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## PARTICIPANTS' PAPERS

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### CURRENT LEGAL REGIME OF IMPRISONMENT IN BRAZIL AND EFFECTIVE COUNTERMEASURES AGAINST OVERCROWDING OF CORRECTIONAL FACILITIES

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#### I. INTRODUCTION

There are many instruments of human rights which establish standards of treatment for those deprived of their liberty, such as the Universal Declaration of the Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

Brazil is a signatory to further international agreements that refer specifically to prisoners and their imprisonment conditions.

In 1955, the First United Nations Congress on the Prevention of Crime and Treatment of Offenders was held in Geneva and it adopted the Minimum Rules for the Treatment of Prisoners, which influenced penal treatment in many United Nations member states.

In 1995, in Brazil, the Minimum Rules for the Treatment of Prisoners were elaborated, which have the purpose of fulfilling the Resolutions of the General Assembly of the United Nations in 1971 and 1974 and the other orientations that followed. It is good to emphasize that it was during the Fourth United Nations Congress on the Prevention of Crime and Treatment of Offenders, in the Japanese city of Kyoto, in 1970, that the world woke up to the importance of practicing many principles that would limit State actions in punishing the offender, as well as the relationship of the inmate toward the public prosecutor, in consonance with what is provided in the Constitution and laws of each country.

The set of principles and rules established in the documents mentioned above is not an outline of a standard correctional facility, but, having in mind the objective of reintegrating the inmate, it establishes the minimum necessary procedures for good penitentiary administration, based on the Universal Declaration of Human Rights.

Thus, the present work intends to show how the practices have been implemented in Brazil, with the intention of giving the inmate decent and humanitarian treatment, in order to avoid recidivism and reduce overcrowding of correctional facilities.

Moreover, some juridical institutes provided for in Brazilian legislation will be outlined in this paper, either constitutional or infra-constitutional, which affect how many offenders receive and can complete alternative penalties.

It is right that the construction and improvement of practices that seek the successful re-socialization of the Brazilian penitentiary system are based on official documents, and that obviously, success depends only on their good application.

#### II. CURRENT LEGAL REGIME OF IMPRISONMENT IN BRAZIL

##### A. Aspects

When the penitentiary system is mentioned, the image of a precarious and appalling structure of overloaded cells, imprisoned inmates without even minimum sanitary conditions, bad food and exposure to all kinds of disease comes to mind.

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Despite this not being the rule, there is no doubt that the Brazilian penitentiary system requires dramatic improvement, bearing in mind that the overcrowding of correctional facilities is a serious problem to address, so as not just to create conditions for the inmate to be effectively recovered, but to fulfill the law which assures humanitarian treatment, the right to health, the right to learn a profession, legal aid and much more.

Unfortunately, in some situations, correctional facilities, due to overloading and lack of programmes effective for the rehabilitation of the convict, become “schools of crime” in which an inmate can “improve” and develop a personality, that was, in a certain way, already turned to crime, so that he or she commits more serious and violent crimes upon release.

Thus, in the actual system, if drastic measures are not taken, the State will combat the problem of rehabilitating prisoners only in a deceitful way, because it will give society a false impression: that the problem was eliminated, that the offender who violated the law has been punished, imprisoned and that “justice was done”.

However, the same criminal, in the case where there is no State effort to promote his or her recovery and rehabilitation, some time afterwards, will be released and will return to the society even more violent and without moral and social values.

The question of the problems concerning the penitentiary system deserves being combated by the means of public politics and strict application of the Law N<sup>o</sup> 7,210/84, which is known as the National Prison Law, or the Law of Penalty Execution, which concerns disposition of the sentence or judicial decision and establishes the conditions for the social integration of the convict.

Despite being old, the National Penal Law (Law of Penalty Execution) is a modern law because it gives guarantees to the inmate, like worthy treatment, the right to health, minimum sanitary conditions, to learn a job, all things to assure his or her social reinsertion. Making the law effective is difficult, because often overcrowding prevents the implementation of the measures assured to prisoners.

In 2006, The National Penitentiary Department – DEPEN,<sup>1</sup> linked to the Ministry of Justice, was reformed, and on that occasion the Federal Correctional Facility System was created: its exclusive function is to manage and control the Federal Correctional Facilities, according to the determination of the Law of Penalty Execution.

The staff of correctional facilities are public servants who were admitted to the public service by a public examination and who are trained specifically to deal directly with inmates.

All correctional facilities in Brazil are public; however, discussion of private ownership of correctional facilities is common. Would it be the solution to all problems?

Some people are in favour. They believe that those who are imprisoned should compensate society for their crimes, but, in the end, it is the society itself that bears all the expenses. In Brazil, there is not work for all the inmates in the penitentiary system, so, if the administration of the correctional facilities could become private, and was taken out of the obligation of the State, inmates would form “potential workers”, because all the inmates could work and all would leave the prison ready to be reintegrated into society.

On the other hand, some people are against this proposal. The Brazilian Constitution provides that correctional facilities must be administrated by the State, so some people think that making the administration private would be an unconstitutional measure, that something pertinent to the State itself cannot be delegated to the private sector.

Other options are that the State administrates the correctional facilities but it can give other attributions, such as the supplying of food, clothes, legal aid, medical care, etc. to third parties. The delegation of some

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<sup>1</sup> National Penitentiary Department – DEPEN, an organ linked to the Ministry of Justice, whose competence is, among other attributions, to plan and co-ordinate the national politic penitentiary.

activities could be implemented without violating the Federal Constitution, and one of the main forms to make this happen is Public Private Partnership.

### **B. Statistics: the Number of Imprisoned Inmates in Brazil**

Brazil has 183,987,291<sup>2</sup> inhabitants and, according to official data in the statistical report produced by the National Penitentiary Department, the jail population in Brazil in July 2008 was 439,737<sup>3</sup> inmates, and about 7% of this total was female.

There are 1,716 correctional facilities in Brazil, with a total capacity of 277,847. In other words, there are 161,890 more prisoners than spaces, according to the National Penitentiary Department.

It is important to emphasize that the situation here mentioned would be worse if one considers the quantity of warrants of arrest that are waiting to be fulfilled all over the country, as will be demonstrated below.

It is possible to make an outline of the offenders in correctional facilities nowadays in Brazil, considering socio-economic aspects like level of education, race, colour, age and income. Most of them are young men, mulatto or black, with a low level of education, coming from the lower socio-economic class, who work in industries or job that do not demand a qualification and which are low-paid.

This outline changes again considering the offenders who fulfill alternatives measures that originate from proceedings in the Special Criminal Court, where there is the possibility of receiving a Conditional Suspension of the Process.

## **III. MEASURES APPLIED BEFORE CONVICTION THAT AFFECT THE IMPRISONMENT SYSTEM**

### **A. Caution Arrest**

In Brazil, it is a rule that the suspect is free during the accusatory procedure. But this does not prevent a suspect's freedom from being taken away before a criminal conviction is rendered.

The Brazilian Federal Constitution foresees three kinds of caution arrests.

- Redhanded Arrest (*Flagrante Delicto*) – it occurs when the author was arrested committing or immediately after committing the crime;
- Temporary Arrest – ordered by a judge to ensure the investigations by the judicial police. There is a period of five to thirty days depending on how serious the offence;
- Preventive Arrest – ordered by a judge to ensure the criminal prosecution, public order and the fulfillment of the punishment.

All the decisions taken to proclaim caution arrest (or temporary arrest) must be based on minimum evidence of authorship and materiality.

There can be no arrest without a warrant or unless the offender is caught red-handed. Arrests without one of those two bases were abolished by the Federal Constitution of 1988.<sup>4</sup>

The number of temporary arrests in Brazil is very high and after many studies of this topic, there is a conclusion that in Brazil, a fact that contributes to the excessive quantity of confined prisoners is the caution arrest, in other words, imprisonment even before the perpetrator of the crime has been convicted and sentenced, but which is implemented to guarantee the continuity of the investigations and/or to make sure that

<sup>2</sup> Source: Counting the Population 2007 (Census), published by the Brazilian Institute of Geography and Statistic IBGE (public foundation linked to the Ministry of Planning, Budget and Management, which is the country's main provider of data and information).

<sup>3</sup> Source: <http://www.mj.gov.br/data/Pages/MJ8F939E3DITEMID1252A3A4A59E44448925C8872CF1946BPTBRIE.htm>

<sup>4</sup> Art. 5º, LXI, of the Federal Constitution: "No one shall be arrested unless in flagrante delicto or by a written and justified order of a competent judicial authority, save in the cases of military transgression or specific military crime, as defined in law".

punishment is effected.

According to the Ministry of Justice, there are about 130,000 temporary prisoners, who have not been definitively condemned. This number caused concern to the National Justice Council (CNJ,<sup>5</sup>) which determined in the first half of 2008 the achievement of a judicial community effort all over Brazil, which resulted in the release of 1,000 inmates who were confined beyond the allowed period of time following a caution arrest.

The CNJ estimates that this number could be even bigger as the community effort work mentioned above was carried out only in some States of Brazil and according to information spread by the National Penitentiary Department, about 96% of prisoners in Brazil are extremely poor and, due to their poverty, do not have good quality legal aid.

Aiming to reduce such problems, The National Justice Council approved a Government Edict that has the objective a preventing undue detention and imposes an obligation for judges to give information to their respective offices of the Department of Internal Affairs of the situation of temporary imprisonment.

In this way, due to the Edict here referred, judges will have control of cases which have been delayed for more than three months whose offenders are under caution arrest and judicial action will certainly be more effective.

According to the National Justice Council, in some Brazilian States more than 70% of the jail population is composed of temporary prisoners, in other words, prisoners who are being charged by the State and are awaiting trial; however, a significant number of those would be reduced with the measures adopted by the Council.

## **B. Bail**

As mentioned earlier, the freedom of a suspect is a rule and, for that, the Law guarantees freedom during the police inquest or the trial until the rendition of the criminal judgment. The authorities in charge of giving the concession of this benefit are the judge and the police chief.

The decision to apply bail is more common in the civil police sphere, because judges grant bail without payment when the suspect meets the requirements for "Provisional Freedom".

The Brazilian Federal Constitution provides some crimes that are non-bailable, such as the practice of torture, traffic of drugs, terrorism and crimes defined as heinous crimes. So, excepting these crimes, the judge can grant bail to an offender.

Bail is not frequently used in Brazil because we have another measure called Provisional Release which is more often applied by judges, because it is a constitutional guarantee. Besides, people who commit crimes in Brazil are mostly very poor, and, for this reason, judges prefer to grant them Provisional Release instead of fixing bail.

## **C. Provisional Release**

The Brazilian Constitution disposes that the provisional release from imprisonment, when possible, will be given by the judge.<sup>6</sup>

The expression "provisional" rests on the fact that with or without bail (which is a guarantee), some conditions are imposed on the offender, such as he or she must be present in all hearings; in case those conditions are not observed, the provisional release will be revoked. This kind of freedom is called "provisional" because it is pending the result of the criminal trial.

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<sup>5</sup> National Justice Council – CNJ, installed 14 June 2005, organ of the Judiciary Power with action in all the National Territory, whose competence, among others, is the control of the administrative and financial actions of the Judiciary Power, the fulfilling of the functional obligation of the Judges, and, to propose projects of management of many branches of the Judiciary Power. Source: <http://www.cnj.jus.br/>

<sup>6</sup> Art 5º, LXVI, of the Federal Constitution: "No one shall be taken to prison or held therein, when the Law admits release on own recognizance, subject or not to bail".

The offender who deserves the benefit of Provisional Release is one who does not represent a danger to society, did not commit serious crimes and is not a recidivist.

The institution of Provisional Release is frequently used in Brazil, and many inmates receive this benefit daily all over the country. It contributes to diminishing overcrowding in the correctional facilities. Bail became unusual after the passing of this law.

This is a fundamental right and not something that the judge can give randomly.

**D. Conditional Suspension of the Process (Law N° 9,099/95 - Art 89)**

Law N° 9,099/95, known as the Law of Special Civil and Criminal Court, in its Article N° 89, provides for the Conditional Suspension of the Process; this was a turning point in the history of Brazilian criminal proceedings.

Some amendments have been made to this Law, but according to it, the perpetrator of an offence for which punishment does not exceed two years can accept that the process can be suspended for a period of between two and four years, if during this period, he or she will obey some conditions imposed by the judge.

There is neither interrogation nor collecting of proof. At the end of the established period, in case none of the conditions were broken, the punishment could be finished and the latest conviction will not be recorded.

With this measure the number of procedures diminish because justice personnel dedicate more time to serious crimes and petty offenders do not come into the penitentiary system.

Conditional Suspension of the Process is frequently used in Brazil because our legislation enumerates many petty offences with punishment of less than two years.

During this period, no one monitors the perpetrator, because of lack of staff. So the offenders must live a straight life and avoid trouble.

**IV. PENALTIES AND ALTERNATIVE MEASURES TO IMPRISONMENT  
AFTER CONVICTION**

Considering the increasing mobilization and worries of society about violence and criminality, the Brazilian Government is forced to present structured and effective solutions to prevent crime.

There is no doubt about the importance of the correctional facility system in this regard, since violent actions result in punishment that must be fulfilled and, at the moment of the application of the law, the State has the opportunity to interrupt this cycle of violence, avoiding heaping convicts inside correctional facilities, and instead investing in alternatives to fight crime and do something that can stop recidivism and minimize the overcrowding problem in prisons.

Penalties and alternative measures are an option of reprimand to criminals, without putting them in prison. According to specialists, the implementation of alternative penalties can reduce overcrowding of correctional facilities, besides encouraging the rehabilitation of the inmate.

On 13 February 2009, the National Penitentiary Department published<sup>7</sup> data showing that in July 2008 there were 13.415% (498,729) more offenders fulfilling punishment and alternative measures than were imprisoned (439,737). It means that alternative punishments nowadays represent another penitentiary system, directed to a specific group of people different from those that need to be kept confined.

Moreover, it is necessary that the administration of the correctional system recognizes the importance of alternative measures and gives attention to the penal control of its fulfillment, because they are short term measures that could bring great stability to the correctional facility system, reducing the prison population and stopping the cycle of violence, preventing petty offenders from mixing with more dangerous criminals.

<sup>7</sup> Source: <http://www.mj.gov.br/data/Pages/MJ8F939E3DITEMID1252A3A4A59E44448925C8872CF1946BPTBRIE.htm>

### **A. Concepts and Classifications**

The Brazilian Penal System foresees, basically, two kinds of reprimand. They are the deprivation of liberty and the imposition of alternative penalties. There is also the fine, which can be combined with either reprimand.

The first reprimand involves restricting the offender's liberty by placing him or her in a correctional facility, where, depending on the regime (open, semi-open or closed), he or she can be confined. It can occur when an offender commits crimes considered highly offensive and has been sentenced to a punishment of between four and thirty years of confinement.

Under an alternative penalty the offender will have imprisonment changed for an other punishment that does not restrain his or her freedom, such as rendering social service.

Crimes punishable with two to four years of prison, and for which the offender is not a risk to society, may be subject to alternative penalties. Among those crimes are: the use of narcotics, traffic accidents, slight physical harm, simple robbery, slander or defamation, domestic violence, etc.

Alternative penalties include:

- Rendering of Social Service – the offender is ordered to carry out activities, according to his or her aptitude, in social assistance organs, hospitals, schools, orphanages and other public establishments;
- Temporary rights interdiction – consist of prohibitions given to the convict, for the same period of the deprivation of liberty, of being deprived of carrying out public activities or elective mandate; any profession that needs specific abilities; driver's licence suspension, and the prohibition of going to certain places, etc.;
- Limitation for the weekend – during the substitution for the deprivation of liberty penalty, the convict is under an obligation to remain at the Shelter House or a similar place, on Saturdays and Sundays for a period of five hours, where he or she will participate in courses and educational talks.

Doubtless, the greatest difficulty in the effective application of the alternative punishments is the lack of human resources to control and to monitor people submitted to this kind of measure; for that reason, in 2002, the National Center for Supporting and Attendance to Alternative Penalties, linked to the Ministry of Justice, published the Manual Advising for the Penalties and Alternative Measures, which was handed out to all Brazilian States and contains the procedures to be adopted for the effective evaluation, referral and monitoring of convicts who are fulfilling alternative penalties.

The importance of this monitoring is mainly to give society the assurance that the offender effectively fulfilled the penalty that was imposed on him or her.

In Brazil, this monitoring is also done by means of reports sent by organs where the punishment and alternative measures are fulfilled, and eventually, with the visit of technical teams.

There is an interesting and innovative option of monitoring. It involves gathering inmates for meetings, having the objective of evaluating the fulfillment and discussion of subjects connected to the punishment, such as reintegration of the convict into society, reduction of recidivism, etc., as well as the inclusion of those groups in social programmes and guiding them to public services.

### **B. Fine**

Fining is provided for in Brazilian legislation and consists of the patrimonial reduction of the convict to be reverted to the Correctional Facility Fund. It is a punishment with the intention of compensating society, and is a considerable way to inhibit the undertaking of new crimes.

Those who defend the application of the law emphasize its advantages, such as efficient and quick punishment, that sometimes is the motivation for crimes, and, its application as a substitute for the deprivation of liberty, avoiding sending the convict to prison, which is sometimes considered an authentic school of teaching and development for offending.

The fine must be calculated by the judge according to the financial situation of the inmate and his culpability.

### **C. Conditional Suspension of the Punishment – Probation**

The Brazilian Penal Code establishes in its Article 77<sup>8</sup> the possibility of the Conditional Suspension of the punishment.

When probation is applied, the judge does not determine the execution of the penalty imposed on the sentence: he or she gives the conditional suspension of the punishment, in other words, the convict will not begin the fulfillment of the punishment, but will be on conditional release, for a period called probation, that varies from two to four years.

There are many rules and particularities that must be observed during the concession of the probation and its term which, in case of default, will lead to revocation. Probation proves its efficiency when the purpose is to avoid prison overcrowding.

## **V. CORRECTIONAL FACILITIES AND THE MEASURES USED TO REDUCE PRISON OVERCROWDING AND RECIDIVISM**

### **A. Parole, Remission of the Punishment by Working, Amnesty, Grace and Pardon**

#### **1. Parole**

If the criminal is sentenced to a punishment longer than two years, after fulfilling more than a third of the sentence and meeting some requirements, such as good behaviour, for example, the convict can be released on parole for the remainder of the sentence. At the end of this period, if there is no reason for abrogation, the sentence is considered fulfilled.

The difference in probation consists of the fact that, in it, the inmate does not initiate the fulfillment of the sentence, as happens on parole.

If the inmate is a re-offender of a felony, he or she must fulfill more than half of the punishment to have the right to parole.

If the inmate was convicted of a heinous crime, the practice of torture, illicit traffic of narcotics, or terrorism, he or she must have fulfilled more than two thirds of the sentence.

During the period of parole, offenders are monitored by an organ called the Penitentiary Council. The prisoner must attend the Council monthly, where his or her monitoring portfolio is stamped.

We do not have electronic monitoring in Brazil.

#### **2. Remission of Punishment through Work**

Article 126, §1º of the Law of Penalty Execution provides the possibility of the remission of the punishment by work, and establishes that one day of punishment will correspond to three days worked, observing that the work journey cannot be under six hours or up eight hours daily, for the benefit to be allowed.

Work at the weekends is not allowed because, besides the rest insured by Law on Saturdays and Sundays, the number of public servants is reduced on the weekends and, consequently the surveillance becomes vulnerable.

Generally speaking, work inside the prison is not available to all inmates but only to those who merit this benefit. This philosophy maintains the organization of the prison, considering that those who work try their best in order not to lose the benefit and those who are not working yet can see that in fact work reduces the time spent in prison, and they endeavour to demonstrate that they also deserve this advantage.

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<sup>8</sup> Art 77: “The execution of the freedom restraint punishment, not superior to 2(two) years, could be suspend, from 2 (two) to 4 (four) years...”.

Re-socialization is one of the goals to be achieved by the prison system and, consequently, the reintegration into society is linked with the work that dignifies the man. Offering a work opportunity to the inmate, besides the habit of a disciplined daily activity, is also a contribution for him or her to form professional persona that will be helpful when he or she leaves the prison.

Therefore the remission of the punishment by work represents a simple way of encouraging the process of re-education, a fair prize for the imprisoned worker, that promotes the idea that work is really worthy.

### 3. Amnesty

In Brazilian Law, "amnesty" means the expunging of one or more political crimes committed by a group of people, extinguishing the effects of the penalty.

Amnesty in Brazil can be given only by the National Congress, in a form of a Law; according to constitutional foresight and they are generally applied to political crimes in order to extinguish the committed political crime. It is an eminently political measure (it is not granted by the judiciary); it has a wide and collective character, it is irrevocable and irrefutable, and it has immediate efficacy.

Law 6,683 of 28 August 1979, granted political amnesty for all who, between the period of 2 September 1961 and 15 August 1979, period of military dictatorship in Brazil, committed political crimes or crimes with political motivation. Those who were convicted of the crimes of terrorism, assault, kidnapping and personal attack were excluded of the benefit of amnesty.

According to the Ministry of Justice, this Law benefitted 29,000 Brazilians including inmates repealed, banished, exiled or simply dismissed from their work. About 12,000 of those received economic compensation for proven damages.

### 4. Grace and Pardon

This is another way for the State to show mercy the offender, as both are granted by the President of the Republic. Grace is individual and pardon is corporate. Generally grace must be requested, but pardon is granted spontaneously. Both extinguish the punishment, but the crime is kept and, if the convict who is the object of the favour commits another crime, he or she will be considered a re-offender.

Grace and pardon cannot be applied to crimes of torture, trafficking of drugs, terrorism and crimes defined as heinous.<sup>9</sup>

## **B. Innovative Programmes for the Treatment of Inmates**

The deprivation of liberty penalty has the purpose of the re-socialization of the offender but this objective was not being reached. The history of the sentence passed through many alterations over the years, completely changing the execution of sentences, searching for its humanization, using mechanisms for the re-socialization of the inmates and trying to avoid recidivism.

Unfortunately the re-socialization of the inmates and their reintegration to the society are not easy, it is a great challenge that demands co-operation between government and society to avoid recidivism.

### 1. Association of Protection and Assistance for the Convicted (APAC)

In 1972, in a city called São José dos Campos, in the State of São Paulo, in southeast Brazil, a lawyer called Mário Ottoboni and a group of people connected to the Catholic Church started a volunteer assistance programme for inmates that resulted in changing of their behaviour. Due to huge local necessities, the administration of the correctional facilities was transferred to that group of volunteers.

The first APAC then began and its way of working was registered. It developed and its actions nowadays compose the APAC method.

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<sup>9</sup> Article 5º, XLIII of the Constitution of the Federative Republic of Brazil. "The practice of torture, the illicit traffic of narcotics and related drugs, as well as terrorism, and crimes defined as heinous crimes shall be considered by law as non-bailable and not subject to grace or amnesty, and their principals, agents and those who omit themselves while being able to avoid such crimes shall be held liable".

In 1986 the second APAC was created in the city of Itaúna, in the State of Minas Gerais, where it was also founded by volunteers of the Catholic Church.

The APAC in Itaúna is considered an international reference on the treatment of offenders, being unique in world correctional facilities in administrating the three regimes of fulfillment of punishment (closed, semi-open and open) without using the police or correctional staff.

APAC is a non-profit civil association, with own legal status, and it has the purpose of treating the offender (already convicted), whom it calls “*recuperando*”, preparing them for life after the fulfillment of the punishment.

Its philosophy is “to kill the criminal and save the man”. It is an NGO (Non-Governmental Organization) that carries out its activities with straight and permanent contact with the Penalty Execution Court.

The monthly cost for a person who is fulfilling punishment at APAC is about US\$300 whilst the cost in another correctional facility comes to US\$790 per month.

The national rate of recidivism is 80%; however, at APAC this rate is 9%.

The APAC maintains its activities by means of contributions and donations made by the society, and because it has strong discipline, it holds only those inmates who are committed to fulfilling all its rules. The transference of the inmate to APAC happens after a decision between the administration of APAC and the judge of the Penalty Execution Court.

After being transferred to APAC, the inmate goes through a process of adaptation in this method, remaining in a special cell for 30 days. After this period, and knowing the APAC’s rules and conditions, he is invited to sign the “Commitment Term” for the membership of APAC’s method. In case of default on the signed “Term”, he will have to return to the governmental correctional facility, among other penalties.

If the inmate wants to go back to the governmental correctional facility, he can do so any time he wants.

With the focus on the achievement of the effective re-socialization of the inmate, the APAC works up from relevant fundamentals as outlined below:

- First: The possibility of restoration – for the APAC all inmates can possibly be reformed, coming from the principle that all human beings are susceptible to change;
- Second: Religion – the reform occurs when the inmate is transformed spiritually, being born again as a new man;
- Third: Trust – the inmate participates in his own disciplinary process. The keys of the correctional facility are entrusted to them;
- Fourth: Work – considering that idleness is a terrible thing;
- Fifth: Respect – never shelter a number bigger than its capacity.

*(i) APAC’s Methodology*

The APAC Method mainly comprehends twelve elements that must be observed during the work of reintegration. They are as follows:

- Participation of the Community: The APAC will only exist with the participation of the society and the volunteers;
- The solidarity between the inmates develops the collaboration and mutual help among at themselves;
- Work: as a Professional and Therapeutic possibility but also bearing in mind that it is not only work that restores the man;
- Religion: with a free choice, respecting the individual faith and being open to all kinds, religion is seen as an element of consciousness for the inmate;

- Dignity and Respect for the human being: putting the human being in the first place, transforming his self image, calling him by name, knowing his background and showing interest in his life and his future.

The APAC never admits a larger number of inmates than there are vacancies. Trust is applied in the practice, so there are no police and the keys of the prison are with the inmates.

- Health Assistance: medical, odontological, educational and psychological assistance is provided as support for their mental and physical integrity;
- Legal Aid: considering that 95% of the prison population lacks sufficient financial resources, legal aid provides lawyers for procedural situations;
- Family: the most important partnership in the correction of the inmate, emotional bonding and family company is stimulated in the APAC's methods;
- Volunteer Work: the APAC's work is based on the gratuity of serving one's neighbour;
- Social Reintegration Center: the APAC created this Center with separate wards for the regimes of fulfillment of punishment;
- Merit: the inmate is submitted to a constant evaluation that proves his reform in the prison period;
- Journey to Freedom in Christ Workshop (called the Jornada): an intensive retreat including presentations, time for prayer, and various other activities – it is considered a highpoint in the APAC methodology).

Today the APAC from Itaúna administrates two Halfway Houses (a male and a female one), with a total of 130 inmates. It is linked to the Prison Fellowship International which is a United Nations consultative organ for prison issues. For about 23 years it has successfully developed its activities, receiving visitors from all over the world, people who are interested in knowing the method and its application.

## 2. “New Ways Project” on the Penalty Execution

Before the high results of the APAC in Itaúna, the Court of Justice of the State of Minas Gerais – TJMG, in the southeast of Brazil, launched, in September 2001, the New Directions Project.

The Project is co-ordinated by the Presidency Adviser for Prison Issues and The Penalty Execution of the State of Minas Gerais, and was regulated by the Resolution Nº 433/2004 of the Court of Justice of the State of Minas Gerais, published on 1 May 2004.

The Project's slogan “All men are bigger than their faults” and has the purpose of encouraging the creation and development of Halfway Houses in the APAC pattern of Itaúna, by means of public hearings and seminars for the training of tutors and volunteers, in any interested city.

The New Directions Project is located at the Court of Justice of the State of Minas Gerais, in Belo Horizonte, the Capital, giving instructions to the APAC as regards the construction of buildings for the operation of the Social Reintegration Center, with three different wards – closed regime, semi-open and open, besides following the activities developed by the other APACs.

As part of the Judiciary Power, the Project New Directions gives more legality to the APACs, accomplishing, through public hearings, work to wake the community up to the fact of prejudice towards inmates, increasing the involvement of its members working with the re-socialization of offenders.

There are two cities nowadays, in the State of Minas Gerais, Itaúna and Nova Lima, which have Social Reintegration Centers, working completely with the APAC method. Twenty more other cities partially adopted the method and 61 cities are building the centres or they are studying the possibility of doing so.

There are about 100 correctional facilities in Brazil that partially use the APAC's method, and some units have already been implanted in other countries, such as: Argentina, Bulgaria, Chile, Costa Rica, Ecuador, El Salvador, England, Germany, Honduras, Latvia, Malawi, México, Mondávia, Namibia, New Zealand, Norway, Peru, Slovakia, the USA, and Wales.

## **VI. PROGRAMME OF RESTORATION AND REINSERTION OF EX-OFFENDERS INTO SOCIETY**

### **A. Program of the Social Reinsertion of the Ex-offender and the Importance of the Participation of Society in this Process**

With the intention of spreading the best practices of the national penal units and considering that the deficiencies of the Brazilian correctional facilities are completely diffused by the media, it is a good time to divulge the “Best Practices” that have been developed in the 27 States of Brazil.

According to statistical data published by the National Penitentiary Department,<sup>10</sup> in 2007, more than 90 best practice activities were carried out nationwide, aiming to promote the social rehabilitation of the offender in the work market; programmes of concession of loans to the sheltered and former offenders to create their own businesses; courses and workshops to enable the offenders to learn many different kinds of occupations, such as handicraft work, turnery, tailoring, mechanics, joinery, painting, sewing, cookery, waitressing, waitering, manicure, housekeeping, hand work wrapping and recycling of material; besides films exhibitions on correctional facilities, literacy courses and programmes of social and psychological aid for ex-offenders.

Because Brazil is a big country, two programmes from different regions are selected here, and briefly presented as follows.

#### **1. Program Start Again**

Launched in Brasília, on the 29 December 2008, by the National Justice Council and by the Federal Supreme Court,<sup>11</sup> the programme intends to draw the attention of the population to the question of the reintegration of the prisoners who have already fulfilled their penalty, to get back into the work market.

The programme focuses on actions that aim to give more effectiveness on the Law of Penalty Execution and the consequent modification of the current jail situation in Brazil.

Among the activities to be developed is the accomplishment of judicial community work in order to verify the situation of the inmates in relation to the fulfillment of their punishment. This kind of work will involve the analysis of many law-suits, with the purpose of promoting the progression of the regime of the fulfillment of the punishment or the release of the prisoner if he or she has fulfilled the punishment completely. The people who are able to act in this kind of judicial community work are judges, the representatives of the Public Prosecution Service, representatives of the Public Defense Council and court’s servants.

Another activity provided in this programme is the celebration of covenants made among many competent institutions well-known in the area of training, reforming people, enabling them in human resources, bearing in mind the reintegration of offenders in the work market, after the fulfillment of the punishment.

The development of a mechanism called “Job Opportunity”, is also part of this programme. It will be centralized in the National Justice Council, to be distributed later on the State Penalty Execution Courts. Offers of labour opportunities will be made by the enterprises, companies and institutions willing to join the scheme.

The Federal Supreme Court was the first institution to join this Program, through a covenant made with the Government of the Federal District of Brazil, which commits to receive, from 2009, 40 ex-offenders from correctional facilities. Only convicts who are fulfilling semi-open punishment will be selected for this Program. They will have a daily work schedule of between six and eight hours, and will work as a helper for to the Court administration, for a maximum period of one year. They will have a monthly salary of between

<sup>10</sup> Source: <http://www.mj.gov.br/data/Pages/MJDA8C1EA2ITEMIDB6397CD625A644849D8D9D50156D22A2PTBRIE.htm>

<sup>11</sup> The Federal Supreme Court is an organ of Judiciary Power whose competence is mainly the protection of the Constitution. Source: <http://www.cnj.jus.br/>

US\$230 and US\$270, besides other benefits such as transport<sup>12</sup> and food support.<sup>13</sup> It is good to bear in mind that the minimum salary in Brazil today is US\$198.

The National Justice Council approved Recommendation N° 21 of 16 December 2008, as a way to stimulate other institutions to join this Program. This action suggests that the State Courts adopt effective actions for the restoration and social reintegration of the inmate and of the ex-offenders of the prison system, emphasizing the necessity of professional valorization for the reinsertion of ex-offenders in the work market, through the covenant made with the State Bureau in charge of the administration of the correctional facilities.

For the advertisement of the “Start Again Program” two short films were produced for TV and a spot for radio, with a duration of 30 seconds each. These advertisements were produced for free, in January and February 2009, through the national radio and TV all over Brazil. The message of one of the films was: “Give a second chance to those who have already paid for what they have done. It is easy to ignore but to help is to be human”.

This campaign had the objective of stirring the population to try to reduce prejudice towards ex-prisoners, and to draw attention to the necessity of their reintegration in the work market and in society. The slogan of this institutional campaign was “True freedom is having a second chance”.

The participation of society in the process of the convict’s rehabilitation is fundamental for the guarantee of the success of this Program, for society can help the State in this difficult and critical moment of the reinsertion of the convict in to society.

The first course of this programme was accomplished on 20 January 2009, in the State of Maranhão, in the northeast of Brazil. The course “Modelling and Cotton Confection”, with a duration of 160 hours, was provided to female prisoners of the Reeducation and Social Inclusion Center for Convicted Women, promoted by the National Justice Council and Federal Supreme Court and implemented by the National Service for the Industrial Apprenticeship (SENAI).

This initiative of integration of the actions of many institutions has the aim of making the jail system more humanized all over Brazil, because, for the actual system of the Brazilian Prison Law to be more effective and to diminish the rates of recidivism, the partnership of the country and its States and private companies, as well as society, is very important.

## 2. Support Foundation for the Egress of the Prison System – FAESP

The Support Foundation for the Egress of the Prison System was created on 23 June 1997 in the State of Rio Grande do Sul, in the south of Brazil, and it is a philanthropic organization of social assistance, neither a political party nor profit-making entity, that helps the egress, released offenders, re-offenders, to be in charge of their own reintegration, with the participation of society, helping them with matters regarding work, education, health and material aid.

The people served at FAESP are re-offenders of the state prison system (90% of men and 10% of women). The age is mostly between 28 and 50 years old, with a low level of education and without professional qualifications.

At this Foundation, the released inmates are received, interviewed and guided to job opportunities available at the New Life Project, through partnerships with organs and institutions, or guided to a social co-operative called Laborsul, created to be an intermediaty in finding work.

The Social Foundation gives professional courses and formal education, such as literacy and elementary courses.

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<sup>12</sup> The transport benefit is given to the employee by the employer in advance for travel expenses to and from work.

<sup>13</sup> Food benefit is a payment given to the worker each month to pay his or her daily food expenses.

Since the creation of this Foundation, more than 800 inmates have passed through, with recidivism of only 13%.

### **B. Treatment Program for Narcotics Dependents**

With the Law N° 11,343/06 there was a considerable change to the understanding of what is a narcotic substance. The former law established a freedom deprivation penalty,<sup>14</sup> but now the offender is liable to another kind of penalty, according to Article 28 of the new law.

“Article 28 – Who obtains, keeps, has in stock, transports or brings with him, for his own consumption, drugs without authorization or in disagreement with the legal determination will be liable to the following penalties:

- I. Warning about the drugs’ effects;
- II. Rendering of Social Services;
- III. Educative Measures of presence in educative courses.”

It is important to stress that there was no decriminalization of the use and carriage of narcotics, only a modification to the reprimand to be imposed.

That measure manifested itself in a very important way; instead of attributing to the user the character of a delinquent he or she is considered a person who needs a suitable specialized treatment.

In 1998 in the city of Fortaleza, the State of Ceará, located in the northeast of Brazil, an Execution Court for Alternative Penalties was established, which develops projects related to offenders who are fulfilling alternative penalties.

This Court is composed of social workers and psychologists who are responsible for the personal evaluation of each inmate, in order to check their mental health, giving special attention to the cases of drug addiction.

Despite the fact that most of the inmates under treatment are drug users (about 60%), it was verified that only 14% of them were convicted of crimes foreseen in the Brazilian Law of Toxic Substances. Although they had been convicted of crimes such as murder, robbery and rape, many of them were drug addicts.

It concerns a highly important subject that deserves special attention in relation to social reintegration.

Some agreements were made with hospitals that offer special treatment to drug users and the hours spent in this treatment are counted as rendering of community service for those who are fulfilling alternative penalties.

Another measure adopted was the remission of the alternative penalty by the presence of the inmate at the meetings of Alcoholics Anonymous and Narcotics Anonymous, in which where they participate voluntarily.

According to recent data, in 2008, those who were the focus of the programme developed in Fortaleza, were marijuana users (20%); cocaine and crack users (15%); alcohol users (12%); users of other drugs (4%); and multi-users (49%).

The dependent use of drugs represents 60% of cases, whilst 25% indicate harmful use and only 15% recreational use. This classification is very important to consider personal differences (economic, psycho-social, family aspects, etc.) and to adopt solutions directed to each problem individually.

Since the beginning of this programme, 27 partners have joined this group, including centres of psycho-social attention in narcotics and alcohol, therapeutic communities, educational centres for youth and adults, and organizations such as Alcoholics Anonymous and Narcotics Anonymous (NA).

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<sup>14</sup> Law N° 6,368/76, in its Article 16, foresaw a punishment of six months to two years of imprisonment for carrying or use of drugs.

In one year, 120 people were guided to this programme and 80% of them completed the penalty transaction successfully. Obviously the word "cure" is not mentioned because chemical dependency is a compulsion and there is a risk of recidivism. This problem of recidivism is the next challenge to be faced by those who idealized this programme.

## VII. CONCLUSION

There is no established form or recipe to magically reverse the actual situation of overcrowding in prisons and criminal recidivism.

The moment the prisoner is sent to a correctional facility is considered a delicate moment for him or her; however, the moment he or she leaves the prison is a moment that reflects on the society. For that reason, the treatment given to him or her during the imprisonment, under State custody, is very important and has a decisive influence on his or her behaviour after release.

Recidivism is a straight reaction to the conditions to which the convict is submitted during the fulfillment of the penalty and, also a reaction to how the community receives him or her after fulfilling the punishment. Society has a great responsibility in this process and there is no doubt that, for comprehensible reasons, it nourishes a kind of scorn towards those who are or were imprisoned. Therefore, it is important to work to make society conscious that the social restoration of the inmate demands the participation of the State and all society.

The practices outlined in this present work consist not only in giving worthy treatment to the inmate and to released offenders to reintegrate socially, but also to introduce a new way of thinking to the social group to which they belong, all with the objective of avoiding the commitment of new crimes, the growth of penalties and the overcrowding of prisons.

Society and the authorities must pay attention to the fact that the main solution to the problem of recidivism is via a policy support for released offenders, according to the Law of Penalty Execution; otherwise, the released inmate who is enjoying his or her freedom, in case he or she is not assisted, will be the recidivist criminal of tomorrow.

The Brazilian prison system cannot be considered of an excellent quality, but our nation has developed some strategies and is aiming to improve the system every day.

"The degree of civilization in a society can be judged by entering its prisons".  
Crime and Punishment (1866) - Fyodor Dostoevsky (1821-1881)