

# The crisis of detention and the politics of denial in Latin America

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## Abstract

*This article assesses the causes of the crisis of detention in Latin America. It is argued that this crisis, which manifests itself in overpopulation of the region's prison systems, deficient infrastructure, prison informality and violence propelled ultimately by political processes, is mostly related to, on the one hand, disastrous human rights conditions inside Latin American prisons, and on other, the political denial of these conditions. This denial produces a state of institutional abandonment that is preserved by the interests of politicians and bureaucrats, who are engaged in denying prison violence and human rights abuses while simultaneously calling for more punishment and imprisonment.*

**Keywords:** prison conditions, Latin America, violence, denial, human rights, internationalization strategies.

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## Introduction

On Sunday, 1 January 2017, the Brazilian city of Manaus witnessed an outbreak of violence. It was, however, not on the streets of the city that the violence – lethal violence, consuming the lives of at least fifty-six people – erupted. Rather, it happened behind the walls of the Anísio Jobim Penitentiary Complex, which was inaugurated in 1999 to replace a semi-open prison farm 30 kilometres away from the downtown area, and which was privatized in 2014. As news agencies reported, the violence began with a prison riot that, “with decapitated bodies thrown over prison walls”, culminated in the “bloodiest prison revolt in more than two decades in Brazil’s overcrowded penitentiary system”.<sup>1</sup> The violence that broke out in the prison, and which was not stopped by the police – who were still in charge of order and security – for more than seventeen hours, resulted from turf wars between two rival drug gangs, the Família do Norte and the Primeiro Comando da Capital. In the aftermath of the riot it became apparent that the violence had been planned in a systematic way. A network of tunnels was discovered, and during “the days before the uprising, prison guards had come to believe that drug trafficking groups were smuggling in firearms, some of which were collected by police after the violence subsided”.<sup>2</sup> All responsibility was put on the prisoners themselves. The private contractors involved in managing the prison complex claimed that public authorities were responsible for internal discipline, order and security, including riot control.<sup>3</sup> Brazil’s minister of justice, Alexandre de Moraes, in turn blamed the victims, telling the press one day after the riot ended through negotiations: “The inmates had established with the [public] administration [of the prison] a promise that everything would run smoothly throughout the holidays and there wouldn’t be any problems. They didn’t keep their promise, but you can’t expect much from criminals, can you?”<sup>4</sup>

Far from being a sporadic and isolated incident, this episode of prison violence and the structural conditions that allowed it to happen – including the non-intervention by the police and informal deals between inmates and the prison administration, as well as the denial of the responsibility by the latter – reflect, in a paradigmatic way, the situation in Brazil’s contemporary prison system. It is a system where violence in its manifold manifestations – structural, institutional, physical and symbolic – is the norm rather than the exception:

- 1 Alonso Soto, “Brazil Drug Gangs Spark Prison Riot, 56 Dead”, *Reuters*, 2 January 2017; Nátalia Lucas, “Detentos foram esquartejados e decapitados em briga de facções em presídio de Manaus”, *O Globo*, 2 January 2017.
- 2 Jill Langlois, “126 Inmates Still at Large in Brazil after a Prison Riot that Left 56 Dead”, *Los Angeles Times*, 6 January 2017.
- 3 “Umanizzare esclarece o seu papel”, available at: [www.umanizzarebrasil.com.br/noticias/umanizzare-esclarece-o-seu-papel/](http://www.umanizzarebrasil.com.br/noticias/umanizzare-esclarece-o-seu-papel/) (all internet references were accessed in October 2017).
- 4 Euan McKirdy and Jay Croft, “At Least 56 Killed in Brazil Prison Riot over Drug Turf, Officials Say”, *CNN*, 3 January 2017, available at: <http://edition.cnn.com/2017/01/02/americas/brazil-prison-riot/>.

Part of the reason prison violence is so common in Brazil is that conditions in most of the country's penitentiaries are barbarous. There are an estimated 656,000 incarcerated people in state prisons, where there is officially space for less than 400,000. Yet roughly 3,000 new inmates are added to overcrowded penitentiaries each month. The prison population has increased by more than 160 percent since 2000. It's for good reason that a former justice minister reportedly said he'd rather die than spend time in a Brazilian prison. Brazil's state prisons are overseen by drug gangs that act as judges, jurors and executioners. Most prisons are divided up among competing gangs. The government is only nominally in control. Experts describe drug factions as a "parallel state." Gangs have long recruited their rank and file from prisons and organize trafficking and racketeering businesses from within their walls. Research has found that 70 percent of inmates who leave prison find their way back.<sup>5</sup>

While in light of this scenario it would be fair to say that the contemporary Brazilian prison system is in crisis, when seen from a more regional perspective, neither (lethal) prison violence nor the structural features that contribute to its normalization are unique to Brazil. Rather, throughout the continent, prison systems can be described as being "in crisis", a fact to which we refer in this article as the *crisis of detention in Latin America*. It is the purpose of this article to assess the causes and consequences of this crisis.

This article argues that the crisis of detention in Latin America, which manifests itself most clearly in the overpopulation of the region's prison systems, deficient infrastructure and prison violence, is mostly related to, on the one hand, disastrous human rights conditions inside Latin American prisons, and on the other, the *political denial* of these conditions. As the latter produces a state of institutional abandonment that is preserved by the interests of politicians and the judiciary who are engaged in denying prison violence and human rights abuses while promoting more punishment, the two sides of the crisis of detention in the region are deeply linked. They fuel a mutually reinforcing cycle of crisis-as-denial that, so far, has been crucial to limiting the impact of prison reform efforts in the region. To break out of this cycle, we claim that a politics of non-denial is needed which restores the human (and legal) rights of prisoners without relegating inmates to passive objects of increasingly securitized "humanitarian interventions".

We elaborate this argument in three steps. First, we offer an overview of the Latin American crisis of detention by highlighting the growth of the region's inmate populations, the prevailing informality and violence inside Latin American prisons, and the social composition of the prison population. Next, we situate these developments in their political and penal bureaucratic context. Specifically, we highlight the somewhat paradoxical role of democratization, party politics and neoliberalization in triggering a "punitive turn" in the region that led to the emergence of criminal justice reform and penal State expansion combined with

5 Robert Muggah and Ilona Szabó de Carvalho, "Brazil's Deadly Prison System", *New York Times*, 4 January 2017.

penal populism, and gave rise both to an upsurge in incarceration rates and to the political, judicial and expert denial of prison violence and human rights violations in Latin American institutions of confinement. In a third step, we turn to the crucial obstacles of and for prison reform by pointing towards sites of contestation and denial of human rights abuses inside Latin American prisons, thereby demonstrating how under conditions of politically and judicially produced abandonment, human rights and international fora become elements of last resort for inmates and human rights activists, transforming prisons into targets for humanitarian interventions. These interventions, however, operate according to the tensions of national penal fields, which in most cases leads to a denial of the structural violence of Latin American prison conditions, while still demonstrating a “will to improve”.<sup>6</sup> In some cases, however, international human rights strategies contribute to policy changes, going beyond a predominantly symbolic concern. This article briefly analyzes how these international actions have been backed or resisted by the efforts of Latin American politicians, judges and even criminal justice reform experts in different national scenarios, leading to the recognition or denial of human rights violations inside the region’s prison system and to changes or continuities in some prison policies. In conclusion, we summarize the main findings of the article and highlight the implications and contributions of social-scientific studies for a possible way out of the Latin American crisis of detention, starting with recognizing the social sources and political effects of its denial.

## Inside Latin America’s carceral archipelago

For a better understanding of the scope and severity of the crisis of detention in contemporary Latin America, it makes sense to move beyond more spectacular, yet far from exceptional, outbreaks of prison violence, such as the Anísio Jobim riot mentioned above. To this end, this section will analyze the more mundane and “routinized” manifestations of the crisis of the region’s prison systems by highlighting three defining features of Latin America’s carceral landscape: (a) overcrowding, (b) informality and (c) the social composition of the inmate population.

Regarding the first issue, *overcrowding*, it has been widely documented that the last two decades witnessed a dramatic increase in the regions’ prison population,<sup>7</sup> reflecting what Darke and Karam have termed “the expanding

6 This term is borrowed from Murray Li, *The Will to Improve: Governmentality, Development and the Practices of Politics*, Duke University Press, Durham, NC, 2007.

7 Lucia Dammert and Liza Zúñiga, *Prisons: Problems and Challenges for the Americas*, FLACSO, Santiago de Chile, 2008, pp. 41–66; Sacha Darke and Maria Lúcia Karam, “Latin American Prisons”, in Yvonne Jewkes, Ben Crewe and Jamie Bennett (eds), *Handbook on Prisons*, 2nd ed., Routledge, Abingdon, 2012, p. 462; Manuel Iturralde, “Colombian Prisons as a Core Institution of Authoritarian Liberalism”, *Crime, Law and Social Change*, Vol. 65, No. 3, 2016, pp. 139–140; Paul Hathazy and Markus-Michael Müller, “The Rebirth of the Prison in Latin America: Determinants, Regimes and Social Effects”, *Crime, Law and Social Change*, Vol. 65, No. 3, 2016, p. 114–121; Markus-Michael Müller, “The Rise of the Penal State in Latin America”, *Contemporary Justice Review*, Vol. 15, No. 1, 2012, pp. 64–67.

power of punishment” in Latin America.<sup>8</sup> While the political and economic context factors that triggered this development will be assessed in the next section, before turning to the causal factors behind this process, it is important to take a closer look at some numbers to better illustrate how powerful and pervasive this trend has been – and how much it has contributed to the crisis of detention in the region.

The rise of the region’s prison population is most evident when putting Latin American developments in a global perspective. As the most recent edition of the *World Prison Population List*, the most comprehensive publicly available data on prison population trends, states, while at the global scale the prison population has grown by nearly 20% since 2000, this trend unfolds unevenly, with notable regional differences:

The total prison population in Oceania has increased by almost 60% and that in the Americas by over 40%; in Europe, by contrast, the total prison population has decreased by 21%. The European figure reflects large falls in prison populations in Russia and in central and eastern Europe. In the Americas, the prison population has increased by 14% in the USA, by over 80% in central American countries and by 145% in south American countries.<sup>9</sup>

Seen from a global perspective, Latin America is the world region that witnessed the highest growth rates of its prison population in the new millennium. When breaking these numbers down to the ratio of prisoners per 100,000 inhabitants, Latin America witnessed an increase from 161 at the beginning of the millennium<sup>10</sup> to 288 in 2015.<sup>11</sup> With the exceptions of Guatemala (121), Haiti (97) and Bolivia (122),<sup>12</sup> all Latin American countries by far exceed the global median of 144, including extreme cases such as Cuba (510), El Salvador (492), Belize (449), Panama (392) and Brazil (302).<sup>13</sup>

This massive prisoner intake, however, has not been matched by a simultaneous expansion of the region’s prison facilities, prison budgets and existing institutional infrastructures, thus leading to serious overcrowding. In fact, “[o]vercrowding has reached unprecedented levels because the increase in incarceration has far outstripped any increase in physical capacity” of the region’s penitentiaries.<sup>14</sup> Currently, *all* Latin American prisons are overcrowded,

8 S. Darke and M. L. Karam, above note 7, p. 462.

9 Roy Walmsley, *World Prison Population List*, 11th ed., Institute for Criminal Research Policy, Birkbeck, University of London, 2016, p. 2, available at: [www.prisonstudies.org/sites/default/files/resources/downloads/world\\_prison\\_population\\_list\\_11th\\_edition\\_0.pdf](http://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_11th_edition_0.pdf).

10 Mark Ungar and Ana Laura Magaloni, “Latin America’s Prisons: A Crisis of Criminal Policy and Democratic Rule”, in Marcelo Bergman and Laurence Whitehead (eds), *Criminality, Public Security and the Challenge to Democracy in Latin America*, University of Notre Dame Press, Notre Dame, IN, 2009, p. 224.

11 This number is based on data provided by the *World Prison Population List*, above note 9, including Caribbean countries.

12 In the case of Haiti, this extremely low number should mostly be seen as a reflection of the near-total destruction of all public infrastructure, including all the country’s prisons, after the 2010 earthquake.

13 *World Prison Population List*, above note 9, pp. 5–7.

14 M. Ungar and A. L. Magaloni, above note 10, p. 226.

and “all of them, with only one single exception, [suffer] from critical overcrowding (a density of 120 per cent or more)”.<sup>15</sup>

*Informality*, the second defining feature of the region’s prison systems and their crisis, is a direct consequence of overcrowding. Informality, to be sure, has long been a defining feature of Latin American prisons, but the increase in the region’s inmate population during the last two decades has triggered a veritable institutionalization of informality. In contemporary Latin America, it seems, informality is the norm rather than the exception regarding how prisons function – and this functioning is therefore dominated by the existence of “socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels”.<sup>16</sup> Although the actual degree of informality is context-dependent, and some of the region’s prison systems, such as those of Argentina and Chile, have witnessed a strengthening of their formal-institutional capacities to impose and enforce order,<sup>17</sup> it is nonetheless undeniable that informality is part and parcel of the way most prisons in the region operate. Taking a closer look at this topic is therefore indispensable for understanding the crisis of detention in the region.

Existing research has documented how the precarious infrastructural conditions in the region’s prison systems mean that inmates and their families have to develop informal strategies for getting access to basic services such as food, clothing or hygiene products. Usually this implies bribing prison guards.<sup>18</sup> In fact, to satisfy their basic everyday needs, prisoners are dependent upon prison black markets “that are protected, ‘taxed’ and operated by the prison personnel, in collaboration with inmates, who additionally manage the illegal trafficking of weapons, cell phones, alcohol, drugs or prostitution inside the prisons as well as the systematic extortion of prisoners”.<sup>19</sup> It is telling, in this regard, that Venezuelans, for instance, refer to a prison sentence as “*pagando condena*” (literally, “paying [a] sentence”).<sup>20</sup>

15 Elías Carranza, “Prisons in Latin America and the Caribbean: What to Do, What not to Do”, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, Resource Material Series No. 94, Fuchu, 2014, p. 193, available at: [www.unafei.or.jp/english/pdf/RS\\_No94/No94\\_VE\\_Carranza.pdf](http://www.unafei.or.jp/english/pdf/RS_No94/No94_VE_Carranza.pdf).

16 Gretchen Helmke and Steven Levitsky, “Informal Institutions and Comparative Politics: A Research Agenda”, *Perspectives on Politics*, Vol. 2, No. 4, 2004, p. 727.

17 Paul Hathazy, “Remaking the Prisons of the Market Democracies: New Experts, Old Guards and Politics in the Carceral Fields of Argentina and Chile”, *Crime, Law and Social Change*, Vol. 65, No. 3, 2016; P. Hathazy and M.-M. Müller, above note 7, p. 122.

18 See, for instance, Jim Cavallaro, Jacob Kopas, Yukyan Lam, Timothy Mayhle and Soledad Villagra de Biedermann, *Security in Paraguay: Analysis and Responses in Comparative Perspective*, Harvard Law School, Human Rights Program, Cambridge, MA, 2008; L. Dammert and L. Zúñiga, above note 7; Lirio Gutierrez Rivera, *Territories of Violence: State, Marginal Youth, and Public Security in Honduras*, Palgrave Macmillan, Basingstoke, 2013; P. Hathazy and M.-M. Müller, above note 7, p. 130; M.-M. Müller, above note 7; Mark Ungar, “Prisons and Politics in Contemporary Latin America”, *Human Rights Quarterly*, Vol. 25, No. 4, 2003.

19 Markus-Michael Müller, “The Universal and the Particular in Latin American Penal State Formation”, in Peter Squires and John Lea (eds), *Criminalisation and Advanced Marginality: Critically Exploring the Work of Loïc Wacquant*, Policy Press, Bristol, 2012.

20 Christopher Birkbeck and Neelie Pérez-Santiago, “The Character of Penal Control in Latin America: Sentence Remissions in a Venezuelan Prison”, *Criminology and Criminal Justice*, Vol. 6, No. 3, 2006, p. 290.

Informal relations between prison authorities and inmates (and their families), however, extend beyond the realm of black markets. They also define the way many prisons in the region are governed. As we have argued elsewhere, the “‘numerical’ imbalance between guards and inmates has produced a form of prison governance in which public officials systematically enlist prisoners as auxiliaries to perform basic prison functions”. This implies that “the reproduction of the internal social order is left to prisoners’ organizations that govern cell-blocks, cells and/or dormitories”. As a consequence of this, it is often not the State but inmates themselves who govern Latin American prisons (including the use of force and the application of punishment), in particular those inmates endowed with substantial access to political and economic power and influence.<sup>21</sup>

One important consequence of this way of informally co-produced prison governance in Latin America is that many prisons in the region contribute to the reproduction of the basic security problem they are expected to solve: organized criminality and the violence related to it. In fact, criminal organizations and organized criminal actors in the region, such as drug trafficking organizations or gangs, use their control over carceral spaces to strengthen their organizations and keep their businesses running beyond the walls of the prisons, often with the explicit consent of the prison authorities. Thus, overpopulated and, at least from a formal perspective, ungoverned prisons have turned into an important element of the criminal infrastructure. They allow for the reproduction and even strengthening of criminal organizations and the maintenance of their illicit activities,<sup>22</sup> while simultaneously fuelling the cycle of rising prison rates stemming from the ongoing presence of organized crime and drug trafficking throughout most of Latin America, and the harsher criminal polices meant to suppress these activities (see below).

The third feature of contemporary prison systems in Latin America that is illustrative of the crisis of detention in the region is the *social composition* of the inmate populations. It is here that the crisis of the region’s prison systems probably becomes most visible (at least when seen from a broader macro-social perspective), as the region’s prisons are actively contributing to and reflecting the social, economic and political inequality found in the world’s most unequal region. We should recall at this point that

Latin America remains the most unequal region in the world. In 2014 the richest 10% of people in Latin America had amassed 71% of the region’s wealth. If this trend continues, according to Oxfam’s calculations, in just six

21 P. Hathazy and M.-M. Müller, above note 7, p. 121. See also Camila Nunes Dias and Sacha Darke, “From Dispersed to Monopolized Violence: Expansion and Consolidation of the Primeiro Comando da Capital’s Hegemony in São Paulo’s Prisons”, *Crime, Law and Social Change*, Vol. 65, No. 3, 2016; L. Gutierrez Rivera, above note 18; M.-M. Müller, above note 7, pp. 69–70; Roy D. King and Bruna Valensia, “Power, Control, and Symbiosis in Brazilian Prisons”, *South Atlantic Quarterly*, Vol. 113, No. 3, 2014.

22 José Miguel Cruz, “Central American Maras: From Youth Gangs to Transnational Protection Rackets”, *Global Crime* Vol. 11, No. 4, 2010; L. Gutierrez Rivera, above note 18; Graham Denyer Willis, *The Killing Consensus: Police, Organized Crime, and the Regulation of Life and Death in Urban Brazil*, University of California Press, Oakland, CA, 2015.

years' time the richest 1% in the region will have accumulated more wealth than the remaining 99%.<sup>23</sup>

This inequality, in turn, is both contributing to and reflecting what has been termed the “unrule” or “misrule” of law in Latin America – that is, people’s capacity to influence the law in their favour according to access to political, social and economic power. “In such circumstances, law has little to do with notions of neutral or fair regulation. Rather, it ensures a different norm: the maintenance of privilege among those who possess extra-legal powers to manage politics [and] bureaucracy.”<sup>24</sup> This transforms the “misrule of law” into an “effective, though perverse, means of rule”,<sup>25</sup> and implies that the formal and informal “privileges” in Latin American prisons are “reserved” for more powerful and influential prisoners. The latter, however, is a relative category as most inmates, due to the socio-economic selectivity of the misrule of law outside the prison, “where the possession of substantial amounts of economic, social and political capital guarantees that more powerful actors can take advantage of high levels of judicial impunity and therefore the evasion of prison sentences”,<sup>26</sup> are usually not the most dangerous and powerful criminals but the poorest – often those who have committed minor street crimes or drug-related offences.<sup>27</sup>

The latter aspect, social composition, already indicates that the structural features and manifestation of the crisis of detention in the region are inseparable from the broader political context in which the region’s prison systems are embedded. The analysis of this context and how it has contributed to the crisis of detention in contemporary Latin America will be the focus of the next section.

## Tracing the politico-institutional origins of the Latin American prison crisis and its denial

How can the constant violations of basic civil and human rights in the overcrowded, informal and discriminatory prisons of Latin America coexist with the region’s turn toward democratic politics, including the related democratic criminal justice and prison reforms efforts of the last three decades? Understanding this relationship between post-authoritarian political development and the crisis of detention in

23 Alicia Bárcena, “Latin America is the World’s Most Unequal Region. Here’s How to Fix It”, Economic Commission for Latin America and the Caribbean, 2016, available at: [www.cepal.org/en/articles/2016-latin-america-worlds-most-unequal-region-heres-how-fix-it](http://www.cepal.org/en/articles/2016-latin-america-worlds-most-unequal-region-heres-how-fix-it).

24 Paulo Sergio Pinheiro, “The Rule of Law and the Underprivileged in Latin America: Introduction”, in Juan E. Mendez, Guillermo O’Donnell and Paulo Sergio Pinheiro, *The (Un)Rule of Law and the Underprivileged in Latin America*, University of Notre Dame Press, Notre Dame, IN, 1999.

25 James Holston, *Insurgent Citizenship: Disjunctions of Democracy and Modernity in Brazil*, Princeton University Press, Princeton, NJ, 2008, pp. 228–229.

26 M.-M. Müller, above note 7, p. 68.

27 Elena Azaola and Marcelo Bergman, “The Mexican Prison System”, in Wayne A. Cornelius and David A. Shirk (eds), *Reforming the Administration of Justice in Mexico*, University of Notre Dame Press, Notre Dame, IN, 2007, p. 112; Fernando Carrión “¿Por qué todos los caminos conducen a la miseria del panóptico?”, *URVIO: Revista Latinoamericana de Seguridad Ciudadana*, Vol. 1, No. 1, 2007, pp. 1, 5–9.



the region is crucial, considering that, paradoxically, the same processes of political liberalization and democratic prison reform contributed decisively to expanding prison systems, to the deterioration of prison conditions in the region, and to the political, judicial and administrative denial of the crisis of detention. As noted by Stanley Cohen, in the context of the Latin American crisis of detention, the “social conditions from which atrocities originate fuse with official techniques of the denial of those realities”.<sup>28</sup> To understand the continuity of denial and the crisis of detention produced by it, we will now re-examine the political, legal and administrative conditions that contributed to the atrocious prison conditions in Latin America and the ways in which they converge with official techniques of denial. Expanding on an analysis that we started elsewhere, we will argue that the increasing “power of punishment” and the resulting deterioration of prison conditions are directly related to (a) political regime changes in the region, (b) democratic criminal justice reform processes, and (c) international drug control policies.

### The dark side of political democratization and criminal justice reform: Prison expansion and deterioration

As we have argued elsewhere,<sup>29</sup> *political regime change*, such as the democratic transition processes that started in the 1980s in Peru (1980), Argentina (1983), Brazil (1985) and Chile (1990), and which continued during the 1990s, was accompanied by an increase in the region’s prison population, leading to overpopulation, the exacerbation of internal violence, and a general deterioration of prison conditions. Prison expansion and deteriorating prison conditions also accompanied transitions from one-party rule to multi-party systems, as in the case of Mexico,<sup>30</sup> and the turns to post-neoliberal regimes, such as those of Venezuela and Ecuador.<sup>31</sup> These political upheavals (re)constituted the electoral political systems of the affected countries. And, in combination with structural economic transformation processes towards, or away from, neoliberalism, they gave rise to new political economies which, in turn, impacted the ways in which the transformations of the party systems and the distribution of power in the political system at large unfolded. In general, political regime change coincided with the politicization of common and violent crime that was in turn magnified by the growing “discovery” of these topics by the liberalized press after democratic transitions, the concentration of media groups under neoliberalism

28 Stanley Cohen, *Estados de negación: Ensayo sobre atrocidades y sufrimiento*, trans. Mary Bellof, 1st ed., Universidad de Buenos Aires, Buenos Aires, 2005, p. 11.

29 P. Hathazy and M.-M. Müller, above note 7.

30 Markus-Michael Müller, “Penalizing Democracy: Punitive Politics in Neoliberal Mexico”, *Crime, Law and Social Change*, Vol. 65, No. 3, 2016.

31 Maximo Sozzo (ed.), *Postneoliberalismo y penalidad en América del Sur*, CLACSO, Buenos Aires, 2016.

and the insistence of right-wing civil society groups on the persistence, if not worsening, of high crime rates under democratic or leftist governments.<sup>32</sup>

Political regime change and the growing centrality of crime issues in the media and politics allowed new parties and politicians to capitalize on the growing public concerns – to a large extent fuelled by sensationalist media coverage – by promoting punitive politics as the “solution” to the crime problem.<sup>33</sup> In the federal systems of Argentina, Mexico and Brazil – the most populous Latin American countries – for instance, changes in the political system, along with neoliberal policies of State downsizing and decentralization, substantially enhanced the powers and responsibilities of governors and majors.<sup>34</sup> In turn, this exposed these political actors to even more citizen pressure to deal with crime and violence, as it was now their duty – along with federal governments – to address such problems.<sup>35</sup> In cases of neoliberal structural adjustments, highly punitive politics led to an increase in sanctions and the diffusion of harsh law and order policies, often articulated in the language of “strong hand” (*mano dura*) or “zero tolerance” (*tolerancia cero*), and frequently as a means to deal with the social and economic consequences of neoliberal policies, such as the growing informalization of many Latin American economies through the *de facto* criminalization of the economic survival strategies of growing parts of the population that were left behind by neoliberal policies.<sup>36</sup> Moreover, these punitive policies also served the symbolic purposes of preserving State authority and compensating for the reduction of public spending and economic deregulation.<sup>37</sup> Law and order rhetoric, calling for penal-exclusion, “tough on crime” politics, paradoxically also emerged in countries that have veered toward post-neoliberal policies of State-led redistribution and the expansion of social services. A case in point is Venezuela, where after an initial reduction of its prison population, the Bolivarian Revolutionary Government resorted to a highly punitive political agenda in order to deal with its more recent

32 Paul Hathazy, “Entre la ‘represión’, la ‘prevención’ y la ‘seguridad interior’: Categorías y políticas de seguridad en la pos-transición Argentina”, study presented at workshop on “Estudios sociales sobre delito, policía y violencia: La seguridad en cuestión”, Universidad Nacional de La Plata, 10 April 2017; Guillermo Sunkel, “Medios de comunicación y violencia en la transición Chilena”, *Cuadernos del Foro* '90, No. 3, 1992; Paul Chevigny, “The Populism of Fear: Politics of Crime in the Americas”, *Punishment and Society*, Vol. 5, No. 1, 2003, p. 79; Yolanda Salas, “Imaginary and Narratives of Prison Violence”, in Susana Rotker (ed.), *Citizens of Fear: Urban Violence in Latin America*, Rutgers University Press, New Brunswick, NJ, 2000.

33 P. Chevigny, above note 32.

34 Marcelo Cavarozzi, *Autoritarismo y democracia (1955–2006)*, Ariel, Buenos Aires, 2006, p. 56, Victoria Rodriguez, “Centralizing Politics vs. Decentralizing Policies in Mexico”, in Menno Vellinga, *The Changing Role of the State in Latin America*, Westview Press, Boulder, CO, 1998.

35 P. Hathazy and M.-M. Müller, above note 7.

36 Markus-Michael Müller, *The Punitive City: Privatised Policing and Protection in Neoliberal Mexico*, Zed Books, London, 2016.

37 P. Chevigny, above note 32; Loïc Wacquant, “The Militarization of Urban Marginality: Lessons from the Brazilian Metropolis”, *International Political Sociology*, Vol. 2, No. 1, 2008; Paul Hathazy, “(Re)Shaping the Neoliberal Leviathans: The Politics of Penalty and Welfare in Argentina, Chile and Peru”, *European Review of Latin American and Caribbean Studies*, No. 95, October 2013.

economic crisis, the resulting social dislocations as well as new socio-political tensions stemming from a new regime of political exclusion.<sup>38</sup>

The massive process of *penal State-building* is another, and in fact related, contributing factor to the regional trend of prison expansion, notably in the form of police and criminal justice reform initiatives during the last few decades. Police and criminal justice reform efforts in the name of confronting crime in the region's "violent democracies",<sup>39</sup> despite their framing in the language of "democracy" or "citizen security", in practice turned into a process of "perverse state formation"<sup>40</sup> that transformed the region's democratic regimes into "securitizing democracies".<sup>41</sup> These processes expanded the penal powers of Latin American States, increased their sentencing capacities and fueled a process that we have termed *rule through law*, considered as the transformation of the "impartial character of law and legal processes into political means that, by criminalizing certain practices most often associated with people at society's margins, aim at enhancing the legitimacy of political actors through practices of legal-political exclusion".<sup>42</sup> The overall consequence of this has been the dramatic expansion of the region's prison population discussed above.

These penal State-building efforts are the result of several convergent developments: first, the widely shared *political* assumption that crime constitutes a core problem of Latin American societies that is best addressed not by, for instance, enhancing social welfare, but by punitive law and order policies; second, the related strengthening of judicial capacities after the return of democracy and processes of regime change; and third, proposals made by a new class of criminal justice reformers that preached for the creation (and expansion) of new police forces and criminal courts procedures as solutions for the region's crime and violence problems. In fact, the transitions to democracy and processes of political regime change opened windows of opportunity for police and criminal procedure reform.<sup>43</sup> These reforms, reflecting the attempts of new political elites to gain control over police forces and/or judicial bureaucracies, and to address citizen demands for security, substantially expanded policing and judicial processing capacities. Governors and presidents eager to demonstrate their commitment to "citizen security" and their leadership capacity as successful crime fighters enhanced the

38 Andres Antillano, "Crimen y castigo en la revolución bolivariana", *Cuestiones de Sociología: Revista de Estudios Sociales*, No. 10, 2014; Jorge Paladines, "La 'mano dura' de la Revolución Ciudadana (2007–2014)", in M. Sozzo (ed.), above note 31; Martha Lia Grajales and Maria Lucrecia Hernandez, "Chavismo y política penal (1999–2014)", in M. Sozzo (ed.), above note 31.

39 Enrique Desmond Arias and Daniel M. Goldstein (eds), *Violent Democracies in Latin America*, Duke University Press, Durham, NC, 2010.

40 Jenny Pearce, "Perverse State Formation and Securitized Democracy in Latin America", *Democratization*, Vol. 17, No. 2, 2010.

41 M.-M. Müller, above note 36, pp. 5–9.

42 P. Hathazy and M.-M. Müller, above note 7, p. 116.

43 Paul Hathazy, "Democratizing Leviathan: Politics, Experts and Bureaucrats in the Transformation of the Penal State in Argentina and Chile", PhD dissertation, Department of Sociology, University of California, Berkeley, CA, 2013, pp. 260–274; Paul Hathazy, "Punitivism with a Human Face: Criminal Justice Reformers' International and Regional Strategies and Penal-State Making in Argentina, Chile and Beyond", *Kriminologisches Journal*, Vol. 48, No. 4, 2016.

numerical strength of police forces, as well as their resources and powers.<sup>44</sup> Judicial reforms towards an adversarial system put in place new prosecuting organizations and increased the number of courts and prosecutors.<sup>45</sup> In the process, the idea – held at the beginning of these developments – of enhancing the efficiency of courts by reducing the time taken to make a judgment, and reducing high levels of pre-trial detentions through the introduction of oral procedures, was turned on its head and contributed to the increase of the region’s prison population.<sup>46</sup>

In fact, most of these reforms aimed at reducing police powers and pre-trial detention rates in post-authoritarian settings have been systematically reversed by granting more powers to police and prosecutors to order and decide over custodial detentions, while leaving in place the increased adjudicatory capacities. One outcome of these developments is that human rights institutions and policies have been subordinated to the demands of political actors who call for harsher crime policies, increased penal supervision and control over the criminalized segments of those at society’s margins.<sup>47</sup> This trend is most visible in the fact that those penal institutions more closely involved in repression – the police and prosecutors – have received more political backing and resources than those institutions in charge of their oversight, such as control judges, public defence services and prison oversight judges.<sup>48</sup>

The progressive subordination of police and justice reforms to the political needs of law and order campaigns and “tough on crime” policies also meant the subordination of activists and experts committed to advancing human rights standards for criminal justice procedures and prison realities. Powerful human rights movements who played an important role during the initial moments of the democratic transitions were actually sidelined by the criminal justice reform policies, mostly due to a refocusing of these reforms on enhanced efficiency and efficacy standards.<sup>49</sup> In turn, this has relegated concerns over human rights and

44 P. Hathazy and M.-M. Müller, above note 7; John Bailey and Lucia Dammert, *Public Security and Police Reform in the Americas*, University of Pittsburgh Press, Pittsburgh, PA, 2006; Hugo Frühling, “Police Reform and the Process of Democratization”, in Hugo Frühling, Joseph S. Tulchin and Heather A. Golding (eds), *Crime and Violence in Latin America: Citizen Security, Democracy, and the State*, Woodrow Wilson Center Press, Washington, DC, 2003.

45 Julio Maier, Kai Ambos and Jan Woischnik (eds), *Las reformas procesales penales en América Latina*, Ad-Hoc, Konrad Adenauer Foundation and Max Planck Institut, Buenos Aires, 2001; Cesar Rodriguez, “Globalization, Judicial Reform and the Rule of Law in Latin America: The Return of Law and Development”, *Beyond Law*, Vol. 7, No. 23, 2001; P. Hathazy, “Democratizing Leviathan”, above note 43, pp. 264–268.

46 See, for example, Sebastián Salinero Echeverría, “¿Porqué aumenta la población penal en Chile? Un estudio criminológica longitudinal”, *Revista Ius et Praxis*, Vol. 18, No. 1, 2012, pp. 113–115; M. L. Grajales and M. L. Hernandez, above note 38; Luis Pasara et al., *Independencia judicial insuficiente, prisión preventiva deformada: Los casos de Argentina, Colombia, Ecuador y Peru*, Due Process of Law Foundation, Washington, DC, 2013.

47 P. Hathazy and M.-M. Müller, above note 7; J. Bailey and L. Dammert, above note 44; H. Frühling, above note 44.

48 For Argentina and Chile, see P. Hathazy, “Democratizing Leviathan”, above note 43, pp. 220–246.

49 On criminal procedure, see *ibid.*, p. 146; Christian Riego, “The Chilean Criminal Procedure Reform”, *International Journal of the Sociology of Law*, Vol. 26, No. 4, 1998, p. 449 for the Chilean case. For a regional trend, see P. Hathazy, “Punitivism with a Human Face”, above note 43, p. 314. Grajales and Hernandez, above note 38, and Paladines, above note 38, observe analogous subordination of human rights standards to security concerns in Venezuela and Ecuador.

legal accountability to a secondary issue, thereby contributing to the “dark side” of what has been called the “post-human rights era” in contemporary Latin America.<sup>50</sup> This can also be seen in the subordination of rehabilitation ideals and programmes to more general concerns about security and order by prison administrations and penal bureaucrats more broadly.<sup>51</sup> The expansion and new power of the latter, it should be recalled, also provided new employment options for some former human rights activists who got incorporated into the new police and penal bureaucracies. These former activists, while still officially committed to improving human rights, in practice tend to deny the ongoing human rights violations inside prisons, a process to which we will return to below.

To these factors and processes that fuelled the crisis of detention in contemporary Latin America, we must add the region’s geopolitical placement within the global “war on drugs”. As one leading expert summed it up:

The so-called “War on Drugs” waged over the last four decades has had a tremendous impact on security operations and judicial and prison systems in Latin America – to the point where nearly one-third of all detainees are incarcerated for non-violent drug-related crimes.<sup>52</sup>

In fact, mostly in response to US pressure, including the US certification process that links the granting of development aid to a country’s active cooperation and performance in the war on drugs, new mandatory minimum sentences for drug-related crimes as well as new, and usually harsher, drug laws have been enacted and implemented in many Latin American countries.<sup>53</sup> As the following quote, from a report on related developments in Argentina, Bolivia, Brazil, Colombia, Ecuador, Mexico, Peru, and Uruguay – the region’s main “battlegrounds” in the “war on drugs” – illustrates, this has contributed substantially to the crisis of detention in the region:

In all these countries, the emphasis placed by drug control efforts on criminal sanctions has given rise to a significant increase in the number of persons incarcerated for drug offenses. The enforcement of severe laws for drug offenses has not only been ineffective in curbing the production, trafficking, and consumption of illicit substances, but has generated enormous negative consequences, including overwhelming caseloads in the courts, overcrowding in the prisons, and the suffering of tens of thousands of persons behind bars for small-scale drug offenses or simple possession. The weight of the drug

50 See, for instance, Edward L. Cleary, *Mobilizing for Human Rights in Latin America*, Kumarian Press, Bloomfield, CT, 2007.

51 See Special Issue on “Rebirth of the Prison”, *Crime, Law and Social Change*, Vol. 65, No. 3, 2016, edited by Paul Hathazy and Markus-Michael Müller.

52 Luciana Pol, “Failed Drug Policies in Latin America: The Impact on Prisons and Human Rights”, *Penal Reform International*, 24 April 2015, available at: [www.penalreform.org/blog/failed-drug-policies-in-latin-america-impact-on/](http://www.penalreform.org/blog/failed-drug-policies-in-latin-america-impact-on/).

53 M.-M. Müller, above note 7, p. 62.

laws has been felt with greater force among the most disadvantaged and vulnerable sectors of society.<sup>54</sup>

Contrary to the recent talk about the “failures” of the “war on drugs” and the emergence of seemingly more “progressive” Latin American drug policies (including legalization initiatives), this trend continues,<sup>55</sup> mostly because “legalization” initiatives are often at odds with prevailing drug market practices – for instance, decriminalizing the possession of amounts of drugs that are at odds with the amounts usually sold to end-users.<sup>56</sup> And it also continues to be convenient to incarcerate small-scale drug users for the production of statistics that demonstrate governments’ commitment to, and “success” in, fighting “organized crime”.<sup>57</sup>

The processes described in this section are all directly implicated in the making of the crisis of detention in the region by contributing to prison overpopulation, violence, informality and the deterioration of prison conditions. Surprisingly enough, however, and despite recurrent episodes of prison massacres, they are also at the bases not only of the normalization of everyday violations of administrative, legal and humanitarian standards, but also of the denial of the critical situation in the region’s prison regimes. It is the analysis of this denial to which we now turn.

### *The political, judicial and expert denial of prison violence and human rights violations*

Denial, defined by Milburn and Conrad as a “psychological defense mechanism” that “cancels out or obscures painful reality”,<sup>58</sup> is a common social and political phenomenon. In fact, “our official life as nation is built on a shared denial of painful realities and the suffering they engender”.<sup>59</sup> Taking this observation seriously by considering that the denial of collective suffering in democratic regimes tends to be more “subtle, putting veils over truth, establishing the public agenda, adjusting reality to interests, spin-doctoring, and showing a selective concern over policies”,<sup>60</sup> allows for a better and more comprehensive understanding of the current crisis of detention in Latin America. In fact, this crisis, we argue, is the direct result of a *politics of denial*.<sup>61</sup> This politically

54 Pien Metaal and Coletta Youngers, *Systems Overload: Drug Laws and Prisons in Latin America*, Transnational Institute and Washington Office on Latin America, Washington, DC, 2011, p. 5, available at: [www.tni.org/files/tni-systems\\_overload-def.pdf](http://www.tni.org/files/tni-systems_overload-def.pdf).

55 Alejandra Corda, *Drug Policy Reform in Latin America: Discourse and Reality*, Colectivo de Estudios Drogas y Derecho, 2015.

56 See, for instance, Julieta Lemaitre and Mauricio Albarracín “Patrullando la dosis personal: La represión cotidiana y los debates de las políticas públicas sobre el consumo de drogas ilícitas en Colombia”, in Alejandro Gaviria Uribe and Daniel Mejía Londoño (eds), *Políticas antidroga en Colombia: Éxitos, fracasos, extravíos*, Bogota, Universidad de los Andes, 2011.

57 M.-M. Müller, above note 30, p. 232.

58 Michael A. Milburn and Sheree D. Conrad, *The Politics of Denial*, MIT Press, Boston, MA, 1996, p. 2.

59 *Ibid.*, p. 4.

60 S. Cohen, above note 28, p. 30.

61 *Ibid.*

produced denial is rooted in (a) the new political terrain and interests built around prison expansion, (b) internal changes in the relationship between institutions and bureaucracies operating in the carceral field of the region's penal States, and (c) the emergence and rise to power of new experts and expertise in the fields of prison policy.

Regarding agents primarily involved in *the political arena*, the politicization of crime control in Latin America, the widespread consensus regarding the so-called “benefits” of “tough on crime” policies, and the related centrality of punitive stances for promoting political careers in the region's “violent democracies”<sup>62</sup> have pushed political actors to show a very selective concern, to use Cohen's words, with the outrageous prison conditions in their countries, as evinced in the cases discussed below. This is mostly because the recognition of the grim underside of the very punitive measures being promoted and implemented by these political actors would devalue the political capital they have accumulated by being “tough on crime”.<sup>63</sup> In other words, such recognition would undermine the efforts of politicians, presidents, governors, mayors and/or high-profile legislators to “make crime pay”<sup>64</sup> by implementing punitive policies and/or institutional reforms that ultimately fuel the rise of the region's prison (over)population. At the discursive level, any call for the implementation of policies that would improve prison conditions or prisoners' rights contradicts the highly emotional and exclusionary punitive discourse that essentializes criminals as the dangerous “other”, often derived from and fuelled by simplifying stereotypical tropes circulated by the press and politicians. Thus, there is a tendency to deny prison problems by systematically investing – in material, symbolic and discursive terms – in the punitive measures discussed above; measures that ultimately worsen prison conditions. In a context in which the political agenda of Latin America's “securitized democracies” is dominated by an over-concern with (in)security issues, it is not a big surprise that for political actors and the media, inmates only deserve mentioning and attention when spectacular riots – accompanied by escapes and/or massacres – happen. Such “spectacular” instances then create opportunities for blaming political opponents and increasing daily newspaper sales.<sup>65</sup> It is during such episodes that the routine denial of prison conditions is temporarily replaced by what Cohen refers to as an “implicatory denial” –

62 E. D. Arias and D. M. Goldstein, above note 39.

63 P. Chevigny, above note 32; Máximo Sozzo, “Populismo punitivo, proyecto normalizador y ‘prisión-depósito’ en Argentina”, *Sistema Penal y Violencia*, Vol. 1, No. 1, 2010; Lucía Nuñovero Cisneros, “Las razones y los sentimientos del encierro: consideraciones político económicas del aumento de las poblaciones penitenciarias en el Perú”, in Chloe Constant (ed.), *Pensar las cárceles de América Latina*, Instituto de Estudios Andinos, Lima, 2016.

64 Katherine Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics*, Oxford University Press, Oxford, 1997.

65 German Rey (ed.), *Los relatos periodísticos del crimen: Como se cuenta el delito en la prensa escrita latinoamericana*, Fundación Friedrich Ebert, Bogotá, 2007. See also Jenny Pontón Cevallos, “The Crime Section in Ecuadorian Media: A Problem of Citizen Security?”, *Revista Urvio*, No. 5, September 2008; Jenny Pontón Cevallos, “Prensa y situación carcelaria en el país”, *Boletín Ciudad Segura: FLACSO sede Ecuador*, No. 1, January 2006, p. 12, available at: <http://repositorio.flacsoandes.edu.ec/bitstream/10469/2355/1/BFLACSO-CS1.pdf>.

denying the “moral, political or psychological implications” of certain facts,<sup>66</sup> either by stressing the “necessity” of avoiding escapes or liberating hostages, by dehumanizing inmates (“What can you expect from prisoners?”), or, in very few cases, by recognizing the lack of political and administrative control in and over prisons. In many cases, routine atrocities are followed by State atrocities during the “recovery” of the prison from the rioting gangs.<sup>67</sup>

Changes inside *the penal State*<sup>68</sup> – that is, the elite positions of the penal bureaucracies involved in the creation and execution of policies related to detention, sanctioning and punishment – have also contributed to the denial of prison violence and human rights violations. A study of judicial responses to prison problems in Latin America<sup>69</sup> distinguished three types of bureaucratic reactions in this regard: (a) a dominant tendency to “not intervene”; (b) interventions meant to highlight structural prison deficiencies that seemingly aim at improving prison conditions within a certain timeframe but ultimately assume that the main problem is a matter of overcrowding, thereby calling “for the building of more and better prisons”, often under the banner of “modernization” and “humanitarian” prison-building; and (c) the rather uncommon option of reducing the use of custodial sanctions. In a typical case of “interpretive denial” through “legalism”, most cases of non-intervention by the judiciary point to the lack of authority over the executive branch or prison authorities’ jurisdiction. It is also a common practice by the judiciaries to deny their responsibility for seemingly “structural agentless outcomes”, for instance by pointing to the fact that the prison crisis “is endemic” and its solution, therefore, will have to be postponed to an undefined future: “From the judicial point of view, overcrowding dominates the imagination of courts. From the judicial point of view it is believed that its disappearance will imply the perfect functioning of the penitentiary apparatus.”<sup>70</sup>

This trend of legalist and normalizing responses has continued, and has even been reinforced by structural changes in the position of courts within the region’s carceral fields.<sup>71</sup> Even if the relative power of Latin American judiciaries has increased vis-à-vis prison administrations, when considering the consequences of recent criminal procedure reforms, the new role of judiciaries as wardens of prisoners’ rights has substantially been curtailed by counter-developments. In inquisitorial criminal justice systems, the judiciary continued to impose highly

66 S. Cohen, above note 28, p. 27.

67 These dynamics were already observed by Teresa Caldeira in the late 1990s in her study of the Carandirú prison massacre in Sao Paulo, Brazil, where all these implicatory denials of prison violence and of the atrocities committed in the recovery of the prisons were present. See Teresa P. R. Caldeira, “The Massacre at the Casa de Detencao”, in *City of Walls: Crime, Segregation and Citizenship in Sao Paulo*, University of California Press, Berkeley, CA 2000, pp. 175–182.

68 David Garland, “Penalty and the Penal State”, *Criminology*, Vol. 51, No. 3, 2013.

69 Manuel Iturralde Sanchez and Libardo Ariza, “Reformando el infierno: Los tribunales y la transformación del campo penitenciario en América Latina”, in Libardo José Ariza and Manuel Iturralde (eds), *Los muros de la infamia: Prisiones en Colombia y en América Latina*, CIJUS, Universidad de los Andes, Bogotá, 2011.

70 *Ibid.*, p. 21.

71 P. Hathazy, “Democratizing Leviathan”, above note 43, pp. 244–245, 258–259; P. Hathazy, above note 17.



punitive measures<sup>72</sup> as mandated by increasingly “toughened” penal law, and in line with a growing politicization of judicial positions.<sup>73</sup> In the adversarial criminal justice systems (i.e., those of Chile, Brazil, Mexico, Venezuela, Colombia and Argentina), the judges themselves lost power vis-à-vis prosecutors<sup>74</sup> and oversight special courts that received only very limited resources, thereby relegating these institutions to a predominantly symbolic invention.<sup>75</sup>

Finally, changes in *the academic and expert sectors* during the last two decades have led to the proliferation of euphemistic discourses that justify prison expansion while leaving aside issues of prison violence and prisoners’ (human) rights. Although during the first phases of the transitions to democracy or regime transitions, such as in Mexico or Venezuela, local human rights activists paid close attention to prison problems,<sup>76</sup> over time their focus shifted towards – or, more accurately, followed – those problems privileged by politicians: questions of (in)security and police reform. As we will show below, in the case studies we analyze, for many activists, their prior investments in judicial and police reform projects reduced incentives to recognize the deterioration of prison conditions, as the latter were partly the unintended outcomes of their own work on police and judicial reform that contributed to an expansion in the size and powers of these institution<sup>77</sup> – a development that also fuelled their growing punitiveness. The main exception to this trend is a minority of “displaced” human rights activists who initially worked on police and criminal-court reforms but later started to pay attention to worsening prison conditions, as we will discuss below. Unfortunately, those interested in prison matters face severe problems and political obstacles in the politicized climate outlined above, and it is therefore no surprise that the most common avenue for presenting their claims has been the deployment of “internationalization strategies” (see below) – for instance, by presenting cases to the Inter-American Commission on Human Rights (IACHR) – producing the most surprising cases of government and bureaucratic denial, as we will analyze below.

To these factors we must add *the contribution of prison informality* discussed above. The informality that exists inside Latin American prisons often

72 For the Argentine cases, see P. Hathazy, “Democratizing Leviathan”, above note 43, pp. 272–273.

73 On the politicization of judicial positions and punitive stances, see Luis Pasara, “Prisión preventiva e independencia judicial en Colombia, Ecuador y Perú”, in *La justicia en la región andina*, Fondo Editorial, PUC-Peru, Lima, 2015, pp. 443–467.

74 Luis Pásara, “El ministerio público en la reforma procesal penal de Chile” and “Acercas de la reforma procesal penal en Chile, Ecuador y Perú”, in *La justicia en la región andina*, Fondo Editorial, PUC-Peru, Lima, 2015, pp. 115–152; Julita Lemgruber et al., *Ministerio Público: Guardiáo da democracia brasileira?*, Centro de Estudos de Segurança e Cidadania, Rio de Janeiro, 2016.

75 P. Hathazy, “Democratizing Leviathan”, above note 43, p. 200; Jörg Alfred Stippel, “Acceso a la justicia en materia penitenciaria: ‘Una deuda pendiente y un desafío para el futuro’”, available at: [www.oas.org/dsp/documentos/ministerial/pres%20Stippel%20esp-CE00379S04.pdf](http://www.oas.org/dsp/documentos/ministerial/pres%20Stippel%20esp-CE00379S04.pdf); Cesar Barros Leal, *La ejecución penal en América Latina a la luz de los derechos humanos*, Porrúa, ILANUD and UNAM, 2009.

76 Andres Dominguez Vial (ed.), *El sol en la ciudad: Estudios de prevención del delito y modernización penitenciaria*, Editora Nacional de Derechos Humanos, Santiago de Chile, 1993.

77 For the Argentine and Chilean cases, see P. Hathazy, “Democratizing Leviathan”, above note 43, pp. 275–276, 258–260; P. Hathazy “Punitivism with a Human Face”, above note 43.

leads prison authorities to deny and maintain secret everyday prison realities from which they benefit in political and often economic terms, including their complicity in facilitating riots or leaking information in order to produce public scandals that will limit the attempts of well-intentioned up-and-coming politicians to change prison regimes.<sup>78</sup> For high-ranking political agents, ministries or secretaries of justice, strategies of “not wanting to know” and delegating responsibilities to the “corrupt” low-ranking bureaucrats and prison staff become more and more common. The latter thereby serve as convenient scapegoats for prison problems while allowing for the preservation of political careers.<sup>79</sup> On the other hand, politicians are increasingly interested in reducing political scandals by informally granting prison officials more power in exchange for guarantees of peace and tranquillity inside their institutions, by whatever means necessary – including the delegation of power to prison gangs.<sup>80</sup> This further increases the denial of violence, corruption and informal self-government.

Finally, a *geographic dimension* contributing to the denial of the crisis of detention in Latin America must also be mentioned here. The massive prison construction boom, mostly following US prison complex architectures – including maximum-security units – coincides with the relocation of prison facilities away from urban areas.<sup>81</sup> Prisons, and prison conditions, are literally disappearing from the sight of most (politically sensitive) citizens. Rising urban land and real-estate prices – a favourite investment site for the profits of the re-primarized export economies – contribute to the spatial peripherization of prisons and prisoners, as political and economic elites prefer to reserve precious urban lands for economic development projects and not the construction of desperately needed new prisons. In many cases, this has also led to the closing and selling of older prisons located in downtown areas, which had to make space for new urban development projects such as shopping malls, becoming monuments of consumption.<sup>82</sup> Old prison farms located in the countryside and used as semi-open prisons housing soon-to-be-released prisoners then provide for the needed spaces on which to construct the new prison complexes, to which the

78 On the informality of prisons in Latin America, see Christopher Birkbeck, “Imprisonment and Internment: Comparing Penal Institutions North and South”, *Punishment and Society*, Vol. 13, No. 3, 2011. On the everyday markets of goods and information in prisons, see, for example, Francesca Cerbini, “El espacio carcelario y la organización interna de los reclusos de San Pedro (La Paz, Bolivia): Repensando el concepto de vigilar y castigar”, and Andres Antillano, “La prisión en dos tiempos: La cárcel venezolana entre el neoliberalismo y la revolución bolivariana”, in C. Constant (ed.), above note 63.

79 On the professionalizing tendencies of political agents in the new Latin American democracies, see M. Cavarozzi, above note 34, p. 56.

80 For Brazil, see Fernando Salla, “As rebeliões nas prisões: Novos significados a partir da experiência Brasileira”, in *Sociologias*, Vol. 8, No. 16, 2006. For Chile and Argentina, see P. Hathazy, “Democratizing Leviathan”, above note 43, p. 225. For Venezuela, see A. Antillano, above note 78.

81 A prime example is the process of relocation observed in the Brazilian state of Sao Paulo, the biggest prison system in Latin America, as documented in Giane Silvestre, “O processo de interiorizacao penitenciaria em Sao Paulo”, in *Dias de visita: Uma sociologia da punicao e das prisoes*, Alameda, São Paulo, 2012, pp. 121–130.

82 See Susana Draper, *Afterlives of Confinement: Spatial Transitions in Postdictatorship Latin America*, Pittsburgh University Press, Pittsburgh, PA, 2012.

criminalized dwellers of the urban periphery are now sent – further increasing invisibilization of the prison crisis through the spatial displacement of its victims.

In a regional and national context defined by politically induced denial and invisibility, the institutional weakening of protective organs, empowered prison bureaucrats, and new generations of criminal justice reformers interested in perfecting the “toughened” policing and judicial branches, human rights activists have invested in new avenues to advance prison change and prisoners’ protection. The most common strategy, not surprisingly, has been the internationalization of their fight, resorting to international organs, and introducing the language of humanitarian law into prison policy vocabularies, as a site of last resort. We now turn to the analysis of two cases where these structurally based politics of denial and human rights international strategies have clashed in the attempt to put a limit on the carceral social genocide taking place in Latin America.

### **National politics and international strategy convergence as (possible) sources of change**

In this last section we briefly analyze the growing centrality of “international strategies” – considered to be “the ways that national actors seek to use foreign capital, such as resources, degrees, contacts, legitimacy and expertises[,] ... to build their power at home”<sup>83</sup> – by human rights activists and how they interact with tensions inscribed in the system of agents involved in punitive prison policy-making and the implementation of penal laws at the national level. We draw insights from two national cases, Chile and Mexico, that present similar mechanisms of denial but differ in the way in which international human rights activism has been able to alter the accepted political and expert thinking. The analysis shows that international human rights strategies are effective when they converge with the dynamics of and changes in the distributions of power in the national carceral arenas. Such dynamics of and changes in the distribution of power, while being beyond the control of activists, nonetheless must be mapped and taken into account for any successful attempt at change.

In Chile, the politicization of prison policies – that is, the displacement of human rights experts by reform technocrats interested in efficiency, security and penal State expansion<sup>84</sup> – led to the current prison crisis and its denial in the face of internal and external demands. However, breaking the logic of denial and the incipient introduction of alternative policies was possible, as human rights activists’ strategies, with their different temporalities (from press releases responding to scandals, to periodic report-making, to extraordinary long-term

83 Yves Dezalay and Bryant G. Garth, *The Internationalization of Palace Wars: Lawyers, Economists and the Contest to Transform Latin American States*, University of Chicago Press, Chicago, IL, 2002, p. 7. See also Markus-Michael Müller, “De-Monopolizing the Bureaucratic Field: Internationalization Strategies and the Transnationalization of Security Governance in Mexico City”, *Alternatives: Global, Local, Political*, Vol. 39, No. 1, 2014.

84 P. Hathazy, “Democratizing Leviathan”, above note 43, p. 224.

interventions via institution-building and resort to international bodies), converged with the actions of other experts and received the backing of temporarily marginalized political elites within the highly consensual party system and its technocratic style of policy-making.

Chilean prisons have been at the centre of the international human rights movement's attention in the 1970s and 1980s as part of the fight against authoritarian regimes and political imprisonment.<sup>85</sup> During the 1990s, authorities and experts expected that criminal procedure reforms would solve the overpopulation problem through faster trials and fewer pre-trial detainees,<sup>86</sup> with human rights expertise marginalized from prison policy-making circles. As the prison population grew by 50% between 1994 and 2000, from 20,954 to 33,051, and criminal accusations before courts ballooned from 21,966 in 1997 to 31,573 in 2000 after the new criminal procedure was passed,<sup>87</sup> the promised solutions soon proved to be false. A "prison crisis" exploded in December 2000 when 11,000 inmates out of the total prison population of 31,000 staged a nationwide protest after the death of seven inmates in a prison fire. Authorities responded with a programme of prison-building and privatization.<sup>88</sup> The crisis and the demands of the "grand reform" of the criminal justice system allowed private businesses to acquire a share in the business of punishment and high officers and State managers to replace correctionalist expertise with managerial skills.<sup>89</sup> The crisis also turned the Chilean prisons into a human rights battleground again.

In the late 1990s, human rights scholars once again aimed their human rights guns at the prisons. The strategies were threefold: informational, judicial and institutional. In 2000, professors at Diego Portales Law School began producing annual reports on human rights abuses under democracy, targeting prisons.<sup>90</sup> The Human Rights Center at Portales agglutinated other human rights groups: the older Corporation for the Defence of People's Rights (Corporación para la Defensa de los Derechos del Pueblo, CODEPU), created in 1980 and

85 The human rights reports of the 1970s gave renown to human rights organizations documenting the aberrant human rights violations during dictatorship. See Yves Dezalay and Bryant G. Garth, "From the Cold War to Kosovo: The Rise and Renewal of the Field of International Human Rights", *Annual Review of Law and Social Science*, Vol. 2, No. 1, 2006.

86 Cristian Riego, "La prisión durante el proceso penal en Chile", *Cuadernos de Análisis Jurídico*, No. 16, 1990; P. Hathazy, "Democratizing Leviathan", above note 43, p. 223.

87 See Jörg Alfred Stippel, *Las cárceles y la búsqueda de una política criminal para Chile*, LOM, Santiago de Chile, 2006, p. 34; S. Salinero Echeverría, above note 46, p. 115.

88 Three weeks after the first massive protest in prisons in Chile, the justice and public works ministers announced a programme to build prisons for 16,000 inmates, putting them in the hands of private companies: *El Mercurio*, 14 January 2001.

89 The government privatized prisons "the French way", retaining security and supervision of prisons and contracting out building and operations, as well as provision of food, laundry, medical and rehabilitation "services": *El Mercurio*, 14 January 2001. For an analysis of the privatization process, see P. Hathazy, "Democratizing Leviathan", above note 43, pp. 226–229.

90 Their 2002 report showed overcrowding, lack of hygiene, insufficient food, prisons controlled by inmates with high levels of violence, deaths, and a highly tense order produced by the collaboration between abusive and exploitative gangs and despotic guards. The report also denounced systematic torture and physical abuses. See Alvaro Castro and Martín Besio Hernández, "Chile: Las cárceles de la miseria", *Pena y Estado: Revista Latinoamericana de Política Criminal*, Vol. 6, No. 6, 2005.

tasked with the defence of prisoners,<sup>91</sup> and the new Confraternity of Common Prisoners (Confraternidad de Familiares y Amigos de Presos Comunes, CONFRAPECO), an organization of ex-convicts mobilizing under the banner of human rights.<sup>92</sup> For five years, between 2002 and 2007, the Chilean Ministry of Justice systematically denied the validity of the reports describing the terrible prison conditions.<sup>93</sup> Following a managerial approach, top-down prison bureaucracies tried to symbolically solve the problems of violence, killings and overcrowding, treating them as issues of public relations and public image. At the same time, they hired teams of local and foreign legal experts to show they were working on the problem. The Ministry of Justice hired its own human rights specialists and socio-legal scholars from Germany with the assistance of the (now-defunct) German Development Agency (Deutsche Gesellschaft für Technische Zusammenarbeit)<sup>94</sup> – with the explicit aim of assisting the Ministry in regulating judicial oversight of prisons.<sup>95</sup> After two years of work, and after receiving the collaboration of legal scholars from the Universidad Diego Portales and Universidad de Chile, the minister of justice decided to abandon the project in 2007 and replace it with a smaller plan to create supervising judge positions that have so far not been created.

Finding no response in the national arenas, in the mid-2000s human right activists at Diego Portales Law School deployed internationalization strategies similar to those used during dictatorship<sup>96</sup> and turned to the IACHR. They prompted a visit to Chile that reported on the overcrowding, State violence, officer abuses, inadequate facilities and lack of rehabilitation services found in the country's prisons.<sup>97</sup> The IACHR has been progressively interested in common prison conditions in the region since 1993.<sup>98</sup> The 2008 visit, along with internal political pressure, forced the Prison Service Directorate to recognize that prison conditions were substandard and that they violated human rights.

In the face of these negative reports and scandals, the central government finally decided in 2009 to call a special commission to study problems and propose solutions. Named the Council for a New Penitentiary Policy, it was a place where

91 CODEPU, “¿Quiénes somos?”, available at: [www.codepu.cl/pagina-ejemplo/](http://www.codepu.cl/pagina-ejemplo/).

92 CONFRAPECO, “Confraternidad de Familiares y Amigos de Presos Comunes – CONFAPRECO”, *Idealist.org*, available at: [www.idealist.org/es/ong/5f3558ab54bd4125b4ddd95146bfd6a-confraternidad-de-familiares-y-amigos-de-presos-comunes-confapreco-santiago-de-chile](http://www.idealist.org/es/ong/5f3558ab54bd4125b4ddd95146bfd6a-confraternidad-de-familiares-y-amigos-de-presos-comunes-confapreco-santiago-de-chile).

93 Centro de Derechos Humanos, *Informe anual sobre derechos humanos en Chile 2009*, Universidad Diego Portales, Santiago de Chile, 2010, p. 96.

94 This was a private institution owned by the Federal Republic of Germany that under the banner of technical assistance (*technische Zusammenarbeit*) provided development aid to countries in the global South between 1975 and 2011.

95 See, for instance, Johannes Feest, “Hacia un sistema de control de la ejecución de penas no privativas de libertad”, *Boletín Jurídico del Ministerio de Justicia*, Vol. 4, No. 2, 2003.

96 See above note 80.

97 Rapporteur on the Rights of Persons Deprived of Liberty “Rapporteurship on the Rights of Persons Deprived of Liberty Concludes Visit to Chile”, Press Release No. 39/08, 2008, available at: [www.cidh.oas.org/Comunicados/English/2008/39.08eng.htm](http://www.cidh.oas.org/Comunicados/English/2008/39.08eng.htm).

98 In 1994 the IACHR declared that steps must be made “to remedy inhuman conditions in prisons”, and it began dealing with them in its annual report of 1995. It issued a recommendation in 1998, has produced country studies since 1998, and created a special rapporteurship on the rights of persons deprived of liberty in its 119th session, in March 2004. See: [www.oas.org/en/iachr/pdl/default.asp](http://www.oas.org/en/iachr/pdl/default.asp).

many police and justice reformers who were displaced from centre stage when reforms were put in place could make a comeback.<sup>99</sup> In early 2010, the Council delivered a report which focused on overcrowding, security and custody, insufficient infrastructure, lack of “adequate offer of rehabilitation”, lack of integration between the closed and open system, and lack of judicial control.<sup>100</sup> Elected right-wing president Sebastián Piñera initially ignored the report, as the “managers” in the prison administration worked hard to deny, cover and minimize the brutal conditions of Chile’s prisons.<sup>101</sup> On 8 December 2010, a riot exploded in the San Miguel Penitentiary Complex, a complex designed to house 1,100 that was housing 1,964 at the time, controlled by only thirty guards. Eighty-one inmates died in a fire ignited amidst the fighting.<sup>102</sup> Only after the greatest prison catastrophe in Chilean history had put the prison system crisis in the world tabloids, and Concertación parties, now in opposition, had voiced the criticisms of the displaced experts and human rights activists, did the government begin to implement some of the IACHR and Council recommendations.<sup>103</sup> Since 2011, the government has backed reforms to reduce the prison population through alternative sanctions for small crimes and fines (excluding drug offences nonetheless), introduced a pardons policy for non-violent offences (Law 20.588 of General Pardon)<sup>104</sup> and put conditional release decisions in the hands of a special commission headed by judicial authorities instead of political delegates (Law 20.587).<sup>105</sup> Prison authorities have also created a Human Rights Unit in charge of monitoring human rights standards. These measures have served to stop the growth in imprisonment rates but high levels of overpopulation remain, as well as serious deficiencies regarding facilities, training and the physical security of inmates.<sup>106</sup>

The Chilean case is quite unusual in that the human rights activists contributed to new policies and some changes regarding the quantity and quality of imprisonment. This depended on a very specific social configuration that weakened the logic of denial and permitted alternative policies to be advanced.

99 The Council was formed entirely of “specialists” from think-tanks and NGOs: the Fundación Paz Ciudadana, Center for the Study of Security, led by Hugo Frühling; the FLACSO Security and Citizenship Program, directed by Lucía Dammert; and Cristian Riego from the Justice Studies Center of the Americas. The think-tanks and university expert were joined by the Supreme Court prosecutor, and representatives of the Ministries of Justice and the Interior. The minister of justice asked them to work on rehabilitation. See Consejo para la Reforma Penitenciaria, *Recomendaciones para una nueva política penitenciaria*, Ministerio de Justicia de Chile, Santiago de Chile, 2010.

100 *Ibid.*

101 Centro de Derechos Humanos, “Sistema penitenciario y derechos humanos”, in *Informe anual sobre derechos humanos en Chile 2009*, Universidad Diego Portales, Santiago de Chile, 2010, p. 109.

102 Centro de Derechos Humanos, “Sistema penitenciario y derechos humanos”, in *Informe anual sobre derechos humanos en Chile 2011*, Universidad Diego Portales, Santiago de Chile, 2011, pp. 111–113, section “Incendio de la Carcel San Miguel”.

103 *Ibid.*, pp. 113–118, section “Reformas y avances desde 2010 a la fecha”.

104 Law 20.588, “Indulto general”, 22 May 2012, available at: [www.leychile.cl/Navegar?idNorma=1040511](http://www.leychile.cl/Navegar?idNorma=1040511).

105 Law 20.587, “Modifica el régimen de libertad condicional y establece en caso de multa la pena alternativa de trabajos comunitarios”, 8 July 2012, available at: [www.leychile.cl/Navegar?idNorma=1040829](http://www.leychile.cl/Navegar?idNorma=1040829).

106 Centro de Derechos Humanos, *Informe anual sobre derechos humanos en Chile 2014*, Universidad Diego Portales, Santiago de Chile, 2014, p. 286.

This was possible (a) because agents in the periphery of the carceral policy arena could launch effective strategies (i.e., human rights activists engaging supranational organs in convergence with marginalized experts trying to make a comeback); (b) when the responsible incumbent political authorities and allied experts saw their positions jeopardized because of international scrutiny (as in the visits and report of 2008 and 2010); and (c) when experts lost power and direct access to the government, as in 2010, when the left-centre Concertación alliance of parties lost the presidency to the right-wing opposition.

That these conditions are important when considering the feasibility of internationalization strategies for confronting the political denial of the domestic crisis of detention becomes apparent when contrasting the Chilean case with related developments in Mexico. Mexico, as shown elsewhere in greater detail, clearly joined the punitive turn in contemporary Latin America, including the related “crisis of detention”.<sup>107</sup> When comparing the Mexican developments with the Chilean case, however, three structural aspects that contributed to the lack of success in addressing this crisis by activists “going international” need to be taken into account: (a) the relative weakness of Mexican civil society organizations, including human rights groups; (b) the particularity of the Mexican security situation, in particular regarding the severity of the “war on drugs” that, since 2006, has consumed the lives of more than 100,000 people;<sup>108</sup> and (c) the inherited informal institutional legacy of the authoritarian one-party regime of the Institutional Revolutionary Party (Partido Revolucionario Institucional, PRI) that ruled Mexico from 1929 to 2000 and, after a short interlude, again since 2012.<sup>109</sup>

The year 2000 signalled the breakthrough of the subnational democratization process that had been on the way since the mid-1990s at the national level. However, when looking at prison statistics, full-fledged regime transition also coincided with a hitherto unparalleled increase in Mexico’s inmate population, rising from 154,765 prisoners in 2000 to 247,888 in 2015.<sup>110</sup> This contributed to serious overcrowding problems in the country, leading to a worsening of the already highly problematic prison conditions in authoritarian Mexico,<sup>111</sup> as evidenced by a comprehensive assessment of the Mexican prison system by the National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH) in a 2014 report.<sup>112</sup>

When considering that such reports clearly evidencing serious deficiencies inside the country’s prisons are regularly issued by public institutions, it seems at

107 M.-M. Müller, above notes 30 and 36; Markus-Michael Müller, “Penal Statecraft in the Latin American City: Assessing Mexico City’s Punitive Urban Democracy”, *Social and Legal Studies*, Vol. 22, No. 4, 2013.

108 Kimberly Heinle, Octavio Rodríguez Ferreira and David A. Shirk, *Drug Violence in Mexico: Data and Analysis through 2015*, Justice in Mexico Project, University of San Diego, San Diego, CA, 2016, available at: <https://justiceinmexico.org/wp-content/uploads/2016/04/DrugViolenceinMexico-Final-2015.pdf>.

109 See Jay Longston, *Democratization and Authoritarian Party Survival: Mexico’s PRI*, Oxford University Press, Oxford, 2017.

110 Presidencia de la República, *4to. Informe de Gobierno: 2015–2016. Anexo estadístico*, Gobierno de los Estados Unidos Mexicanos, Mexico City, 2016, p. 53.

111 On the latter, see Americas Watch, *Prison Conditions in Mexico*, Human Rights Watch, New York, 1991.

112 CNDH, *Diagnóstico nacional de supervisión penitenciaria 2014*, CNDH, Mexico City, 2014.

first sight that the Mexican authorities are trying to confront the crisis of detention. On closer inspection, however, this is not the case. To understand this outcome, it is important to place Mexico's crisis of detention within the context of the country's escalating drug war and a general, real as well as perceived deterioration of its security situation that coincided with the last phase of the democratization process and Mexico's embrace of neoliberalism since the mid-1990s. In turn, this, as elsewhere in Latin America, politicized the issues of crime and insecurity. This led Mexican politicians and bureaucrats to call for more, better and tougher law enforcement and harsher punishment for criminals.<sup>113</sup> And it translated into efforts by politicians and law enforcement agencies to demonstrate their success in crime fighting by engaging in "statistical politics" that show that the government is winning its war against crime by arresting more and more "criminals". The latter, as elsewhere in the region, usually come from the most marginalized segments of the population and are hardly the worst or most dangerous criminals.<sup>114</sup>

Human rights activists interested in changing this situation are confronted by two main obstacles. First of all, as security is a main priority for Mexican citizens and politicians, and as the proliferation of "citizen security" discourses has divided up the Mexican political space into rights-deserving citizens and criminal "non-citizens", the latter have almost no lobby as it has become increasingly difficult to openly call for the protection and improvement of the rights of criminal and criminalized "non-citizens". As one interview partner working for an NGO that seeks to address these problems put it, "[f]or many Mexicans, perpetrators deserve no human rights" – a fact which translates into serious funding problems for civil society actors interested in improving Mexican prison conditions.<sup>115</sup>

Here it should be mentioned that Mexican civil society is rather weak when compared to other Latin American countries. This weakness stems from the often successful co-optation efforts of dissident groups by the PRI and the ways in which these have translated into a form of "State-financed" semi-official civic activism. This has had negative consequences for the credibility of many civic organizations in the country, preventing them from becoming deeply embedded in Mexican society.<sup>116</sup> As one NGO member summed it up:

NGOs have historically served to enrich those people who direct them and they aren't accountable [*han servido para enriquecer a las personas, que las dirigen y no rinden cuenta*]. Therefore people don't give [them] money, which substantially limits the amount of money you, as an organization, can expect [to receive] from the people.<sup>117</sup>

This general problem is more severe for those groups struggling for prisoners' rights, and their struggle is made even more complicated and difficult by the

113 Arturo Alvarado Mendoza, "La criminalidad y las políticas de seguridad en México", *Cuestiones de Sociología*, No. 10, 2014.

114 M.-M. Müller, above note 30, p. 233.

115 Personal interview with NGO member, Mexico City, April 2008.

116 M.-M. Müller, above note 36, pp. 101–102.

117 Personal interview with NGO member, Mexico City, June 2006.



lasting legacy of those informal and co-optation-centred practices, including clientelism, in Mexico's contemporary political system.<sup>118</sup> In fact, the prevailing informality inside the Mexican political system extends into the penal field and undermines the success of internationalization strategies, just as we have observed in the case of Chile. Indeed, Mexican activists, largely due to their domestic "weakness", have tried to go international, but due to high levels of domestic informality, these efforts have run dry. In the words of another NGO member:

What is true is that the state listens to you, but it does not comply. In Mexico there is no legal system which would apply international [human rights] recommendations or decisions to the national level. This means that it [the international human rights system] only serves as a medium for political pressure. Unfortunately in our legal environment, there exists no possibility of applying international criteria to concrete legal cases. Despite the fact that our constitution gives international treaties the status of supreme laws, there are no institutional juridical mechanisms which permit the direct application of a decision [of an international human rights body]. There is no respective legal system or the judge is not obliged to apply these recommendations. And on the other hand, although international human right treaties have the character of supreme laws, it is certain that the judges, that all the jurisdictional personnel neither has the capacity to adopt them, nor knows something about these treaties. ... Because in order to punish a governor or a police chief of whom we know that he gave the orders, you need a political judgement [*juicio político*] from the legislative power of the respective state or from the federal level. But, for sure, this guy has his godfathers [*compadres*] among the deputies, and they won't prosecute him. So, there is no way, definitely no way to sanction neither high ranking police officers, nor the responsible politicians.<sup>119</sup>

This observation extends to the realm of penal improvements, implying that because of the prevailing informality that determines the workings of power in the Mexican penal field, international human rights institutions and mechanisms lose their power when they travel back to Mexico. The fact that dominant human rights experts and agenda setters in Mexico's penal field often don't come from an activist background but are rather technocratic academics whose work ethos is dominated by ideals of impartiality, efficiency and neutrality – and who often follow the dominant political agendas and/or priorities of external funding bodies which, in light of Mexico's security crisis, often tend to ignore the crisis of detention in the country<sup>120</sup> – represents another structural problem for anyone

118 On the difficulties of access to government by civil society actors, see Sharon F. Lean, "Enhancing Accountability in Mexico: Civil Society in a New Relationship with the State?", *LASA Forum*, Vol. 45, No. 1, 2014, available at: <https://lasa.international.pitt.edu/forum/files/vol45-issue1/Debates3.pdf>.

119 Personal interview, NGO member, Mexico City, July 2007, quoted in Markus-Michael Müller, "The Struggle over Human Rights in Mexico", in Klaus Hoffmann-Holland (ed.), *Ethics and Human Rights in a Globalized World*, Mohr Siebeck, Tübingen, 2009.

120 M.-M. Müller, above note 83.

interested in improving Mexican prison conditions. The apparent “neutrality” of many human rights experts, the prevailing informality of Mexican politics and the “opportunity structure” provided by Mexico’s “drug war” for the political denial of the country’s prison crisis are factors that have ultimately undermined the more positive outcomes of activists “going international”.

In that respect, just as some political, judicial, administrative or expert agents may resist, abort or ignore struggles for new policies, as in the case of Mexico, it is only through alliances and the backing of these different agents located in the national carceral fields that improvements in domestic prison conditions will happen. The human rights principles, actions and desires of activists have to be matched with acute sensitivity and precise knowledge of the structure of interests and strategies of agents involved in the domestic definition of prison policies and priorities. The work of social scientists working in and on the region’s prisons becomes not only important for documenting the power and symbolic structures leading to the current prison crisis and the underlying sources of its denial, but also decisive in identifying the multiple options available to overcome resistance and produce positive changes.

In 1999, Special UN Rapporteur Nigel Rodley saw in the “decision of the Inter-American Commission on Human Rights to study prisons” the “one bright spot” in the region.<sup>121</sup> Since then the IACHR has produced numerous country, regional and special topics reports. In 2011 the IACHR concluded its special report on the human rights of persons deprived of liberty, recommending interventions in different sectors of the carceral field. In the properly political arena, it recommended “comprehensive prison policies geared to the personal rehabilitation and reintegration of convicts into society”. At the judicial level it suggested legislative and institutional measures “to guarantee effective judicial monitoring of the enforcement of sentences”, in particular judges, and “measures necessary for providing public legal aid”. At the administrative level it recommended “monitoring the activities and decisions of ... authorities” involved in assigning work, bestowing prison benefits and sentencing decisions, to prevent irregularities and corruption; “notification of release orders”; “[s]etting up databases ... on all persons subject to criminal proceedings”; and “implementing post-prison follow-up and support programs”. At the prison level, finally, it pointed to the need to establish “nimble, equitable and transparent mechanisms for the awarding of slots in educational, vocational training, and work programs”.<sup>122</sup>

Each of these policies points to different sectors and dimensions of the processes that have led to the current prison crisis and its denial. Social-scientific studies are in the best position to disentangle the limits and possibilities that the immanent tensions of the carceral fields have in store for the advancement of progressive policies within prisons. The reconstruction of the system of power

121 Nigel Rodley, “Torture and Conditions of Detention in Latin America”, in J. E. Mendez, G. O’Donnell and P. S. Pinheiro, above note 24, pp. 39–40.

122 IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, Washington, DC, 2011, pp. 219–220, available at: [www.oas.org/en/iachr/pdl/docs/pdf/PPL2011eng.pdf](http://www.oas.org/en/iachr/pdl/docs/pdf/PPL2011eng.pdf).

struggles, involving political, judicial, administrative, bureaucratic, social and reformist dynamics, is essential to advance in such a direction.

## Conclusion

This article has assessed the causes and consequences of what we refer to as the crisis of detention in contemporary Latin America. This crisis, we have demonstrated, is most visible in the overpopulation of the region's highly informal prison systems, leading to ongoing human rights abuses and prison violence. We have situated these developments in their political and penal bureaucratic context and highlighted the somewhat paradoxical role of democratization, political regime change and party politics, as well as neoliberalization and post-neoliberalization, in triggering a "punitive turn" in the region that led to the emergence of penal State reform projects, combined with the rise of penal populism that contributed to both an historically unparalleled upsurge in incarceration rates and to the political, judicial and expert denial of prison violence and human rights violations in Latin American institutions of confinement. This denial has produced a state of institutional abandonment that is preserved by the interests of politicians and the judiciary, who are engaged in denying prison violence and human rights abuses while promoting and producing more punishment.

By turning towards sites of contestation of the denial of human rights abuses inside Latin American prisons, we have demonstrated how under conditions of politically and judicially produced abandonment, human rights become the element of last resort for inmates and human rights activists, thereby transforming prisons into targets for humanitarian interventions through internationalization strategies. These interventions, however, ultimately operate according to the system of tensions of each national penal field, which in most cases leads to a denial of the structural violence of Latin American prison conditions, while still demonstrating a "will to improve". In some cases, however, international human rights strategies have contributed to policy changes, going beyond a predominantly symbolic concern.

One important analytical and practical implication of our findings is that international human rights norms, standards, discourses and institutions are not a panacea for overcoming the crisis of detention in Latin America. Latin America's penal fields are what Dezalay and Garth call "two-tiered systems". These systems are composed of a cosmopolitan elite propagating and importing "grand principles" at the top, and "ordinary" agents, actors and bureaucrats at the bottom, whose routine practices continue to be defined by "clientelism and patronage".<sup>123</sup> These two tiers are so socially and institutionally separated that the impact of those actors aiming at improving local practices by going international is structurally limited if the two tiers are not in sync:

123 Y. Dezalay and B. G. Garth, above note 83, p. 249.

The cosmopolitan importers work to construct a new, internationally acceptable and legitimate state, but they must confront deeply ingrained practices at all social levels and the people who sustain those practices in ways that ultimately benefit the cosmopolitan elite. ... The devalorization or disqualification of local justice and local states in Latin America (and elsewhere) because of their embeddedness in patronage and clientelism also provides legitimacy and prestige for those at the top of the two-tiered system. They gain recognition, in part, for their sophistication of their criticisms. Their distance and their cosmopolitan connections and credibility, in other words, allow them to appear as a nobility speaking on behalf of the new sophisticated remedies for the state and the economy.<sup>124</sup>

In this regard, the way forward and a possible way out of the crisis of detention in contemporary Latin America depends on the crafting of domestic and international alliances that bring these two levels of the increasingly internationalized penal fields in sync with each other. It should be obvious that in the over-politicized context of Latin America's "violent" and "securitized" democracies, in which political careers are built on the (re)production and denial of this crisis, such efforts will be met with severe resistance, but this is, in our view, the only way forward that would be capable of achieving a structural change in the region's prison systems. This change would also need to imply a critical rethinking and greater self-reflexivity of involved activists, scholars and experts who, often unintentionally, have contributed to this crisis in and through their own, well-intentioned work. As long as seemingly progressive discourses, such as "citizen security", which implicitly frame criminals as non-citizens, continue to proliferate, and as long as technocratic, efficiency-oriented expertise dominates in the region's penal fields, improvements may not come, even in the long run. In this regard, a better understanding of the unintended consequences of prison reform efforts and of the multiple interests involved is indispensable for moving out of the crisis of detention in the region. It is our hope that by mapping the institutional, political and bureaucratic terrain in which these reforms unfold, this article will make practitioners aware of this situation and help them to better navigate the over-politicized terrain of prison reform in the region.

124 *Ibid.*