STRATEGIES TO REDUCE THE PRISON POPULATION IN THE EARLY STAGES OF "POSTSENTENCING AND SENTENCING"

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Introduction

The paper discusses, with a focus on the Brazilian experience, if the alternative to prison constitute a successful strategy to reduce prison overcrowding. Initially it will be briefly explained the difference between alternative penalties and alternative measures provided in the Brazilian law and the hypotheses of their application. Afterwards there will be presented some data about prision population, deficit of places and the increasing application of alternative penalties and measures. It will be also presented the type of crime and the profile of prisoners as well as of abiding alternatives, according to the data collected by the Ministry of Justice and by the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD). The data indicate that the alternative penalties and measures not only did not reduce the prison population, but increased the punitive control. Therefore, there will be an approach about the challenges and potentialities for the alternatives to prison policy in order to reach their aim In this perspective. It will be highlighted as previous conditions not only the reduction of the demand for criminalization but also the breach of common sense about the effectiveness of the prison as the unique tool to ensure public safety. At the end, it will be pointed at the characteristics of the Brazilian experience on the application of alternatives to prison as punishment which can serve as a reference to other countries.

1 Alternatives to imprisonment in Brazil

Following international guidelines, in particular the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules, General Assembly Resolution 45/110 of 14/12/90), Brazil carried out legislative and administrative provisions necessary to reduce the use of prison as penalty. They started timidly with the Penal Code reform in 1984, took shape with the Law 9099 of 1995, which created the Special Criminal Courts, and with the Law 9.714 of 1998. Finally they were strengthened with the creation in 2000 of the National Center for Support and Monitoring for Alternative Penalties and Measures (Cenapa), under the Ministry of Justice. According to law, alternative penalties are the criminal sanctions other than imprisonment. Among them, the restricting of certain rights, which replace the deprivation of liberty. But there is more and more alternatives that are not substitutive. In turn, alternative measures consist in a large number of legal instruments which avoid sentencing and the application of a penalty, or, postsentencing, the imprisonment.

Brazilian law provides more than ten species of non-custodial penalties, defined in the Penal Code or in special laws, almost exclusively as substitute penalties. It means that, the judge must impose a custodial sanction first in order to replace it by an alternative sanction. Prevails in practice, firstly, the provision of community or public service, and, secondly, the pecuniary instalment. In general,it is the so called "basic baskets", which consist on delivering food or other necessities to charities.

The application of alternative penalties is limited to crimes whose sentencingdo not surpass four years imprisonment and that have not been committed with violence or serious threat to the person, or whatever the sentence, if the crime is nonintentional. It requires as objective condition that the defendant is not a recidivist in intentional crimes, as well as an analysis of the reasons, the circumstances of the crime and subjective elements, such as culpability, previous records, social behavior and personality.

Alternative measures are in a minority. Include civil composition, criminal transaction, suspended process, sursis, conditional release, judicial and legal pardon. The most usual alternative measures are

criminal transaction and suspended process, in crimes for which the maximum penalty, in abstract, not exceed two years in prison. The way they are fulfilled often get mixed up with the pecuniary instalment and the community or public services.

According to research by Machado (2008), in Brazil 1320 types of crimes admit the application of alternative penalties and measures. However, this legal provision do not produce impact in reducing the rate of incarceration, as it will be discussed below.

It should be noticed that the Law 9714, which amended the Criminal Code, to extend from one year to four years imprisonment penalties, in order to admit their replacement by restriction of rights, answered at the time to the unsustainable prison overcrowding and to tens of thousands of not fulfilled arrest warrants.

Nevertheless, Azevedo (1999, p. 55) criticizes the Law 9714, because the alternative penalties, particularly the restricting rights, kept from being a reaction to the imprisonment of short term, to apply generally to sentencing up to four years, which constitute the majority of imprisonment sanctions, except for the crimes committed with violence or serious threat to a person.

Toledo (1999, p. 139) also criticizes the law, not by the expansion but by the distortion that engenders. For example, perpetrators of crimes against public administration very difficultly will be compelled to carry a custodial sanction, even in the case of serious misconduct.

In spite of critics, it should be enhanced that in 2008, the number of people who comply with alternative penalties and measures exceeded the number of convicted to custodial sentences.

The Table below shows the number of people who comply with alternatives to imprisonment and of the institutions involved.

Table 1 : Historical evolution of Alternative Penalties and Measures (PMA) in Brazil

Year	Law	Time of fulfillment of PMA	Public equipment of monitoring PMA	Number of Abiding-restricting rights penalties		Number of PMA	Number of prisoners
				Alternative measures	Alternative penalties		
1987	7210	0 - 1	01 Núcleo no RS	Sem informação	197	Sem informação	Sem informação
1995	7.210/84 9.099/95	0 - 1	04 Núcleos	78.672	1.692	80.364	148.760
2002	7.210/84, 9.099/95 9.714/98, 10.259/01	0 - 4	04 Varas Especializadas 26 Centrais/ Núcleos	80.843	21.560	102.403	248.685
2006	7.210/84, 9.099/95 9.714/98, 10.259/01 10.671/03, 10.826/03 11.340/06, 11.343/06	0 - 4	10 Varas Especializadas 213 Centrais/ Núcleos	237.945	63.457	301.402	401.236
2007	7.210/84, 9.099/95 9.714/98, 10.259/01 10.671/03, 10.826/03 11.340/06, 11.343/06	0 - 4	18 Varas Especializadas 249 Centrais/ Núcleos	333.685	88.837	422.522	423.373

2008	7.210/84, 9.099/95 9.714/98, 10.259/01 10.671/03, 10.826/03 11.340/06, 11.343/06	0 - 4	19* Varas Especializadas 306 Centrais/ Núcleos	457.811	101.019	558.380	446.764

Remarks:
Number of Counties in Brazil: 2510 (source: UNDP / MJ, 2006)
Number of Counties with Public Service PMA in Brazil: 325 (13%) (source: CGPMA / DPP / DEPEN)
% Of Recidivism of ex-abiding of sentences of imprisonment (prisoners): 70 to 85%
% Of Recidivism of ex-abiding PMA: 2 to 12% (Source: ILANUD) (Source: Nunes, Adeildo, 1996)
Social Network Monitoring = 13000 registered partner organizations
The National Penitentiary Fund (FUNPEN) of the National Penitentiary Department (DEPEN) of the Ministry of Justice was created by Complementary Law 79, of 1994.
* In July 2009, was created the Court of PMA Macapá - AP.

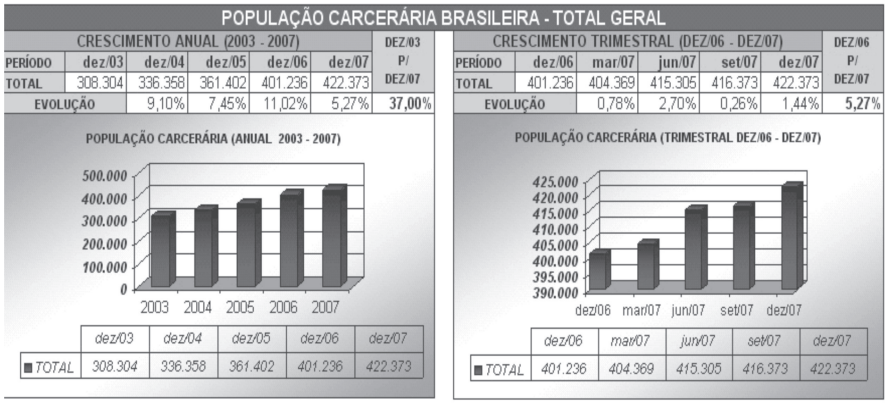
The ILANUD / Brazil carried, between December 2004 and January 2006, a National Survey on the Enforcement of the Alternatives Penalties, in nine Brazilian cities (Belém, Belo Horizonte, Fortaleza, Campo Grande, Curitiba, Porto Alegre, Recife, Salvador, Sao Paulo) besides the Federal District. It assessed the effect of the policy deployed nationwide by CENAPA. Further, we review some of its conclusions.

2 The numbers of incarceration in Brazil

According to the estimate of the Geography and Statistics Brazilian Institute (IBGE), in 2009 the Brazilian population reached 191.5 million people. But the annual average rate of growth is decreasing. From 1.6% in the period 1990-2000 , reduced to 1.2% in 2000-2010 in 2010. The prospective for 2020 is 1% (CARVALHO, 2004). At the same time the projection indicates the increase in the group of elders and women.

Regarding the prison population, the incarceration rate almost doubled from 1995 to 2003. The First National Prison Census was conducted in 1975 when were counted 148,760 inmates. The latest consolidated data of the Penitentiary Department (DEPEN) in 2007 in Table 1 show a continued growth in the period of 2003-2007. In December 2003 there were a total of 308,304 prisoners in the country. That same month in 2007, there were 422,373 inmates, which means an increase of 37% of the prison population1.[1] Therefore, the incarceration rate in Brazil is much higher than the rate of population growth.

Table 2[2]

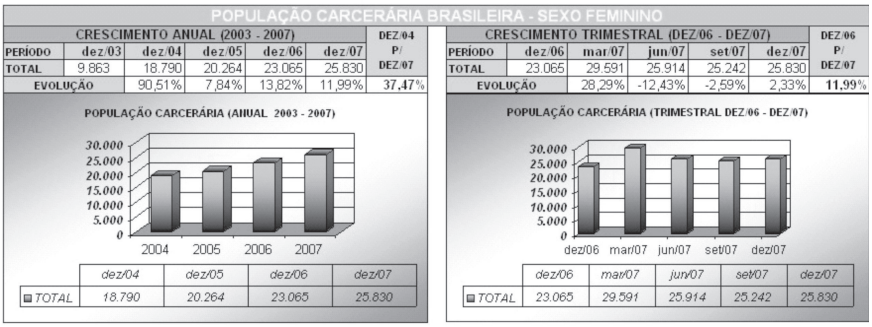


1 This number includes men and women abiding prison in closed, semi-closed and open regimes ou security measures (in case of mental illness), at establishments under penitentiary administration or policial of the states. It should be add 217 inmates at federal penitentiaries.

2 The total do not include 217 inmates at federal penitentiaries. Source: DEPEN/MJ

The Table 3 shows the evolution of the female prison population, whose rate of increase has been greater than that of the male prison population, thus raising problems and new demands. From December 2006 to December 2007, meanwhile the growth rate of the male population was of 5,2%, the women's growth rate reached 11,99%

Table 3



POPULAÇÃO CARCERÁRIA BRASILEIRA - SEXO FEMININO

CRESCIMENTO ANUAL (2003 - 2007)						DEZ/04 P/ DEZ/07
PERÍODO	dez/03	dez/04	dez/05	dez/06	dez/07	
TOTAL	9.863	18.790	20.264	23.065	25.830	
EVOLUÇÃO		90,51%	7,84%	13,82%	11,99%	37,47%

POPULAÇÃO CARCERÁRIA (ANUAL 2003 - 2007)

	dez/04	dez/05	dez/06	dez/07
TOTAL	18.790	20.264	23.065	25.830

CRESCIMENTO TRIMESTRAL (DEZ/06 - DEZ/07)						DEZ/06 P/ DEZ/07
PERÍODO	dez/06	mar/07	jun/07	set/07	dez/07	
TOTAL	23.065	29.591	25.914	25.242	25.830	
EVOLUÇÃO		28,29%	-12,43%	-2,59%	2,33%	11,99%

POPULAÇÃO CARCERÁRIA (TRIMESTRAL DEZ/06 - DEZ/07)

	dez/06	mar/07	jun/07	set/07	dez/07
TOTAL	23.065	29.591	25.914	25.242	25.830

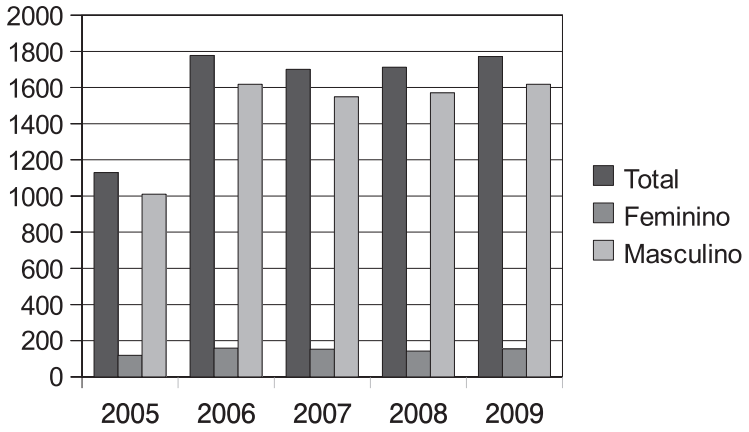
Source: DEPEN/MJ

The last published data points the total of 451,429 prisoners in December 2008, and for December 2009 the total of 473,626, of which 442,225 are men and 331,401 women. At these numbers, Brazil has a proportion of about 300 prisoners per 100 thousand habitants.

The Table 4 shows the number of penitentiary establishments, from 2005 to 2009. In June 2009 were computed 1771 establishments, almost all under administration of the states.

Table 4

Penitentiaries Establishments 2005-2009



Source: DEPEN/MJ

Differently from the tables related to the growth of the male and female prison population, in this table the columns remain stable, revealing the deficit of places, specially for women.

There is constant deficit which results in prison overcrowding in a large number of the penal establishments. In December 2007, for 275.194 places there were 422.590 inmates (34,87%), in December 2008 for 296.428 places 451.429 inmates (34,03%) and in December 2009 for 294.684 places there were 473.626 inmates(37,78%).

The deficit is even greater if we take into account the number of arrest warrants to be complied, which is said to be 350 thousand or 500 thousand, as in the Final Report of the Parliamentary Investigation Commission (CPI) on the Brazilian prison system, who visited various prisons during 2007. The Report also states that overcrowding, already identified by other CPI held in 1976, is the

main problem of the prison system (2008, p. 226). The overcrowding undermine the rights of prisoners to health, education, work, leisure, finally, the set of fundamental rights not affected by imprisonment, contributing to the recidivism within the prison and out of it.

The Brazilian prison overcrowding stems from both the appropriate and inappropriate use of prison. That means, on one hand, that investments in construction and reform of prisons are not properly planned and executed, on the other hand, that there was a hardening of criminal laws and in their implementation. Besides, there is an overuse of pretrial detention, which results in an anticipated punishment. And worse: research in four state capitals and in the Federal District revealed that "more than 70% of cases of theft in which arrests had been provisional result in an alternative to imprisonment or open prison, although defendants have remained detained during the process " (BARRETO, 2007 p.120).

The pretrial detention became one of the direct factors contributing to prison overcrowding in Brazil. According to the DEPEN in June 2009, approximately 30% of the prison population was in this situation. This high percentage had already drawn the attention of the National Judiciary Council (CNJ), which, since 2008, promoted prison work-party, consisting of the review of all proceedings of pretrial and sentenced prisoners. At the end of 2009 it had been analyzed 93,524 proceedings. In 19,967 of them the prisoners were released and in 31,534 they obtained legal benefits. The most common benefits were the progression of prison's regime, early release and substitution of prison penalties by restricting rights penalties. (www.cnj.jus.br). The experience made CNJ set a target to reduce the size of provisional prisoners population to a percentage below 20%.

Different surveys made in Brazil (BARRETO and CASTILHO, 2009; BOITEUX *et alii*, 2009; MACHADO, 2009) show that some crimes stand out in the composition of the prison population: theft, robbery, and drug trafficking.

According to the consolidated national data, in 2008, the robbery figures in first place among the crimes practiced by the defendants imprisoned (27,16%) and the theft in the third (22,6%). In the second place appears the drug trafficking and in the fourth the homicide (11,87%). The drug trafficking is responsible for the increase in female incarceration.

In his turn Machado (2009), in a survey restricted to the Federal District, pointed the robbery in the first place (22,6%); theft in second (18,8%) , carriage of ilegal weapons in third (12,2%), and, in fifth place, the homicide (6,8%).

Regarding to the profile of prisoners is one of "a young man, brown or black, with low education level, from lower social strata, carrying out activities that require little skill and poorly paid, and also in a vulnerable work situation" (ILANUD, 2006, p. 18). With this profile, most have already passed by juvenile justice institutions before reaching 18 years. In turn, once released from prison, the likelihood of recurrence exceeds 70%.

3 The ineffectiveness of alternatives to prison in reducing imprisonment

Cohen, already in 1979 (p. 339-363), announced the risk of the use of alternative measures and penalties, rather than acts as promised to reduce the prison population, increase the punitive control. Griffiths and Murdoch (2009, p. 33) also points out: "A key concern with the development of alternatives to prison is that" netwidening "will occur, wherein additional numbers of persons are brought into the justice system (…). If this occurs, the net effect will be to increase the numbers of persons under supervision by the justice system and prison population are unlikely to be reduced.

This is what happened in Brazil. According Azevedo (2000, p.321) Law 9099, cited above, which created criminal transaction and boosted the application of alternatives, included cases considered less offensive in the formal justice system, through informal mechanisms for entry and processing. The exemption to the police investigation for crimes submitted to the Special Criminal Courts "retired

police authority, which had the prerogative to select the cases considered more 'relevant', and so close the proceedings of most of small crimes."

The Survey of ILANUD/Brazil concluded that "the alternative penalty, as provided by the law and applied by the Brazilian justice system does not comply with the aim to "empty the prisons", that is, the profile of the sentenced with an alternative penalty, specially as to the committed crime, is different from the prison population profile"(2006, p.16).

Nevertheless, the social-economic profile of the abiding-alternative penalties and measures is similar to the prisoners. This is explained by the functioning of the Brazilian penal system which reproduces social-economic and racial inequality of the society. In this unequal structure are punished with imprisonment or alternatives to it only the poor, the uneducated, the unemployed, the browns and blacks[3].

Even then, the Brazilian context is insufficient to explain or justify the prison overcrowding. The principal reason for the increase in punitive control is rooted in the punitive culture and the idea of incarceration in Western societies, reinforced by globalization and the hegemonic model of American society. This model directly influences other countries in bilateral contacts as well as indirectly, in the buiding of international conventions. A comparison between statistics of the prison population in the United States and Brazil reveals similarities in its steady increase and in its profile. Note, for example, the overrepresentation of the black people.

Solutions, therefore, should not be sought only in the specific context of each country, but in the global context. Limited efforts at the national level of little use if not counting on international support and stimulus. In this sense are very important guidelines and recommendations set forth within the various UN bodies. However, there should be coherence between them. For example, the North American policy war on drugs has been internationalized by the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, resulting in an increase in prison population in confrontation with the effort to implement the policy advocated in the VI and VII United Nations Congresses on Crime Prevention and Treatment of Offenders, consolidated in the Tokyo Rules.

In Brazil, the culture of incarceration is evident in the persistence of imprisonment as the principal penalty prescribed by law for about 1,600 offences, and the amount of this penalty as a parameter to replace it by restricting rights penalties. So is permanently reinforced the idea that only the prison is an effective penalty and that replacing it by alternative penalties or admitting progression from closed to open regime show leniency of criminal justice, featuring impunity.

The law enforcers generally work in optics to maximize the indictments, the charges and sentences so that custodial sentences are calculated in amounts that exclude the granting of progression to open regime or the use of alternatives to prison (MACHADO, 2009).

It should be noted that this statement is true only for a specific set of violations, ie, the conducts against property, committed with serious threat or violence and for drug trafficking. In the context of domestic violence a serious threat and injury are curiosly minimized. Crimes against property committed by fraud or crimes against consumers affecting undetermined number of victims are also treated with kindness. Regarding drug trafficking, research carried out for the Ministry of Justice (BOITEUX et alii, 2009) shows that the criminalization reaches predominantly the small traffickers and users who also traffick.

The ILANUD research confirms this idea, because observed, on the one hand, that "judges, in most

3 About this aspect see SEGATO, Rita. El color de la cárcel en América Latina: apuntes sobre la colonialidad de la justicia en un continente en desconstrucción. *Nueva Sociedad*, n. 206, marzo-abril 2007.

cases, decide by the substitution of sentences lasting up to one year, reaching significant percentages merely to two years , time that does not applies to the crimes of highest incidence in the penal system " (2006, p. 16). On the other hand, as the law excludes the possibility of alternative penalties for crimes committed by threat and violence even if the size of the penalty permits the replacement, and there is a large proportion of individuals convicted for robbery, is "reduced the impact of alternative penalties in the prison population" (p. 17).

At the time of the research there was an judicial understanding that allowed the award of restricting rights penalties for those convicted of drug trafficking. But the Law 11.343, of 2006, prohibited the concession of bail and the application of alternatives to prison[4].

In 2007, Machado et *alii* (2008) crossed the number of crimes susceptible of alternative penalties with the database of the Ministry of Justice on prison population, named INFOPEN. They concluded that 25% of the population convicted, complied penalties up to four years and only 8% was in the open regime. Why these people were in closed or semi-open regime? Because they have committed crimes with violence or serious threat or were recidivists. The researchers then made simulations with the criteria "amount of the penalty" and "violence/serious threat," and concluded that the factor that impacts the Brazilian prison population are not the long-term penalties, but the short ones, due to the restrictions limiting milder regimes of prison or the application of alternatives to prison.

Common sense that the crime of the streets and that related to drugs has the prison as only effective response is embedded in the legislation. Therefore, those accused of theft, robbery and the drug trafficking are very likely to wait trial in prison.

While acknowledging the failure of the prison penalty, the public insists on its use, trying to justify the failure with poor management, and faces alternative penalties and measures with caution, do not perceiving them as an efficient instrument to control crime.

Proponents of alternative penalties and measures argue that the recidivism rates of the abiding of penalties and alternative measures are at or below 12% (GOMES, 2009, p. 25), comparing them to high recidivism rates of released prisoners. In fact, this comparison is arguable because the alternative penalties and measures to reach a set of crimes other than that which defines the prison population. Furthermore, the much lower rate of recidivism can mean simply that is unnecessary the penal control of these conducts.

Therefore, to overcome the dispute, further research is needed. Recently, Barreto and Castilho (2009) observed that in cases of theft and robbery prosecuted in the Federal District, the more severe the prison regime, the higher the recidivism rate displayed. The defendants that have not been through pretrial detention and had suspended their process had recidivism rates significantly lower than those who experienced the prison and were perceived minor violations of their rights. Moreover, this type of penalty gave the victims a greater chance of obtaining compensation for damage caused to them.

4 The challenges and potentialities of the policy of alternative penalties and measures as a strategy to reduce the incarceration

In view of this, the success of the strategy to reduce incarceration through increasing alternatives requires a major effort to reduce the punitive paradigm itself and abandon the prison as a "reference sanction" (Machado et *alii*, 2008). Implies get them out of the penal system and, in some cases, even out of the State. It involves valuing the restorative paradigm not only in minor infractions.

At the moment it seems a proposal difficult to implement because the public, mainly conveyed

4 The Federal Superior Court initiated in March 2010, the judgment to state if are constitutional the provisions of the law (HC 97.526)

by the mass media, rejects it. Alternative penalties and measures to imprisonment, restorative practices, external work, temporary leavings, pardon are deemed incompatible with certain crimes, particularly those practiced with physical violence, just because in abstract, regardless of how the incident occurred. I will mention two recent events. There is a project of law in the Brazilian National Congress that provides the use of restorative procedures for all crimes and misdemeanors, since the circumstances and consequences of the event, and the personality of the author, recommend. At the end of last year (2009) the rapporteur in the Committee on Constitution and Justice and Citizenship of the House of Representatives issued an unfavorable opinion. The stated that "the country is going through a feeling of impunity, with great production of legislation in order to criminalize conducts and aggravate penalties," so it is inconvenient to approve a project that "goes in the opposite direction, depenalizing conducts." Also last year the Senate passed a bill that restores the conditional release, in all crimes committed with violence.

The existing international declarations, such as the Vienna Declaration on Crime and Justice to the Challenges of the Century XXI, of 2000, or the Declaration of Costa Rica on Restorative Justice in Latin America, of 2005, or the United States Standard Minimum Rules on Non-Custodial Measures (Tokyo Rules) and the Basic Principles on the Use of Restorative Justice Programs, respectively, approved by Resolution 45/110 of the General Assembly and by the Resolution 2002/12 of the Social and Economic Council, are systematically disregarded.

The contraction of the penal system must be discussed in international forums as a priority and coherently. In this sense much would contribute the abandonment of the "war on drugs", already discredited "in the face of its inability to achieve the purposes for which was proposed, as well as of its inefficiency and human rights violations, which can be evaluated by the persistant high consumption of illicit drugs, especially in America, and by the high social costs of drug policy in the peripherical countries, like Brazil, where violence is another side effect of 'drug war' (Boiteux et alii, 2009, p . 106-107).

Similarly, the establishment of guidelines for countries to encourage them to limit prison places in order to compel the judges to apply to prison as a last resort would induce the choice of alternatives .

The paradigm shift must be reflected in legislative reforms. Specifically in Brazil it is necessary to expand legal opportunities for substitution and alternative penalties for crimes done with serious threats or violence or drug trafficking, and offenders, as well as for restorative practices in crimes against property done with a serious threat and also crimes against the person.

Besides, it is necessary to strengthen the alternative penalties and measures considering them as the principal penalty and provide administrative infrastructure to its implementation and monitoring.

Last but not least, it must be made an effort in implementing the right to equality in Brazilian society and in eradicating the discrimination that produces stereotypes and racism which made young people, black or brown, and the residents of slums the preferred target of the criminal justice system and specifically of the prison. So can be reached by social policies for health, education, job training, housing, employment and leisure, which can avoid the criminalization and victimization of those marginalized groups.

The Brazilian experience on the implementation of alternative penalties and measures, though not met the aimed function to reduce the rate of incarceration, presents interesting results that may eventually transform them in major sanctions and considered sufficient to prevent and punish more serious crimes. In this respect the results met the goal established by the General Coordination of the National Alternatives Penalties and Measures "to ensure mechanisms to measure the 'certainty of punishment' as a strategy to spread the perception that the alternative penalties and measures are a legitimate mode of criminal response.

The researchers of ILANUD (2006, p.20) evaluated that for best results it is important to exist "a specialized court in the implementation of alternative penalties and (...) a whole body of operators and technicians who provide support for the actions of this court." The technical team must be permanent and in tune with "the purposes of the alternative penalty, especially with regard to overcoming stigmatizing practices cultivated by the community" (ibid, p. 23). In turn, Alencar (2009, p. 40) notes that the effectiveness of alternative penalties and measures depends on "a social network that offers them for services and, especially, the necessary services for structuring and monitoring its implementation.

From this perspective, it is worth remembering two recent facts favorable to the policy of alternative penalties and measures to imprisonment. The first is the policy adopted by the First National Conference on Public Safety held in Brazil in 2009, giving support to the policy which has been implemented on encouraging alternative penalties and measures. Among 40 highest rated guidelines it was voted the number 22), establishing as a priority on the political, administrative and financial agenda of governments the creation of a national system of alternative penalties and measures, with structure and mechanisms in the States and in Federal District, the structure and equipping of the Criminal Justice as well as the priority on using alternative penalties and measures, restorative justice and mediation.

The adoption of this guidance at a conference where there was direct participation of about three thousand people is surprising in view of the rapporteur's statement to support his opinion adverse to the bill on restorative justice. In fact, there are conflicting positions within the Brazilian society that must be faced objectively. The research of Barreto and Castilho (2009) found evidence that alternatives to imprisonment are already gained social legitimacy, especially when there is a conjunction of two factors to be considered for application of this kind of sanction: the type of offence and the defendant's history. The penalty of community services is one which got more support.

The second fact is the Resolution 101, of 15 December 2009, passed by the National Council of Justice, which is the external control organ of the judiciary in Brazil. Resolution 101 defines the institutional policy of the judiciary in the enforcement of alternative penalties and measures to imprisonment. We should remember that only the Federal Executive Branch had established a policy. Lacked to the judiciary to assume its share, which is crucial because it is the judge who applies the penalty and one of the stakeholders in the control of the sentence enforcement. The Resolution adopts the decentralized model of psychosocial monitoring, which is characterized by compliance of alternative penalties and measures in various entities and institutions, forming a network enabled and registered, and its monitoring and supervision by a multidisciplinary team, linked to a specialized court.

The Resolution legitimizes the model that has been introduced in practice: "It is characterized on the one hand, by an interdisciplinary monitoring which never was implemented in prisons, because of security reasons. On the other hand, the articulation of the traditional agents of State in the penal enforcements with a social network, which account 'with the participation of bodies representing the community who influence and legitimizes this practice, including: OAB (Brazil Bar Association) universities and non-governmental organizations in the area of justice, social development, citizenship and human rights' (Alencar, p. 42). The model establishes a relationship of dialogue between State and civil society that still needs to be systematically evaluated, but responds in principle the requirements for a social democratic control.

Conclusion

The Brazilian experience in implementing a national policy for alternative penalties and measures to prison presents successful results in increasing punitive control and in the way it monitor their enforcement. But it did not reduce the overcrowding, which was its stated goal. Therefore, the central issue to be discussed in Brazil and other countries is the growing demand for criminalization and incarceration. Once limited the penal intervention and concurrently withdrawn restrictions on

the use of alternatives to prison, the Brazilian experience in the enforcement of alternative penalties and measures can serve as a positive reference to its application to current customers of prisons, effectively reaching the goal of reducing the rate of incarceration.

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