

# APPLICABILITY OF UNITED NATIONS STANDARDS AND NORMS IN CRIME PREVENTION AND CRIMINAL JUSTICE IN THE LATIN AMERICAN AND CARIBBEAN REGION

*Cristina Rojas Rodriguez\**



## I. INTRODUCTION

A Continent of tremendous socio-economic contrasts, the Latin American and Caribbean Region is far from being homogeneous. It is the cradle of many, different *ethnias* with their particular backgrounds, religions, cultural uses and languages; with a very rich elite, while the majority of the population is extremely poor, a gap that in recent years has widened to levels never seen before.

Almost all Latin Americans nowadays are living under elected civilian governments. But the region faces severe challenges posed by its slow economic growth, the highest levels of inequality in the world, and a deepening impoverishment<sup>1</sup> of its population<sup>2</sup>; that are triggering popular unrest, and destabilizing and undermining the efforts towards the attainment of democratic governments made over the past 25 years; a historic and unprecedented achievement in the developing world.

The increasing socio-economic inequalities in the Latin American Region can be easily evidenced. According to the most recent UNDP report: "Democracy in Latin America" (April, 2004), in 1990, the Regional Gini<sup>3</sup> coefficient was 0.554, but in the year 1999, the coefficient alarmingly raised to 0.580, while the world coefficient in the 90's was just 0.381 and one of the developed countries was of 0.337. The same study indicates that in 1999 the incidence of poverty had reached 35% of the households; however, in the year 2003, the number of persons living under the line of poverty in Latin America grew to 225 million, (43.9% of the total population). It is important to note that urban critical poverty increased in higher percentages in this period, indicating the tendency towards urbanization of critical poverty. In this same period, the index of criminality increased by 5 %, or by 2.5 times the growth in population.

The lack of economic and human resources has weakened administration of justice systems. The issue of prison population is thus a matter of concern, since the rights of prisoners are frequently violated, as confirmed by the fact that more than half of all prisoners are being held in pre-trial detention.

The incontrovertible correlations between high indexes of social inequality and increases in violence and criminality are not any more in discussion. Explicitly all international and multilateral *fora* have recognized them lately, and thus, have to be confronted through the adoption of social, economic, health, education and justice policies, centred in the holistic development of the individual, with dignity, and free of all fears.

## II. CURRENT SITUATION OF THE APPLICATION OF THE U. N. STANDARDS AND NORMS IN CRIME PREVENTION AND CRIMINAL JUSTICE IN LATIN AMERICA & THE CARIBBEAN REGION

Accurate measurement and evaluation of the degree of use and application of the United Nations Standards and Norms in Crime Prevention and Criminal Justice in Latin America and the Caribbean Region

---

\* Former Ambassador of Costa Rica to Japan. Former Senior Crime Prevention & Criminal Justice Officer, UNOV, Austria. Parliamentary Advisor. Associate Expert of ILANUD.

<sup>1</sup> In 2002, 43.4 % of Latin Americans lived under the line of poverty. In 15 out of the 18 countries studied, by the UNDP, more than 25 % of the population lives below the poverty line and in 7 of them more than half live under these conditions.

<sup>2</sup> In Guatemala 56% of the population lives below the poverty line (surviving on less than two dollars a day), and 26% live below the extreme poverty line (less than a dollar of income per day).

<sup>3</sup> In the Gini coefficient, 0 represents perfect distribution, while 1 absolute inequality. A Gini coefficient of 0.25-0.35 can be considered as "reasonable". A Gini coefficient of 0.55 represents extreme inequality.

has not been possible. Governments do not collect data using uniform parameters, due not only to the diversity and heterogeneity among criminal justice systems, but also because of the lack of manpower and assigned budget; ineffective coordination among criminal justice institutions; and lack of confidence in the importance of the standards and norms and on the functions of the UN System in Criminal Justice Administration.

Non-application or non-implementation is often the outcome, as well as a lack of knowledge of the standards and norms themselves. In some nations, even domestic laws are not always available to criminal justice personnel, much less to the public, because of the lack of resources available for document publication.

#### **A. The Rule of Law in the Region**

Law and penal justice are instruments and preconditions of democracy, not so much because they include prescriptions for individuals, but mainly, because they contain limitations to State power and rights, against arbitrary power and force.

The rule of law is a key condition for human development, since it is through politics and not only through economics that it is possible to create more equitable conditions and to expand options for people. Essential as it is for democratic governance, provides the required potential for the development of a prosperous economy, ensures life and personal security and reduces risks of political instability, fostering national development.

On the contrary, the absence of the rule of law, contributes to poverty, violence, and unchecked abuses of political power; as well as unchecked violence by police, prison officers and other public officials. Under these conditions, the poor, displaced and minority groups, are more likely to be humiliated and subjected to arbitrary treatment and intimidation by public officials, prevailing a culture of fear that displaces the proper role of a culture of legality.

Rampant structural corruption in many countries of the Region has to be considered as one of the most serious problems that affects negatively the rule of law, with corrosive and harmful effects upon the credibility of the Justice Administration Systems.

The allocation of resources, both financial and human, to the Criminal Justice Systems offer a clear sign of the degree of importance that the Latin American States render to the protection of the Rights of the citizens as can be observed in the following table (UNDP, 2004). The medium regional average of resources assigned to the Justice Sector is just 2.5% of the total national budget, and in some cases, even less. In eight out of the fourteen countries in which reliable data was found, there is just one public defender for each 100,000 habitants.<sup>4</sup>

Another serious factor that hampers the rule of law in the Latin American and Caribbean countries, is the proliferation of misery zones or slum areas (better known as “tugurios”, “favelas”, “garrison communities” or “nobody lands”) surrounding the big metropolitan areas. These vast, overpopulated territories are generally dominated by criminal organizations that impose their will through fear and terror, and represent indeed, one of the most serious problems for police officers. On many occasions, they don’t even dare to go in them. Police only enter these areas when there are clashes between rival gangs. During these incidents, stray bullets often kill innocent passers-by. State social services are rarely present; there are no hospitals, no schools, no sewage system, and no police. No preventive work of any kind is done by State authorities.

---

<sup>4</sup> Table Information: Access To Justice, Country, Year, % of National Budget, Year, number of Judges, Year, number of Public Defenders, number of Public Defenders per 100,000 habitants.

**ACCESO A LA JUSTICIA, C. 2001**

TABLA 66

Pais	Año	% presupuesto nacional	Año	n° de jueces	n° de jueces por 100.000 habitantes	Año	n° de defensores públicos	n° de defensores públicos por 100.000 habitantes
Argentina	2000	3,2	2000	4.106	11,1	2001	857	2,3
Bolivia	2000	1,5	2002	758	9,1	2001	82	0,9
Brasil	2000	2,1	2000	6.145	3,6	2001	3.000	1,7
Chile	2000	0,9	2002	718	5,0	2004	417	2,7
Colombia	2000	1,2	2002	3.257	7,4	2000	1.126	2,7
Costa Rica	2000	5,2	2001	660	16,0	2001	128	3,2
Ecuador	2000	1,5	2002	681	5,6	2001	33	0,3
El Salvador	2001	4,5	2002	625	9,2	2001	274	4,3
Guatemala	2001	3,4	2002	720	6,0	2001	92	0,8
Honduras	2000	7,2	2002	550	8,2	2002	200	3,0
México	2000	1,0	2000	692	0,7	2001	686	0,7
Nicaragua	2000	2,9	2001	316	6,0	2001	15	0,3
Panamá	2000	2,6	2002	238	8,0	2001	48	1,7
Paraguay	1995	1,6	2001	590	10,5	2001	200	3,6
Perú	2000	1,5	2002	1.688	6,0	2001	263	1,0
República Dominicana	2000	1,4	2001	549	7,0	2001	39	0,5
Uruguay	1995	1,6	2000	517	15,5	2001	74	2,2
Venezuela	2000	1,4	2000	1.508	6,1	1998	159	0,7
América Latina		2,5			4,9			1,5

Source: UNDP, April 2004 Report on Democracy In Latin America, [www.democracia.undp.org](http://www.democracia.undp.org)

**B. Situation of the Indigenous Groups, Migrants, Indigents, Children and Women**

Marked inequalities persist in the treatment of persons belonging to different population groups, while laws to protect children in the workplace are frequently ignored and workers' social security protection has been reduced.

Most countries in the region have ratified the main international treaties and enacted domestic laws concerned with equality under the law and protection against discrimination as well as women's rights. But, although civil rights are recognized legally in most cases, a significant number of citizens suffer overlapping exclusions and serious failings concerning the effective respect of these guarantees. Programmes such as witness and victim protection are little developed.

In the Latin-barometer of perception of legal equality<sup>5</sup>, in the year 2002, the vast majority of Latin Americans believed that the rich persons always or almost always were able to have their rights respected. This is a different perception to the one that the poor, women, immigrants and indigenous people had, since they believed that they confronted serious legal disadvantages. When asked if their rights were respected, only 67.0% of the Latin American women had a positive answer; 23.1 % of the indigenous people, 17.8 % of the poor people and 30.8 % of the immigrants, as can be observed in the following chart.

In relation to minority and indigenous groups, not all the Constitutions of the Latin American countries recognize and protect the multi-ethnic and pluri-cultural characteristic of the composition of their societies, nor protect their human rights in any specific way. Brazil, Chile, Costa Rica, El Salvador, Honduras, Dominican Republic and Uruguay don't even mention them in the Constitution, while Bolivia has just a weak reference.

<sup>5</sup> Democracy in Latin America, UNDP, April, 2004, ([www.democracia.undp.org](http://www.democracia.undp.org)).

	Inequality 1999: Gini Coefficient <sup>6</sup>	% Under Poverty Line	Perception <sup>7</sup> Legal Equality: Woman 2002	Perception Legal Equality: Indian 2002	Perception Legal Equality: Poor 2002
Argentina	0.542	30.3	69.7	9.1	7.9
Bolivia	0.586	61.2	54.8	21.2	13.9
Brazil	0.640	36.9	78.3	34.3	20.1
Chile	0.559	20.0	68.9	33.5	19.9
Colombia	0.572	54.9	70.3	22.1	18.1
Costa Rica	0.473	21.7	59.8	23.2	13.7
Ecuador	0.521	60.2	60.4	40.2	25.2
El Salvador	0.518	49.9	72.0	32.3	32.4
Guatemala	0.582	60.4	65.3	38.7	24.8
Honduras	0.564	79.1	69.8	34.6	23.5
México	0.542	42.3	54.8	7.5	5.6
Nicaragua	0.584	67.4	60.3	23.5	17.7
Panama	0.557	30.8	65.6	10.5	10.7
Paraguay	0.565	61.8	71.5	15.0	10.9
Peru	0.545	49.0	61.9	16.0	11.6
Dominican Republic	0.517	29.2	76.4	11.5	22.2
Uruguay	0.440	11.4	78.4	17.1	21.8
Venezuela	0.498	48.5	73.7	28.2	26.1
Central America & Mexico			66.4	22.2	18.9
Andean Región			63.8	27.8	19.2
Mercosur & Chile			71.2	19.2	14.6
Total Latin America			67.0	23.1	17.8

### C. Obstacles to the Equitable Functioning of Legal and Judicial Systems

#### 1. Political Unsteadiness and Linkages between the Judiciary and the Political and Economical Oligarchies

Corruption and political instability can be identified as some of the gravest obstacles in the accomplishment of the rule of law in the Region. Most Latin American countries have had few short periods of democracy, sandwiched between military dictatorships, civil revolutions and intense guerrilla and narco-guerrilla activity.

<sup>6</sup> Source: Democracy in Latin America, UNDP, April, 2004, [www.democracia.undp.org](http://www.democracia.undp.org).

<sup>7</sup> The perception of legal equality makes reference to the number of times a woman, an Indian or a poor person thinks his or her rights are respected, according to the Latinbarometer 2002.

Citizens have been disappointed with the judiciary system's effectiveness in this Region, where the rule is to denounce abuses made by ex-governors, politicians, and members of the reigning economic and political oligarchies, while giving them almost unrestricted impunity.

Several former Chiefs of State have been impeached by Congress for corruption scandals, but only one of them has been sentenced to jail in Latin America. (Arnoldo Alemán, Nicaragua, 2003). Such is the recent story of the Brazilian President Fernando Collor de Mello, impeached by Congress in 1992, prosecuted, and despite abundant evidence, exonerated by the Brazilian Supreme Court. Carlos Menem, former Argentinean President, in June 2001, received a 600-page indictment charging him with authorizing illegal arms shipments to Croatia and Ecuador, and was ordered to remain under house arrest pending an investigation, dealing as well, with money laundering activities. In November 2001, Menem was released from house arrest after being cleared by the Supreme Court.

These two cases are not different from what has happened in other countries, as for example the case of Alberto Fujimori in Peru; Abdalá Bucaram in Ecuador, Col. Ríos Montt in Guatemala; Carlos Andrés Pérez and Jaime Lusinchi in Venezuela, and so on.

The case of Peru and Colombia, with very strong military forces combating insurgents and narco-guerrilla groups, is similar to that of Guatemala, where the effects of 36 years of war between armed insurgents and an all-powerful army, has led, as a consequence, to the government resorting to the worst type of persecution and atrocities that one can imagine, to quell the uprising.

The enormity of the difficulties facing Latin America's legal and judicial systems, as evidenced, links themes of access to justice and judicial partiality, justice delay, legislation and cultural disparities in the discourse of socio-economic inequalities.

It is impossible to separate the judiciary from the oligarchies that dominate the economy and politics. In the majority of the cases, the dominating considerations on the nomination of Supreme Court Justices include political criteria.

Two extra examples will illustrate in a clearer way what has been said: a) the 52-page report to the United Nations Special Rapporteur on the Independence of Judges and Lawyers, (April 2002) that challenges the independence and effectiveness of Mexican judges and estimates that 50% to 70% of Mexican judges are corrupt; and b) the residence of high magistrates in public offices, including the President of the Supreme Tribunal of Justice, in government-controlled military installations in Venezuela.

## 2. Access to Justice

Access to the protection of the juridical system in the Latin American countries is not granted to the most underprivileged socio-economic and cultural sectors. Ignorance of the law abounds. The judicial resources are not only assigned primarily to the urban centres leaving the rural areas with very scarce provision of services and judicial infrastructure; but are also limited. Legal terminology is not only different from that often used by ethnic majorities, but is incomprehensible to the poor, given their insufficient education and the hermetic terminology involved.

Good legal counsel in the majority of the countries is expensive. Richer citizens can win trials, since they can afford good lawyers. On the other hand, citizens who cannot afford private legal counsel, when charged with a crime, receive legal counsel from public defenders, which frequently are of very poor quality. Therefore, the citizens who end up in the prison system are the poorer ones.

In the Penitentiary System as well, aborigine groups and foreigners, that don't speak the main local language, are especially vulnerable. The majority of the norms in penitentiary ordinances and regulations in the Latin American and Caribbean Region do not specify the right, of those deprived of liberty that are not able to communicate in the official language, to have an interpreter or a translator.



### 3. Justice Delays

Justice delays are closely linked with the capacity of the Justice Administration Systems to perform efficiently and with efficacy its assigned duties. Responsibilities such as the judgment of the offences, the punishment of the guilty, the protection of the victim and the deprived of liberty, and the retribution of the injuries, are crucial in the attainment of the rule of law.

Unfortunately, justice delays always work directly against the rights of the most vulnerable social groups due not only to the high litigation costs, but to the harmful socio-economic consequences it implies when the economic provider is imprisoned. On the contrary, if the accused happens to be a member of the political, social, cultural or economic elite, or can marshal sufficient support among the powerful, the strategy to delay the process will be effectively applied to grant impunity.

### 4. Extremely Low Clearance Rates: Police Violence and Corruption.

The prevalence of problematic norm-violating behaviour among Latin American and the Caribbean police forces may have deeper roots, reflecting repressive State policies and perhaps biases, such as ethnic and racial biases, against particular sub-populations, accompanied by a culture of social tolerance.

In some countries, deficient training and very low salaries that help undermine self-esteem within police forces; widespread corruption among both the military and the civil police, and their involvement with organized criminal organizations, is a recognized fact. No wonder the poor fear the police brutality more than the criminals.

According to C. Mendes, in Rio de Janeiro, Brazil, the police force is not only corrupt but also extremely violent and responsible for one out of every ten homicides that take place, with hundreds of victims per year. A study by Cano (1997) found that practically 50 per cent of the corpses of police victims in Rio, studied by the Forensics Department in the civil police force, had four or more entry wounds and were basically shot in the head or in the back, as a clear indicator of the intention to kill and not merely to stop the opponent. Unfortunately, there is a general belief that respect for human rights is not compatible with police efficiency.

## III. CURRENT SITUATION OF PRISON ADMINISTRATION IN LATIN AMERICA AND THE CARIBBEAN REGION

### A. Prison Overcrowding

The problem of prison overcrowding affects, to a greater or lesser extent, almost all countries of the Region. But, the fact of an imprisonment sentence does not make the offender an extra-social being. He continues to be part of the community, with full possession of his rights and thus, ought to be treated as a human being.

Under no circumstances could we justify the inhuman conditions in which the inmates are kept, nor the cruel and degrading treatments that are given in the penitentiary systems to the deprived of liberty in many Latin American and Caribbean countries. Prison overcrowding, lack of healthy physical spaces; deterioration of penitentiary infrastructure; lack of hygiene, douches, toilets; broken sewers; lack of medical attention; physical and psychological mal-treatment; lack of special premises to keep inmates that require psychiatric attention; lack of separate premises to keep the deprived of liberty that suffer communicable and contagious diseases (e.g.: Tuberculosis, Hepatitis B and C, HIV/AIDS); and lack of labour and educational facilities, are just part of the offences to the human dignity and cruel and degrading conditions that the deprived of liberty have to suffer within most of the penitentiary facilities in the region.

One of the most critical challenges confronting all systems of corrections is prison overcrowding. This phenomenon undermines and severely limits reform initiatives and also creates a number of additional challenges. Until this problem is resolved, efforts to improve other aspects of prison administration, will unlikely have any meaningful impact.

In many jurisdictions, prison systems are administered not by civilians, but by the police and the military, and are closely associated with national security and the maintenance of the political *status quo*.

Most systems of corrections lack a well developed body of empirical knowledge upon which to base the formulation of policies and the operation of programmes and are affected by a variety of factors including political considerations and public opinion, lack of experimental research and rigorous evaluation of correctional policies and programmes, and lack of independent evaluation to assess their effectiveness.<sup>8</sup>

<b>DERECHO DE ACUSADOS Y PRISIONEROS, c. 2000</b>					TABLA 67A
País	Año	Total de población carcelaria (incluye detenidos sin proceso y en libertad condicional)	Tasa de población carcelaria (por 100.000 de la población nacional)	Detenidos sin proceso / en libertad condicional (porcentaje de la población carcelaria)	Nivel de ocupación carcelaria (sobre la base de la capacidad oficial)
Argentina	1999	38.604	107	55,2	119,9
Bolivia	1999	8.315	102	36,0	162,5
Brasil	2002	240.107	137	33,7	132,0
Chile	2002	33.098	204	40,4	134,3
Colombia	2001	54.034	126	41,1	136,5
Costa Rica	1999	8.526	229	39,5	109,6
Ecuador	2002	7.716	59	69,9	115,0
El Salvador	2002	10.278	158	49,7	167,5
Guatemala	1999	8.460	71	60,9	112,9
Honduras	2002	11.502	172	78,5	207,6
México	2000	154.765	156	41,2	127,8
Nicaragua	1999	7.198	143	30,8	113,0
Panamá	2002	10.423	359	55,3	136,5
Paraguay	1999	4.088	75	92,7	151,0
Perú	2002	27.493	104	67,2	137,8
República Dominicana	2001	15.341	178	64,5	175,3
Uruguay	2002	5.629	166	72,5	150,8
Venezuela	2000	15.107	62	57,5	97,2
<b>América Latina</b>	<b>c. 2000</b>	<b>36.705</b>	<b>145</b>	<b>54,81</b>	<b>138,2</b>
Caso comparativo					
Estados Unidos	2001	1.962.220	686	18,8	106,4

Nota: Las cifras regionales son el término medio o promedio de todos los casos para los que existen datos disponibles.  
Fuentes: Carranza (2001); y Centro Internacional de Estudios Carcelarios (2003).

Regionally speaking, national overcrowding averages are extremely high. In 19 out of 25 countries with prison overpopulation, the overcrowding situation is critical, presenting density equal or superior to 120%, as it is evidenced in the 2004 UNDP report: Democracy in Latin America. While the number of persons deprived of liberty varies considerably from country to country, the low index of penitentiary population for

<sup>8</sup> Table Information: Right of Accused and Prisoners, Country, Year, Total of penitentiary population (including detainees that are not sentenced and in conditional liberty), Index of penitentiary population (per each 100,000 national population), % of inmates without process in conditional liberty (in relation to total penitentiary population), Level of penitentiary occupation (in relation to the official capacity, overcrowding).

every 100,000 inhabitants in Venezuela, Ecuador, Guatemala and Paraguay is very low, while in other countries such as Panama, Costa Rica and Chile is very high.

In most countries, the number of prisoners awaiting trial is higher than the figures shown in the chart since persons in police stations are not included, and it is in these places where most of the prisoners predominantly are. Sentenced persons deprived of liberty but waiting appeal are not included in the figures of people awaiting trial.

Besides presenting a high penitentiary population growth resulting from an increase in the use of imprisonment and stricter penal laws, mainly in relation to violent and drug related offences; the penitentiary systems of the Latin American and the Caribbean Region face meagre budgets. With the exception in the trend of Ecuador and Venezuela, each year, the number of persons within a group of 100,000 persons that goes to prison, has increased.

Most penitentiary facilities are built inadequately, creating conditions that impede proper classification and security, thus promoting internal violence. Under these conditions, it is not possible to fulfil an acceptable standard of almost any other essential penitentiary function, such as health, food, hygiene, security, visits, and other much less important functions such as recreation, sport, training and work, all of which limit the deterioration of persons deprived of liberty.

The Polinter centre of detention in Brazil gives us a good perspective of imprisonment overcrowding in the Region<sup>9</sup>. Some 65 to 70 prisoners are kept in cells measuring three by four meters (12 square meters). Of course, there is no room for all of them, even if they decide to spend 24 hours a day standing up. With a lot of imagination and a sense of survival they have created their tier cells: there are those who live on the ground; those who live on the "second" and "third" floors, on hammocks made out of different materials. A doctor specialized in public health, visiting these cells, stated: "The condition of the prisoners in this institution is one of maximum deprivation: overcrowding, lack of air, promiscuity, bad odours, no privacy whatsoever, radical discomfort. One can affirm that the prisoners are living in a situation of physical and mental torture. The intensity of human misery imposed upon these men is unspeakable and indescribable. Most of these men are awaiting trial, although sentenced prisoners may be often also found. A special note should, however, be added: if one has a university diploma, one will never see the interior of these cells..."

**Polinter Centro, Brazil, the Central Police Station Lock-up**



<sup>9</sup> Mendes, Candido; "Drugs, arms, poverty and governability: a Brazilian city in the 21st. Century", published in the memory of the Expert Group Meeting on the Application of the UN Standards & Norms in Crime Prevention and Criminal Justice, Stadthlaining, Burgenland, Austria, 10-12 February, 2003.



Unfortunately the description of the inhuman conditions in which the deprived of liberty live in the Polinter Centre of detention, as it was said before, is not very different from the ones that prisoners live in other latitudes in the Region.

As the next chart shows, the number of foreign prisoners in some countries of the region, such as Costa Rica and Panama has been steadily growing mainly due to drug trafficking offences that use their territory for transit operations from Colombia, destined to the United States and Canada; and the high percentage of legal and illegal migrant population.

Costa Rica in the last two decades has gone through a constant increase in the absolute and relative number of its penitentiary population. This situation is revealed both in the statistics that show the increase in the total number of persons deprived of liberty, and in the ones that calculate the total number of inmates in relation to 100,000 inhabitants. For the period 1998-2001, the above-mentioned tendency was emphasized dramatically. In 1998 the increase in the relative numbers with respect to 1997 was 28%. In 1999, the increase in the number of inmates was still very high at 27%. The tendency diminished a little to 18% for the year 2000, even though it always remained high. And for the year 2001, the tendency diminished significantly with respect to the immediate former year, going down to 7%.

#### Persons Deprived of Liberty, Waiting Sentence

Months of Imprisonment During the Period 1994-2003 in the Costa Rican Penetentiary System										
Time of Imprisonment	Absolute Values									
	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>Total</b>	<b>612</b>	<b>867</b>	<b>933</b>	<b>784</b>	<b>800</b>	<b>902</b>	<b>1289</b>	<b>1295</b>	<b>1427</b>	<b>1501</b>
Up to 3 Months	373	520	519	407	473	413	618	680	766	743
More than 3 Months, Less than 6 Months	125	197	225	184	171	283	370	364	331	414
More than 6 Months, Less than 9 Months	77	71	96	111	102	114	153	160	167	188
More than 9 Months, Less than 12 Months	17	39	42	41	28	48	91	76	75	83
More than 12 Months	20	40	51	41	26	44	57	15	88	73

Source: Statistics Department Supreme Court of Justice

In December 1998, the total number of persons deprived of liberty was 4,448, while in November 2001 this number was 11,858 inmates, with a total increase of 60 % in the said period. It is interesting to confront this data with the total numbers of the sentenced persons in a semi-institutionalized condition, that went, at the beginning of the same period of the study, from 669 to 1,138 in the year 2000, diminishing again to 934 in the year 2001, with a total increase rate of 40 % in the period.

The situation is more serious when we analyze the case of institutionalized minors. In the same period of study, the increase in the number of minors deprived of liberty was 88%.

This is a very grave national situation that should call local authorities to perform a serious in-depth evaluation, specially if we consider that the total rates for each segment of 100,000 inhabitants increased in the last quinquennium, from 159 for each 100,000 inhabitants, to 288 for each 100,000 inhabitants, placing Costa Rica as one of the countries with the largest number of persons deprived of liberty in the whole American Continent.

It is possible to identify different kinds of reasons that could help to understand such a social phenomenon. Perhaps the primary and first reason is of a political character, and is consistent with the decision of the national authorities, mainly legislative and executive, to provide a more repressive response to the aggravation of social conflicts and violence. Other factors such as a major improvement in the functioning of the judicial agencies in charge of investigation, prosecution and judgment of the cases that increases at the same time the number of sentenced persons, and, the excessive use of imprisonment penalties, instead of alternative measures to imprisonment, have also been crucial.

#### IV. SYSTEMS FOR SECURING TRANSPARENCY AND ACCOUNTABILITY IN THE ADMINISTRATION OF PENITENTIARY INSTITUTIONS AND THEIR IMPLEMENTATION IN THE LATIN AMERICAN & CARIBBEAN COUNTRIES

Latin American countries have enacted very modern and progressive legislation that creates different types of institutions which, among other functions, supervise the application of human rights and the United Nations Standards and Norms in the prevention of Crime and the Treatment of Offenders in the functioning of the judicial and penitentiary systems, such as the Ombudsman, Commissions of Human Rights, and Tribunals that deal with the Inspection of the Judiciary and the Execution of the Penalty, among others.

##### A. Tribunals of Execution of the Penalty: the Case of Costa Rica

The institute of Execution of the Penalty is ruled under Title V, Articles 452 - 463, of the new Procedural Criminal Code of Costa Rica enacted in January 1998. It introduced significant transformations in the *iter* of the national Penitentiary System, establishing a series of norms for the control and vigilance of the execution of penalties and of the security measures of the deprived of liberty, through an aggregate of Tribunals of Execution of the Penalty that come to play a radically new role in respect with what, up to that date, the judges of execution of the penalty had been doing. The new legislation assigned a series of general and specific functions to these officers, mainly dealing with the control of the legality of the acts of the Administration.

These series of norms respond to the constitutional mandate that assigns to the Judicial Power the function of: a) administrating Justice, b) resolving definitely the cases that are brought under its knowledge, and c) executing the resolutions of the sentences it pronounces, with the help of the police if it is necessary.

Specifically the Procedural Criminal Code stipulates that the deprived of liberty could exercise the rights and faculties that the laws and the regulations grant them, being able to submit to the knowledge of the Tribunal of the Execution of the Penalty all the pertinent observations.

Two preliminary conclusions could be extracted out of this text:

- that the deprived of liberty or the person that is under a security measure has the legitimacy to present its case directly before the Tribunal of the Execution of the Penalty;
- that this right is referred to, generically, as “*any observation*”... and thus, it is understood that the concept refers to petitions, requests, complaints, demands, etc. in relation to *any* decision of the Penitentiary Administration that the inmate might consider prejudicial to their rights and interests.

The exercise of this right does not demand any other prerequisite other than the subjective belief of the interested person that he or she is becoming a victim of a violation of their human and constitutional rights and that the acts of the Penitentiary Administration, illegitimately are violating the principles of equality, proportionality, no discrimination, and/or reasonableness.

The Judge of Execution of the Penalty emerges as a guarantee that the prison penalty and/or the security measure will be executed in conformity with the constitutional and legal mandates. It is legally authorized to intervene, attending the petition of the inmate or of any third person interested, (prosecutor, defender, victim); and to resolve what is pertinent in order to amend the situation. The judge will appraise the gravity of the situation and according to criteria of reasonability will decide what he esteems as more convenient, even if that decision implies a modification of any measure that the Administration might have adopted.

The procedural norm also mandates that all matters in relation to successive settlements, extinction, substitution or modification of any of the conditions of the execution of the penalty, will be under the cognizance of the Tribunal of Execution of the Sentence. It means that this jurisdiction has the legitimacy to intervene once the Penitentiary Administration has fulfilled all the functions assigned to its level of decisions, such as the ones in relation to the modality of the treatment that should be administrated to the inmate, the place and conditions under which the penalty or the security measure should be executed, etc. These functions and attributes of the Penitentiary Administration are stipulated in detailed regulations that deal specifically with the penitentiary regime.

The Tribunals of Execution of the Penalty can revise, confirm or modify any of the measures adopted by

the Administration, before a petition of an inmate, thus controlling the legality of the measures, preventing in this way, the adoption of arbitrary and/or illegal decisions. It must be clear that this does not imply at all, that the Judge will be substituting the functions of the Administration. The Judge, in a motivated resolution will identify clearly the specific violations of the human and constitutional rights of the inmate in which the Administration has incurred, and will *order* what he deems pertinent to restore them.

According to Article 454 of the Procedural Criminal Code, either the inmate, the prosecutor of the case, the defender or the victim can also go before the Judge of the Execution of the Penalty and present any legal petition in relation to the execution, substitution, modification or extension of the said penalty or measure of security. In case the Judge considers it to be relevant to the case, before adopting the pertinent resolution, can order a summary investigation of the facts and evidence to support his criteria. The matter will be solved in an oral audience.

The Judge of Execution of the Penalty with ample faculties, can order the provisional suspension of the measures adopted by the penitentiary administration that have been objected to, before pronouncing his sentence, during the time that he/she is evaluating evidence and conducting the summary investigation. (Article 455 CPP).

It must be clear that the interested party can go directly and present their case before the Judge of Execution of the Penalty, without having to comply previously with any administrative prerequisites or procedures. The mere adoption of a measure that any of the said parts considers, even in a subjective way, that is harmful and that will affect its interests in any way, will give him the legitimacy to present an incident before the Judge of Execution of the Penalty.

The Judge can confirm the measure adopted by the Penitentiary Administration, or else, substitute it for another, either partially or totally ordering in such case what he considers that proceeds in due respect of the Law.

The resolutions adopted by the Judge of Execution of the Penalty can be appealed before the Judge of the Sentence (paragraph 3, Article 454 CPP).

In January 1998 article 458 of the Procedural Criminal Code (PCC) was modified in order to establish in a clearer way the attributions of the jurisdiction of the Tribunals of Execution of the Penalty, in relation to the vigilance and control of the penitentiary administration. It ought to be understood that the Judge of Execution of the Penalty can intervene both by request of an interested party, or else diligently, by his own initiative when he considers it to be necessary.

According to the law, the functions of the Judge of Execution of the Penalty are:

- (i) Maintain, substitute, modify or stop the effects of the penalty or the security measure, as well as the conditions in which it is accomplished.
- (ii) Visit the Penitentiary centres in order to verify the respect of the fundamental rights of the inmates, (those that are protected by the constitution, International Treaties and Conventions, laws and regulations) ordering imperatively, the corrective measures to be adopted to correct what he estimates are pertinent.
- (iii) Resolve the petitions and complaints that have been submitted to his consideration, in relation with the regime and the penitentiary treatment that the inmate is being subjected to.
- (iv) Resolve the claims of the inmates in relation to the disciplinary sanctions imposed on him by the penitentiary administration.
- (v) Approve (or disapprove) all the disciplinary sanctions of isolation for more than forty eight hours that the Penitentiary Administration might impose on an inmate.
- (vi) Order, previous practice of due medical examinations, the reference of an inmate to a facility in which he can receive adequate medical treatment, ordering the measures that have to be adopted, in order to prevent his escape. Of course in emergency situations, the Penitentiary Administration can authorize what appears pertinent, having the obligation to submit the matter immediately to the knowledge of the Judge of Execution of the Penalty who can confirm or revoke it.
- (vii) Defer the execution of the penalty in the case of a mother in an advanced state of pregnancy or the mother has a child less than three months of age, when the life of either one or both may be endangered.

- (viii) Defer the execution of the penalty in the case of inmates with severe terminal diseases, or affected by serious maladies that might endanger their lives.

All the jurisdictional attributions in relation with the execution of the penalty are applied in the same way in the case of the security measures imposed on an inmate. In such a case, the Judge has as well, the duty to review the application of the measure every six months in order to check if the motivation that justified its imposition still exists or has disappeared, having the mandate that authorizes him to substitute or modify it.

The efficacy and credibility of the Tribunals of Execution of the Penalty in Costa Rica can easily be verified in the accelerated growth of the number of cases submitted to its knowledge:

**Number of Cases Submitted to the Tribunals of Execution of the Penalty**

<b>Tribunal</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
Alajuela			2911	2379	2390	2611
Cartago			668	641	573	544
Limón			627	612	584	517
Puntarenas			345	430	470	513
San José			1271	1436	1030	1153
Total	213	3974	5117	5498	5047	5338

## **B. Tribunal for the Inspection of the Judiciary**

The Courts have an internal disciplinary jurisdiction, to review cases in which justice administration personnel have been faulted for justice delays, poor service to the public, etc. But, this jurisdiction is not always very functional, since judges can always argue work overload and logistical deficiencies.

As can be observed in the next chart, the total number of judges that have been sanctioned in the Costa Rican Tribunal for the Inspection of the Judiciary is extremely low, and the number of cases in which the sentence has been to revoke their mandate, is even lower.<sup>10</sup>

**CUADRO 5.8**

### **Cantidad de jueces denunciados y sancionados por el Tribunal de la Inspección Judicial. 1998-2002**

<b>Año</b>	<b>Jueces acusados</b>	<b>Jueces sancionados</b>	<b>Porcentaje de sancionados</b>	<b>Revocatoria de nombramiento</b>
1998	940	77	8,2	4
1999	1.015	95	9,4	5
2000	1.085	93	8,6	5
2001	1.069	89	8,3	8
2002	775	56	7,2	0

*Fuente: Anuarios de Estadísticas Judiciales 1998-2000; oficio 20-EST-2002 de la Sección Estadística y, para el 2002, elaboración propia a partir de los informes mensuales del Tribunal de la Inspección Judicial.*

<sup>10</sup> Table Information: Judges Sanctioned by the Tribunal for the Inspection of the Judiciary 1998-2002, Year, Judges accused, Judges sanctioned, % of sanctions, Revocation of their appointment (dismissed).

### C. The Ombudsman

From 1990 on, with the exception of Brazil, Chile and Uruguay, the countries of the Region have institutionalized a new organ of control: the Ombudsman, that operates both as an agent of vertical and horizontal control, thus differentiating itself from other control institutions. The Ombudsman receives inquiries and complaints about the practices and services provided by public agencies. While not an advocate, the Ombudsman can conduct impartial and confidential investigations to determine if a public agency is being fair to the people it serves.

The Ombudsman can: provide information about what steps to take in dealing with a public agency; try to settle complaints through consultation; investigate complaints about administrative unfairness by a public agency; make recommendations to a public agency to resolve an unfairness; report to Parliament; issue public reports and submit cases to the Constitutional Branch of the Supreme Court of Justice when fundamental rights are being violated. Also, it investigates complaints about maladministration when a public body fails to act in accordance with the rule of law.

Citizens can complain to the Ombudsman when institutions fail to do something they should have done, when they do it in the wrong way, or when they do something they should not have done. Some of the most common problems that the Ombudsman deals with are unnecessary delays, refusal of information, discrimination and abuse of power.

In all the countries the Ombudsman has helped to ensure transparency and accountability of public authorities, including of course the ones in charge of the penitentiary administration, applying, when necessary, pressure so that the institutions prove in practice their compliance with the Constitution. As a result, the service the institutions provide has certainly improved.

Justice delays, failures in the administration of the Penitentiary Systems, prison overcrowding and violations of the rights of prisoners in the process of execution of the penalty, are recurrent themes that have been present in the annual reports of the Ombudsman.<sup>11</sup>

CUADRO 7.19							
Centroamérica: denuncias presentadas ante los Ombudsmen. 1995-2001							
Pais	1995	1996	1997	1998	1999	2000	2001
Costa Rica <sup>a)</sup>	19,916	26,109	19,405	13,077	19,998	19,787	17,612
El Salvador <sup>b)</sup>		4,533	5,694	3,858	3,243	2,572	2,898
Guatemala <sup>c)</sup>	17,204	19,763	19,935	11,842	16,754	18,321	20,941
Honduras <sup>d)</sup>				263	607		4,431
Nicaragua <sup>e)</sup>						1,120	1,103
Panamá <sup>f)</sup>							4,803

<sup>a)</sup> Consultas de la ciudadanía.  
<sup>b)</sup> Casos ingresados.  
<sup>c)</sup> Denuncias tramitadas.  
<sup>d)</sup> Quejas del público. En 1998 y 1999 únicamente se incluyen quejas relacionadas con corrupción de funcionarios públicos. En el 2001 se incluyeron todas las quejas recibidas.  
<sup>e)</sup> Denuncias tramitadas; incluye tramitadas con expediente ordinario, orientación y conciliación  
<sup>f)</sup> Quejas admitidas, datos de 1998-2002. Promedio anual, 960.

*Fuente: Costa Rica, Defensoría de los Habitantes; El Salvador, Procuraduría de la Defensa de los Derechos Humanos; Guatemala Procuraduría de los Derechos Humanos; Nicaragua, Procuraduría para la Defensa de los Derechos Humanos y Panamá, Defensoría del Pueblo.*

<sup>11</sup> Table Information: Central America: Number of cases submitted to the Ombudsman. 1995-2001 (CUADRO 7.19), Central America: Percentage of cases submitted to the Ombudsman in relation to the institution informed against. Various years (CUADRO 7.20)



CUADRO 7.20

**Centroamérica: porcentaje de denuncias ante los Ombudsmen por institución denunciada. Varios años**

Institución	Nicaragua <sup>a/</sup>	Honduras <sup>b/</sup>	Panamá <sup>c/</sup>	Costa Rica <sup>d/</sup>
Poder Ejecutivo	39.2	73.0	44.4	16.5
Poder Legislativo	0.1	1.0		0.4
Poder Judicial	16.9	18.0	0.9	2.3
Órgano electoral	18.3			0.2
Gobiernos regionales y municipales	1.6		20.2	9.1
Instituciones descentralizadas y de servicios públicos	0.5	8.0	34.5	30.3
Particulares	23.4			41.2
Total absoluto	3,011	870	4,803	17,612

<sup>a/</sup> Incluye los años 2000 a mayo del 2002.

<sup>b/</sup> Incluye las quejas relacionadas con corrupción para los años 1998 y 1999.

<sup>c/</sup> Incluye los años 1998-2002.

<sup>d/</sup> Sólo incluye las consultas del 2001.

*Fuentes: Costa Rica, Defensoría de los Habitantes; El Salvador, Procuraduría de la Defensa de los Derechos Humanos; Guatemala Procuraduría de los Derechos Humanos; Nicaragua, Procuraduría para la Defensa de los Derechos Humanos y Panamá, Defensoría del Pueblo.*

The use that citizens give to the Ombudsman's office in the Central American countries, as can be observed in the above charts, published in the Ninth Report of the State of the Nation on Sustainable Human Development, (2002, [www.estadonacion.or.cr](http://www.estadonacion.or.cr)), in a period that goes from 1998 to 2002, varied a lot from country to country, ranging from 870 cases in Honduras to 17,612 cases in Costa Rica. It could be that some of the main reasons for the occurrence of such phenomenon are: the low levels of literacy, ignorance of the law, ignorance of the existence of the institution itself, and doubts on the efficacy of its work, among others.

## V. CONCLUSIONS

In order to conclude the present exposé, it is important to say that the Principles and Guidelines of the UN Standards and Norms in Crime Prevention and Criminal Justice are simply awaiting implementation in the Latina American and Caribbean Region.

Solid human rights protection and an independent and vigorous judiciary still need to be significantly strengthened. Due attention has to be rendered to:

- the coordination of all crime prevention policies with strategies for social, economic, political and cultural development;
- the importance of improved transparency and expediency of the criminal justice system, as well as fairness in the sanctioning of offenders;
- the impact of social exclusions and marginalization of the indigenous population, indigents, women, children and migrants, in relation to the application of the rule of law and the access to justice;
- the coordination and planning among the different Justice Administration agencies;
- the incorporation of community-based judicial practices that pay due respect to the traditions and customs of indigenous people - a cross cultural approach;
- the adequate diffusion of the UN Standards & Norms in this field among concerned officers in the justice administration systems of the Region as a vital element for their use and application; and
- the application of an effective system of transparency and of accountability within the Justice Administration Sector.

The efforts to implement more equitable standards and norms in crime prevention and criminal justice in the Region are just starting, but we still aim to see their efficient execution as a reality in the near future. The burden of labour that this ideal requires is big, but stronger is our will to fight for their application without claudication.

## APPENDIX A

	<b>Ethnic Breakdown</b>
<b>Argentina</b>	European: 85% (mainly Spanish and Italian descent); Indigenous: 9.1%; Mestizo, Ameridian, and other non-white groups: 15%
<b>Bolivia</b>	Spanish, Mestizo; Indigenous: 21.2%
<b>Brazil</b>	Portuguese, Italian, German, Spanish, Japanese, Arab, African Indigenous people: 34.3%
<b>Chile</b>	Spanish, Mestizo; Indigenous: 33.5%
<b>Colombia</b>	Spanish, Mestizo; Indigenous: 22.1%
<b>Costa Rica</b>	Spanish, Mestizo, African Caribbean; Indigenous: 23.2%
<b>Ecuador</b>	Spanish, Mestizo; Indigenous: 40.2%
<b>El Salvador</b>	Spanish, Mestizo; Indigenous: 32.3%
<b>Guatemala</b>	Mestizo (Spanish-Indian); Indigenous: 38.7%
<b>Honduras</b>	Mestizo (Spanish-Indian); Afro-Caribbean; Indigenous: 34.6%
<b>México</b>	Indian-Spanish (mestizo), 60%; Indian, 30%; Caucasian, 9%; Other, 1%
<b>Nicaragua</b>	Mestizo (Spanish- Indian); Afro-Caribbean; Indigenous: 23.5%
<b>Panamá</b>	Mestizo (Spanish-European-Indian): 70%; Indigenous: 10.5%; Caucasian: 10% Afro-Caribbean: 5%
<b>Paraguay</b>	Spanish, Mestizo (Indian & European); Indigenous: 15.0%
<b>Perú</b>	Mestizo (Spanish-Indian); African American; Chinese; Indigenous: 16%
<b>Dominican Republic</b>	Mestizo (Spanish-Indian); Afro-Caribbean; Indigenous: 11.5%
<b>Uruguay</b>	Spanish, Mestizo; Indigenous 17.1%
<b>Venezuela</b>	Spanish, Mestizo African American; Indigenous: 28%

Source: OIT, 2002; University of Georgetown & OAS, 2002; UNDP 2004.

## APPENDIX B

**GRUPOS INDÍGENAS MÁS IMPORTANTES, C. 1993**

TABLA 122

Grupos más importantes	Población estimada	Ubicación
Quechua	12.581.114	Perú, Bolivia, Ecuador, Colombia, Argentina
Maya	6.500.000	Guatemala, México, Honduras, El Salvador
Aymará	2.296.000	Bolivia, Perú, Chile, Argentina
Náhuatl	1.197.328	México, El Salvador
Mapuche	988.000	Chile, Argentina
Zapoteco	403.457	México
Wayúu (Guajiro)	297.456	Venezuela, Colombia
Misquito	285.000	Nicaragua, Honduras
Otomí (Ñahñu)	280.238	México
Garífuna	220.000	Honduras, Nicaragua, Belice, Guatemala
Lenca	220.000	Honduras
Totonaca	207.876	México
Paez	140.000	Colombia
Ngöbe (Guaymí)	123.626	Panamá
Subtiava	100.000	Nicaragua
<b>Total</b>	<b>25.840.095</b>	

Fuente: Matos Mar (1993: 232-33, cuadros 1 y 2).

## APPENDIX C

CUADRO 5.1

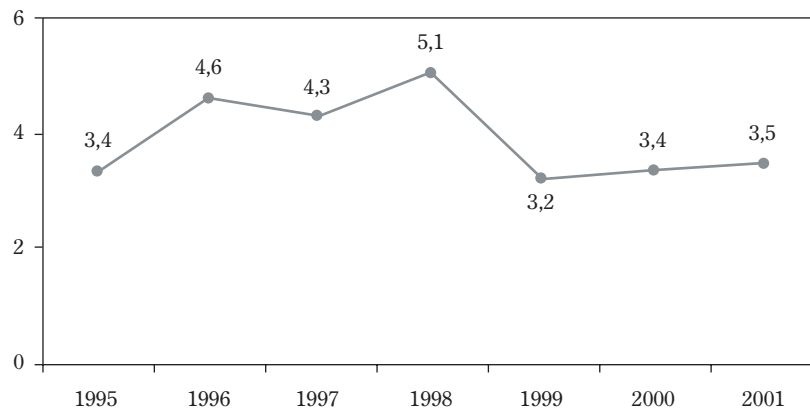
### Evolución de algunas variables e indicadores políticos

	1995	1996	1997	1998	1999	2000	2001	2002
<b>Administración de la justicia</b>								
Oficinas judiciales de primera instancia								
Casos entrados	637.415	631.643	664.311	629.376	726.757	798.198	933.614	995.822
Tasa de crecimiento	18,4	-0,9	5,2	-5,3	15,5	9,8	17,0	6,7
Casos entrados menos casos de tránsito	287.726	287.538	315.156	329.396	362.783	378.653	396.074	400.758
Tasa de crecimiento	8,5	-0,1	9,6	4,5	10,1	4,4	4,6	1,2
Violencia doméstica								
<i>Casos entrados</i>		5.023	15.336	20.996	26.437	32.643	43.929	46.012
<i>Casos terminados</i>			7.339	19.514	25.023	30.852	42.258	46.307
<i>Mantiene la medida provisional</i>			1.433	4.150	5.958	8.982	13.554	16.689
<i>No comparecencia de la víctima</i>			2.106	6.446	8.553	9.334	11.650	
Detenidos por tráfico de drogas según la Ley de Psicotrópicos	526	624	770	921	881	1.188	1.114	1.316
<i>Salas del Poder Judicial</i>								
Tasa de crecimiento del total de casos entrados a las salas del Poder Judicial	19,5	8,5	15,7	1,3	14,4	6,3	16,6	2,3
Tasa de crecimiento de los casos en trámite	-12,5	14,0	3,7	-8,9	33,5	-7,1	28,0	74,9
Sala Constitucional								
Recursos de hábeas corpus presentados	1.126	1.111	1.328	1.108	1.443	1.547	1.442	1.355
Recursos de amparo presentados	5.165	5.773	7.022	7.188	7.666	8.651	10.740	11.665
Acciones de inconstitucionalidad presentadas	338	345	399	350	369	329	338	289
Duración promedio de los hábeas corpus	1 mes	21 días	19 días	19 días	17 días	17 días	17 días	17 días
Duración promedio de los amparos	4 meses y 2 semanas	3 meses y 2 semanas	3 meses y 1 semana	3 meses	2 meses	2 meses 3 semanas	2 meses 3 semanas	2 meses 3 semanas
Duración promedio de las acciones de inconstitucionalidad	39 meses y 2 semanas	37 meses y 3 semanas	26 meses	19 meses y 3 semanas	17 meses	25 meses 1 semana	20 meses 1 semana	24 meses 3 semanas
<i>Población carcelaria</i>								
Personas privadas de libertad (nivel institucional)	3.986	4.408	4.967	5.208	5.374	5.634	6.079	6.571
Privados de libertad sin condena	867	933	784	800	902	1.289	1.295	1.427
<i>Respeto a los derechos humanos</i>								
Total de denuncias ante el MTSS por persecución sindical <sup>a</sup>	33	37	26	31	17	68	51	65
<b>Participación ciudadana y rendición de cuentas</b>								
Casos en la Defensoría de los Habitantes								
Consultas	19.916	26.109	19.405	13.077	19.998	19.787	17.612	19.850
Expedientes abiertos	2.049	1.496	1.358	2.082	1.678	1.544	1.765	1.964
Oposiciones a solicitudes de ajuste tarifario			38	41	33	17	15	13
Audiencias públicas en la ARESEP		7	70	79	74	61	75	118

Source: Ninth Report on the State of the Nation on Sustainable Human Development, 2002.

## APPENDIX D

**People Killed by the Military Police in the Brazilian State of Rio de Janeiro, per 100,000 inhabitants - 1995/2001**



Source: Police Ombudsman's offices in the state of Rio de Janeiro

Source: MENDES, Candido, "Drugs, arms, poverty and governability: a Brazilian city in the 21st. Century. In the Expert Group Meeting Report on the Application of the United Nations Standards and Norms in Crime Prevention and Criminal Justice, Stadtschlaining, Austria, 2003.



## APPENDIX E

### Police Killings 1978-2000

Year	killings	rate	as % homicides	killed	ratio
2000	140	5.4	16	11	1:13
1998	145	5.7	15	14	1:10
1996	148	5.9	16	10	1:15
1994	100	4.0	13	6	1:16
1992	145	5.9	19	-	-
1990	135	5.6	20	11	1:12
1988	181	7.7	30	6	1:45
1986	179	7.7	29	10	1:26
1984	355	15.6	42	19	1:20
1982	236	10.9	37	10	1:24
1980	234	10.9	21	28	1:10
1978	167	8.0	30	18	1:09

Data source: Statistics Unit JCF.

Source: MENDES, Candido, "Drugs, arms, poverty and governability: a Brazilian city in the 21st. Century. In the Expert Group Meeting Report on the Application of the United Nations Standards and Norms in Crime Prevention and Criminal Justice, Stadtschlaining, Austria, 2003.

## APPENDIX F

LEGISLACIÓN SOBRE VIOLENCIA CONTRA LAS MUJERES, 1990-2001		TABLA 60
País	Legislación sobre violencia doméstica y violencia contra las mujeres	
Argentina	Ley 24.417 de protección contra la violencia familiar, diciembre 1994. Acta n° 25.087 que modifica el Código Penal, 1999.	
Bolivia	Ley 1.674 contra la violencia doméstica y familiar, 1995. Ley 1.678, que modifica el Código Penal en lo relativo a delitos sexuales, 1995.	
Brasil	Decreto Legislativo 107, que da fuerza legal a la Convención Interamericana sobre Prevención, Castigo y Erradicación de la Violencia contra las Mujeres, 1995. Artículo 226 de la Constitución Federal de 1988, y varios artículos del Código Penal.	
Chile	Acta 19.325, que establece procedimientos estándares y penas para actos de violencia dentro de la familia, 1994. Ley 19.617 sobre crímenes sexuales, 1999.	
Colombia	Ley 294 para prevenir, castigar y erradicar la violencia familiar, 1996 (parcialmente modificada por la Ley 575, 2000). Ley 360 sobre delitos contra la libertad sexual y la dignidad humana, 1997. Ley del Código Penal 599, que trata sobre la violencia intrafamiliar, 2000.	
Costa Rica	Acta 7.142, que promueve la igualdad social de las mujeres; incluye el capítulo 4 sobre violencia en la familia, 1990. Ley 7.586, contra la violencia doméstica, 1996.	
Ecuador	Ley 103, sobre violencia contra la mujer y la familia, 1995.	
El Salvador	Decreto-ley 902, sobre violencia familiar, 1996.	
Guatemala	Decreto-ley 97-96, de prevención, castigo y erradicación de la violencia familiar, 1996. Ley por la dignidad y promoción integral de la mujer, 1999.	
Honduras	Decreto 132-97, de prevención, castigo y eliminación de la violencia contra la mujer, 1997.	
México	Ley para tratar y prevenir la violencia familiar, 1996. Decreto de reforma de los códigos civil y penal en referencia a la violencia familiar y la violación, 1997.	
Nicaragua	Ley que contiene modificaciones y agregados al código penal de 1996; y ley que crea el Servicio de Policía de Mujeres y Niños, incluido en la legislación que establece el Servicio Nacional de Policía, 1996. Ley 230, que establece la protección de las mujeres víctimas de la violencia doméstica, 1996.	
Panamá	Acta 27, 1995. Ley 4 sobre igualdad de oportunidades para la mujer, 1999. Ley 38 sobre violencia doméstica, 2001.	
Paraguay	Ley 1600 contra la violencia doméstica, 2000.	
Perú	Ley 26.260, que establece la política estatal y social sobre la violencia familiar, 1993 (modificada por la Ley 27.306, en 2000). Ley 26.763, que establece mecanismos para proveer mayor protección a las víctimas, 1997. Ley 26.770, que reforma el código penal estableciendo que el matrimonio no vicia los argumentos para el procesamiento de crímenes contra la libertad sexual, 1997. Acta 27.115, que establece acción penal pública para delitos contra la libertad sexual, 1999.	
República Dominicana	Ley 24-97, que define los delitos de violencia doméstica, acoso sexual e incesto, 1997.	
Uruguay	Acta 16.707, sobre seguridad de los ciudadanos, que agrega un nuevo artículo al código penal, definiendo a la violencia doméstica y estableciendo sus penalidades, 1995. Ley 17.514 sobre violencia doméstica, 2002.	
Venezuela	Ley de igualdad de oportunidades para la mujer, 1993. Ley sobre violencia contra la mujer y la familia, 1998.	

Nota: Información válida al 24 de octubre de 2002.

Fuentes: CEPAL (2000: 50-51, cuadro 10); y OEA, Comisión Interamericana de Mujeres (2003).

Source: UNDP Report on Democracy in Latin America, April 2004.

## APPENDIX G

### 103 Inmates Die in Horrific Prison Fire in Honduras

**BigNewsNetwork.com Tuesday 18th May, 2004**

At least 103 prisoners have died, and many more subjected to serious burns, in a major fire at a northern Honduras correctional facility. It was the worst jail disaster in Honduras and the second time that dozens of gang members have been killed inside a Honduran prison in a little over a year, Reuters reported. Some inmates complained that security forces were slow to help Monday and some family members suspected it was no accident.

Although there was little specific information about the fire victims, many gang members have been convicted on charges of murder, drug smuggling or robbery. They are often housed together in prisons because of frequent clashes with other groups of inmates.

One of the members who survived said guards at the prison were extremely slow to help the inmates.

"The explosion was above my bed. The fire started at 1:30 (a.m.) and the police arrived to open up the cells at 3:30, although we were shouting 'Help, help!'" Antonio Hernandez said in an interview with Radio America.

Family members gathered outside the prison and some suspected foul play.

"Why was the fire only in the area of the gang members? Why wasn't it in another area where the other prisoners are? The same thing happened in La Ceiba," said Sara Gomez, the mother of a Mara Salvatrucha member, said the Reuters report.



## **Fire Caused By Short-Circuit Kills More Than 100 in Honduras Prison**

**Monday, May 17, 2004 (05-17) 12:01 Pdt San Pedro Sula, Honduras (AP)**

A fire sparked by a short-circuit killed more than 100 inmates and injured more than two dozen in a prison in northern Honduras early Monday. It was the second major jail fire in the country in a little more than a year.

The short-circuit apparently occurred when a refrigerator motor overheated in a cell block housing 186 gang members, Police Commissioner Wilmer Torres said. Some prisoners were burned to death while others died from smoke inhalation. There were no reports of any escapes, Torres said.

As word of the fire spread, hundreds of the inmates' family members began gathering outside the prison, located in the city of San Pedro Sula, 110 miles north of the capital, Tegucigalpa.

Authorities closed off all streets near the prison as police, rescue crews and army troops worked to control the situation.

"We're doing everything possible to work fast, but it is chaos," Torres said.

"Everything happened fast while we were sleeping," prisoner Jose Mauricio Lopez told a radio station from his hospital bed. "We woke up with our clothes and our beds in flames."

Authorities said 103 prisoners died, and 25 were taken to area hospitals with injuries after the fire broke out about 1:30 a.m. Authorities originally estimated the death toll at 90. They later raised it to 101 after more bodies were found, then to 103 when two prisoners died at the hospital.

The fire already had consumed a large part of the jail when fire-fighters entered. They were able to bring it under control quickly despite resistance from some of the gang members, prison spokesman Commissioner Jose Bustillo said.

One of the surviving prisoners, Pablo Cardona, claimed that guards "fired at us repeatedly from outside the cell block to stop us from leaving, despite our cries for help."

But Bustillo said guards fired guns in the air "to prevent a massive prisoner escape."

Honduras' prisons consist of 27 old buildings housing 13,000 prisoners, twice their capacity. The prison in San Pedro has room for 800 prisoners, but held 1,960 at the time of the fire, Torres said. Authorities earlier said the prison's population was 2,200. Torres later noted that some of the inmates had been transferred to other facilities in recent days.

All of the prisoners in the affected cell block belonged to the Mara Salvatrucha, one of the most violent of Central America's gangs.

There are more than 100,000 gang members belonging to 500 different gangs in Honduras. Most of the members are between 8 and 35 years old.

Monday's was the second major jail fire in a little more than a year. Some prisoners were locked in their cells, doused with gasoline, and set on fire, during an uprising at El Porvenir prison on April 5, 2003, that killed nearly 70 people, including guards and visitors.

The uprising began with clashes between prisoners, many also gang members. The violence quickly escalated, and a government report blamed guards for many of the deaths.

<http://sfgate.com/cgi-bin/article.cgi?file=/news/archive/2004/05/17/international1501EDT0645.DTL>

### **Gang Members Call Honduras Jail Fire Arson**

**Mark Stevenson**  
**Associated Press**

SAN PEDRO SULA, Honduras - Survivors of a prison fire that officials blamed on a short-circuit claimed Tuesday that the inferno that killed more than 100 gang members was intentionally set by fellow inmates.

A similar fire that broke out a year ago during clashes at the nearby La Ceiba prison killed 70 gang members. As in Monday's fire, last year's blaze burned only a cellblock housing the gangs.

Most of those killed were members of the feared Mara Salvatrucha 13 gang, characterized by tattoos of saints, skulls, daggers and dice.

"Many of the guys who died in there were in jail just because they had tattoos," said 18-year-old gang member Olmon Alberto Contreras, who lay in a hospital bed with severe burns.

At least 103 of 186 prisoners in the cell block - the only one of 18 at the prison to burn - died in the blaze at the state prison in San Pedro Sula, 110 miles north of the capital, Tegucigalpa.

Some were burned to death; others died from smoke inhalation. The death toll was expected to rise as many of the survivors lay in hospital beds with burns over as much as half their bodies.

The government acknowledged overcrowding and poor conditions in Honduras jail cells and promised to provide more funding.

But some survivors alleged that other inmates set the fire by throwing gasoline into their cell block and lighting the fuel, while officials stood by and did nothing. The gang members say the guards' apathy was part of a government strategy of elimination that began with last year's federal anti-gang law.

"When you sow hatred, you reap hatred," Contreras said. "As you treat us, we will treat you. If you hit me, I must seek revenge."

Government authorities deny they are out to exterminate the gangs but say tough action is necessary to control an increasingly violent force blamed for everything from common crimes to grisly homicides.

Many of those killed Monday were detained during the country's recent crackdown on the estimated 100,000 gang members in Honduras.