age (117.931), followed by the group between 25 and 29 years of age (97.711).

Also equivalent between men and women is the level of education of the prisoners, with greater presence of prisoners with incomplete elementary education. On the other hand, only 0.4% of the imprisoned population has college degree or a level above. Among the men, 29.381 were illiterate, a condition of 1.153 women.

A sentence up to four years was more common among women, whereas for men the sentences concentrated in the range of 4 to 8 years. These data show us that penal institutions are overcrowded with people imprisoned because of crimes to which the legislation defines a lenient punishment, either because of a less damaging nature of the crime, or the quality of the offender, many times with good records and a first time offender[178].

[177] Depen, National System of Penitentiary Information – Infopen (http://www.mj.gov.br/data/Pages/MJD574E9CEITEMIDC37B2AE94C6840068B1624D28407509CPTBRIE.htm)

[178] Cosidering men and women altogether with sentences above 8 years, there is a total of 131,388 prisoners, almost 1/3 of the total imprisoned population.

As for the type of crime attempted or consummated, the information from Depen has confirms that was presented by the National Secretariat of Public Security – SENASP, also subordinated to the Ministry of Justice[179]. Men are more convicted because of larceny, such as theft or robbery, simple or aggravated, of homicides, of crimes listed on the Disarmament Statute, and of narcotics trafficking, a kind of crime women are extremely related to.

TABLE 11. Number of imprisoned people per type of crime, 2008

Types of Crime	Men	Female	TOTAL
Crimes listed in the Disarmament Statute	19.877	363	20.240
Aggravated Theft	32.421	953	33.374
Simple Theft	27.212	993	28.205
Aggravated Homicide	30.738	961	31.699
Simple Homicide	18.229	496	18.725
Aggravated Robbery	78.231	1.368	79.599
Simple Robbery	34.987	734	35.721
Narcotics trafficking	58.206	7.819	66.025

Source: Ministry of justice, National Prison Department

Other information about the prison population lists color of skin, or ethnic group, and nationality. Contrary to what has been spread by common sense that black people are the greatest perpetrators of crimes in the country, 149.774 prisoners have declared themselves white, and 144,701 have declared themselves mulatto, that is, almost 70% of the total[180]. Although there is no information about the reasons that originated the conviction, it is known that 2.920 prisoners are foreigners, the majority coming from other countries in Latin America or Africa.

Last but not least, there are data about the quantity of prisoners involved in labor activities. The job outside the prison unit is carried out by 21.439 prisoners, in that 12.573 are working in private companies, 4.134 in direct public administration, and 1.764 in other places. Internal jobs are broken down between 33.429 prisoners

[179] Refer to item 1 in this report about Brazil, "Criminality profile in Brazil".
[180] The rest of the prison population includes blacks, yellow, indians, and other ethnic groups

provind support to the own penal institution; 14.569 dedicated to handicraft, 3.288 to rural activities, and 20.322 to other activities, a total of 71.608 prisoners. According to the CPI of the Prison System, the national average of prisoners studying is only 13,23%[181].

CHILE

The prison administration is performed by the Chilean Gendarmería, an institution that is subordinated to the Ministry of Justice. The Gendarmería does not belong to the Armed Forces; nevertheless its structure is similar to the military with the figure of the vigilants (gendarmes suboficiales), the officers, and the professionals. The same Organic Law of the Gendarmería, in its article n.2 establishes that *"the Chilean Gendarmería, because of its objectives and nature, is a hierarchical institution, standardized, disciplined, obedient, and its personnel will abide by the rules that establish the corresponding legal statute and the regulations of discipline that the President of the Republic will dictate."*.

As it has already been mentioned, the mission of the Chilean Gendarmería, while agent of the system of administration of justice and responsible for the execution of the sentence is: "*To contribute for a safer society, ensuring the effective fulfillment of preventive imprisonment, and of the sentences of deprivation or restriction of freedom to whom the courts determine, providing to the prisoners a treatment with dignity according to their human condition, and developing programs of reinsertion that tend to decrease the probabilities of felony recidivism"*.

Because of this mission, the Gendarmería manages the sanctions that are served in open regimes (through alternative measures to reclusion), and in closed regimes (because of a sentence of deprivation of freedom to a closed prison, a semi-open, or open), and temporary restraining orders that imply in deprivation of freedom during the penal process (such as the preventive prison).

The Gendarmería carries out its mission of assistance and treatment to those serving sentences through a Technical Sub-Administration that is in charge of the Departments of Open Regime, Readaptation, and Post Prison People in detention

[181] Chamber of Representatives, Parliamentary Inquiry Commission of the Prison System, Final Report, July /2008.

under the responsibility of the Department of Readaptation, a technical agency that includes a multidisciplinary team, and that has among its main functions advise the Technical Sub-administration on those matters related to the social assistance and reinsertion of those people deprived of their freedom[182].

The institutional policy about the matter of reinsertion is based on the *General Model of Prison Treatment* (Modelo General de Tratamiento Penitenciario) that postulates that social insertion is facilitated with the use of tools of social competency and labor qualification to the prisoners that have little time to serve or postulate the benefits of open regime, or to finish their sentence. The prison programs focus the following areas: *education, labor, psyco-social and cultural, recreational, and sports***.**

- In the educational area, the educational programs that are offered in the prisons are subordinated to the Ministry of Education that through municipal corporations provide programs of education to adults. The financing occurs through subsidies that come from this Ministry. In every prison, school attendance is voluntary; nevertheless there is a priority for those prisoners with low educational skills (illiterate and incomplete elementary education). The technical area in each penal unit performs evaluations of the prisoners and makes recommendatios about the participation of those with a better prognosis towards the available programs. In addition to the programs, there are Private Educational Entities approved by the Ministry of Education that provide elementary and middle level education inside prisons. On December, 2007 there were 67 penal schools (in 85 penal institutions), and 8 high schools (in 61 institutions).
- The labor area has the Intra-walls Labor Program that started in 1993 and includes the following types of activities: a) Work with private companies, b) Work for the Centers of Education & Labor, c) Self-managed jobs, with prisoners that are micro-entrepreneurs, d) Work as waiter and by houron services for the penal institution, and e) Work in independent workshops (handicraft). During 207, 14.825 prisoners got involved in some type of prison labor activity, representing 34% of the prison population. Of this percentage, most of the individuals (59%) perform activities of handicraft. The second most relevant occupation is the work of maintenance, that is, maintenance

[182] Downloaded from http://www.gendarmeria.cl, on *Social Reinsertion for People in Prison* [10/09/2008].

rendered inside the penal units and developed by 22% of the prisoners during 2007[183].

- The psyco-social area includes social and psychological care both to individuals and to groups, and the possibility of joining specific programs, such as those carried out in the Centers of Treatment for Addicts (ex Therapeutical Communities), as part of the program of treatment and rehabilitation from drugs for the penal adult population, or the program "Know your son". The last actions are developed in reduced groups[184].
- Sports, recreational, artistic and cultural activities are performed with the support of agreements with the Gendarmería and competent agencies, and with the postulation to projects through tenders with public agencies that deal with the matter. The Gendarmería has its own resources, of course, and receives support from private institutions, and the participation of artists and sports persons that contribute with their work free of charge. During the year 2007, 24.109 prisoners joined these kinds of activities, of which 88% were males and 12% females[185].

Currently, there are in Chile 103 prison institutions. These centers are organized into three subsystems: closed, semi-open, and open, and they are classified in the following way:

- Centers of Preventive Detention (CDP)[186].
- Centers of Prison Sentences (CCP)[187].
- Centers of Feminine Sentences (CPF)[188].
- Prison Compounds (CP)[189].
- Centers of Education and Labor (CET), Open Centers, or Rural Centers[190].

[183] Chilean Gendarmería (2008), "Memoria 2007. Programas y Acciones de Reinserción", Santiago, p. 17 y ss.
[184] During the year 2007, the Addiction Training Centers that operated in closed regimes and in open regimes assisted 882 people meaning 1% of the prison population. Ibid, page 29.
[185] Ibid, page 31.
[186] Prison institutions to help those who have been arrested and those subject to preventive imprisonment. DS 518, Regulation for Prison Institutions, Article 15.
[187] These are prison institutions for the service of sentences that deprive freedom, and that can include the following regimes: closed, semi-open, and open. DS 518, Article 15.
[188] These are those centers for the feminine population, either for those arrested, accused, or convicted. DS 518, Article 16.
[189] These are prison institutions that coexist in a same perimeter and apply a differentiated internal regime and treatment to the prisoners with the support of sole, centralized services of security, administration, health, social reinsertion, labor, and registration and movement of the prison population. DS 518, Article 16.

- Centers for Social Reinsertion (CRS)[191].

This division includes a separation between women and men, between arrested and convicted, and between young and old[192].

In December, 2007 the capacity declared by the prison administration was 31.576 people in prison. In May, 2008 there were 48.855 people detained, and taking as a reference the former figure, there were 17.279 people above the capacity of prison institutions, in other words, the overcrowding percentage reached 55%[193].

Looking for solutions to help build prison institutions quickly and to be able to meet the increasing population and improve housing conditions in prison premises, the State decided in the year 2000 to open a tender for the construction and partial administration of 10 new prisons. The construction of these prisons would be financed by the adjudicated company, and the State would reimburse de costs in 20 year´s time. During this period, the company would manage the services of meals, health, maintenance, and rehabilitation receiving a grant per prisoner. The ChileanGendarmería would keep the top management of the institution and from the very beginning the custody of the prisoners based on the constitutional principle that allows the use of force to the State.

With this objective, a budget of US$280 million was approved, enough to build the 10 prisons with a capacity for 16.000[194] prisoners. The construction was in a tender among four groups and should start in the late 2005. This process has been developed with some difficulties, such as the delay in the delivery of the works, non-compliances because of a lack of a model of prison cell requested in the tender requisits[195], in economic problems (the cost per prisoner in the franchised institutions is three times higher than in traditional prisons: US$ 35 vs. US$ 11 per

[190] These are Centers of Prison Sentences that include a certain type of social reinsertion treatment. DS 518, Article 17.

[191] These are the centers for the follow-up, assistance, and control of prisoners that, because of a legal benefit or a regulation, are serving in open regime. DS 518, Article 20.

[192] In some of the institutions mentioned before, there are separate facilities for each of the different categories, although many times the distance between the buildings is not enough to eliminate all contacts. For instance, in the case of the Prison Compound in Valparaiso, there is cotact among convicted and accused women, although dormitories are separated.

[193] Dammert, L. y Zúñiga, L. (2008), "La cárcel. Problemas y desafíos para las Américas" ("The prison. Problems and challenges for the Americas"), FLACSO Chile, Santiago, page 50.

[194] The capacity of the places can increase 10% máximum, according to the already signed agreements. If this amount is exceded, the State will pay a fine to the company in charge of the penal Unit.

[195] Shortly after the tender was adjudicated, requests to increase the areas of qualification, education, and recreation of the prisoners were made by the Justice and the Gendarmeria, and in addition they added more meters for segurity and to incorporate technologies of security and vigilance. Therefore, the adjustments increased in 60% the works and in 10% the square meters to be constructed. Diario El Mercurio ("El Mercurio Newspaper") (07.25.2005).

day[196]), and in the progressive increase of prison population, turning the 16 thousand places offered insufficient to cover the deficit of vacancies[197].

Notwithstanding what was mentioned before, it is fair to recognize some advantages in the system of "privatized" prisons. On the first place, they help renovate many of the prison institutions currently in use[198] and other institutions that are obsolete in their design and/or conditions, following some financing conditions that according to some analysts are favorable to the country. On the second place and considering that the agreements with the adjudicated companies establish as mandatory rules and standards with a high level of demand, it is expected that the new prisons increase the quality of the services for meals, health, rehabilitation, and others. On the third place, after the twenty years that the concession last have passed, the State will have 10 well built and maintained buildings that it can operate directly or tender according to the convenience of the moment.

Currently, there are six "privatized" prisons in full operations[199], without any government activity of monitoring their performance. Taking into account the national expectations and of the other governments in Latin America in identifying the difficulties and benefits associated to the performance of this measure, it is relevant to develop an investigation to meet these needs.

The prison administration has two categories of workers: military and civilians. The military belong to Plants 1 and 2 of officers and vigilants, respectively, and the civilians belong to Plant 3 that congregates the administrative personnel, and professionals that do not wear uniforms[200].

One of the characteristics of the prison personel is the existence of a professional body exclusively dedicated to the prison tasks, which would facilitate the

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[196] Dammert, L. y Díaz, J. (2005), "El Costo de Encarcelar" ("The Cost of Prison"), Observatorio Nº 9, FLACSO Chile, Santiago.

[197] Willianson, B. (2008). Available at: http://pazciudadana.wordpress.com:80 [11.01.2009].

[198] It is enough to mention that institutions made of wood and built temporarily after the earthquake of Chillán, almost 75 years ago, are still in use. Prado, F. (1995), "Consideraciones en torno a las cárceles privadas" ("Considerations on prívate prisons"), Revista Chilena de Ciencias Penitenciarias y Derecho Penal Nº 21, ("Chilean Magazine of Prions Sciences and Penal Law n.21"), Santiago.

[199] The prison of Rancagua was inaugurated in December, 2005. In addition to this prison, there are currently and in full activity the prisons of Alto Hospicio and La Serena (inaugurated in January, 2006), Santiago 1 (inaugurated in January, 2007), and Puerto Montt and Valdivia (recently inaugurated). The prisons of Concepción and Antofagasta, that belong to the second stage of the tender, and the fourth and last stage that includes the construction of two extra buildings (in Talca and in the Metropolitan area: Santiago 2), should be ready before 2010. Available at Internet, on the link Concesiones: http://www.gendarmeria.cl [06.17.2007].

[200] According to the oficial information, during 2007 the staff of Gendarmería increased significantly with 790 new employees qualified for Plants 1 and 2. As for Plant 3, the civilians, in 2007 another 200 people were included after a public contest that was carried out to supply 234 positions. Chilean Gendarmería (2008), Public Account 2007.

permanent qualification of its workers and, consequently, a positive execution of institutional programs.

The qualification programs for the "gendarmes" lasts a whole year in the case of vigilants, and two years for officers. Applicants should be young people between 18 and 23 years of age with different educational backgrounds accepted. Therefore, vigilants should have studied until the 2nd year of high school (10 years of formal education), and officers should have finished high school (12 years of formal education). In addition, it is a career that provides stability, a good system of health care and pension fund, and a balanced system of remuneration[201].

According to recent information that describes the problems of the prison system[202], part of the advantages mentioned was neglected because of the lack of human resources. Because of the increase of prison population, it was necessary to increase the number of vigilants in prison units. This required the qualification of the vigilants that were still doing their course and made them conclude their practices two months ahead of time, performing and carrying out functions of experienced gendarmes[203].

The institutional training is provided by the General Gendarmeria School Manuel Bulnes Prieto, (Escuela de Gendarmería General Manuel Bulnes Prieto[204]) that includes the Superior Academy of Penitentiaries Studies (Academia Superior de Estudios Penitenciarios) that provides training for officer-candidates, and the Penitentiary Graduation School (Escuela de Formación Penitenciaria) where student vigilants are graduated (subofficers).[205].

As for the professionals and technicians that belong to the group of prison security agents, there is no initial qualification program, or introduction programs in

[201] Prado, F. (2006), "El sistema penitenciario chileno: una aproximación crítica" ("The Chilean prison system: a critical approach"), in *Revista Electrónica Agenda Pública*, Issue year V, Nº 8. Available at: http://www.agendapublica.uchile.cl/n8/4.html [10/22/2006].

[202] Universidad Diego Portales (2007), "Informe Anual sobre Derechos Humanos en Chile 2006" (Annual Report on Human Rights in Chile), Law School, Santiago.

[203] The proportion of gendarmes per number of prisoners in developed countries is 2.6:1. During 2005, Chile had a percentage of 6.5 prisoners per gendarme. The projection according to the increase in the ranks of vigilants programmed for the following years shows that this figure will reach 3.8 prisoners per gendarme (UDP, 2007, p. 118), information that could not be corroborated with updated oficial data.

[204] The Academia Superior de Estudios Penitenciarios was created in August, 1928 because of the need of technical and professional qualification to personnel that would take over the delicate task of taking care of human beings deprived of their freedom. In 1993, the first course for officers candidates was performed in this institution. With the objective of improving the educational level of the employees, this group created in September, 1944 the Escuela Penitenciaria de Chile, that later on received the name of Escuela Técnica de los Servicios de Prisiones, to train and graduate vigilants. Currently, the school is called Escuela de Gendarmería del General Manuel Bulnes Prieto. In 1981, the institution delivers the first course of officers for women.

[205] Chilean Gendarmería. Available at: http://www.gendarmeria.cl [10/08/2008].

prison institutions. Nevertheless, this group can attend qualification courses, or upgrade courses that are provided by the HR department, that is provided by an external entity not always coinciding with the dynamics of the Gendarmería School.

Within this scenario, the School is in a process of reorganization that tries (in addition to incorporating mechanisms for the continuous and permanent evaluation of the teaching activity, and to establishing new lines in the career, training and improvement plans for the personnel) to obtain the accreditation of the process of prison training at a Professional-Technical level, which means the modification of the Constitutional Organic Law on Education (LOCE) incorporating the team of teachers of the prison on the appropriate level. At the same time, the reorganization tries to unify the formation schools existing in Chilean Gendarmeria, in such a way that the Gendarmeria School is composed of three units of institutional formation:

- Chilean Gendarmeria School, for Aspirants and Official;
- Penitentiary Formation School, for students vigilants;

Superior Academy of Penitentiaries Studies, in general extension, for all staff.

In Chile, there is no figure of a "Defender of the People" (Defensor del Pueblo) or Ombudsman, as guarantee of the rights and guarantees that are recognized in the constitution, nor a figure of a prison defender. Therefore, the figure of an institution that takes specific care of the interests of the prisoners and, in general terms, controls the execution of the sentence does not exist.

Chile is one of the few countries in Latin America that does not have a national institution to take care of the respect for human rights. There is a bill to establish a National Institut of Human Rights (currently being analyzed in Congress), and that would be entitled with the competencies to promote and protect human rights, being able to request the collaboration and information of State agencies, and enter any place where people deprived from freedom are found, or might be found.

Finally, the Chilean Gendarmería (like other public institutions) has an Office of Information, Complaints, and Suggestions (OIRS) that can be accessed to request information about the rights and duties of the prisoners, the access to intra-prison benefits, the system of elimination of criminal records, the services of the post-penitentiary system, the access to special pardons, the recovery of political rights, alternative measures of detention[206], among other topics of relevance.

[206] Available at: http://www.gendarmeria.cl/carta.html [02-12-2009].

The OIRS of the Chilean Gendarmería is committed with the citizens in delivering answers to their inquiries, complaints, and suggestions within a period of 10 working days. If this complaint, inquiry, or suggestion turns into an investigation, or if it is linked to other institutions of the State, the period is extended according to the time established in the administrative procedures[207].

In Chile there is no complete analysis of the prison population. Nevertheless, it is possible to identify several attempts to characterize this group, generally considering the application of public opinion polls to a certain sample. Although the data collected through the poll represent an actual approach to the issue, it has included all the dimensions that might enable a global analysis of data[208].

Evidence shows that most of the social and demographic variables of the prison population do not change significantly after release from prison, and in some cases they get worse. Therefore, it is possible to say that the majority of the population deprived from freedom is composed by men, young people with incomplete education, a history of unstable labor, a history of substances consumption, and coming from low social economic layers in the society[209].

In 1997, the company ADIMARK develop a study about the profile of the prisoners in Colina I and II (October 1997)[210] delivering data about house and family, education and school, friends and neighborhood, life before prison, characteristics of the felony, and performance of the felony according to its perpetrators. On this respect, the study shows that only 6% managed to complete high school, in that 56% already had incomplete elementary education, and 5% had never gone to school. About their relationship with friends, 45% showed that during the adolescent years at least one of their friends had been arrested. And about the felony committed, 81% showed that it was linked to larceny (robbery, robbery followed by homicide,

[207] Available at: http://www.gendarmeria.cl/doc/oir/consultas.pdf [02-09-2009].
[208] ADIMARK (1997), "Estudio perfil de reclusos de centros penitenciarios Colina 1 y 2. Presentación de Resultados" ("Study of the profile of prisoners in prison centers Colina 1 and 2. Presentation of Results"), Santiago.
[209] Petersilia (2003); Travis and Petersilia (2001), quoted by Villagra, C. (2008), "Reinserción: Lecciones para una política pública" ("Reinsertion: Lessons for a public policy") , in Revista Electrónica Debates Penitenciarios n° 6. Available at: http://www.cesc.uchile.cl/publicaciones/debates_penitenciarios_06.pdf [09.13.2008].
[210] Ibidem.

robberywith intimidation), 7% of crimes against life, 7,4% for drug trafficking, and 2,4% for sexual assault[211].

A more recent study (2007)[212], gave the profile of the characteristics of the young population (15 to 30 years) found in detention. The results of this study were grouped according to the following variables, facilitating the identification of the social and biografic profile of the group in question:

Family system:

- 40% of those interviewed lived with both parents and 33% in houses with only one parent.
- 71% were single, 50.2% had children, and 34% were the head of the family.
- 47% had had a relative in the prison system.
- 39% had in some moment lived in the streets.
- On average, the families had 5 people of which two were economically active persons.

Education:

- 95.3% had not finished their school cycle, and in this group 50% did not finish elementary school.

Health:

- 56% of the prisoners depended on the State to obtain health services.
- 29.3% in this group depended on FONASA and 27.2% had a card of indigent.

Political participation:

- 4.7% was registered in the electoral records and 3% had already voted in a national election

Work:

- 59% had performed a productive action for a salary. Most of them in low classification jobs.
- 31% had once had a job contract.
- 38% said that they had a profession and most of them learned the skills in prison.

[211] Universidad Miguel de Cervantes and Gendarmería de Chile (UNICRIM) (February, 2005), "Estudios sobre la Caracterización de la población penal recluida en Chile" ("Studies about the Characterization of the prison population detained in Chile"), Santiago (non-published document).

[212] Cabezas, C. (2007), "Caracterización socio-criminológica de la población penal. Análisis de las características sociológicas y criminológicas de la población penal recluida en las cárceles chilenas" ("Social and criminological characterization of the prison population. Analysis of the sociological and criminological characteristics of the prison populations detained in Chilean prisons"), Universidad Academia Humanismo Cristiano, Santiago (unpublished).

Institutions of control and social protection:

- 57% had been in an institution for minors.
- 57.3% had been imprisoned without a sentence (preventive prison).
- 33% had been convicted before, that is, were recidivists.

GENDER wise, women in prison represent 6.79% of the total population[213]. The greatest concentration of women is found in the metropolitan area, followed by the first region and the fith region. This information makes sense when these regions are considered (either because they are located on the border, or because they have a harbor nearby, respectively) they are zones with a great flow of drug trafficking. This illegal behavior is the felony of greatest prevalence among women, different from men that usually are in prison because of larceny.

As for the ETHNIC GROUP, it is important to mentione that Chile, through Law 19.253 (193) has recognized as main Indian ethnic groups the following ones: mapuche, aimara, rapanui, atacameña, quechua, colla, kewésqar, and yagán. Any representative of this prison population that belongs to one of the Indian groups would be relatively young: 43.3% between 15 and 29 years of age; 43.8% between 30 and 44.11% between 45 and 59; and 1.9% older than 60 years of age. The average age of men was 33 years, and of women 37 years. The composition per gender was 6.1% women and 93.9% men. As for the group they belonged to, of the total number of people that considered themselves indians 82.9% were mapuche, 15% aimara. And about the place of residence 79.2% came from the urban sector and 20.8% from the rural area; and when questioned about their place of birth 72% said they were born in urban areas and 28% in the rural area. The education level of this population was low, in that 10% was illiterate and most of them belonging to the aimara ethnic group, and in the case of the mapuches 10.7% were illiterate. The education background showed 43.1% with incomplete Elementary Education and 24.7% with complete Elementary Education. 62.2% had children, a figure that increases in the case of women, reaching 88.3%. 92.7% were heads of the family the moment they were arrested. As for the type of crime committed, 49.1% had been convicted because of larceny, 4% because of felony against people, and 3.7% because of special laws (anti-drugs and anti-terrorist laws). The recidivism was lower among the Indian

[213] This percentage increased according to the data collectiong in May, 2008, reaching the figure of 7.4%. Dammert, L y Zúñiga, L (2008).

population when compared to the non-indian population (a figure that varies between 50 and 75%, with no recent information on this aspect), so 39.2% of the total population of indians convicted had been prosecuted before because of former felonies without conviction.

Finally, it is important to highlight a recent effort to produce a research of regional information that brought to light some interesting and updated data about the profile of crimes and of the gender of the imprisoned Chilean population:

TABLE 12. Characterization of the population according to the type of crime and gender

Type of Crime	Men	Women
Economic Crimes	1.333	129
Sexual Assaulst	3.624	25
Drugs	7.087	1.858
Homicides	3.693	156
Theft	3.686	462
Injuries	2.416	61
Robberies	2.887	1.000
Other crimes	7.354	247
Not mentioned	906	96
TOTAL	**32.986**	**4.034**

Source: Chilean Gendarmería (2008)[214].

7. Main Violations of Human Rights in Places of Detention

According to the trends of maintenance of order through the control and restriction of certain groups in society, prison systems in Argentina, Brazil, and Chile have presented serious and repeated violations to the rights of the prisoners and, consequently, weakening the consolidation of the Democratic Rule of Law.

After decades of neglect and irregularities in Argentina, Brazil, and Chile the very bad conditions of living of the prisoners in these countries have already been incorporated, delaying the measures that are indispensable to guarantee their rights and a complete renovation of the system they are submitted to.

[214] Quoted in Dammert, L. and Zúñiga, L. (2008:71).

The management of risks inside and outside the prisons has been characterized mostly by the disregard to many legal precepts and by the transformation of discretionarity into arbitrariness. The rights described in the law become privileges extended to few prisoners that are able to "negotiate" their benefits – usually those that can afford, or those who belong to criminal organizations with a better structure and great ideological influence. The rest find overcrowded cells, poor social, medical, and legal assistance, poor or no job or educational opportunity, and diversified types of humiliation. In addition, in these spaces the possibilities of abuse, torture, and death are wide spread.

Federal prisons in Argentina and in Brazil, and some penitentiaries in Chile, can be recognized as exceptional places where minimum guarantees are met but, as a counterpart, it is in these very same places that the rules of imprisonment are harsher and where the prisoners are more disconnected from the social world.

In the cases of Argentina, Brazil, and Chile the actions of the State to reverse this panorama are still not enough. Some decisions of the internal Supreme Courts, recommendations of special rappourteurs and of International Courts and movements of the organized civil society show up as a form of pressure even with results that are outnumbered by the problem.

ARGENTINA

The current prison policy is prioritizing the maintenance of order over the socializing postulates that can be seen with the over representation of the imprisoned population in maximum security prisons[215], and in lodgings of people at great distance from their family members (PPN; 2008). Several pieces of information highlight that a great part of the population remains detained in their cells for many hours during the day, and that is increased for those who suffer from "prison inside prison" because they are in the regime of Physical Integrity Protection, for instance. Even though, there are great deficiencies in terms of access to education and work[216] Also in the case of the precincts of the PBA and of federal institutions of the

[215] In 2007, more than 72% of the federal prison population was lodged in maximum security units according to data from SNEEP.

[216] According to SNEEP data, 2007 almost 50% of the federal prison population does not join formal education programs. Nevertheless, 42% of the population does not have remunerated jobs, and 18% only work 20 hours per week.

Gendarmería or the Municipality there are not any minimum requisits to help lodged persons to develop some kind of activity.

And there is no evidence of respect for the separation between convicted prisoners and those waiting for trial. Quite the contrary, the lodgings are defined according to age or nationality and it is understood as "group management" and not individual management.

Part of the governability of the system is based on the management of broad margins of prison arbitrariness. For instance, although the Law of Execution establishes a system of classification "by treatment" that should be provided by the prison personnel, in practical terms it has become an instrument of submission and discipline in the hands of the administration (PPN; 2003). This was already seen in 1999, "[a]s *the expectations of the prisoners grow towards better conditions of detention, and on the possibility of early release, and these expectations depend on a decision of the administration that uses uncertain criteria, they turn into an element of pressure over the prisoners that is used in complex mechanisms of negotiation as instrument of management of the prison institution* (Salt 1999; en PPN 2003*)*. Recently an accusation was presented in the province of Buenos Aires about the sale of criminological reports by the agents of the SPB.[217] Directly related to this fact is the "marketization" of the prison. In this sense, rights such as the access to health care, or to visits in practical terms become "benefits" arbitrarily distributed by the administration after the implementation of a system of rewards and punishment in addition to the accusation of abuse by the prisoners and continuous oral aggressions.

In this sense, some investigations inform about the informal delegation of discipline management provided by the Prison Service to some prisoners with whom certain "codes of survival" are agreed upon, as well as with those that manage the punishment (SDH, 2005; CPM; 2007/a).[218]

The supply of drugs and narcotics is another aspect identified by NGO´s, defenders, and control agencies as a strategy of governability in the places of

[217]Refer to "Citarán a presos por la venta de informes criminológicos" ("Prisoners accused of selling criminological information"), Diario hoy, 23/02/2009.

[218] The Secretariat of Human Rights in the province of Buenos Aires highlighted in 2005 that "[i]n all pavillions there are people arrested and that call themselves "cleaners" ("limpiezas "). Usually, this role is performed by those with greater influence over the rest of the population in the pavillion. In many cases, this influence is obtained through violence. The "limpieza" is the middle man between the prison personnel and the other prisoners. For many years this figure has been in control of his own peers in the pavillions; it has been and it is a feature that gave place to all kinds of abuse. The "limpieza" through the "control" of the pavillion tries to obtain "benefits", such as for instance pills, better conditions for reunions with family members, or better punctuation in the prison life".

detention. The use and circulation of drugs in prison units of the PBA is an example of these informal policies. For instance, according to information provided by the own Prison Service, in Unit n.9 in La Plata, with a population of 1433 people, 18.657 drugs were consumed every month. In Unit n.8 of Los Hornos with a population of 209 women, 6.520 drugs were consumed. In Unit n.3 of San Nicolás with a population of 543 prisoners the consumption was of 8.460. In Unit n.29 with a population of 157 the consumption reached 7.434 pills. The average monthly consumption of the prison population was 269.544 pills in the year 2005. (SDH; 2005)[219]

Nevertheless, even with this circulation driven to maintain calm the prison population and lower the conflicts, in many cases the acquisition of the pills and the effects of the consumption caused conflicts among the prisoners and between these and the prison personnel. Self-aggression as a means to require the delivery of the material is something frequent.

As a counterpart of this reality, the demands from people deprived from freedom changed and it can already be seen a decrease in their capacity of organization. From the interviews made, it is possible to see that in the past the demands concentrated in issues related to detention conditions and in problems that had an impact on the collective with high levels of dissemination of these aspects among the prisoners. Currently the demand is focused on individual topics related to the legal cases and the technical defense, plus the aspects that impact on progression; and this brings a direct impact with the possibility of acquiring temporary leaves or assisted freedom. The atomization and lack of organization currently found outside the walls also reaches those deprived from freedom. It is certainly this situation that is one of the determining reasons for a decrease in organized riots in the past few years.

This way of maintaining governability in places of detention happens in a context of critical material conditions of the prisons. Both fires that happened in 2005 in Buenos Aires and in Santiago del Estero in 2007 with 68 prisoners that died represent an example of this situation.[220] The investigations highlighted the direct

[219] The few numbers of psychiatrists that exist in the system give greater credit to this hypothesis. For instance, one psychiatrist gives assistance to the populations in units 15, 6, and 37, and another one to Units 30, 7, 2, and 38.

[220] In October 15th, 2005 there was a fire in the prison of Magdalena, province of Buenos Aires, where 33 prisoners died. The judicial investigation include enough evidence of the structural conditions that were determinants and caused the fire, and the actions performed by the staff to prevent the tragedy and the deaths.

connection between the poor conditions of detention (without fire protection systems, inflammable mattresses, etc) the treatment that prison agents provide to the prisoners, and the deaths. Nevertheless, this situation has not developed any new state policy of prevention at federal level.[221]

The PBA case is particularly serious. Several pieces of information show the systematic violation of rights that got worse as of the year 2000 when a qualitative and quantitative leap of this structural situation was observed. "Although, before this period the housing and health conditions were poor and torture plus illegal activities a repeated practice, the systematic and magnitude that the problem reached in the past few years disclose a new dimension. It is not a sheer problem but something involving the whole system". (CPM; 2006).

And the survey carried out by the current provincial government in March 2008 to provide a diagnosis to design the prison plan showed many of these serious deficiencies of infrastructure. For instance, according to this official information the units are not provided with fire fighting equipment, the installation of the power network is poor, there are continuous failures in the heating system and in drinking water distribution. In addition, there are serious deficits in medical assistance, in meals, and in access to labor activities, education, and training.

In the precincts, the situation is even worse because there are no minimal housing conditions, or recreational areas, or labor and/or educational activities.

Throughout these past few years and especially after the decision of the CSJN, many of these situations caused a judicial or administrative shutdown of several pavilions, modules, and precincts.[222] Nevertheless, the current growth of the prison

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The fire in prison Varones de Santiago del Estero occurred in November 5th, 2007 after a protest because of repressions that took place a few hours before. Argentina had already experienced other fires but no policy of prevention was developed. In May, 1990 there was a fire in Olmos in the province of Buenos Aires where 35 prisoners died. Years before the prison Villa Devoto had caught fire. For more information refer to CELS, "Responsabilidades políticas y judiciales a dos años del incendio en el penal de Magdalena" ("Political and judicial accountability two years after the fire in prison Magdalena"); CELS, Human Rights in Argentina, Report 2008, Siglo XXI Publishing House; available at www.cels.org.ar.

[221] After the claim was reported, CELS requested to the Ministry of Justice and Human Rights of the Nation an urgent meeting with the Federal Prison Council to analyze the situation and establish clear standards about the conditions of security where people deprived from freedom are lodged in all national territory.

[222] These detention conditions give place to the filing of countless habeas corpus. The Committee against Torture of the Comisión Provincial por la Memoria, presented between January and November, 2008, 780 habeas corpus because of the aggravation of the conditions of detention. Of all these, 247 were due to blows, 210 because of the lack of medical assistance, 119 because of issues of infrastructure, 152 because of constant transportation, and 125 because of family ties that were hurt. Also, collective habeas corpus were presented because of different issues in units 30, 29, 10, 45, 1, 21 of Campana, Institutos de Menores Recepción La Plata, Recepción Lomas and Recepción Malvinas and Almafuerte. To this group, it has to be added some presented by public defenders

population in Buenos Aires and the increased number of arrested people in precincts can be an indication that a situation similar to 2005 when it was necessary an intervention of the highest court in the country might occur.

Actually, in the federal arena these problems are not so generalized but focused in somewhat especially serious places. This is the case, for instance, of the institutions of the Gendarmería in the north of the country, the big structures in the City of Buenos Aires, or in the province of Buenos Aires like Marcos Paz[223] (CELS; 2009).

In such a context, the increase in the past few years of deprivation of freedom for certain groups that need special consideration, such as pregnant women and those with small children is of special concern.

In the province of Buenos Aires, the number of women deprived of freedom has grown. Of the total number of prisoners, almost 10% live with their children in the centers for detention, and nine out of every ten women arrested with their children is under the regime of preventive prison. (CPM; informe 2007)[224]

The Provincial committee for Memory (Comisión Provincial por la Memoria) highlights that "the provincial state restrictions only allow mothers with children less than 4 years of age to live together but forgot to provide them with the other rights they are entitled to. It has not even met the meager regulation in effect, which has not included in its rules those aspects that are inherent to the lives of these boys and girls" (CPM; 2007/b).[225] In addition, it is of special concern the situation of women arrested in "Women precincts" in the province.[226]

On the federal arena, there are 900 women, of which nearly 10% are pregnant, or held in prison with their children under the age of 4.[227] The reports made by the

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and of which there are only general records. Some of these cases and their relationships are available at: <http://www.cels.org.ar/agendatematica/?info=homeMiniSitio&ids=158&lang=es&ss=171>.

[223] This was informed by the Prison Committee of the Nation General Defense Office ("Comisión de Cárceles de la Defensoría General de la Nación ") and by the National Penitentiary Attorney's Office (Procuración Penitenciaria de la Nación) in the reports carried out about the units.

[224] According to this report, in Unit n.33 where almost 90% of the women with children are lodged, 96% have received sentence. 40 % are there because of larceny; 31% because of narcotics possession and trade; and 23% because of crime against life. The average period of detention for these women is 1 year and 8 months.

[225] The death of a baby with bronqueolites in Unit 33 in Los Hornos in November, 2007 showed the conditions to which these children are exposed in prison.

[226] The CPM highlights that women suffer with very high levels of overcrowding; they do not have access to working activities, recreation, or educational activites; they have difficulties of access to visits because of very restricted internal regulations; they have no access to personal hygiene kits; they have no possibility of comunication with their relatives; and they lack medical assistance a situation that is more serious with women with HIV, or in an advanced state of pregnancy.

[227] By late March, 2009, there were 10 pregnant women and 68 mothers living with their children in prison. The total number of children was 76. According to SPF, "Síntesis semanal de la población general alojada al 27 de

agencies of control show that these women have several complaints because of the delay and quality of medical assistance, the scarce provision of food for the children, the structural problems in toilets and in the kitchen, the insects, and the failures in the heating system that are translated into very low temperatures during winter also in the cells where the mothers live with their children. Several organizations have reported the conditions of transportation for women that have children and that travel separated from them on trucks together with men and in late hours of the night.

The prison problem in Argentina is not limited to the above mentioned conditions of detention and bas been aggravated because of the persistence of systematic practices of violence. Depiste of the repeated reports and accusations by local organizations – state-owned or not – and the observations of international organizations[228], torture and abuse continue a problem that is extended and generalized in our country. This kind of practice is present in the daily lives of the people lodged in prisons and in precincts. This systematic characteristic of constant use of these illegal methods turns them into common practice of the security forces of the State.[229]

In this aspect, the void of official information is clear. With the lack of records to gather documented information methodically about the cases of torture and disparaging treatments all over the country, it is difficult to establish accurately its quantitative dimension. This collapse, in addition to supporting "negativist" speeches, prevents the development of effective policies to eradicate torture and abuse.

The lack of systematic and reliable information on these topics generated addresses from the UN Committee against Torture (CAT) in 1997 and 2004.[230] During these opportunities, CAT highlighted the need to create and develop a

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marzo de 2009" ("Weekly summary of the general population lodged until March 27th, 2009"), available at <http://www.spf.gov.ar/pdf/sintesis_semanal_femenino.pdf>.

[228] For instance, CAT, Final notes, November 21st, 1997, and November 24th, 2004.

[229] During the military dictatorship, the repetition of torture was based essentially on the attempt to respond to a deliberate plan, or to guidelines of the top state authorities, and not only on the generalized characteristic or on the extensión of a practice, as it happens in the frame of democratic governments. In November, 2004 the national government recognized before the UN Committee against Torture that "the practice of torture does not respond to exceptional situations or to particular circumstances but as routines of the State security forces, just like a legacy of the last military dictatorship that the democratic governments have not been able to solve". The UN Committee against Torture declared its concern before the "countless accusations of torture and abuse committed in a generalized and repeated way by the forces and bodies of security of the State both in the provinces and in the federal capital". (CAT/C/CR/33/1, paragraphs 6. a, November 24th, 2004).

[230] CAT, Report of November 21st, 1997 (A/53/44, paragraphs 52-69) and Report of November 24th, 2004 (C/CR/33/1, paragraphs 6. b and 7 e.).

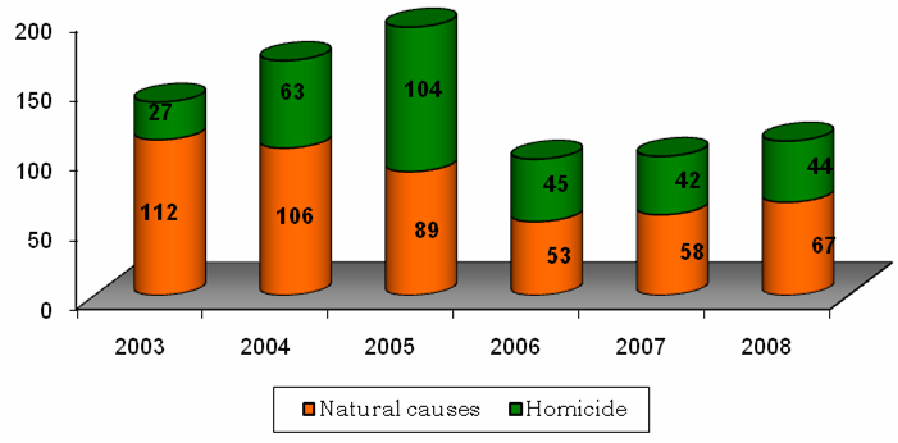
National Record that would compile information about cases of torture around the country. Despite CAT´s repeated requests, the national State continues to ignore this duty.

Consequently and because of the lack of data about the whole country, it is possible to provide a panorama of the federal system and of the PBA, since some control organizations, such as Penitentiary Attorney's Office, the Disfranchisement Defense Office of PBA, or CPM Committee against Torture in the province of Buenos Aires decided to develop their own records and investigations to determine the reach and magnitude of the phenomenon.

In the PBA arena, there is clearly a situation of structural violence very much rooted in the political, prison, and local police cultures. This situation persists, although in the past few years some devices for monitoring and reporting accusations have been strengthened. In this sense, interventions from different institutions have multiplied, and, nevertheless, the SPB and the police seem to have enough flexibility to maintain these practices inside the units and police premises, despite any change of context, continuing with the broad levels of arbitrariness and impunity that they receive.

The next chart shows the increase of deaths in places of detention of the PBA, showing the number of violent deaths that are a result or consequence of direct actions of those in charge of the administration of prisons, or of fights among prisoners many times related to the ways these prisons are managed.

CHART 6: Number of inmate deaths in Buenos Aires Prison Services, 2003-2008



Source: CELS, in the Ministry of Jusice of the Province of Buenos Aires data base. Note: 2006 y 2008 data collected in September 30th and October 8th, respectively, projected until December to facilitate comparison.

During 2007, 100 deaths were reported in the prisons in Buenos Aires, 42 of them violent deaths. Until October, 2008, 86 deaths occurred, 40% of which died in a traumatic way (homicides during fights, suicides, burnt, etc.).[231] In addition, according to data informed by the Provincial Committee against Torture, and according to information of 25% of those accused in the province, during the first 11 months of 2008 more than 5.600 events of violence occurred, with a balance of 4.800 injured people[232].

In addition to the 40% of traumatic deaths, deaths because of illnesses are also quite concerning because they are directly related to the lack of the appropriate medical assistance that might avoid them. According to official information, since January, 2008, 56 deaths because of illness happened in prison units, of which 18 because of HIV. After a judicial action where the lack of a whole policy for the prevention and treatment of infectious and contagious diseases such as HIV, TB, and Hepatitis was disclosed, the Ministry of Justice informed that on 2.400 cases reported, 468 prisoners were diagnosed for HIV, leading to an estimate that at least 25% of the population is HIV positive.[233]

Another manifestation of this structural problem falls on the reports of torture and abuse. This violence responds to different factors and procedures of force in the SPB, or in the police premises linked to discipline and management of the sites with events of corruption, covering of crimes, or personal revenge.

An example of this systematic approach is the use of transfers from unit to unit, or to police premises (known as "calesita"), a form of punishment and discipline. According to the report of CPM Committee against Torture, these systematic transfers are decided arbitrarily by SPB and it represents one of the most terrible moments in the application of physical and body punishments[234]. Because of the material conditions involved in this activity, transfers imply in a constant risk for

[231] Information provided by the Sub-secretariat of Criminal Policy, Ministry of Justice of the Province of Buenos Aires, October 31st, 2008.
[232] On the other hand, SPB informed that it held back prisoners at least in 1,175 ocasions (using rubber bullets in distinct units). Data from the CPM data base for violent actions.
[233] According to information provided by the provincial Ministry of Justice of Mesa de Diálogo established by order of the provincial justice during the cause: "GANON Gabriel Elías Heriberto c/ Provincia de Buenos Aires s/ Amparo" Expte. N° 3.157, started in July, 2006. The provincial government presented a plan in 2009 for the prevention and treatment of HIV that was strongly questioned by those responsible for the judicial action because it did not count with the appropriate diagnosis of the problema, nor presented an approach with enough resources.
[234] The Committee against Torture presented before the provincial Penal Disfranshaisiment Court (Tribunal de Casación Penal) a collective habeas corpus to report such practice.

the physical integrity of the prisoners and for their belongings that can be lost or stolen.

Recently, during a transfer there was a death of a prisoner by suffocation. The vehicle for transfer had no ventilation holes and was going from a closed police premise that was in bad conditions to another. It was supposed to be a 6 hour trip that came to last the whole day because this same vehicle should deliver food to other premises in the province.[235] Another case to mention is the case of a prisoner in the Unit San Nicolas that should have been sent to hospital because of blows received, convulsions, incontinence, and being in a state of shock. This prisoner wanted to report on an agent of the Prison Service that had asked him for money in exchange of a move from unit. The judge of the case refused to carry on with the hearing without the presence of a guard from SPB and the statement was made in the Unit, in front of several possible informers[236].

The official policy shows in this issue a very restricted focus. Before reports and requisitions, the situation is denied and becomes reduced to a problem of violence among prisoners. Unfortunately, this vision removes from the analysis the conditions of institutional violence found in SPB or in the police, and it also avoids an evaluation of the actions that promote, give place, or tolerate these events among prisoners. This definition of the problem is translated, as expected, in the omission of concrete lines of action.

Even without reaching the number and seriousness of the events of torture and abuse found in the province of Buenos Aires, the situation in the federal level is allarming. As it was said, the lack of official records prevents an actual knowledge of the dimension of the problem. This is a gap that impacts not only the political authorities that manage SPF but also the institutions of control that should protect and defend those people deprived of freedom that have neither an encompassing of a complementary set of records. SPF National Board states that they do not have serious and reliable information because the reports are made directly to the justice and the judicial power does not inform to the Prison Service about the existence and procedural steps of the respective causes.[237] This position hides the same concept that was criticized in the past. It is difficult to agree with the idea that those politically

[235] Page 12, Transfer from Buenos Aires, March 3rd, 2009.
[236] Case reported in the newspaper Page 12, "El caso del preso que no quería hablar" ("The case of the prisoner that wouldn´t speak), March 9th, 2009
[237] Note sent by the director of SPF as a response to a request by CELS, December 1st, 2008.

responsible for the places of detention have no responsibility whatsoever in identifying, measuring, and designing specific policies for the reduction of intra-walls violence. As we shall see, neither does the judicial power.

In 2008, 14 violent deaths were recorded at least[238] and another 20 because of illnesses such as HIV, levels similar to previous years.[239]

To be able to handle the situation of violence in the federal system, PPN developed an investigation in 2007[240] that generated much discussion because in the official sphere the results were minimized. The Attorney's Office ("Procuración") considered the *"physical aggression, the search on individuals and in the pavilions, and the disciplinary sanctions of isolation as key indicators in the production of physical pain, degradation, and submission, control and disciplinary techniques in the set of strategies for prison governability".*[241] Although the conclusions of the study were questioned by SPF, the void of information prevents from including in the discussion the general results of such report. (CELS; 2008/c).

According to the survey, 64.3 % reported physical aggression from SPF personnel during detention. In more than half of the cases[242] the aggressions produced physical lesions as a consequence. The greatest number of people that received blows is concentrated in the 18-24 and 25-34 age brackets: 69.6% and 65% respectively. The division where young male adults are lodged is where more frequently the practice of blows by prison personnel happens, around 85%. Maximum security units follow as places where these cases of violence are concentrated.

According to this same investigation, males are victims of physical aggression in greater proportion than females: 65.8 % and 5.7%, respectively. According to the

[238] This figure is the result of the summation of data sent by SPF to PPN. "Violent deaths" are considered those classified as "suicide", "fight among prisoners", "abuse by SPF", and "questionable deaths" according to the classification of PPN. In a scattered way, in 2008, 1 death was confirmed because of SPF abuse, 5 suicides, 3 deaths in fights among prisoners, and 5 questionable deaths.

[239] In 2007, according to PPN data, there were 17 violent deaths (5 suicides, 9 in situation of violence, 3 of questionable deaths), and in 2006 also 17 cases were reported (3 suicides, 13 fights, and 1 questionable death). SPF estimates for 2006, 12 violent deaths (3 suicides and 9 fights), for 2007, 15 (6 suicides and 9 fights) and for 2008, 10 (six suicides and 4 fights). The information about the total amount of deaths classified according to the "causes of death" and "events of violence among prisoners" sent by SPF 1998-208 was made with aggregated data that makes their evolution difficult to be analyzed.

[240] National Penitentiary Attorney's Office (Procuración Penitenciaria de la Nación), Informe Preliminar. Investigation: *Estudios sobre malos tratos físicos: requisa, sanción de aislamiento, y golpes en las cárceles federales (studies about abuse: search, isolation, and blows in federal prisons)*, November, 2007. Unpublished.

[241] National Penitentiary Attorney's Office (Procuración Penitenciaria de la Nación), Preliminary Report. Pages 19 and 20.

[242] It concerns 53.4% of people assaulted, that is 33.9% of the total population interviewed.

study, *"it is on the shameful search and not so much on blows that abuse is channeled on the collective of imprisoned women"*. Almost 70% of imprisoned women had to endure in 2007 the most degrading and humiliating of the inspections: strip search and squatting.

In this sense, it is important to highlight that despite the repeated reports the Guide for Search Procedures (Guía de Procedimientos de la Función Requisa) in 1991 (Resolution 42/91), establishes in what moments and how physical records should be carried out in prisons, and that allows detailed reviews of prisoners and family members including the exhibition of the genitals, buttocks, anus, and vagina. This provides "legal" support to a level of invasion of the body that represents a cruel, inhuman, and demeaning treatment according to national and international standards in human rights[243] These practices of intimate search continued justified because of security issues, although the state should design alternative mechanisms that did not impact on the personal dignity of prisoners or their family members.

The punctual measures taken by SPF top management to deal with some aspects of prison violence did not reach support from the "Service" that in the daily treatment with the prisoners continues to deploy rooted violent methods. The sources that were interviewed have not observed, either, major changes in the training of SPF representatives, not even in the behavior of those in management positions. Like this, some changes in unit management bring poor results if they cannot turn into deep changes of the internal culture of the staff. It is said that it is a random reaction in face of occurring situations.

The absence of a national active policy to decrease the rates of violence in the prisons is also seen in the lack of implementation of the Optional Protocol of the Convention against Torture (OPCAT) that demands from the states the creation of an institutional mechanism for the prevention and punishment of torture. In November 14th, 2004 Argentina ratified the Protocol[244], through which until June 2007 it should have informed the Sub-committee of the creation of a national mechanism; this has not been done, yet.

[243] When CIDH, examined a case about Argentina, it sustained that vaginal search or inspection is only accepted as legitímate in exceptional circumstances. Cfr. CIDH, Report 38/96 – Case 10506, Argentina, October 15th,. Some time later, in 2004, the CAT Committee developed recommendations to the Argentinean State among which, namely: "…The necessary measures should be taken to guarantee that personal searches respect fully the dignity and human rights of every one in full commitment with international standards (…)" Cf. CAT, Final notes on the fourth periodical report of Argentina, December 10th, 2004, CAT/C/CR/33/1.

[244] The Protocol was approved by a Congress law in September 8th, 2004. In November of this year it was forwarded for ratification.

BRAZIL

The violations of rights in Brazil, as seen in this study, do not only happen in places of detention but it is mainly in those places, far from the attention of the public opinion, that we find the most outrageous affronts to the essential principles of human dignity. It is not by chance that countless reports are disclosed by entities and people that still want to fight for the preservation of such rights and demand actions from the government.

Even when supported by international treaties, such as the Covenant of Civil and Political Rights, the Covenant against Torture and the Penal Execution Law that relentlessly show us how a sentence with deprivation of freedom should be performed both in terms of prisoners´ treatment and penal institutions, these reports are far from receiving the appropriate answers to match the problem.

In 2005, the Pastoral Carcerária Nacional, subordinated to the National Council of Bishops in Brazil (CNBB), sent to the Ministry of Justice "contributions and notes" about the situation of human rights in the Brazilian states prison system. At that time, the entity reported the responsibility for the action or omission of the public agents in neglecting and abusing of prisoners.

According to Pastoral, there are distinct forms of deprivations, such as those in some states in the North and Northeast of the country where the prisoners starved because they were left without food for days in a row, or were only fed once a day:

> "The situation on the state of Amazonas in September, 2004 was similar: food for the prisoners in prisons upstate never arrived because the funds from the Prison Administration Sub-secretariat of the State were not released by another instance. In addition, there is a trend to restrict the possibility of the family bringing food, home-made or industrialized, in many states in Brazil" (Pastoral, page 19).

There is also a dramatic situation for the prisoners with mental disabilities. According to Pastoral, many of these prisoners are thrown in confinement in prisons, remain isolated and in submission, so that they do not engage in confrontation with other prisoners, or do not require specific attention of the employees in the unit, maintained for indefinite time clostered in "punishment cells" without periodic medical and psychological examination and opinion, nor appropriate treatment.

Another specific problem concerns women in prison. When they are not sent to institutions for men where they are humiliated, raped, and victims of the most

diverse abuse, the female prisoners are hurt with the family ties that are cut, especially with their babies that were generated while they remained in prison. Many feminine institutions do not have baby centers or day care centers, and if they have premises of the kind, they are usually full and cannot accommodate all the children that in the first months of their life need breast feeding and the bond with their mothers. In addition, when they are separated from their children, the prisoners seldom receive information about where they have been lodged and what they will have to do after they are released, so that they can have them back again. Pastoral also describes other serious cases:

> "In the prison of Jaciara, near Rondonópolis in Mato Grosso, the nearly 10 prisoners locked in only one cell told that two pregnant inmates had lost in the past few months a child on its sixth month of pregnancy because of wide spread infection. In addition to the death and abortion of the embrio because of lack of hygiene both spent one month in hospital treatment, of which four days in the ICU (Intensive Care Unit) to recover from the infection". (Pastoral, 2005, pp. 13 e 14)

The Parliamentary Inquiry Commission of the National Congress Chamber of Representatives created in 2008 to evaluate the conditions of prison institutions because of the scandal that came true in these places with countless reports and serious demands from international organizations presented on its final report an endless list of violations found in every Brazilian state.

As for the material assistance, the representatives made the following statement:

> "the CPI observed that most of the penal institutions cannot offer the minimum conditions for the prisoners to live with dignity. That is, indispensable conditions to the process that will prepare the prisoner to return to society. The CPI observed a cruel, inhuman, animal like, illegal reality in the prison environment where prisoners are treated like human dirt.
> The CPI noticed friction, fear, repression, torture, and violence in many penal institutions - the kind of environment that to some extent embraces and extends to the relatives, especially during the visits to prison units". (Chamber of Representatives, 2008, page 175)

Among other measures, the Commission warned about the urgency of renovating the already existing penal institutions to offer minimally decent sanitary conditions to the prisoners, such as water, showers, sewage to render the environments less unhealthy, and the installation of illumination, areas of ventilation, and room for sunbathing, in addition to hygiene kits with soap, towels,

clean clothes and mattresses to avoit the propagation of diseases, among other arrangements.

The topic on food was also object of the CPI survey and, according to the information the irregularities involved not only the prisoners but the public agents suspected of fraud or corruption. In Instituto Penal Paulo Sarasate, in Ceará, the food for the prisoners was being supplied in plastic bags. The prisoners had to use their hands to eat because prison management did not supply utensils. The CPI is still to check for the following situation in Rio de Janeiro:

> "The little quantity and the bad quality of the food served do not match the excrutiating prices paid by the taxpayer – on average R$ 10,00 (ten reais) – per prisoner. (...)
> Nevertheless, the government of the state [Rio de Janeiro] offers to the poorer population better food with greater variety for only R$ 1,00 (one real), a contradiction that can only be explained through the action of schemes of corruption.
> The CPI has also become aware of the existence of a parallel market of food inside some prison institutions that was explored by prison employees with the help of prison labor". (Chamber of Representatives, 2008, pages 182 and 183)

Other reports came after this one, and this time concerning prisoners´health:

> "During the investigations, the CPI found situations of human misery. In the district of Contagem, in cell n.1, an old man in his sixties had the body covered with wounds and he was in the middle of another 46 prisoners. An image never to be forgotten! In the Temporary Detention Center of Pinheiros, São Paulo, several prisoners with TB mingled in an overcrowded cell with other apparently "healthy" inmates. In Ponte Nova, the prisoners used creolin (a disinfectant made of creosol and soap) to heal skin diseases. In Brasilia, prisoners with mental disabilities had no psychiatric assistance. In the prison of Pedrinhas, Maranhão, prisoners with gangrene on the legs. In Santa Catarina,the dentist pulls off a good tooth and leaves the bad one in place. In Ponte Nova and Rio Piracicaba, in Minas Gerais, 33 prisoners burnt down to death". (Chamber of Representatives, 2008, page 184)

Nevertheless, the representatives ensure that the worst problems involving prisoners are "legal" problems from which other many derive, such as overcrowding, limited assistance, deaths, escapes, and riots. These problems involve procedural issues, such as forged flagrants, deadlines that are not met, lack of defenders, disregard to constitutional precepts, such as right to counsel and presumption of innocence, private, and corrupt lawyers with malicious motives. According to the Director of Depen at the time in a deposition to the CPI "nearly 30% of Brazilian prisoners should be released from prison and this does not happen because of a deficient legal assitance". The former director also called the attention to more than 500 thousand prison warrants dispatched and not executed, whose execution would

bring catastrophic consequences not only for the prison system but for the whole society.

If violations that occur because of the omission of the Public Power were not enough, there are also reports of typified actions, such as felonies perpetrated by employees of the prison units that are constantly in the accusations made about the affront to human rights to prisoners in Brazil. Physical aggressions, humiliations, body and psychological torture, abuse, and death complete the rol of illegal activities to which prisoners are submitted and over which the governments resist to take action.

According to the same report of Pastoral Carcerária mentioned above, the changes that made legislation harsher and that restrict some of the former guarantees that the prisoner had, contribute mainly to the exercise of psychological torture that weakens the mental health of the prisoners and in consequence, creates greater friction among these and the employees in the system. In this case, the Differentiated Disciplinary Regime is highlighted as an example that tends to increase the number of mental disabilities and suicides because of the isolation and pressure that convicted inmates receive with this new type of punishment.

A psychological torture also occurs in some states at the moment of the arrival of the prisoner to the prison; a moment when because of the existence of some criminal organizations of strong influence, the prisoners have to assume to which organization they belong, or choose an organization, so that his destiny in the prison is defined. This situation was recently reported by Philip Alston, UN Special Narrator that in his visit to Brazil in 2007 declared:

> "Several prisons in Brazil ask the prisoners to choose to which gang they belong when they enter the prison system for the first time. Prison management adopts this practice as a way of better controlling the prison population and reducing conflicts between gangs in the prisons – in a prison in particular, or in a pavilion, for instance, only members that belong to the organization Comando Vermelho are sent, whereas in another pavilion only members of Amigos dos Amigos are kept. In Rio de Janeiro, even when a new prisoner has no affiliation to a gang, he is forced by the prison administration to choose which gang he wants to join. A prisoner that refuses is simply assigned to a gang by the prison administration. The practice of the State of requesting the identification of a gang actually serves as a recruitment of prisoners to the gangs. As a last resort, this usually contributes to the growth of the gangs outside the prisons and increases the rates of crimes. Because of the power of the gangs now established in the prison system, rival gangs can certainly remain separated to avoid riots and deaths. But it is important to take into consideration all the methods available to avoid that ordinary criminals become members of the organized crime. While in theory some states have "neutral" prisons where prisoners with no affiliation

> can remain, it is better that over there their neutrality is actually preserved" (Alston, 2008, pp. 3 e 4)

The practice of physical torture is also a constant in prison institutions. Remains of the dictatorship or not, the reality is that agents of the criminal system still feel free to operate according to the most perverse and cruel ways in prisoner treatment. Since these occurrences are many times hidden and denied by the Public power – and even encouraged by top management - there are no reports of outstanding judicial or administrative actions to curb this kind of conduct. The CPI report describes:

> "In every prison institution that was examined, the CPI heard from the prisoners and relatives reports of torture and abuse. In some units inspected in Rondônia, Piauí, Cuiabá, Mato Grosso, Ceará, Maranhão, Goiás and in many other states, the CPI found evidence of torture on prisoners.
> In Luziânia, a city in the state of Goiás, located not far from Brasilia [capital of Brazil], the CPI heard different reports about torture practiced by the National Force at the moment of the arrest. The female prisoners reported that the National Force kicked them, and used electric shocks, stepped on the belly of a pregnant woman, and had another one stripped naked.
> Fear and fright dominate prison institutions. Prisoners live under constant intimidation. A good part of the units are managed by former xeriffs from the Federal Police, or military still in service or retired that militarize the prison environment.
> In this atmosphere of tension, fear, and fright, few prisoners are willing to report openly the tortures that are practiced. The CPI was intimidated in several places with the attempt of obstruction of the works, such as it happened in Mato Grosso do Sul.
> Unfortunately, most of the prison institutions are real concentration camps". (Chamber of Representatives, 2008, page 254)

The Pastoral Carcerária reinforces the situation informing about a case of physical torture and the corresponding shameful action of the criminal justice institutions when they became aware of the event:

> "One prisoner decided to report a serious case of torture to the Pastoral Carcerária that occurred in the prison of Parelheiros/São Paulo. According to the information provided by the Judiciary Assistance Office, the judge responsible for the execution bench court until 2003 in the county of São Paulo, filed the case after the prison was deactivated with the argument that no further torture case would take place over there. When the attorney general reported the fact publicly, the judge prosecuted him and the attorney general was sentenced to a heavy fine.
> The same judge was co-responsible for the physical and psychological torture for a life tenure on the prisoners he released temporarily from prison to collaborate with the Public Security Secretariat of São Paulo to solicit prisoners and fight members of the criminal gang Primeiro Comando da Capital (PCC). Many of these [released prisoners] were killed extra-judicially in March 2002 by the extermination group Gradi (Grupo de Repressão e Análise dos Delitos de Intolerância) (Group of Repression and Analysis of Crimes of Intolerance) from the military police, and the

> [other] prisoners collaborators are under threat and can die at any moment". (Pastoral, 2005, p.3)

In this environment of neglect and precariousness, the number of deaths and escapes from prison institutions has reached alarming proportions. If it was not for the lack of assistance provided to prisoners, prison statistics could not hardly establish the exact quantity of fatalities, nor of people involved in escapes or mutinies. Such reality can be checked on the table below, where the numbers presented by the National Prison Department and by the Master Plans of the different states for the renovation of the Prison System have incredible discrepancies despite both having as a source the states information systems. This can be explained because after Depen collects the data there is no commitment of the states for forwarding accurate and complete information to Infopen (Depen´s information system), because there is no counterpart from the federal government for this assignment. On the contrary, the Master Plans are part of a broader policy in the area of public security, the Pronasci (National Program of Security and Citizenship) through which the states in addition to accepting a formal commitment with the federal government that they will modify their systems of information and invest to reach the goals established in the Penal Execution Law, receive good standing funds not only from the Prison Fund but also from the PAC (Growth Expediting Plan) to increase the economy having as a basis the social investment.

TABLE 13. Number of escapes and deaths in the prison system, Brazil, 2006-2007

Prison System	2006-2007			
	Escapes (Master Plan)	Escapes (Depen)	Deaths (Master Plan)	Deaths (Depen)
Acre	337	52	8	0
Alagoas	432	77	38	3
Amapá	72	9	16	3
Amazonas	701	117	25	0
Bahia	72	46	30	6
Ceará	358	16	30	5
Distrito Federal	88	104	33	6
Espírito Santo	248	89	59	6

Goiás	784	126	19	4
Maranhão	65	15	11	1
Mato Grosso	394	78	13	1
Mato Grosso do Sul	41	177	48	3
Minas Gerais	2.734	104	125	6
Pará	1.310	7	28	2
Paraíba	17	22	29	3
Paraná	680	104	53	13
Pernambuco	2.267	57	117	5
Piauí	15	0	7	1
Rio de Janeiro	27.652	3	180	4
Rio Grande do Norte	Not informed	13	Not informed	2
Rio Grande do Sul	9.968	1.058	254	14
Rondônia	1.591	193	33	6
Roraima	127	4	15	0
Santa Catarina	768	39	86	8
São Paulo	15.095	2.303	657	79
Sergipe	12	6	2	0
Tocantins	49	1	3	0
TOTAL	**65.877**	**4.820**	**1.919**	**181**

Source: Depen

All these outrageous facts and figures had some NGO´s asking for help to international organizations of guarantee and defense of human rights because of the omission of the State that did not solve the poor situation of the Brazilian prison system; and especially to the Organization of the American States – Interamerican Commission of Human Rights (CIDH) and the Interamerican Court of Human rights (CortIDH), and to the Organization of the United Nations (UN).

In addition to other petitions that had been received and measures that had been proposed to the Brazilian State, CIDH granted in October, 2006 temporary restraining orders for approximately 400 people arrested in precinct 76th of the Police Department of Niteroi, state of Rio de Janeiro, that were imprisoned in a place with capacity for 140 people. In addition to overcrowding, the temporary prisoners

were put together with convicted prisoners[245]. In 2007, CIDH granted temporary restraining orders for teenagers arrested in the Temporary Detention Center of Guarujá, in the state of São Paulo. According to the report the institution for the detention of adults was constantly lodging teenagers totally disrespecting international rules and the Brazilian Statute for the Child and the Adolescent that establishes the detention of young people in special places where they can receive social and educational training[246].

In addition to the temporary restraining orders, the Brazilian states received the determination for the implementation of urgent provisional measures. Between January and July, 2002, 37 prisoners had been brutally killed by other prisoners in the Casa de Detenção José Mário Alves da Silva, known as Presídio Urso Branco, in Porto Velho, Rondônia. There were other prisoners still threatened. In 2002 and 2007, CIDH presented two notes about the measures taken by the government with the objective of avoiding more killing of other prisoners and became aware that very little had been done to guarantee the integrity of the prisoners in that prison.

In 2006, nearly 1,500 prisoners lodged in Penitenciária de Araraquara, in São Paulo, were locked in a patio subject to weather conditions and to the violence of policemen that wearing hoods to conceal their identity, threatened to shoot them with rubber bullets and real lead bullets up from the walls were they were watching the prisoners. In that same year, CIDH requested to the Interamerican Court temporary measures. A Resolution was ruled by the Court reaffirming the responsibility of the Brazilian State over all those people that had been deprived from freedom in Araraquara, regardless if they had been transferred to other prison units. During 2007, the Commission presented notes concerning the information of the Brazilian State about the fulfillment of the measures ruled by the Court. [247]

In 2002, a micro-bus with 12 people, alledgedly members of the criminal organization Primeiro Comando da Capital (PCC), was intercepted by the Military Police. The passengers in the vehicle were killed by an operation of the same Military Police in the highway Ermírio de Moraes, called “Castelinho”. More than one hundred policemen joined the ambush. This operation was planned with the help of prisoners removed from the prisons and placed undercovered in the criminal

[245] Interamerican Commission of Human Rights (http://cidh.oas.org/ annualrep/2006sp/cap3.1.2006.sp.htm)
[246] Interamerican Commission of Human Rights (http://cidh.oas.org/ annualrep/2007sp/cap3c1.sp.htm)
[247] Interamerican Commission of Human Rights (http://cidh.oas.org/annualrep/2007sp/cap3E1.sp.htm)

organizations. The case was forwarded to CIDH that in 2007, understood that the case had the necessary requisits to be admitted by the Interamerican Court.[248]

Nigel Rodley, UN Narrator for Torture visited Brazil between September and October, 2000, and after confirming the serious situations in the prisons, he recommended an effective participation of the top authorities in the country, federal and state, to disavow torture and abuse, and to commit with the adoption of efficient measures for their repression. Some initiatives in this direction were adopted but producing very few practical results. In 2003, for instance, the Action Protocol against Torture was signed. The objective was to establish a commitment to "identify the factors that jeopardize an efficient fight against torture, identify the practice of torture because of race discrimination, and formulate recommendations for the improvement of the services of the agencies in the system of justice and security". Those that commit themselves with this Protocol were: the STF, the Republic Attorney´s General Office, the Federal Office for the Rights of the Citizen, Public Ministries of the States represented by the National Council of General Attorneys, the Brazilian Bar Association, the Ministry of Justice, the Secretariat of human Rights of the Presidency of the Republic, among others. But this commitment did not reduce the cases of torture and abuse in the Brazilian prisons.

CHILE

Although torture is totally forbidden in the Chilean Constitution, NGO´s received isolated information of abuse by the police in the prisons. According to the Report of Human Rights of the Department of State of the US, there are few reports of abuse that turned into convictions. According to this document, before the end of the year 2008, the Gendarmeria started an administrative investigation on 107 reports of abuse (in 2007, the number of administrative investigations was 26). In six of these new cases the agents that were involved were punished, other nine cases were suspended or nobody was accused, and 92 cases are still pending on a final decision in December, 2008[249].

[248] Interamerican Commission of Human Rights (http://cidh.oas.org/annualrep/2007sp/Brasil.12479sp.htm)
[249] Department of State (2008), "Report on Human Rights - Section Chile", Embassy of the US. Available at: http://santiago.usembassy.gov/OpenNews/asp/pagDefault.asp?argInstanciaId=1&argNoticiaId=4468 [02-25-2009].

Although the policy of the institution does not support the practice of torture or abuse, it is necessary to develop measures to speed-up the investigations and punishment of this kind of action.

Several reports developed by public[250] and private[251] organizations confirm that overcrowding, lack of drinking water, restricted access to medical assistance, the indignified delivery of food, the long periods of confinement of the defendants, the beating of prisoners, and the arbitrary use of punishments by the administration of the prison are part of the most serious problems recorded in prison institutions. Nevertheless, it is necessary to clarify that this is a panorama observed mainly in the traditional prisons, and it is different what is found in "privatized" prisons with modern characteristics and greater respect to human rights[252].

One aspect that was highlighted by the Rappourteur for people deprived from their freedom during his visit to different prison institutions in the metropolitan region and in the V and IX region (2008), was connected to family members visits because of the denigrating aspect of body search[253]. He recommended that the search should not be so thorough, so that right after the visit is over a complete search of the prisoner could take place.

A case that called the attention of the public opinion was the degrading treatment to which a group of female prisoners was submitted in a women prison in the metropolitan area. These women were filmed naked during a search procedure carried out by a group of male employees of the Gendarmería. In December, 2007, after a sentence from the Twelfth Court of First Instance of Santiago, these employees were convicted because of the crime of unfair humiliation against the prisoners[254].

About the deaths, the most frequent types in the prison system are linked to disease, suicides, and the violence among prisoners inside the prisons. According to

[250] As developed by the Prosecutor of the Supreme Court of Justice (2008) for the Foreign Affairs Commission of Congress, the reports of the visit of two judges of first instance, reports of parliamentary commissions, among others.
[251] Universidad Diego Portales (2007), page 86.
[252] Florentín Meléndez, narrator for people deprived from freedom in the Interamerican Commission of Human Rights (CIDH) mentioned this fact during his visit in June, 2008 to several prison units, and after interviewing key agents of the government and the civil society.
[253] Interamerican Commission of Human Rights, Report on the Rights of People Deprived from Freedom (2008). Press release Nº 39/08 of 08-28-08. Available at: http://www.cidh.org/Comunicados/Spanish/2008/39.08sp.htm [13-09-2008].
[254] Universidad Diego Portales (2007), page 97.

the National Comission of the Deceased of the Chilean Prison System, the number of people that died between 1998 and 2007 would be the following[255]:

TABLE 14. Frequency of deceased prisoners between 1998 and 2007

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Number of Deceased Prisoners	76	71	70	112	77	86	88	87	118	115

Source: Chilean Gendarmería, National Commission of the Deceased of the Chilean Prison System (2008)

The highest figures correspond to specific situations that caused the increase. Therefore, in the year 2001, there was a fire in Iquique CCP, were 26 people died. In 2006, there is the beginning of operations of the "Privatized" Penal Estabilishment of Rancagua (Establecimiento Penal Concesionado -ECP) , and it is the year when more deaths occurred because of fights or quarrels among the prisoners. In 2007, another "privatized" prison starts its operation, the EPC Santiago 1, where 8 suicides took place[256].

97.3% of prisoners´ deaths inside prisons correspond to men, while only 2.7% of the total are women. Regardless of the cause of death, it is possible to identify some common characteristics among the deceased: 91.5% had abandoned school, and only 8.5% had completed high school; 61.5% did not have a stable relationship. The range of age varied between 29 and 48 years. As for the legal situation, 75,5% was convicted. 87,4% had not psychiatric diagnosis, 75% had no stable work. The place of death was in 56.9% of the cases the collective cell, while 21.1% in individual cells[257].

[255] Escobar, J. et al. (2008), "Deceased in the prison system: A preliimnary description according to the types of deaths", in Revista de Estudios Criminológicos y Penitenciarios N° 13, Gendarmería de Chile, Santiago, page 39.
[256] Ibidem. One of the hypothesis for understanding the reasons of suicide increase in Prison Institutions is that in those places "the systems of interaction are changed, both formal and informal ones, losing its meaning for the members in this community, and the coertion of the formal system and the dismantling of the social organization structure does not comply with a function of protection to the prisoners, therefore losing sense in terms of classical strategies of adjustment". Ibid, p.51.
[257] Ibid, p. 41 y 42.

TABLE 15. Mortality causes in the prison system

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Illness	42	35	33	27	32	39	35	38	44	49
Events of violence	12	10	15	12	18	15	24	26	45	26
Suicide	14	16	13	19	12	11	14	14	19	25
Accidents	5	3	1	17	9	8	12	6	5	5
Natural Death	0	5	7	37	6	12	3	3	5	9
Unknown Causes	3	2	1	0	0	1	0	0	0	1
TOTAL	**76**	**71**	**70**	**112**	**77**	**86**	**88**	**87**	**118**	**115**

Source: Chilean Gendarmería, National Commission of the Deceased of the Chilean Prison System (2008)

An institutional measure to help understand the causes of deaths inside the prison system and establish procedures to decrease the number arrived with the creation of the National Commission of the Deceased of the Prison System. The systematization and the analysis of the information related to these events made it possible to focus the attention in the prison management of those populations of greater risk, attempting to decrease the recurrence of deaths of people deprived from freedom.

As for medical assistance, according to the information provided in the Report of Human Rights of the Universidad Diego Portales, in public prisons (actually, where 80% of the prisoners of the prison system are lodged) there are infirmaries that are able to render first-aid assistance and care for cases of lesser complexity. In general, nurses are in charge of the infirmaries[258].

In "privatized" prisons there are also infirmaries with a quicker level of assistance than found in traditional institutions but even though the assistance remains of first-aid. The objective of this service is "to deliver full medical assistance with a primary level of resolution but also a secondary and a tertiary level of assistance in coordination with other prison institutions or with the health public

[258] Interamerican Commission of Human Rights – Report on the Rights of People Deprived of Freedom (2007), Conclusions of the Work Teams in the event about the Good Practices in Prisons in the region (unpublished document), Buenos Aires.

system"[259].To be able to accomplish these objectives, the service included the performance of exams to produce files at the arrival of the prisoner, to check for lesions, and prepare statistical rates of incidence of diseases.

Currently, the prison system has 3 prison hospitals located in the cities of Santiago, Valparaíso, and Concepción, in that the best equipped is the one in the capital. If these hospitals are not able to cover the whole demand for health assistance in the prison system, the prisoners that are in institutions located in cities without this kind of service are sent to the public health system. This option is carried out by gendarmes specialized in the transportation of prisoners, and this can be seen by the color of their uniforms[260].

According to the information provided by the area of studies and the Medical Unit of the Chilean Gendarmería, 3.3% of the people that arrive to prison have some kind of illness (December,). Of this amount, 10% (152 people) with some kind of Sexual Transmitted Disease, 2.3% with mental disability (34 people), and 87.7% (1.267 people) with another non specified disease[261].

As for Legal Assistance, the people that are in detention and received their sentence are assited by the Public Penal Defense Office. Nevertheless, there are cases of people waiting sentence because they are still bound to the old proceedings systems (and they are identified as prosecuted). This last group receives assistance from the Legal Assistance Office (Corporación de Asistencia Judicial), a service subordinated to the Ministry of Justice with the objective of promoting free judicial and legal assistance to people that cannot afford it[262].

As for social assistance, it is carried out by social workers of the technical area in each prison unit. The work of these professionals is mainly carried out through specific programs. Nevertheless, there is also individual assistance, according to the needs of the prisoner that deserves it. Because of the few numbers of these professionals in prison units the possibility of receiving this kind of assistance ir very rare.

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[259] SIGES Chile S.A. - Consorcio BAS S.A. (2007), Reports on the management, operations, and statistics in Prison Institutions of Alto Hospicio, La Serena , and Rancagua, including the first and second semesters of 2007, Santiago, page 7.

[260] In a call to the Prison Hospital of Santiago "it was posible to confirm that higiene conditions were appropriate, as well as the separation of prisoners according to the level of ravity and with a good number of security people present (gendarmes)". Dammert, L. y Zúñiga, L. (2008), page 130.

[261] Ibid, p. 125y 176.

[262] Available at: http://www.cajmetro.cl/materias_atendidas.php [02-12-2009].

CONCLUSIONS

This study has been concentrated in the analysis of prison conditions for individuals that become involved in the world of crime and that are selected and introduced into institutions that belong to the criminal justice system as suspects of comiting crimes, as prisoners that are waiting for trial, or that have been convicted by the courts. The analysis occurred with the study of the imprisonment conditions in South America, and more specifically in Argentina, Brazil, and Chile. The conditions of detention under which specific segments such as migrants waiting for deportation, adolescents in conflict with the law, people with mental disabilities, and prisoners of conscience live have not been the central object of analysis in this research. These other contexts of imprisonment should demand future complementary studies that help in a comparative plan to understand the still recurring method of space of detentions for very diverse purposes.

It started with a broader analysis of the change in crime control culture that was established throughout the past thirty years in the world to provide a better understanding of how political and institutional arrangements took place in countries in South America. This new culture closely connected to the new ways of organization of the market and of society during this period implied in a breakthrough with the essential guidelines of perception of crime, of the criminal, and of how penal policies should be structured, as well as the mechanics of punishment, and social order. The new reading on how to deal with crime represented a reasonable abandonment of the ideals of rehabilitation of the offender through a system of punishment, with concerns in the reduction of risk involving crime emergence, a generalized feeling of insecurity, the emergence of new criminologic theories.

Because of these new perceptions, a feeling of vengeance against the offenders emerges and takes place with the creation of harsher laws to punish them, and also to keep them confined. And it was following this lead that death penalty and life imprisonment resumed their place in public debate in many countries. The offender between the years 1950 and 1970 was seen as the result of insufficient processes of socialization, and considered partly as a victim also of the adverse conditions of existence, of economic, social, and psychological vulnerabilities. Following this conception, the intervention of the State was in the sense of working over these conditions that might favor his involvement with crime. And, if punished, it was up to

the State to find a penal treatment that would correct him and return him renewed, rehabilitated to society. But the new liberal order and the new perceptions of law and order bring a new approach to criminals. That social concept of the emergent causes of crime is left aside, and the focus of attention is now fully turned to the individual. The criminal is the enemy (says Günther Jakobs) that individual that breaks the rules of democratic existence, he is the non-citizen that has his own agenda and that makes individual choices that take him to crime. Because he does not respect the law, he should not be entitled to any rights. And it is in this direction that procedures could be adopted to suspend the rights of the criminals, just like strict punishment could be imposed in terms of duration (like prison to life) of the sentences of deprivation of freedom, or the adoption of disciplinary regimes like those found in the *supermax*. These perceptions related to crime and to the offender never place in discussion the main issue of selectivity of the criminal justice system, its flagrant action directed to illegal popular activities, for crime in the streets with illegal activities less visible but not less serious – such as the so called "white collar crimes", money laundry, financial operations in tax heavens, environmental crimes, crimes against pulic health, etc..

The new ways of management of the state and of its relationship with society and with the market emerged from the so called neo-liberal agenda and found grounds in the perception of crime control. The old ways of state accountability, of the welfare with the rights of the citizen, or with the guarantee of order become redefined in an agenda that encourages the participation of civil society and of sharing with the latter this accountability in the maintenance of order, as it is revealed, for instance, in the schemes of community police.

At the same time, the market reaches territories that were almost exclusive responsibility of the state, such as law enforcement, the application of sentences, and what can be seen is an explosion of private interests that include since the production of goods and security equipment (cameras, handcuffs, armored cars, etc.), to the management of prison units according to what Nils Christie (1998) called the "industry of crime". Penal policies receive a touch of popularity, of immediate response to the anxieties and pressures of the population through the use of policies of prevention of longer duration.

This new culture of crime control started spreading out from countries economically stabilized with already consolidated democracies, such as the United States and Great Britain. In the countries of the Northern hemisphere, this culture

and above all the penal policies that were adopted because of them provocated tensions between the agenda of human rights and the legal guarantees that became consolidated especially after the II World War and the constant threats of reduction or suspension of rights, backed by social perceptions that do not recognize the criminal individual, and therefore the prisoners as subjects to rights. A tension that becomes more apparent with the prevalence of concerns with security, with reduction and control of risks in social order, as mentioned by Gilles Chantraine (2004). The events of September 11th, 2001 created an even more favorable environment for the addition of new elements of exceptionality, of possibility of suppression of rights to a culture of crime control already immersed in fear and feelings of insecurity.

The arrival of the new culture of crime control to regions such as South America brought impacts that were very perverse both for the guarantee of the human rights agenda, and to ensure that legality was not sacrificed in the name of demands of security and of the legal emergencies it would demand. After decades of political instabilities and the presence of different authoritarian regimes, in the last three decades democracy has been stabilized in the region. But the new democracies did not reduce the outrageous levels of social inequalities, or the conditions of poverty of millions of people despite the economic growth of several countries. In addition, a strong authoritarian heritage together with a new culture of fear and insecurity also favors the introduction of models of penal policies, of ways of control of crime that place under threat the rule of law and the legal and constitutional guarantees. The common political arrangement in democracies in South America includes the legal formalism, the adoption of constitutions, of legislation and adhesion to international treaties on human rights together with a wide spread authoritarian heritage through the republican institutions, and that prevents democracy from working to all citizens.

One of the consequences of the new perceptions related to crime was the adoption of legislations that broadened the types of crimes that became more repressive with stricter sentences, and created stricter forms of dealing with criminals. All over the world, the result was a growth in the numbers of people behind bars. Actually, prison was reinvented, reorganized, revalued in the past thirty years as "an instrument of management of populations assigned as drifters or dangerous" (Artières, 2004: 25).

The suspicion that emerges then is if it is possible to preserve human rights and human dignity in prison environment? After two hundred years of use of prison as one of the main tools for punishment in modern society, the answer is filled with uncertainties. Rejuvenated and placed as the central figure among the mechanisms of crime control and reduction of feelings of insecurity, the prison remains a territory where human rights are still violated no matter the progress of the democracies in the world and the adoption of international mechanisms of protection and promotion of human rights. The relentless efforts of the Committee against Torture, of the Office of the High Commissioner of the United Nations for Human Rights, of the European Committee for the Prevention of Torture, of the Interamerican Commission of Human Rights (CIDH), or of organizations such as Amnisty International (AI), , Human Rigths Watch (HRW), International Committee of the Red Cross (CICV), World Organization against Torture (OMCT), Association for the Prevention of Torture (APT), Interamerican Institute of Human Rights (IIDH), Insternational Observatory of Prisons (OIP), among so many others, performing constant visits, countless reports of violations of human rights, producing information about the most different aspects of the life in prisons, generating a comprehensive material of support for the monitoring of prison conditions – all of this confirms that the prisons continue places that are a challenge to the capacity of the democracies to ensure the effectiveness of the law and of human rights.

More consolidated democracies in societies where social inequalities run not so deep, are able to maintain prison conditions in reasonable levels. But the situation is serious among those countries that present deep social inequalities, broad layers of the population maintained in porverty and in sub-human conditions, and where democracy has not been able to reduce such levels of inequalities but has allowed crime to control policies that are made harsher, more repressive, more selecetive reaching illegalities practiced mainly by the most vulnerable sectors in society.

In these countries, just like in most countries in South America, to be sent to prison does not mean only a restriction to the right of coming and going, to freedom, but a deep humiliation to human dignity because there is no guarantee that the laws will be fulfilled and that people will have the appropriate defense, or a fair trial. It also means that physical integrity is put at risk by the prison conditions, by overcrowding of cells, by imposed abuse, by violence among prisoners, and by the not at all remote possibility of being killed by another prisoner or by a staff member. Only

in the state of São Paulo between 1999 and 2006, 451 prisoners were killed – that is, 56 per year, 4.6 per month (SAP). In Brazil in 2002, 303 were killed by homicide, which represents one death per every thousand prisoners (Lemgruber, 2004). In 2006, despite the lack of information of the 30% of the states in the country, there were in Brazilian prisons 230 violent deaths. In 2007, the deaths of prisoners in this condition were 257, meaning a rate of 0.6 dead prisoner by homicide in every group of one thousand[263]. In the same situation we find other countries in the region, such as Argentina, Colombia, and Venezuela (Damert & Zúñiga, 2008).

Deaths of prisoners by homicide in South America are very high if we take into consideration that in the United States with a population of nearly 2 million prisoners from 2001 to 2006 there were 299 deaths in state prisons, and 130 in jails according to *US Bureau of Justice Statistics*. In Great Britain, there were 6 deaths of prisoners by homicide between 2004 and 2007 in male prisons[264]. When the State has flaws in law enforcement, when it disrespects international treaties of protection to human rights, when it provides a deficient organization of prisons, it favors the emergence of barbaric episodes in prisons in countries in South America, such as homicide of prisoners. Such places have become real extermination camps with the omission or convenience of the State. They are territories of exception that exhibit widely the contradictions between ubiquitous aspects found in democracies and the rights ensured to all but with the suspension and denial of this universalism inside prison walls. The prison can be in this sense seen as the reverse of democracy. Although following a logic, a rationality of universal ideals in the application of a sentence for any individual in society, it erodes those ideals and materializes social inequality operating in a process of selection and punishment of those individuals involved in popular illegalities. It is, therefore, as reminded by Foucault, an essential instrument in the management of illegalities (Foucault, 1997).

The permanence of the conditions that violate human rights in prisons indicates that the policies driven to the sector are becoming more paradoxal. On one side, they occupy an important position because they are part of the policies of the State to maintain the public order, but on the other side, they are never treated as a priority, and in this sense they only allow the reproduction of illegalities and violence

[263] National Prison Department of the Ministry of Justice.
[264] IPCC Independent Police Complaints Commission, *Forum for Preventing Deaths in Custody – Annual Report 2006-2007*,available at http://www.hmprisonservice.gov.uk/assets/documents/10002FCFForum_for_Preventing_Deaths_Ann_Rep_0607.pdf)

that are practiced there. So, not even the crises that shake the prison system are able to speed-up the efforts, so that prison policies mobilize a little the public opinion and awaken any interest of the elite. It is clear that the basic effort that mobilizes the governments in this realm is the prevention of political wear and criticism. In sumary, the prisons are always being blamed but they never effectively occupy the political agenda of those who govern the countries. At the same time, it is enough to remember that except for the libertarian movement, the political movements in general are resistant in turning the prisons into objectives of political fught: "... even if recognized as inhuman by some and ineffective by others, it only exceptionally becomes a mobilizing political object. It remains isolated and unable to serve as the arena of a legitimate fight both internally and externally" (Artières, 2004: 32). Perhaps, it is because of this position of irrelevance of the prisons as political objects, and of the prison policies in a general sense compared to the other policies that allow that inside prisons human rights be disrespected very frequently.

Nevertheless, prisons are objects of constant proposals of reform. But the agenda to perform such reforms is never met. In addition to the charge of local legislators towards a renovation of prisons, international treaties arrived to protect and promote human rights after the II World War and bring together interference or reinforcement of the need of reform of prisons. This "obsession for reform" is a symptom that not even the sentence nor imprisonment have accomplished the goals. No matter how much one wants to transform it into something else, a prison is a place of detention, to prevent the circulation of bodies, an interruption in the lives of the individuals. It is not enough to announce that among its several tasks, it must collaborate with public security, impose a punishment established by a legal order to each individual, to try to achieve the correction of the prisoners, etc. The fact is that it has a concrete role of segregation, of marking the individuals confined therein. If currently prisons mobilize few political efforts and little attention of public opinion, it is also because of the contempt towards criminals as individuals that chose to break the rules and on which a revenge of society is accepted, not only with the imposition of legal punishment but submitting the individual to imprisonment conditions that reveal an additional punishment without legal grounds. As mentioned by Chantraine, throughout its history, the prison confines always a clientele with the same characteristics: "poverty, lack of work, male, fragile family structure" (2004: 63). In the countries in South America, as we tried to demonstrate, the already historical

trends in the use of prisons to control popular illegalities acquired new momentum in the last decades and pushed towards the prisons even more populated groups of individuals that were outset from the economic and relational plans (Castel, 2002).

It is possible to conclude, therefore, that the adjustment of the operations of the prisons to democratic principles and to the provisions found in international treaties is a matter of urgency, so that millions of prisoners have their human dignity preserved. But it is also time to develop a horizon where other forms of punishment need to be created by society, so that the prisons no longer continue as territories of shame for democractic societies.

Recommendations:

Recommendation 1:
Implement effective penal policies reducing the use of deprivation of liberty as a form of legal punishment.
- Increase the use of alternative measures and not prison.
- Reduce the circumstances that allow the use of temporary imprisonment.
- Guarantee mechanisms to reduce prison time in regimes with sentences of deprivation of liberty.
- Increase legal possibilities of granting pardons, remission of punishment, and parole.
- Greater use of conciliation and transaction as Restorative Justice.

Recommendation 2:
Improve criminal justice system.
- Develop tools of cooperation between the different sectors involved with penal policies (judiciary, executive, legislative).
- Qualify system workers based on human rights international standards.
- Deploy information technology to systemize data, speed-up proceedings, and reveal procedures.
- Create agencies to receive and provide follow-up on complaints on irregularities in prison systems, just like an ombudsman, that necessarily include the participation of representatives of civil society in their operations and are strictly bond to internal affairs entities.

Recommendation 3:
Implement of inter-sector and crosscut public policies.
- Creation of links between criminal justice system agencies and other sectors, such as education, culture, leisure, health, and work.
- Creation of multi-disciplinary committees to evaluate, monitor, and develop penal policies.
- Regulate the assignments to be met by each sector during the implementation of penal policies.
- Collection of preventive measures to reduce social inequalities and poverty with ostensive measures that develop safe environments for society.

Recommendation 4:
Creation and increase of data systems related to criminal justice system.
- Production and regular release of data about the structure and operations of each institution in the criminal justice system (police, public ministry, judiciary power, prison system).
- National standardization of data produced by each institution to become a real basis for the adoption of public policies.
- The existence of an external mechanism (individual or institutional) for the evaluation of the methodology and reliability of data with free access to criminal justice agencies, to prison institutions, and to prisoners.
- Disclosure via official means in reports and recommendations made by international agencies about local criminal system.

Recommendation 5:
Increase participation of civil society.

- Reservation of places with voice and vote guaranteed in advisory and deliberative jurisdictions concerning penal policies.
- Fulfillment of legal provisions that help civil society to follow up and enforce the performance of penalties.
- Development of public networks of organizations to explain and foster the discussion on the guarantee of human rights in the prison system.

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Núcleo de Estudos da Violência – NEV/USP
Center for the Study of Violence

The Center for the Study of Violence was created during the democratic transition, in 1987, and it is one of the Supports Centers for Research of the University of São Paulo. One of the NEV/USP characteristic is the interdisciplinary researches, which turns around a common theoretical question: the persistence of serious Human Rights violations during the process of democratic consolidation. The NEV/USP develops research projects, courses of extension and activities directed to the promotion and protection of the human rights. Through the Teotônio Vilela Commission, the NEV also acts denunciating serious human rights violations and promoting universal access to human rights.
Throughout its 20 years of existence the NEV/USP developed a series of research projects and courses of extension financed by the Ford Foundation, Rockefeller Foundation, Red Cross International Committee, CNPq and Fapesp, beyond accords with agencies of the ONU (OMS/PAHO, PNUD), European Union, Ministry of Health, Ministry of Justice and Special Secretary of the Human Rights. Since 2000 NEV/USP is one of the Centers of Research, Innovation and Diffusion (CEPID) of the Foundation of Support to the Research of the São Paulo State (FAPESP).

In 2002-2005 the NEV was invited to the British Embassy in Brazil to make an independent evaluation of the **Improvement in Prison Management Project** that was developed in the states of São Paulo, Espirito Santo and Rondonia. The main objectives of this project were: to identify deficits in prison service delivery in those states when measured against international standards on human rights and Brazilian law; to provide training for key personnel in developing and delivering policies and procedures in accordance with those standards and legal requirements; to develop, in conjunction with representatives of civil society, processes of monitoring prison performance that could assist existing judicial inspections.

Currently the NEV works with three lines of research, innovation and dissemination: a) Democracy, Human Rights and violence: an integrated analysis; b) monitoring Human Rights in Brazil and particularly in São Paulo; c) Democracy, Human Rights and public security: comparative studies. For this, it counts on a team of researchers and research assistants, graduated in the areas of sociology, science politics, anthropology, history, laws, psychology, literature, public health and statistics.

More information:
www.nevusp.org

CENTRO DE ESTUDIOS LEGALES Y SOCIALES (CELS)
CENTER FOR LEGAL AND SOCIAL STUDIES

- **INSTITUTIONAL INFORMATION**

The Centre for Legal and Social Studies – **Centro de Estudios Legales y Sociales (CELS)** – is a non-governmental organization that works on the promotion and protection of human rights, and on strengthening the democratic system and the Rule of Law in Argentina.

CELS was founded in 1979 – during the military dictatorship that ruled Argentina between 1976 and 1983 – in response to the urgent need to take quick and decisive action to stop serious and systematic human rights violations. The first task was to provide legal counseling and assistance to the victims' relatives, especially in the case of the disappeared, and to document state terrorism.

Today, 30 years later, CELS translates that historical fight into its daily effort to reinforce the democratic institutions that are essential to guarantee human rights.

Based on this premise, CELS' institutional objectives are oriented towards: denouncing human rights violations; advocating for public policies based on the respect for fundamental rights; promoting legal and institutional reforms aimed at improving the quality of democratic institutions; and encouraging a more effective implementation of these rights among the most vulnerable sectors of society.

CELS is formed by a interdisciplinary team whose main activities are: litigation before national and international courts; researching and building tools to monitor public institutions; and training social organizations, legal operators, members of the judiciary and state institutions. CELS develops some of these activities and strategies in coordination with other Argentinean and foreign organizations.

More information:
http://www.cels.org.ar

Centro de Estudios en Seguridad Ciudadana

The Centro de Estudios en Seguridad Ciudadana (Center for Citizen Security Studies), known as **CESC**, is part of the Instituto de Asuntos Públicos (Institute of Public Affairs) at the Universidad de Chile. It was founded in 2001, with funding from the First National Competition for Research Projects in Citizen Security. Under the leadership of Hugo Frühling, CESC's carries out its work through public policy development, research, and extension and teaching activities.

The mission of CESC is to contribute to the design of fully democratic public polices that address citizen security matters, which respect the rights of persons, are open to healthy criticism and citizen oversight, and emphasize above all a preventive approach to reducing violence.

Its goals are the following:

· Carry out studies and research, of high methodological quality, on key problems in addressing criminality and violence in general.

· Build adequate information systems that support local and national policies addressing the issue of violence.

· Evaluate the impact of intervention programs aimed at at-risk groups as a way to reduce violence.

· Advise public and private institutions on the design, evaluation and systematization of violence prevention and crime reduction programs.

· Participate in the training and qualification of professionals working in the area of citizen security and criminal justice.

· Maintain relationships and exchanges with national and international entities related to violence reduction and public security.

CESC has defined three major areas of research where it concentrates its efforts. These areas are the focal points of CESC's work and best comprehend its mission and goals.

Prison Studies

The goal of this area is work on prison issues which, together with the institutional goal, aim to contribute to the creation and improvement of public policies for social reinsertion that guarantee the exercise of civil rights.

The Police and the Judicial System

The goal of this area is to contribute to police and justice reform processes in Latin America from an empirical and comparative perspective, strengthening local capacity in these matters and sharing successful experiences in the region.

Crime Prevention

The Community Crime Prevention Program Strengthening Project, also known as the "More Community More Prevention" project, seeks to address the need to provide effective responses to increasing fear and violence. This project contributes to strengthening the capacity of those who design and execute citizen security programs in various Latin American countries.

More information:

http://www.cesc.uchile.cl

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