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Overcrowding Causes Regional Crisis in Penitentiary Systems

by Andrés Gaudín

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The crisis in South America's penitentiary system is a product of the subhuman overcrowding to which inmates are subjected. "A punishment added to that meted out by the courts," says Álvaro Garcé, Uruguay's parliamentary prison commissioner. "A state crime against the people," says Cezar Peluso, president of Brazil's Supremo Tribunal Federal (STF). The crisis is forcing authorities in several countries to try out possible solutions. Chile and Brazil have already licensed—outsourced—services in several prisons, transferring provision of some inmate services—health care, food, hygiene, education—to private companies.

Now, Brazil has announced that it will build the first two private prisons in Latin America, following an experience initiated by the US in the 1980s and then implemented by Great Britain and other European countries.

In late 2010, the Uruguayan Congress approved an emergency law allocating US$15 million to construct new prisons that will reduce overcrowding. (Official statistics indicate the country houses 9,000 prisoners in facilities designed to hold no more than 5,000.)

All South American countries, without exception, face the moral condemnation of humanitarian organizations and specialized agencies of the UN and the Organization of American States (OAS), which have denounced the degrading conditions to which their respective prison populations are subjected.

Brazil takes the lead in private-prison experiment

However, Brazil is moving forward on the path of privatization, which no other country in the region has yet dared to explore. In mid-June, the government officially announced construction of two prisons, based on the Public-Private Partnerships (Parcerias Público-Privadas, PPPs) model, developed by the British government, which uses private capital to pay for public infrastructure.

The two prisons will be the Complexo Prisional de Ribeirão das Neves in the east-central state of Minas Gerais and the Centro Integrado de Ressocialização de Itaquitinga in the northeastern state of Pernambuco. The prisons will have a combined capacity of 3,000 inmates.

Backers of the PPPs, such as Marcos Siqueira Moraes of the Minas Gerais state government, says one advantage of the system is that it allows financing of costly projects, in which the state does not then have to invest millions of dollars. In addition, says Siqueira, "The PPP promotes better service, since private businesses have economic incentives to do a good job."

Nevertheless, PPP detractors say that what happens is just the opposite, and they question whether the state's functions and responsibilities should be put into private hands. That is the position of the Catholic Church's prison ministry (Pastoral Carcelária), which criticized the new private prisons, saying, "Business participates to make a profit and uses the inmates to achieve that."
The religious organization is not the only one questioning privatization. Other critics fear that turning penitentiaries into businesses could encourage more arrests.

The Minas Gerais government announced that it would pay US$50 per day for each inmate that the Gestores Prisionais Associados (GPA) consortium houses in the prison it is building on the outskirts of Belo Horizonte, the state capital. That comes to US$75,000 per day, US$2.3 million per month, for its projected 1,500 prisoners.

Siqueira Moraes said that the open debate on whether the system would encourage more arrests makes no sense because the state's prisons are already overpopulated. Brazil's prisons are among the most overcrowded in the world. UN figures indicate that some 470,000 inmates are incarcerated in prisons whose maximum capacity is 300,000.

For Siqueira Moraes, private prisons, such as the one in Ribeirão das Neves, will alleviate this situation and, in addition, provide higher quality services for the inmates.

Security expert Lucía Dammert, a Chilean researcher with the Facultad Latinoamericana de Ciencias Sociales (FLACSO), says that, although it is valid to ask whether the private prisons will encourage arrests, she does not think that is the case in countries with high levels of overcrowding.

In the private prisons, the Brazilian government will be in charge only of monitoring the external perimeter of the facility and transferring prisoners, either for health reasons or for court appearances. The new prisons will be designed to minimize contact and communication among prisoners of rival gangs. In addition, the companies running the prisons must comply with more than 400 regulations, and 20% of the income from the state is contingent upon successful outcomes.

The regulations include a stipulation prohibiting prisoners from having cell phones, used to organize criminal activities from inside the prisons. Siqueira Moraes said that "the private prisons will make it possible to resolve a long-standing problem: the level of criminality and corruption within the prisons. Much organized crime is coordinated from within the prisons, dominated by the drug-trafficking bosses."

Dammert shattered the Brazilian official's argument by pointing out something basic: private prisons are not trying to re-educate the inmates but rather to run a profitable business. "Recidivism [in private prisons] is the same or even higher than in regular prisons," said the Chilean researcher.

**Study blames drug laws for overcrowding**

In the study "Systems Overload: Drug Laws and Prisons in Latin America," which analyzes the situation in eight countries (Argentina, Bolivia, Brazil, Colombia, Ecuador, Mexico, Peru, and Uruguay), the Amsterdam-based Transnational Institute (TNI) and the US-based Washington Office on Latin America (WOLA) do not specifically look at private prisons but focus on what they consider the major cause of overcrowding.

The study points out that the explosive increase in the number of prisoners not only results from a probable increase in criminal activity but also comes from the idea, repeated by conservative sectors of all countries in the region, that security issues can only be dealt with by introducing harsher penalties, delaying the legal processes, and above all, lowering the age at which youthful offenders can be tried as adults.
In Chile, for example, when the Reforma Procesal Penal was passed in 2005, tougher sentences were set for all crimes. In just five years, the prison population has grown from 35,000 to 53,000, with the number of inmates now exceeding capacity by 160%.

The joint TNI-WOLA report presents a foundation for understanding the regional prison situation. The severity of current drug laws has contributed significantly to the increase in incarceration rates and to overcrowding in the countries studied. "The drug laws impose penalties disproportionate to many of the drug offenses committed, do not give sufficient consideration to the use of alternative sanctions, and promote the excessive use of preventive detention," the report says.

Dutch project coordinator Pien Metaal says that close to 85% of drug offenders come from the lowest links in the drug-trafficking chain (people possessing small quantities, consumers, street-level sellers). "Imprisoning minor offenders to restrict drug trafficking is useless, for the next day the bosses at the top replace them. But for the persons locked up, prison can destroy their lives," said Metaal.

With draconian laws allowing judges to ignore differences between the responsibility of a major trafficker and that of a small dealer, the number of persons jailed on drug charges in Argentina went from 1% of the prison population in 1985 to 27% in 2000. The slow legal process aggravates the situation. At present, only 26% of the 25,000 inmates in Buenos Aires province jails have been sentenced.

"Those who have not been sentenced have been in jail for an average of four years, years that have destroyed their lives, and perhaps for having had in their possession 5 grams of cocaine," said Roberto Saba, dean of the law school of the private Universidad de Palermo.

The study provides a final clarification of the complexity of the issue. Despite their differences, the eight countries share a common problem: persons jailed for drug-related crimes "typically come from the most vulnerable sectors of society—those with little formal education, low incomes, and limited opportunities."

"Poverty is evident in the prisons in all these countries," said Coletta Youngers, a senior fellow with WOLA. "Many of the persons enter the drug 'business' out of economic desperation, but the reality is that transporting, selling, and producing at that low level doesn't get anyone out of poverty, but it becomes an option despite the risks because it represents a steady income."

That economic desperation has led to what the study identifies as a "feminization" of drug crimes in the region. Most of those jailed for drug offenses are men, but the percentage of women jailed on drug charges is higher than the percentage of men jailed for the same reason.

"This is particularly visible in Argentina and Ecuador," said Youngers. "Many of these women are single and poor mothers. The fear they may have of ending up in prison or getting involved in the drug business is trumped by their need to provide for their families."

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