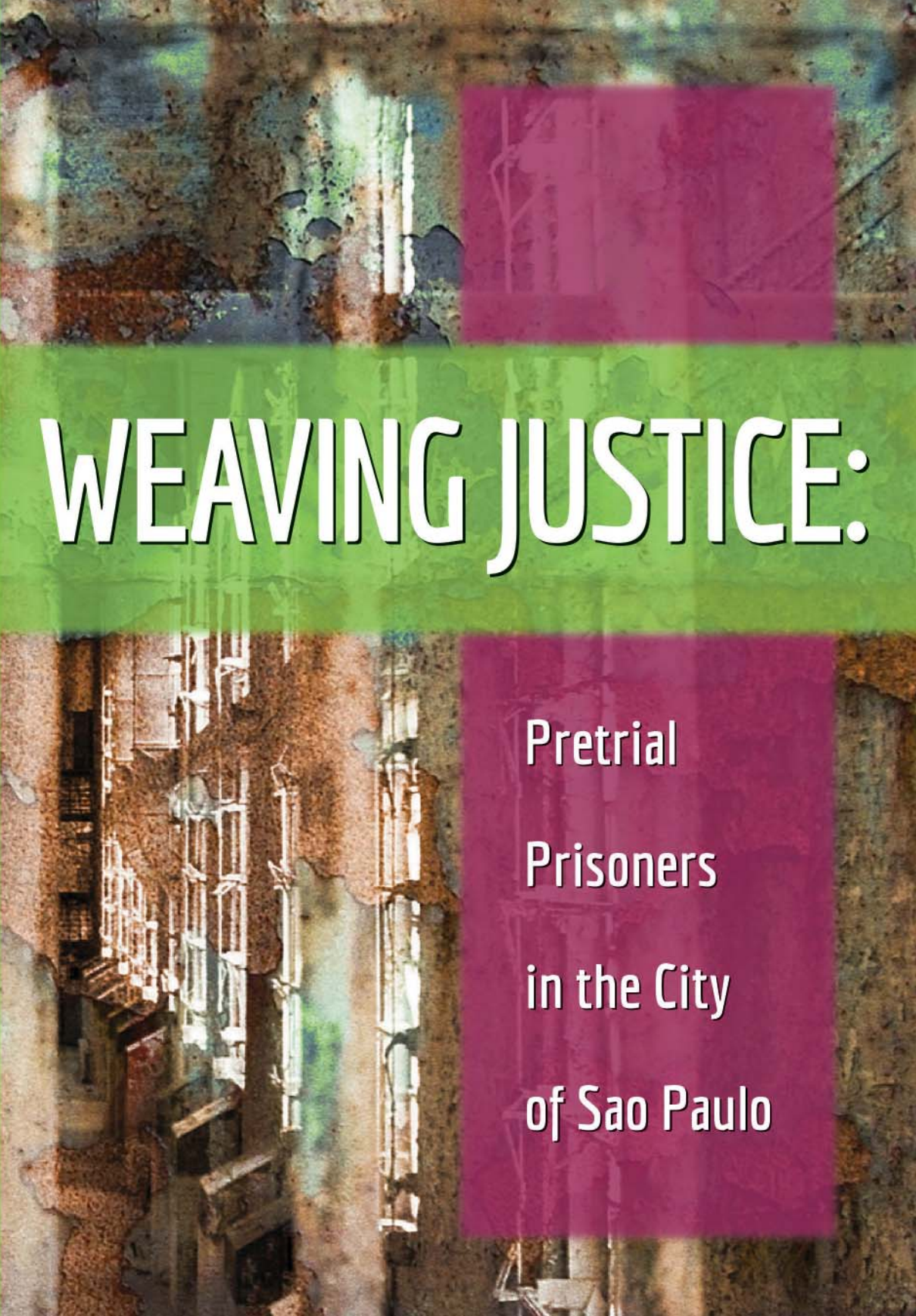
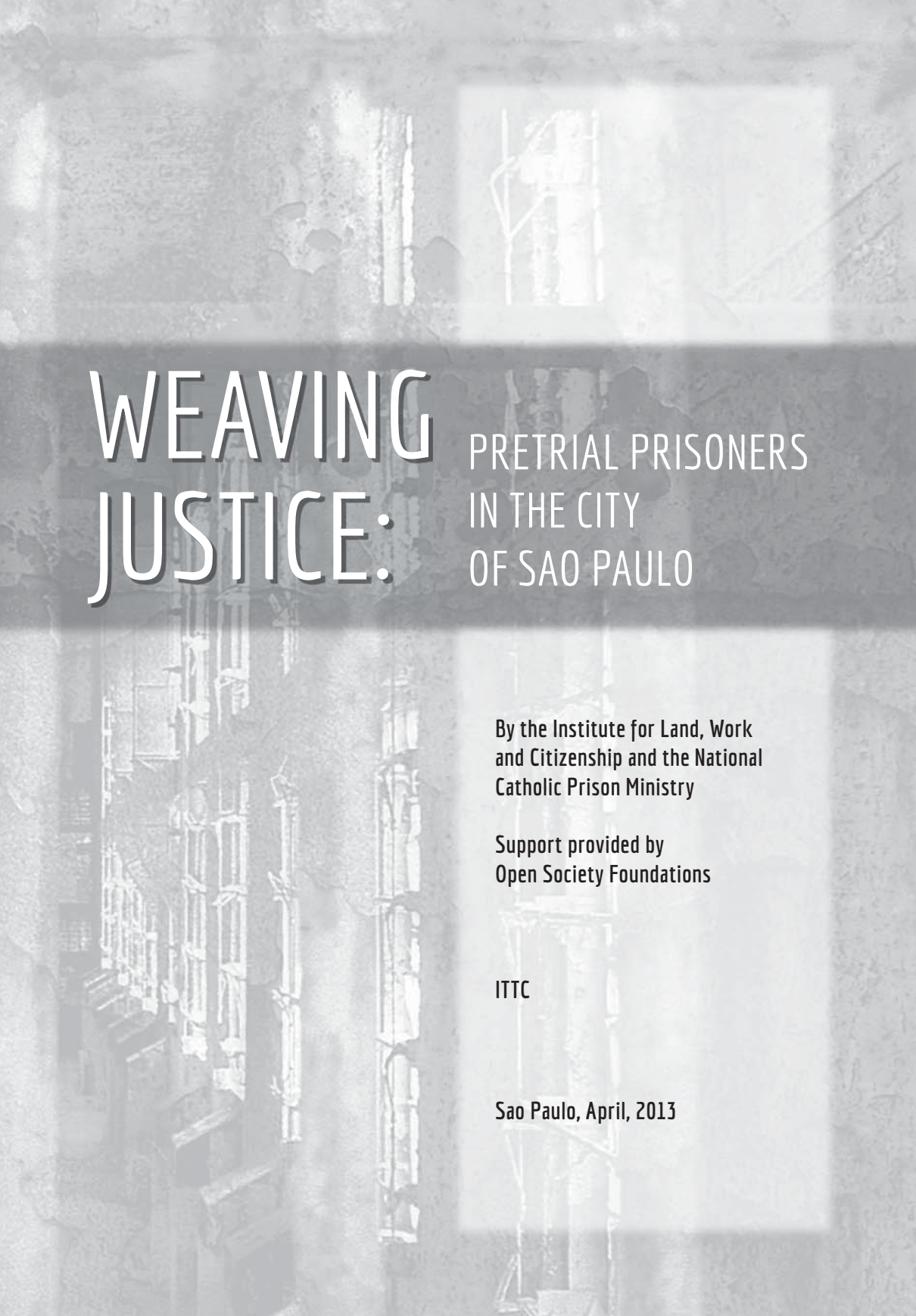


WEAVING JUSTICE:

Pretrial Prisoners in the City of Sao Paulo



WEAVING JUSTICE: PRETRIAL PRISONERS IN THE CITY OF SAO PAULO

By the Institute for Land, Work and Citizenship and the National Catholic Prison Ministry

Support provided by
Open Society Foundations

ITTC

Sao Paulo, April, 2013

This is a collective work done by the teams and partners of the Institute for Land, Work and Citizenship (ITTC), and the National Catholic Prison Ministry (PCr), with support from the Open Society Foundations (OSF)

Institutional Coordination

Heidi Ann Cerneka
José de Jesus Filho
Michael Mary Nolan
Denise Neri Blanes

Organizational Support and Financial Administration

Denise Neri Blanes
Maria Regina Gomes

ITTC Board of Directors

President: Michael Mary Nolan
Vice-president: Heidi Ann Cerneka
Treasurer: Denise Neri Blanes
Secretary: Verônica Sionti

National Catholic Prison Ministry Coordinating Team

Coordinator: Valdir João Silveira
Vice-coordinator: Petra Silvia Pfaller
Coordinator for women prisoners: Heidi Ann Cerneka

Weaving Justice Project: Technical Team

Fernanda Emy Matsuda – research coordinator
Flávia Novaes Barbosa Rodrigues – project coordinator
Cleyton Wenceslau Borges – lawyer
Graziele Bonnes Alves – lawyer
Luana Borba Álvares – lawyer
Maria Cecilia Goi Porto Alves – statistician
Maria Mercedes Loureiro Escuder – statistician
Ramon Arnus Koelle – lawyer

Interns

Aldo Cordeiro Sauda – Law
Ana Julia Andrade Vaz de Lima – Law
Caetano Patta da P.e Barros – Social Science
Felipe Eduardo Narciso Vono – Law
Fernanda Peron Geraldini – Law
Glaucia Alves dos Santos – Business
Guilherme Rossi – Law
Isabela Rocha T. Cunha – Law
Isadora Martinati Penna – Law
João Diego Rocha Firmiano – Law
Maíra Machado F. Pinheiro – Law
Mariana Tavares – Law
Marina Mattar S. Nasser – Social Science
Renato Cestito Brandão – Law
Vivian Oliveira Mendes – Law
Viviane de Ornellas Cantarelli – Law

Volunteers

Anderson Balsanelli – lawyer
Beatriz Goi Porto Alves – lawyer
Julio Cezar de Andrade – Social Work intern
Maria Pia Aradas – Social Science intern
Talita Satie S. Ferreira – Law intern

Weaving Justice Project: Technical Team 2012-2013

Luísa Luz de Souza – Research Coordinator
Isabela Rocha T. Cunha – Law intern
Caroline Dias Hilgert – Law intern

São Paulo (Estado) Instituto Terra Trabalho e Cidadania.

Weaving justice: pretrial prisioners inthe city of São Paulo: Instituto Terra, Trabalho e Cidadania e Pastoral Carcerária Nacional; collective work coordinator: Heidi Ann Cerneka, José de Jesus Filho, Fernanda Emy Matsuda, Michael Mary Nolan e Denise Blanes. Translation: Chad Jerome Ribordy – São Paulo : ITTC, 2013.

Original Title: Tecer Justiça: Presas e Presos Provisórios da Cidade de São Paulo

ISBN: 978-85-99948-03-3

1. Law. 2. Pretrial Detainees. 3. Public Defender´s Office. I. Cerneka, Heidi Ann. II. Jesus Filho, José de. III. Matsuda, Fernanda Emy. IV. Nolan, Michael Mary. Blanes, Denise. VI. Title.

CDD: 340

Our thanks go to the institutions and professionals who collaborated with this research and the production of this material, making it possible to access persons, locations and documents, and for contributing ideas and critical reflections.

Special thanks to:

To the lawyer Sônia Regina Arrojo e Drigo
To the public defender Daniela Skromov de Albuquerque
To the judge Sérgio Mazina Martins
To the sociologist Rafael Godoi

To the teams:

The Public Defender's Office, in the name of Head Public Defender Dr. Daniela Sollberger Cembranelli
The Sant'Ana Women's Prison, in the name of Director Maurício Guarnieri
Pinheiros Center for Pretrial Detention I, in the name of Director Wilton Oliveira Marçal
Archives for the Sao Paulo State Supreme Court, Ipiranga, in the name of Regina Cardoso

To our research partners:

Associação pela Reforma Prisional, Conectas Direitos Humanos, Instituto dos Defensores de Direitos Humanos (IDDH), Instituto da Defesa do Direito de Defesa (IDDD), Instituto Sou da Paz, Justiça Global, Núcleo de Estudos da Violência (NEV)

To our work partners:

All of the prisoners with whom the project team talked, supported and defended in the daily work of the Institute for Land, Work and Citizenship (ITTC), and the National Catholic Prison Ministry, with support from the Open Society Foundations (OSF).

Table of Contents

Preface

In taking on a project like this, of a study and a legal intervention in two prison units in Sao Paulo, the Institute of Land, Work and Citizenship (Instituto Terra, Trabalho e Cidadania - ITTC) and the National Catholic Prison Ministry (PCr) concern themselves with the impacts of the results. For us, this is not merely a search for data, because our priorities and actions are always focused on the defense of specific people in prison.

"Weaving Justice", a project which was possible through the support of Open Society Foundations, combines a study of the profile of people at the moment of their entry into the prison system, with a case defense favoring pretrial release. The project team sought to understand who the people were that had just been arrested, what were their difficulties and the circumstances of their arrest, and how it could be different if there were public defenders present when they were imprisoned. Therefore, the proposal was to guarantee access to the defender immediately after arrest in order to verify to what degree this procedure would increase the amount of pretrial releases. In addition, our team always sought to make contact with the inmates' families shortly after our interview with them. Our goal was to guarantee access to information about the case shortly after arrest and allow the inmates to have knowledge of and accompany their own cases.

The project team started with the hypothesis that access to a public defender shortly after arrest as well as to the case information would increase the number of pretrial releases and thus also reduce the pretrial prison population.

It was a surprise to discover that increases in the number of public defenders as well as access to information are only some elements of a complex chain of factors that can guarantee access to justice. Institutional and cultural barriers, and socio-economic structures play a definitive role in access to justice, and just the guarantee of the right to defense is not enough to overcome these difficulties.

Presentation

ITTC and the PCr, in conjunction with the Global Campaign for Pretrial Justice organized by the Open Society Foundations, and with cooperation from the Public Defender's Office of the State of Sao Paulo, present the results of their project Weaving Justice: Rethinking Pretrial Prison. Through its work with people who were awaiting trial in two large prison units in the capital of Sao Paulo (one for men and the other for women) from June 2010 through December 2011, the Project Weaving Justice challenges us to rethink a principle theme, the question of access to justice for the poorer segments of Brazilian society.

The project, in essence, proposes to address access to justice by starting from a concrete experience of judicial intervention on behalf of the pretrial inmates. During this process, the team encountered many obstacles, impediments, misunderstandings, difficulties and needs. They found populations that fit all the stereotypes as well as some that do not. The majority of the women and men are youths between the ages of 18 and 25, from Sao Paulo capital, brown skin color, with one or two children. A significant number of them live in the streets, and have varying stories of rejection by the public education system. They are immersed in the informal economy with which they have tried to support themselves, and many have never registered as voters (which impedes the rights of basic citizenship). In cases of shoplifting, armed assault, or drug trafficking (often accused with very small quantities of drugs), they often have no identification at the moment of arrest. Many of the women and men also complained of physical or verbal violence from the military police at the moment of arrest.

The selectivity of the criminal system is evident once more: it punishes certain segments of the population, and lets others off scot-free. However, the Weaving Justice Project not only confirms this universally recognized selectivity but also points out two truly unsettling and alarming concerns. Both are born of five centuries of political authoritarianism in which the elite class has been wrapped, and in which others have been trained and groomed.

The first of these unsettling concerns is connected to the actual idea of access to justice. We have always worked from the undeniably important angle of the real and legitimate institution of the Public Defender's office, a reality which is still in process of construction in some parts of the country. In the state of Sao Paulo alone it is worth noting that the number of public defenders does not even reach one fourth of the number of prosecutors and judges. However, the Project Weaving Justice makes us rethink this reality using concrete facts. We also cannot stop thinking it is extremely important that

this population has access to justice. In other words, it is not enough to bring people to an encounter with justice if this same justice does not propose to meet them halfway. Little will be resolved by guaranteeing access to lawyers, judges, and prosecutors if in fact, these same people turn a deaf ear to those who need their intervention. The emblematic cases that the Project shares, in this sense, speak for themselves.

Obviously, the question is not simply a matter of arresting or setting free. We are not defining "access to justice" by just counting the number of petitions for freedom or *habeas corpus* that were granted or denied. There are many things beyond the poverty of judicial language, which is both binary and restrictive at the same time. It is more than that. In fact, the problem is to know how to hear and look at what is happening with the part of the Brazilian population that finds itself within these profiles. It is necessary to understand the role of justice in the midst of all of this. It becomes necessary to question the police we have and whom they serve. It is necessary to question how prison is used as a political strategy in the midst of a society that is convulsing. Finally, the criminal justice system—composed of indifferent lawyers, judges, prosecutors, administrators and police—needs to be exposed to new questions, to be subject to new debates, to be open to new responses.

The identified profile of people in prison comes from a universe of millions who have become accustomed to finding in the justice system, even today, the hoarse repetition of only three verbs: exclude, accuse, and imprison. What the Weaving Justice Project shows us is the urgent necessity to add to this triad a fourth and much richer verb: **"converse"**. That is, it is necessary, finally, to build and demand a justice that also knows—and knows very well—how to converse with people, in their own language, starting from their perspective, without preconceived ideas and intentions. We need to learn, therefore to dialogue with people, a process which is not simple, nor fast, nor easy.

But the Weaving Justice Project brings us to a second and more fundamental concern. We remember that slavery, which spanned generations and was never completely resolved, seriously removed from Brazilian culture the ability to discern right and wrong. For us Brazilians, at least when we compare ourselves to other western nations, slavery caused a certain understanding of right and wrong to take deep, thick roots in the political and cultural soil of the country, roots that until today continue to sustain our power structure. Because there was no explicit break from slavery, it was able to continue in an informal manner for much more time, without challenge or confrontation, which is different from what happened in other western nations since the beginning of the 19th century. Slavery contaminated and continues to contaminate that which goes deepest in Brazilian culture, the authoritarian tradition against the underprivileged classes.

In that same Brazil, there is a certain, small public space where things work well, in certain neighborhoods and to the benefit of a very few. For all the rest, the space that is established is one that is domestic and private. Here the law does not ap-

ply because order and rules exist independently of it. Everything in this private space is much more intimate, habitual, and paternalistic. No one is allowed to meddle in this second environment. Thus, two different spaces exist. One guarantees rights; it is clear and open, but very small. The other is a space of no rights- dark, unnamed, but massive. In the minds of "the few," this latter space, where the humble and poor live, is not possible to control in any way except with the club and with force, seeing as it is filled with the "simple people who are naturally lazy and unproductive."

Thus, what we have here is much more than selectivity. Truly, it is a space devoid of rights where laws, codes, cases or other public instruments do not fit. It is the larger half of the world of the "not recognized," or in other words, that greater half of Brazil which some do not want to consider, and at times even deny its existence. It's this second Brazil that says it is not worth reopening the past, be that the distant past or more recent. This selectivity is the Brazil of those that do not want the intervention of the State in questions related to gender, that say that they abominate crack, but very much call attention to the neglect, the stigma and the contempt. It is the Brazil of the militaresque invasions and "fireworks" of weapons in the slums and peripheries, without search warrants. It is also the Brazil of "death caused by resisting arrest" which there is no reason to investigate[1]. It is the administrators and directors of prison institutions that do not give interviews, that do not reveal their statistics and numbers, and do not even let researchers within their walls. This Brazil has no way to be seen, except by that which is NOT said nor written nor published about it. The only way to find it is by the eloquence of its very silence.

This is the Brazil that the Project Weaving Justice meets and faces. The sensitivity of the researchers perceived the Brazil inside the prisons, and the Brazil of the group on the "other side" which is interested in an unrealistic idea of security that survives by cultivating insecurity through cruelty and villainy. The project also ran into the corporative interests of prosecuting attorneys, judges and public defenders. It found closed doors and bureaucratic obduracy of all kinds, and confronted the secrecy of hidden or missing documents and even – shockingly - the questioning of their right/legal capacity to act in the cases. Now what we have here is not only selectivity, but something much deeper, more embodied and rougher. In the name of the law, we have reinvented in the end, a type of dark matter.

São Paulo, May, 2012.

Sérgio Mazina Martins

Councilman of the Instituto Brasileiro de Ciências Criminais
Member of the Associação Juízes para a Democracia
Professor of Criminal Law in the Fundação Instituto de Ensino para Osasco (Unifieo)

1 Translator's note: This term has been used for years to justify homicides in police actions. The police document always referred to a "suspect that resisted arrest" and was shot in the process of being captured. However, the vast majority of cases showed people that were already in custody, or shot point blank, or shot from an upward angle aiming down, which suggests that the suspect or accused was on the ground. It is a blanket term used by the police to justify lethal action on the part of the police, and then not have to investigate, since they claimed always the person "resisted arrest."

An Introduction to Weaving Justice

The excessive and arbitrary use of pretrial prison, even though a violation of human rights, still affects millions of people each year. Ignored by those who make policies and those who apply the law, it generates and deepens poverty, slows economic development, spreads diseases, and upsets the Democratic State. Pretrial prisoners may lose their jobs or residences, contract and transmit diseases, receive offers of corruption in exchange for freedom or better prison conditions, and suffer torture and physical/psychological harm which can last beyond their time in prison.

The closer to the moment of arrest, the more the case's defense can have a positive impact not only for the person assisted, but also for the criminal justice case phase in general. Examples from various parts of the world reveal that interventions done near the time of arrest can reduce the use of pretrial prison, better the performance of the criminal justice authorities, allow more rational and effective decisions to be made, and elevate the level of responsibility and respect for the democratic state.[2]

The current forms of the apparatus for state social control have caused the exponential increase in the number of persons imprisoned, be it those who are awaiting sentencing or those already sentenced. The overcrowding of the prison system—a perfect setting for violation of human rights—is to a great degree caused by a serious problem in the access to justice: the excessive use of pretrial prison, which is the focus of this work. In this context of understanding "access to justice" as the application of rights protected by the State, it is important to identify some of these rights that are officially "protected" by the State, but in reality, are lacking. For instance the right to a fair trial, the fundamental guarantee of the presumption of innocence, and the right to a speedy trial are rarely implemented; in fact, the long amount of time in which they are held in pretrial custody can end up actually resulting in a type of advance payment on a possible sentence. This State policy worsens the already insufficient structure of the criminal justice system, which is unable to provide adequate physical space to these people, nor render juridical action fully alert to the rights of this population. The more direct result of this state option is the formation of tense and violent spaces inside and outside of the prisons.

2 Open Society Justice Initiative. Improving Pretrial Justice: the role of lawyers and paralegals. Pre-publication draft. New York: Open Society Foundations, pp. 5 and 13.

In 2009, the Open Society Institute began the Global Campaign for Pretrial Justice. Projects were initiated in 2010 and conducted simultaneously in various countries around the world, especially in Latin America and Africa, with the goals of promoting alternatives to pretrial imprisonment, increasing access to juridical assistance, increasing the number of public defenders acting at the moment of arrest, and giving incentives for the allocation of resources dedicated to public policies aimed at changes in the penal justice system. In Latin America, various countries such as Argentina, Peru, Mexico, Uruguay, and Colombia are engaged in similar projects. In Brazil, eight organizations conducted different projects and formed a network to study and propose public policies to reduce the negative impacts of pretrial prison for society.

Thus, the Institute for Land, Work and Citizenship (ITTC) and the National Catholic Prison Ministry (PCr), with support from the Open Society Foundations (OSF), and through an agreement reached with the Sao Paulo Public Defender's Office (DPESP)[3], developed the **Weaving Justice Project: rethinking pretrial prison**, for attending and providing defense for pretrial prisoners recently detained at the Pinheiros Center for Pretrial Detention I (CDP I) and the Sant'Ana Women's Prison (PFS), beginning in June of 2010 and ending in December of 2011. Besides the work of legal intervention, a survey was completed regarding information about the profile of the prisoners assisted and about the judicial cases in which lawyers of the project acted.

The present document shows the principal results of this experience. In the first part of the report, the objectives, the context, the methodology, the activities performed and the obstacles concerning the project are presented. The second part contains survey data collected from the questionnaires applied in the prison units, as well as data from the case information collection forms. Next, the report deals with some specific, emblematic cases which bring up important issues for debate. Finally, it presents the conclusions and recommendations made from the experience of this project.

3 Term of agreement Nº. 2/2010—Process Nº. 3430/2010, published in the *Diário Oficial do Estado de São Paulo* on Nov. 12, 2010

Overall Goal

- To contribute to the improvement of public policies within the realm of pretrial prison by means of the implementation and evaluation of on-site service in two selected prisons.

Specific Objectives

- To provide systematic and continuous legal assistance to pretrial prisoners in two selected prisons, offering orientation about the legal system and about specific cases, and taking the proper measures to obtain the prisoner´s release.
- To petition for the release of the prisoner at all levels of the legal system (the office of the Judge responsible for criminal investigation oversight – [DIPO]), the court chamber for an individual's case, the state supreme court, the Superior Court of Justice and the Federal Supreme Court) with the goal of securing the release of individuals as well as reducing the pretrial prison population.
- To identify cases of police violence or torture, especially at the moment of arrest, and provide for the proper legal measures.
- To improve actual pretrial prison conditions by making contact with families and presenting requests for the family to provide food, clothing, blankets, hygiene products and other necessary items, as well as visits. (Food is offered by the prison, but families can supplement it with permitted items).
- To identify inmates who present mental illness or chemical dependency, accompany them, and attempt to guarantee that their specific needs are met.
- To concentrate efforts on cases of petty theft, since these cases present a better and more immediate chance of pretrial release.
- To construct a profile of the pretrial prison population in these units (socio-economic, health and family situation).
- To offer empirical data based on this experience of pretrial prison intervention, in order to enable more effective planning and execution of public policies.
- To contribute to the strengthening of the state's Public Defender's Office, showing the absolute necessity for more public defenders assisting prisoners and better use of resources.
- To produce a report with data analysis and recommendations concerning the criminal justice system, especially for the state's Public Defender's Office.
- To publicly present the results of the project, provoking a debate among those who act in the criminal justice system in order to consider possible solutions to the problems presented by the project.

Context

The project began with the assumption that the penitentiary system is incapable of keeping its promises: namely, to reduce crime rate, to promote more humane treatment of prisoners, and to help prisoners harmoniously reintegrate back into society. The overcrowding of prisons, institutional violence, and precarious prison conditions are some of the problems which affect men and women who are submitted to deprivation of freedom in this country. [4] The current situation adds to the perception that the agencies charged with the administration of justice are not able to guarantee the rights of pretrial prisoners.

In the state of Sao Paulo, the defense of pretrial prisoners who cannot afford to hire a lawyer—those who are poor in the legal sense of the term—is the job of the state's Public Defender's Office. Since 2007, penal law requires all police bookings to be reported to the Public Defender's Office within 24 hours so that the office can take appropriate action. The reduced number of public defenders who act in this area and are assigned to DIPO (Department of Police Investigations, the organ charged with the jurisdictional functions before reaching the bench court phase) is a significant barrier in promoting access to justice for those pretrial prisoners who are filling up Sao Paulo's prisons. The shortage of public defenders adds to the practice adopted by judges and prosecutors who themselves do not routinely verify the necessity of precautionary custody, and therefore keep people in prison who are entitled to their freedom. It is important to note that pretrial prison is ordered from bench trial courts and higher courts, trivializing the use of pretrial prison[5].

Many times, the first contact between the public defender assigned to the court and the accused happens during hearings, debates, and sentencing, which may come months after imprisonment. It is not unusual that this first contact is the only one, which raises questions about how fully effective the defense tactics really are. The mere fact that a person faces trial while imprisoned may lead to significant barriers in terms of defense, since the imprisoned defendant's ability to produce evidence and contact witnesses is already impaired.

---

4 Data recently produced by the Ministry of Justice indicate that the Brazilian prison population is made up of 494,237 people, and the rate of imprisonment is 258 prisoners per 100,000 inhabitants. The state of Sao Paulo, in which 35% of the entire country's prison population is concentrated, has a rate of 418 prisoners per 100,000 inhabitants. Specifically concerning pretrial prison—that is, the condition of persons answering to charges while imprisoned—data from the state of Sao Paulo indicates that 61,525 people were in pretrial prison in June of 2010, of which 57,099 were men and 4,426 were women. (Data obtained at the site of the Ministry of Justice's National Penitentiary Department: <www.mj.gov.br>. Accessed on: Oct. 31, 2010.)

5 This is considered "trivializing" by the fact that what should be an exception has become the norm.

With the objective of contributing to the construction of public policies directed at the rights of pretrial prisoners in Sao Paulo, the project put a new strategy into practice in offering juridical assistance. The project's model of offering service *in loco* represents advancement in relation to the work developed by the state's Public Defenders Office—the array of the project's services were offered soon after the person entered the prison unit, and consisted of direct contact between the prisoner and the defense team (lawyers and law interns).

The personal contact soon after imprisonment made it possible, on the one hand, to give orientation about the accusations, how the criminal justice system functions, and the possible ways the case might unfold. In addition, it enabled the team to see the health conditions of the prisoner, as well as verifying any evidence of police beating or torture during the arrest process. Besides this, prisoners could provide the information necessary for the project team to enter into contact with the prisoners' families and relatives, who often did not even know the person had been imprisoned. The intervention provided by the team made it possible, to some extent, to obtain documents which supported the petition for release, and at the same time, to give prisoners access to basic necessities not provided by the administration and which the families/relatives would have to provide for the prisoner. [6]

The choice of Pinheiros CDP I (Pinheiros Center for Pretrial Detention I) from among the 17 others throughout the Sao Paulo metropolitan area (which encompasses areas such as Diadema, Guarulhos, Mauá, Mogi das Cruzes, Osasco, Santo André, São Bernardo do Campo, São Paulo e Suzano) was made because it receives prisoners from the police stations located in the center of the city. Many of those brought to this detention center were living on the streets and were users of crack cocaine. Although the unit was originally intended to receive pretrial prisoners, nearly 700 of the inmates were already serving prison sentences.[7] The unit is constantly overcrowded—at times there are more than 1,700 prisoners, a number which far surpasses its capacity of 512.[8] For a time in the month of December, 2010, admission of new prisoners was interrupted, and the service of the project was canceled for 15 days.

The Sant'Ana Women's Prison, for its part, has a capacity of 2,400, but its population during the project was 2,700,[9] 840 of these being pretrial prisoners.[10] Until February of 2011, the prison functioned as the center of pretrial detention for all women in the capital city. [11] The team chose this unit because of the concentra-

6 The set of these items is known in Portuguese as a "jumbo," which includes clothes, personal hygiene items, cleaning supplies, food, sandals, medicine, etc.

7 Information obtained during a meeting with the administration of the unit, held on May 21, 2010.

8 Data from October 25, 2010, available at <http://www.sap.sp.gov.br/>. Accessed on Oct. 31, 2010

9 Data from October 25, 2010, available at <http://www.sap.sp.gov.br/>. Accessed on Oct. 31, 2010

10 Information obtained during a meeting with the administration of the unit, held on June 11, 2010.

11 In February of 2011, the automatic inclusion of pretrial female prisoners began to happen at the Franco da Rocha Unit.

tion of pretrial prisoners in the unit, the overcrowded conditions, the institutional concerns with the increase of imprisonment of women, and other specific issues related to gender.

Thus, the project chose units which had the greatest concentration of people coming from socially fragile situations. However, as the structural conditions of the two units are very different, the work methods had to be adopted according to the prison establishments.

Methodology

Phase 1
(June 2010-July 2011)

- Hiring the team: coordinating team for the project and research, four lawyers, eight law student interns and a business student intern, all working 25 hours a week (5 hours per day). [12]
- Professional training of the team, with the help of lawyers, public defenders, and other specialists who work in this area.
- Institutional meetings with representatives from the state's Public Defender's Office, representatives from the Secretary of Prison Administration, and directors of prison establishments to make the project viable.
- Organized, on site, assistance at the Pinheiros CDP I and Sant'Ana Women's Prison between August 2010 and May 2011.
- Contact made with relatives and acquisition of documents to strengthen the petition.
- Presentation of requests for pretrial release and habeas corpus), and following these requests as they move through DIPO, the criminal courts, the State Supreme Court of Sao Paulo, the higher courts and the Federal Supreme Court.
- Assisting persons released.
- Constructing and applying a questionnaire aimed at determining profiles, as well as building and maintaining a database.
- Designing a sample plan, assembling and using a form for building, collecting, and maintaining a database for case information.
- Assembling partial reports of activities.

Phase 2
(July 2011-January 2012)

- Resizing the team: coordination of the project and research, two lawyers, three Law student interns, and two Social Sciences student interns.[13]
- Following requests made to DIPO, criminal courts, the State Supreme Court of Sao Paulo, the Superior Court of Justice, and the Federal Supreme Court.

12 In the first phase, we also counted on volunteers.

13 In the second phase, the project also counted on volunteer interns.

- Assisting persons released.
- Using a specific form for building, collecting, and maintaining a database for case information.

- Conducting interviews with those who work in the criminal justice system.
- Sponsoring an event on December 5, 2011, in which the results of the project were presented and discussed.
- Consolidation of the reports, and assembling the final report of activities.

Activities

- 1,537 persons assisted by the project.
- 1,161 questionnaires filled out and completed.
- 1,050 juridical requests were made.
- 348 cases examined for a survey of data related to the work.

Obstacles

It is certain that many of the barriers and obstacles the project encountered during its execution were related to the area itself in which the project operated – public security and prisons. That is, the project proposed to act together with bureaucratic structures, themselves characterized by rules, by regimented and hierarchical processes and procedures, and exacerbated by a strong emphasis on the issue of security as the defining guideline. The project team was not naive when making its initial proposal. The team took various steps with this in mind, predicting difficulties and trying to minimize risks, before making an agreement with the OSF. But it is also certain that they did not expect as many obstacles as they had during the course of the project, nor difficulties in forming partnerships, nor that they would cause so much discomfort and irritation in both the juridical system as well as in the areas of security.

With these premises laid out, some of the incidents and challenges encountered by the participating institutions and by the project team during implantation are presented below.

Relationship with the State Defender's Office

Initially, the project team established a cooperation agreement with the state of Sao Paulo's Public Defender's Office which unfortunately delayed in signing the

agreement, and some of the difficulties the team encountered during the execution of the project were a result of this delay. However, the aforesaid agreement did not, in the end, provide solutions to the problems and only brought more work for the team, such as a demand for filling out forms and for detailed, monthly reports. When the project team began to work in the prison units, the lack of a formal agreement of cooperation was circumvented by an informal agreement with a group of public defenders who work in the DIPO. The main barrier was in regard to obtaining copies of police investigations, especially those related to the cases of prisoners in Pinheiros CDP I. As affirmed earlier, the Public Defender's Office received copies of all police bookings, and in order to identify those reports related to potential attendees of the project, it was necessary to do a manual sorting according to the police district of origin. However, they could not count on employees to perform this task, just as the project's team could not. On many occasions, the lack of access to police investigations meant delays or even made it impossible to attend to these men in prison. The project team had believed that with a formal agreement, it would be possible to obtain a password which would access the system that contains the necessary data for filing requests, substituting copies of police investigations. This did not come to pass.

Another difficulty the project team had was in regard to certain privileges related to juridical assistance. Keeping in mind that the team conducted the defense of persons who could not afford to pay for the costs of a lawyer without causing financial difficulties to their home/family, the team considered it important that the project was given the same privileges that are guaranteed to the Public Defender's Office and to other organizations that offer free legal service.

Thus, an agreement was made for the exemption of fees charged for research done at the case distribution center of the Central Criminal Forum at Barra Funda, an important location because it provides invaluable data for the protocol of petitions. Every individual case consultation would have cost the project R$8.00, but through a request to the judge responsible for guaranteeing correct procedures of the Barra Funda Forum, this charge was waived. This obstacle was overcome also in thanks to the intervention of the state's Public Defender's Office.

Another delicate issue was in relation to duplicating work. The Public Defender's Office had agreed to not act in cases where women were imprisoned, because they would be taken to the Sant'Ana Women's prison. However, when the project team began to work at the Sant'Ana Women's Prison, they noted that in many situations women were arrested together with men, which meant that a public defender might have already filed a petition on behalf of the man, not perceiving that the woman would be assisted by the Weaving Justice Project. However- petitions filed on behalf of one defendant extend to the other defendant, so if the project filed a petition on behalf of the woman, it would also serve the man, and if the public defen-

der filed a petition on behalf of the man, it would also serve the women. The judge generally considered the petition that came first. To avoid this, the team signed an agreement with the Public Defender's Office that said the project team would take on these cases. However, on various occasions when requesting release for an inmate, the team saw that a petition had already been filed by a public defender, which quite logically meant that the team could not act, in spite of all of its efforts in working on the case, obtaining documents and preparing the petition. Therefore the former agreement was revoked, and in order to avoid duplication of work, the Public Defender's Office assumed responsibility for these cases. In spite of all of this, there were situations when this did not happen, and which could have resulted in the inexistence of a defense. Given such situations, the project team acting at the Sant'Ana Women's Prison monitored these cases, and when the public defender did not take up the defense, the project team informed the Public Defender's Office and took all possible juridical measures to request release for those persons.

Duplication of work happened more frequently when the imprisonment occurred on the weekend (Friday-Sunday) and the public defenders on call—who were not necessarily the ones who worked at DIPO and had knowledge of the project—did the requests for release. This problem also happened in relation to the hired lawyers. Many times the people who were assisted in the prison unit maintained that they did not have a lawyer when in reality they did because the family had hired one, a costly service and often to the detriment of the family's own livelihood.

It is also important to state that the project team encountered resistance from some public defenders in relation to service offered. One factor that contributed to these problems not being resolved was the replacement of the public defender who had participated in the project since its inception, and had been responsible for managing the project and had a decisive role in these moments. Another reason for the misunderstandings was related to the fact that the official work agreement had been made with the Advocate General, and this was not clearly passed on to the public defenders that began to work at DIPO after the first negotiations.

Moreover, despite the formal partnership with the Public Defender's Office, the Attorney General of the State of São Paulo, through a bulletin published by his office, urged prosecutors to question the legal right of the project's team to intervene in the name of the Public Defender's Office, an attitude which if not completely interrupting the consideration of the petitions filed by the project lawyers for pretrial release, often slowed them down significantly.

The physical structures of the prison units and the possibilities for assistance

At the Sant'Ana Women's Prison, the project team attended the prisoners in two

spaces: in the 2nd floor gallery, and in the observation area (RO) where new prisoners were taken. The upstairs gallery offered sufficient space to attend the prisoners: a long room divided into booths where there were adequate desks and chairs for filling out documents and for interviews. The space guaranteed the privacy necessary for appropriate exchange of information between lawyer and client, and made possible any subsequent denouncements of violence or mistreatment. Moreover, filling out the questionnaire was facilitated by this environment in which there were no other parties besides the interviewer and interviewee. However, in the observation area, the situation was very different: the space used was an area which opened up to the cells, and had no adequate space to attend to the prisoners. The conversation between the project team members and the prisoner usually happened at the work desk of the attending guard, with absolutely no privacy. This made it difficult to bring up sensitive topics, like police violence and the use of drugs. Later, the team was allowed to use an empty cell off the observation area which was used previously as a television room. This provided a little more privacy with the prisoners.

Aside from these difficulties, the work moved forward satisfactorily at the Sant'Ana Women's Prison. After a meeting with the administrators of the establishment and in virtue of the collaboration of the staff, it was almost always possible to access the records of the prisoners and obtain copies of the police investigations, both essential in preparing a judicial request.

However, the work at Sant'Ana Women's Prison ended earlier than expected. In February of 2011, the roof of one of the pavilions collapsed due to a storm. In order to repair the roof, the pavilion had to be closed and the prisoners being held there were relocated to other areas, which only made the overcrowded conditions worse. Because of this, the process of receiving new prisoners immediately after arrest was transferred to another prison in Franco da Rocha (a neighboring city). Since service was interrupted there the whole team of lawyers and interns shifted their attention exclusively to the male prison.

For its part, the work at the Pinheiros CDP I was full of various kinds of problems. First of all, it is important to highlight the precarious nature of the unit's physical structure. As already mentioned, the overcrowding at the unit made the work more intense—the prisoners obviously suffered from the situation, and maintaining the security of the unit was used repeatedly to justify the impossibility of assisting the prisoners or for the delays in bringing the prisoners in to be served.

Here the project team saw two philosophies of managing persons deprived of liberty that were in constant conflict. One focused on the model of risk management, and was more concerned about security and discipline than fundamental rights; the other affirmed that these rights must be held in a delicate balance with the demands for maintaining order and security. The model of risk management was

concerned with the well-functioning of the system, the neutralization of potential troublemakers, and the distribution of work. Whatever activity that tended to upset this pre-established order was seen as a threat to the positions and roles previously established. On the other hand, in the model which affirms fundamental rights, these rights not only prevail over any other goal, but also any other right must be designed from these fundamental rights. Thus security and discipline are conditioned on the guarantee that there will not be violations of human rights.

Although it was never certain to what extent the guarantee of rights put at risk the internal security of the establishment, the argument for security, in the eyes of management, seemed to justify itself without any need to prove its necessity.

When attending the prisoners at Pinheiros CDP I, lawyers normally use a visiting space specifically designated for them, which is usually filled with long lines of lawyers awaiting inmates. However, given the necessity of a method which would attend the greatest possible number of prisoners, this space was inadequate. As it was, there was no space dedicated to juridical service for the prisoners: the project's professionals used the same room as the director of discipline, which meant having the same obstacles as those described at the Sant'Ana Women's Prison; namely, there was no possibility to share confidential information. After some time passed, the administration made a small room available to the team, a room that had been used for storage and was located next to the director of discipline's office. However, this room was not big enough for two people to do simultaneous service (with two prisoners at the same time)—a practice, which given the vast numbers of prisoners who came every day, was absolutely necessary but not viable. In a conversation with the administration of the establishment, the project team attempted to resolve this problem.

The only option that was offered was to do the service in the so-called "birdcage" area, which was an open cell located between the administration building and the halls where the prisoners live, an area designated for inmates waiting for court subpoenas, correspondences, etc. Yet, the "birdcage" was almost always filled with an excessive number of prisoners, making it difficult to talk and fill out the questionnaires. Serving the prisoners in this space also made possible interaction between the team and those in isolation cells, and these inmates began to call upon team members to discuss problems and to make requests. This generated disapproval from the security guards, and thus added even more tension to an already delicate situation.

Another factor contributing to the difficulty of working at CDP I was being unable to access the documents related to the person's arrest, such as dossiers and police investigation reports. The unit alleged that they did not have the necessary resources to make copies of these documents, and the Public Defender's Office also

had problems providing them, as mentioned earlier. The solution to this problem was to resort to consultations at the registry office itself, which created undesirable delays in putting together a request for release.

Because of the prison unit's delay in bringing inmates to the team to be attended, the requests for release at times were done without previously talking to the prisoners; and the project team relied only on the dossier and/or the police investigation report. There were consequences to this method of filing without an initial conversation —an urgent demand from the prisoner, like a health problem or the necessity for contacting a family member, escaped the attention of the team. This also affected the study, because when the questionnaire was left for a later moment, it did not always get completed.

Another obstacle were the various blitzes done by the Group of Rapid Intervention (GIR) from the Secretary of Prison Administration, who would complete a thorough inspection of the cells, looking for cell phones, guns and other prohibited items. On the days when these inspections occurred, the administration did not allow the project team into the unit.

All of these factors, along with the significant number of people who are imprisoned at CDP I every week (between 35-40 people), interfered with the full execution of the initial work plan which had set forth to attend all prisoners who could not pay for their own defense. Given this difficulty, the team proposed a selection which encompassed three major groups of crime (drugs, crimes committed with violence or serious threat, and crimes committed without violence or serious threat).

Finally, it is important to point out that the differences in the treatment given to the project team by the administrations of the two prison units were due to a range of factors, including those mentioned above as well as an issue related to the partnerships previously formed between the executing institutions of the project and the administration of the Sant'Ana Women's Prison. Before the project began, there already existed a relationship of trust and collaboration between the Sant'Ana Women's Prison and the two entities, ITTC and the National Catholic Prison Ministry. Conversely, on the many occasions when the project team presented problems or demands related to the prisoners' living conditions to the management of Pinheiros CDP I, the administrators interpreted this as a position that went beyond "strictly juridical" work and saw such posturing as interfering in the management of the unit.

Moreover, when the model of risk management and preserving security was strong. In this model, the prison administration believed that the function of the criminal defense should be restricted to case work, and that the "well-being" of the prisoners should be left for the operators of the penitential system. In a model which affirmed fundamental rights, all must share in the same obligation to guarantee and protect individual rights, and the other tasks will only be accomplished if those

rights are preserved first. In the same way, the demands for security and discipline would be a function of the fundamental guarantees in such a way that these guarantees will never be sacrificed in favor of those demands.

Imbalance between demand and human and material resources

The work plan originally presented was extremely audacious, but it underestimated the real demands and the obstacles the project team encountered. The size of the work team (four lawyers and eight interns) proved to be insufficient to conduct all of the programmed activities and the care of those inside the prison units. The team defined its work routine as direct service in the prison units, contact with family/relatives asking for documents and giving information, examination of cases and preparation of plans, to accompany specific requests, etc., as well as to support the research. It is important to point out that the work proposal consisted of offering a specialized assistance, which should not to be confused with "production line" requests for pretrial release, pretrial release, and *habeas corpus*. Quality service demands reflection, study, and improvement of legal arguments and theories; and this intellectual work, along with deadlines and quality of service, was many times damaged by the pressure the work exerted, a pressure that only increased during the duration of the project and compounded by the shortage of staff. Still, the great number of people attended and the number of judicial requests demonstrate that in spite of these difficulties, the project was fruitful in the consolidation of information that could contribute to building up public policies at all levels of the criminal justice system.

Access to information

As previously stated, there were difficulties in accessing dossiers and police investigation reports; besides this, there were problems in conducting the accompaniment of the cases in an adequate fashion. The website for the State Supreme Court of Sao Paulo is a very important tool for being able to accompany the development of the criminal case and judicial decisions. However, there are problems in the updating of the information, and much information is not even registered there. Therefore, this made it difficult to follow the cases through the internet, and to do a consultation of the cases as outlined in the research plan. The alternative in dealing with this issue was to consult the database of the Public Defender's Office. However, it was a precarious arrangement that depended on the availability of the workers at the office.

Another challenge for the project in regards to research were the delays by the administration of Pinheiros CDP I in providing requested data related to pretrial

prisoners in the period immediately prior to the research. While attending prisoners in the unit, the relationship between the project team and the administration of Pinheiros CDP I was marked by tense moments, which led the research coordination team to avoid more tension by making new solicitations.

Thus, the project team awaited a decision from the administration about the information for the control phase of the research. When the active phase of the intervention was already ending, the administration responded refusing to collaborate with the lists of names. Not having an alternative, the team proceeded with a request for judicial authorization to consult the data, which was finally conceded, but not in enough time to collect and use case information.

Results of the survey: profile of the pretrial population

The Weaving Justice Project promoted the rendering of juridical assistance to persons arrested *in flagrante* and recent arrivals to Pinheiros CDP I and the Sant'Ana Women's Prison. Parallel to the work of intervention, the project team also conducted a survey to understand the population served. The team obtained this data through a questionnaire applied when attending the prison units.

Before applying the questionnaire, the team provided an explanation of the purpose of the research and affirmed the confidentiality of the information. A consent form was then signed. According to an evaluation done by the team which acted in the prison units, the questionnaire was an important element in forming a relationship with the person interviewed, and thus helped to facilitate assistance of that person. Many times, this conversation brought to the fore difficult situations that the prisoner had experienced. It is necessary to state that in the interview process, the project team often encountered people in a state of shock from being imprisoned, others who were nervous, and still others sad or surprised since the time of interview was very near the time of their arrest and imprisonment.

The questions were divided into four main sections according to their purposes in the research:

1. Socioeconomic profile: gender, age, nationality, place of birth, marital status, occupation/profession and work situation, income, formal education, residence/homelessness, race, sexual orientation and children;
2. Moment of arrest: date, time, location of arrest, who made the arrest, police station of origin, knowledge of the crime charged, and police violence;
3. Relation with the police and the other organs of the justice system: the existence of police confrontation or aggression prior to the arrest, past history of prison sentencing or alternative sentencing, any other criminal case still pending, and history of any juvenile justice involvement or sentencing as an adolescent;
4. Health: health problems and their treatment, the use of drugs in the past and present and treatment for this problem, pregnancy and pre-natal care.

Once the questionnaire was assembled, the project team proceeded to construct the database and the mechanisms to feed it.[14] The results of the final edition of the database are contained throughout this report.

It is important to highlight that not all of the persons interviewed in the prison units received juridical assistance; that is, they did not have their request for prison release formulated by the project, generally because there was already a lawyer for the case. Although there was a methodological demand to give the questionnaire at least to all of the people for whom there was a request for prison release, this was not possible given the difficulties the project team encountered and which were previously explained in this report, especially those difficulties at Pinheiros CDP I. The results are organized according to gender and attendance by the project ("Attended" or "Not attended"). The category "Attended" includes those for whom the project formulated a juridical request for release. The "Not attended" category are those with whom the project met—they were interviewed and given juridical counsel—but they did not have their requests for prison release formulated by the project, generally because they already had an appointed or hired lawyer.

For the purposes of the research, 1,161 questionnaires were processed with the following distribution:

Table 1 **Questionnaires completed**

Questionnaires completed	Attended	Not attended	Total
CDP I of Pinheiros	371	134	505
Women's Prison of Sant'Ana	374	282	656
Total	745	416	1.161

Table 2. **Questionnaires completed by gender**

Questionnaires completed by gender	%
Men	43.5
Women	56.5
Total	100.0

Source: ITTC/Pastoral Carcerária

14 In spite of the fact that ITTC does not have research as its mission, this has been a concern since ITTC's foundation and research has been as an instrument to complement its action in all of its projects. In this sense, the questionnaire, used since the research done by the Citizenship in the Prisons group and improved by ITTC's intervention teams in their last 10 years of working in the prisons, was the base for organizing the Weaving Justice Project's questionnaire. The data and definitions of the research items are based on the categories from IBGE so as to establish the possibility of comparing national statistics. Moreover, the team's other concern, was the approximation of this questionnaire to other questionnaires given by the partners of the OSF in Brazil, making it possible to compare results afterwards.

Table 3. **Age range (%)**

Age range	Population attended		Population not attended	
	Men	Women	Men	Women
18 to 25 years old	44.8	42.9	53.5	37.9
26 to 30 years old	19.6	20.8	15.5	19.3
31 to 35 years old	16.7	14.6	13.2	13.2
36 to 40 years old	9.4	10.0	10.1	11.4
41 to 45 years old	5.8	5.9	2.3	8.2
46 to 50 years old	2.2	4.0	1.6	4.6
Above 50 years old	1.7	1.9	3.9	5.4
Total	100.0	100.0	100.0	100.0

Source: ITTC/Pastoral Carcerária

The data regarding the age of the interviewees reveals a very young population, with the majority in the age range between 18 and 30 years old—66.8% of the men and 60.5% of the women fall in this category, taking into account those attended and not attended.

Regarding the country of birth, very few were foreigners: among the men who were attended and completed the questionnaire, there was only one, and there were no foreigners among those not attended. Of the 24 (3.7%) foreign women interviewed, the project attended only six.

Table 4. **Region of Birth (Brazil) (%)**

Region of birth (Brazil)	Population attended		Population not attended	
	Men	Women	Men	Women
South	4.2	1.7	3.9	1.9
Southeast	69.0	83.7	68.0	81.3
Central-west	1.7	1.7	1.6	0.0
Northeast	24.6	12.2	25.0	15.2
North	0.5	0.8	1.6	1.6
Total	100.0	100.0	100.0	100.0

Table 5. **State of Birth (Brazil) (%)**

State of birth	Population attended		Population not attended	
	Men	Women	Men	Women
São Paulo	62.4	78.2	62.5	76.9
Other states	37.6	21.8	37.5	23.1
Total	100.0	100.0	100.0	100.0

Source: ITTC/Pastoral Carcerária

Table 6. Place of birth (State of São Paulo) (%)

Place of birth (SP)	Population attended		Population not attended	
	Men	Women	Men	Women
Capital	65.9	78.2	73.8	84.0
Other municipalities of the metropolitan area of Sao Paulo	21.2	13.0	12.5	9.0
Other municipalities of the state of São Paulo	12.9	8.8	13.7	7.0
Total	100.0	100.0	100.0	100.0

Source: ITTC/Pastoral Carcerária

In relation to the place of birth, the majority of both the men and the women were either from the Southeast or the Northeast, most being from the Southeast of Brazil. Sao Paulo was the state of origin most often indicated, and its capital was the birth place of most of the interviewees (69.9% of men and 81.1% of women), the great majority being from the capital itself or one of the surrounding municipalities.

Regarding the total number of men interviewed, more than 80% declared their residency to be the city of Sao Paulo, and 15.5% said they were of some other municipality of the metropolitan region. Of the residents of the city of Sao Paulo, a little less than half (44.8%) said they were living in the center of the city, and another 19.4% said they lived in the eastern zone of the city. Regarding those women attended and not attended, 87.4% declared residency in the city of Sao Paulo, and another 9.9% declared the larger metropolitan area. Of the women residents of the city of Sao Paulo, 37.5% lived in the eastern zone, 24.4% in the southern zone, and 18.8% in the northern zone.

Table 7. Color or race* (%)

Color or race	Population attended		Population not attended	
	Men	Women	Men	Women
White	29.6	30.9	25.8	37.1
brown	34.5	45.9	39.1	39.3
Black	15.5	12.6	15.6	12.9
Yellow	1.1	0.5	3.9	1.1
Indigenous	1.9	1.4	2.3	2.2
None of the above	15.2	8.7	11.7	5.5
Don't know	2.2	0.8	1.6	1.8
Total	100.0	100.0	100.0	100.0

* Both the IBGE and our study use self-declaration to identify race and ethnic origin. The IBGE uses colors, and so the study used the same colors as the IBGE (white, brown, black, yellow (Asian), indigenous).

Source: ITTC/Pastoral Carcerária

To register race or color, the project team opted for the classifications used by the Brazilian Institute for Geography and Statistics (IBGE) so that the team could compare the interviewed population with the general population. While filling out the questionnaire, it was possible to observe that phenotypic characteristics are not determinants for the identification with one color or another; and further, the race issue goes beyond the categories traditionally used. Many people struggled or refused to identify themselves as "black," as they said they preferred to use the term "negro". Similarly, the interviewees did not identify with the category "brown," but used instead "moreno." This explains why there is such a high number in the "none of the above" category.

Table 8. Color or race in comparison to PNAD* (%)

	Population attended	Population not attended	PNAD Brazil	PNAD Southeast
White	35.0	38.4	54.0	64.0
Brown	46.3	44.0	39.9	28.4
Black	15.9	14.0	5.4	6.7
Yellow	1.0	2.2	0.5	0.8
Indigenous	1.9	1.5	0.2	0.1
Total	100.0	100.0	100.0	100.0

* Data available at: ‹http://www.ibge.gov.br/home/estatistica/populacao/condicaodevida/indicadores minimos/Table1.shtm›. Acessed on: Dec. 27, 2011.

Source: ITTC/Pastoral Carcerária and Pesquisa Nacional por Amostra de Domicílios (PNAD—National Research by Household Samples) 1999

One may note that given the racial make-up of the Southeast, there is a disproportionate number of "brown" and "black" people among those interviewed, especially blacks. This serves to reinforce the notion that there is selectivity in the criminal system, including the police apparatus which is responsible for the initial police approach. Those cases without response were excluded (between 13.45% of those attended and 10.3% of those not attended) so as to be consistent with the PNAD data.

The statistics regarding the question about the interviewee's sexual orientation are not reliable because of the lack of privacy or because of the presence of prison employees when the questionnaire was given. From the surveys, 96.1% of the men and 91% of the women declared themselves to be heterosexual, whereas 2.1% of the men and 7.6% declared themselves to be homosexual.

Table 9. **Marital status (%)**

Marital Status	Population attended		Population not attended	
	Men	Women	Men	Women
Single	55.3	56.8	51.2	55.5
Married	6.6	2.9	6.2	11.4
With partner	32.6	33.0	37.2	24.2
Separated or divorced	5.5	4.8	4.7	6.4
Widowed	0.0	2.4	0.8	2.5
Total	100.0	100.0	100.0	100.0

Source: ITTC/Pastoral Carcerária

The data concerning marital status showed the majority to be single; and in cases where there was a live-in partner, most opted not to marry officially. Thus there is a significant difference between the number of people who reported having a partner and those who were married.

Table 10. **Children (%)**

Children	Population attended		Population not attended	
	Men	Women	Men	Women
No	47.0	18.9	48.9	22.1
Yes	53.0	81.2	51.1	77.9
Total	100.0	100.0	100.0	100.0

Table 11. **Number of children (%)**

Number of children	Population attended		Population not attended	
	Men	Women	Men	Women
One	41.2	34.7	42.2	29.8
Two	33.3	22.6	34.4	28.4
Three	12.4	17.5	12.5	18.8
Four	4.5	11.1	6.3	9.6
Five or more	8.5	14.1	4.7	13.3
Total	100.0	100.0	100.0	100.0

Source: ITTC/Pastoral Carcerária

Table 12. Living with own children (%)

Living with own children	Population attended		Population not attended	
	Men	Women	Men	Women
No	76.3	43.8	69.5	29.0
Yes	23.7	56.2	30.5	71.0
Total	100.0	100.0	100.0	100.0

Source: ITTC/Pastoral Carcerária

More than half (52.1%) of the men interviewed reported having children, and three fourths of these (75.6%) had one or two children. The number of men who had children but did not live with them (72.9%) was very significant. This data is even more revealing when compared to the same data related to women: 80% had children, and of these, 57.8% had one or two children, and 63.3% lived with their children. This means that cohabitation between mother and child was more than two times that of men who were fathers.

Table 13. Homelessness (%)

Homeless	Population attended		Population not attended	
	Men	Women	Men	Women
No	68.2	86.5	86.2	95.6
Yes	31.8	13.5	13.8	4.4
Total	100.0	100.0	100.0	100.0

Source: ITTC/Pastoral Carcerária

The table above gives evidence of the great number of men attended by the project who were homeless. The project team had thought that this number would be significant because of the choice of Pinheiros CDP I for the project, but did not expect the number to be so high. There is no doubt that the mechanisms of state repression act with selectivity in relation to certain segments of society (men, youth, poor and black), which are commonly alienated from access to rights.[15] They are also subjected to other pernicious practices from the city government, such as the systematic closing of homeless shelters in the central region of the city.

In regard to those the project team interviewed who were or had been homeless in the city of Sao Paulo, the vast majority of the men lived on the streets in the center of the city (91.1%), while the women were divided between the center (39%) and the eastern zone (25.4%) of the city. The high percentage of men from the center was explained by the fact that Pinheiros CDP I received prisoners from police stations

15 Research organized by NEV/USP presents the same issues: "*However, penal and public security policies always end up targeting especially the poorer and underprivileged populations, above all, youth, as the data of this research demonstrates. It is becoming clearer that if (drug) trafficking becomes an opportunity to earn income, and any other way becomes more difficult, then combating this problem lies in guaranteeing individual economic rights and in the distribution of wealth (p. 115).*"

in the center region. Taking into consideration the availability and access to public services, almost half of the men (48%) and 26.3% of the women living on the streets had already lived in shelters but did not do so anymore. Less than one third of men (30.4%) and more than half of women (63.2%) has never lived in a shelter.

Between 2008 and 2010, more than 1,000 shelter beds in the center of the city were closed[16], a measure which was part of the city's plan to "clean up" the areas of the city where a great number of people circulated. According to a 2009 census done by Fipe (Schor e Vieira, 2009), there were 13,666 people living on the streets of Sao Paulo, which during that time represented 0.1% of the population. This underlines the idea that "providing services" to this sector of the population is really a euphemism for criminalizing poverty.

Table 14. **Level of formal education (%)**

Level of formal education	Population attended		Population not attended	
	Men	Women	Men	Women
Never went to school	2.5	3.3	2.3	0.7
Elementary/Middle School not completed	50.7	48.2	42.7	44.6
Elementary/Middle School completed	17.0	12.3	14.5	12.5
High School not completed	15.6	17.4	23.7	13.9
High School completed	11.5	16.9	10.7	22.1
Higher Education, completed or not completed	2.7	1.9	6.1	6.1
Total	100.0	100.0	100.0	100.0

Source: ITTC/Pastoral Carcerária

When asked about professions or occupations held, many responded that they performed activities which needed little or no special training. The data about schooling in the table above corroborates with these responses. Among men, the activity most mentioned were those connected to construction jobs, such as a bricklayer's helper, janitor, painter, handyman, etc. (18.6%). A significant number (10%) also worked as street vendors. In addition, one tenth of the men interviewed and attended by the project said they were unemployed, and 5.2% of the men interviewed but not attended by the project replied the same.

The situation of the women was not different, many responding that they held jobs that did not require training: day laborers, domestic help and cleaners (17.9%), and general helpers (10.3%). The number of unemployed women (14.4%) was higher than that of the men. The percentage of women who declared that they were housewives was 8.3%, which inflates even more the quantity of women who declared themselves not to have an income-generating profession.

16 "Kassab fecha albergues e lota ruas", O Estado de São Paulo, 4 de fevereiro de 2010. Available at: <http://www.estadao.com.br/noticias/impresso,kassab-fecha-albergues-e-lota-ruas,506065,0.htm>. Accessed on: April 28, 2012.

However, the majority of people affirmed that they were working just before their imprisonment—69.2% of men and 61.1% of women offered a positive response to this question. Besides this, their work was linked to sustaining the family in the majority of cases, as the tables below confirm.

Table 15. **"Currently working?" (%)**

"Currently working?"	Population attended		Population not attended	
	Men	Women	Men	Women
Yes, in the formal sector	7.4	3.8	13.5	10.9
Yes, in the informal sector and continuous	31.6	23.6	29.3	29.5
Yes, in the informal sector and discontinuous	30.2	30.8	26.3	23.6
No	30.8	41.8	30.8	36.0
Total	100.0	100.0	100.0	100.0

Table 16. **"Contribute to sustain the family?" (%)**

"Contribute to sustain the family?"	Population attended		Population not attended	
	Men	Women	Men	Women
Yes, as the primary provider	33.6	30.5	36.6	33.6
Yes, but not as the primary provider	29.6	28.8	36.6	39.5
No	36.8	40.7	26.8	27.0
Total	100.0	100.0	100.0	100.0

Source: ITTC/Pastoral Carcerária

The family income of the people attended by the project was quite low: 41.6% of the women and 27.9% of the men declared that they earned less than the "minimum salary", and 33.8% of women and 42.2% of men earn between one and three "minimum salaries."[17] The percentages of men and women attended by the project who do not have a family income were 16.9% and 13.8%, respectively. The income of the persons not attended by the project was not significantly different. The category with the highest percentages was that which is between one and two "minimum salaries": 40.2% of the women and 49.2% of the men responded that they fall in this category.

The data related to voter registration is another important element to be considered since the right to vote for pretrial prisoners is guaranteed by the Federal Constitution and should be ensured by public authorities. Organized civil society has struggled for years to guarantee citizens behind bars their right to vote.

17 In March of 2011, the actual value of the monthly "minimum salary" was increased to R$545, which on the same date, had a US$ value of $327.85.

Table 17. **Voter Registration (%)**

Voter registration	Population attended		Population not attended	
	Men	Women	Men	Women
Yes	67.5	71.4	71.8	78.1
No	32.5	28.6	28.2	21.9
Total	100.0	100.0	100.0	100.0

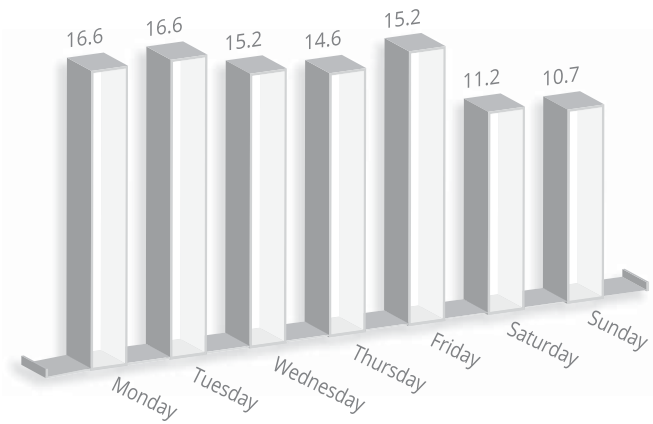
Source: ITTC/Pastoral Carcerária

On the other hand, the fact that 30% of the men and 25% of the women were not registered to vote makes it impossible for them to exercise this right, and demonstrates the distance between this sector of the population and the exercise of their citizenship. Some examples exist in other prison units which guarantee access to documents, such as a Social Security card, an identity card, and a voter registration card for those persons who do not have them. This demonstrates that it is possible for the prisoners to attain these rights and guarantees of their citizenship.

Table 18. **Documents at the moment of arrest (%)**

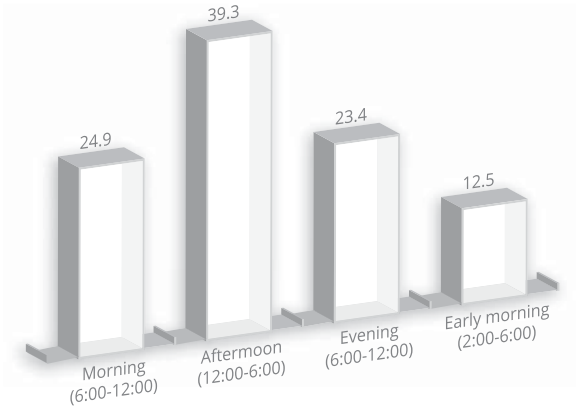
Documents and arrest	Population attended		Population not attended	
	Men	Women	Men	Women
No documents	68.4	65.7	54.5	51.5
Documents in possession	31.6	34.3	45.5	48.5
Total	100.0	100.0	100.0	100.0

Graph 1. **Day of the week in which the arrest occurred (%)**



Source: ITTC/Pastoral Carcerária

Graphic 2. Time of day in which the arrest was made (%)



Source: ITTC/Pastoral Carcerária

It is interesting to note that it is possible to identify a pattern in which arrest occurs more frequently between Monday and Friday (averaging 15.6% per day in contrast to 11% on Saturdays and Sundays), and during business hours (64.2%). A first reading of these statistics may make one believe that the majority of crimes are committed during the day, since the majority of prisoners are caught *in flagrante*. One the other hand, one can suppose that police activity is more intense during the day, which leaves in question what these statistics reveal: are more crimes committed or is there simply more activity on the part of public security agents?

Almost all of the arrests of the men who responded to the questionnaire occurred in the city of Sao Paulo, with the greatest number being in the center of the city, which matched the project expectations since people arrested through the city center's police stations are sent to Pinheiros CDP I. Exactly 69.1% of the men caught *in flagrante* were arrested in the neighborhoods of Bela Vista, Bom Retiro, Cerqueira César, Consolação, Liberdade, Luz, República, Santa Cecília, Santa Ifigênia and Vila Buarque. In relation to the police station of origin[18], most came from the 77th (22.9%), the 5th (19.6%) and the 4th (13.4%).

For their part, the women the project team interviewed at the Sant'Ana Women's Prison were also mostly arrested in Sao Paulo. Although there is a wider representation of the neighborhoods, most were arrested in the central region (18.5%). This is reflected in the data about the police station of origin. Looking at the police stations most represented numerically speaking[19], 6.3 % came from the 3rd Precinct, 4.2% from the 97th, 3.9% from the 1st, 3.4% from the 4th, and 2.7% from the 77th.

18 The men mentioned the following stations: 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 12th, 13th, 23rd, 37th, 63rd, 72nd, 77th, 78th, and the Metropolitan Station (Delpom).

19 The women mentioned the following stations: 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 12th, 13th, 14th, 17th, 23rd, 32nd, 37th, 55th, 63rd, 68th, 72nd, 77th, 78th and the Metropolitan Station (Delpom).

Concerning the crime that caused the arrest, 93.3% of the women and 96.1% of the men said that they were accused of committing a single crime. For the purposes of analysis, the responses in which there were multiple crimes, theft, robbery and drug trafficking were prioritized. The distribution of registered crimes among the interviewees may be seen in the tables below.

Table 19. **Crime being accused of (%)**

Crime being accused of	Population attended		Population not attended	
	Men	Women	Men	Women
Theft	40.9	38.5	37.2	39.8
Robbery	35.6	16.5	29.5	10.4
Drug Trafficking	15.7	38.8	14.7	31.6
Other	7.7	6.1	18.6	18.2
Total	100.0	100.0	100.0	100.0

Source: ITTC/Pastoral Carcerária

In this population of newly-arrived prisoners (the target audience of the research), the statistics show a high rate of theft, as much for men as for women.[20] However, if we see the official statistics for the crimes of which the prisoners are accused (whether pretrial or sentenced prisoners, crimes committed or attempted), the numbers are distributed differently, with theft being less significant.[21]

Table 20. **Type of place where arrest was made (%)**

Type of place where arrest was made	Population attended		Population not attended	
	Men	Women	Men	Women
Public space	78.6	56.0	71.4	43.7
Commercial establishment	6.8	21.9	12.8	30.5
Train/Metro station	8.9	1.6	6.0	1.4
Residence or dwelling place	3.8	12.8	6.0	14.7
Prison unit/police station	0.0	4.6	1.0	3.9
Other	1.9	3.1	2.8	5.8
Total	100.0	100.0	100.0	100.0

Source: ITTC/Pastoral Carcerária

20 For the purpose of this study, "theft" refers to a non-violent crime such as shoplifting, where the victim has not been threatened and is often unaware of the occurrence of the crime. Robbery, on the other hand, includes violence, verbal or physical.

21 It is interesting to note that in the state of Sao Paulo, the rates of incidence of robbery, theft and drug trafficking are different than the rates which appear among the population studied at Pinheiros CDP I and at the Sant'Ana Women's Prison. In June of 2011, on the website of the Depen of the Ministry of Justice, the state of Sao Paulo shows that 23.3% of men are arrested for drug trafficking, 15% for theft, and 35% for robbery. Regarding women, 62% are arrested for drug trafficking, 6% for theft, and 16% for robbery.

Table 21. **Who made the arrest? (%)**

Who made the arrest	Population attended		Population not attended	
	Men	Women	Men	Women
Military Police	65.7	77.1	69.3	69.3
State Civil Police	10.0	11.6	15.0	15.7
Metropolitan Civil Guard	11.4	3.4	7.9	4.4
Train/Metro security guards	9.4	0.8	3.9	0.0
Private security officers	1.9	3.1	1.6	5.1
Penitentiary agent	0.0	3.4	0.8	2.2
Others	1.6	0.6	1.5	3.3
Total	100.0	100.0	100.0	100.0

Source: ITTC/Pastoral Carcerária

Regarding the locale, both men and women were mainly arrested in public spaces. However, in relation to women, many were arrested in commercial establishments, which can be explained by the practice of stealing/shoplifting in supermarkets and stores. This also explains the large number of arrests made by private security forces. Among men, the greatest number of arrests were made at train or metro stations (normally by the security agents of these companies), and among women, the greatest number of arrests, after commercial establishments, were made in residences. These differences can be explained to a great extent by the crime committed, but there are other explanations based on the circulation of men and women throughout the city and different approach tactics of the police based on gender. What can be confirmed with certainty is that the cases of women being arrested in the prison units were related to the crime of drug trafficking committed while attempting to take drugs to their imprisoned partners or family members.

While the team was working, there was always a concern about institutional violence, both the violence committed by the police at the moment of arrest or in the police stations, as well as the violence conducted by the agents of the prison unit. Identifying these violations of rights—which do not always leave marks on the body—and trying to move these cases forward were priorities for the project. Thus, when attending the prisoners, the team was alert to this issue and sensitive about approaching the problem and offering help. Frequently, the victims of institutional violence feel intimidated and choose not to report the violence out of fear of retaliation. The questionnaire also sought to register this information in order to have statistics on the violence practiced by agents of the state.

Table 22. **Police violence at the moment of arrest (%)**

Police violence at the moment of arrest	Population attended		Population not attended	
	Men	Women	Men	Women
Yes	78.1	72.4	72.2	62.7
No	21.9	27.6	27.8	37.3
Total	100.0	100.0	100.0	100.0

Table 23. **Type of violence at the moment of arrest (%)**

Type of violence at the moment of arrest	Population attended		Population not attended	
	Men	Women	Men	Women
Verbal aggression	67.6	65.4	60.2	57.3
Physical aggression	56.5	40.3	54.5	31.2
Threats with a gun	33.0	22.7	31.6	16.5
Threats without a gun	28.6	19.5	21.8	20.1
Other types of violence	6.8	12.4	8.3	8.6

Source: ITTC/Pastoral Carcerária

Considering the places where the violence was perpetrated, the express majority indicated that they suffered the violence at the place of arrest, and by the hands of those who arrested them. The number of people who reported violence by the police was astonishing. In arrests made by the State Military Police, the great majority of men (79.5%) and women (70.3%) affirmed that they suffered some type of violence, and the same held for those arrested by the metropolitan civil guard (city police guard), whose acts of violence were cited by 73.5% of the men and 70.9% of the women.

Regarding the performance of the metropolitan civil guard, what draws attention is not only the fact that an organ charged with the protecting the patrimony of the State (Article 144, paragraph 8 of the Federal Constitution of 1988) is conducting arrests, especially arrests of men from the center of the capital, but also the violence with which it acts. Regarding the State Civil Police Force, the interviewees attributed a lower level of aggression, but still high, with 59.2% of men and 64.6% of women making complaints against them.

The existence of a standard procedure used by the police to cause the suffering of people during the arrest process must be highlighted. There were many depositions of men and women who said that at the hands of the police, they suffered very

similar experiences, such as the "zigzag," [22] the "microwave," [23] the use of pepper spray directly in the eyes and nose, illegally entering into homes (without a judicial order), [24] falsifying the arrest *in flagrante*, [25] extortion, racial discrimination, and threatening violence against relatives (including children). When dealing with the female population, there are also a great number of sexual violence reports, which include asking for "sexual bribes," groping during pat downs by male police officers, obliging the women to strip naked and threatening rape. Of all the men arrested, only one admitted to having been sexually violated in the police station while being tortured.

When a case of police violence or torture was discovered, the team sent the case to the lawyers of the Prison Pastoral Ministry who sought to select, examine and file public complaints with the official bodies responsible for overseeing and investigating these incidents. It was not possible to work with all of the cases because they were far more numerous than expected or far more than the pastoral could respond to with a limited team. There were also other limitations which prevented the team from investigating the majority of the cases. When interviewed, the prisoners who had suffered the violence often chose not to make a formal denouncement because they felt insecure, not having any guarantees that they would be protected afterwards. Some said, for example, that because they live on the streets, they would have to go back to the same place and deal with the same police who violated them.

The delay in doing forensic medical exams also was a reason why some denouncements were not made. After a certain amount of time lapsed, the body wounds would disappear, and the case would rest only on the word of the victim. Another reason why these cases do not move forward is that prosecutors and judges are resistant to determine and investigate violence practiced by public agents. Finally, the forensic medical exams were either done in the presence of the aggressors or they were poorly done. Some victims said that when doing the medical exam, the doctor did not even examine the part of the body which had the marks of violence. Before being transferred to a prison unit, an arrested person must be examined by a doctor at the Medical-Legal Institute (IML), which is responsible for conducting forensic medical exams. The IML frequently and intentionally overlooks marks of police violence. Upon intake at the prison unit, the staff is also responsible for verifying any health issues or marks of violence, although this rarely happens. These practices make it possible for institutional violence to continue with no concern on the part of the perpetrator that he/she might actually be held responsible.

22 The driver of the police vehicle makes quick movements with the car while any people handcuffed with their hands behind their back hits their heads and bodies in the trunk of the police vehicle where there is nothing to secure them.

23 Without water, the prisoner remains in the police car for hours in the sun with the car windows shut.

24 Although many times the police authority makes it seem as though there was no forced entrance.

25 In cases which involve narcotics, it was very common to hear that the police authority "planted" a certain amount of drugs on the person so that they could be charged with trafficking instead of use.

Contact with these situations of institutional violence affirms the conviction that there is urgent need to create mechanisms for transparency and control of police activity, such as the demand for effective forensic medical exams, the creation of preventative monitoring mechanism, the need for independent ombudsmen and internal affairs offices, and the dismantling of the link between the IML and the Secretary for Public Security/Police forces. The latter measure is essential because the current structure places the experts, who are under the authority of the Public Security, in the awkward situation of having to denounce their own colleagues. In addition, the reality uncovered by the project suggests that the issue of torture in pretrial detention deserves a specific study designed to research and present strategies for prevention and prosecution of torture at the moment of arrest and during the criminal investigation.

The research also sought to understand the previous relationship between the interviewees and the police. The results demonstrated that the trajectory of the men at Pinheiros CDP I who responded to the questionnaire was marked by the presence of the State's repressive apparatus and its agents, both in the manner of approach and verbal and physical aggressions (92.1% had already been stopped by the police once before). Even though the numbers were lower, it was not insignificant that 23.3% of women were often verbally attacked by the police and that 43.7% said that they had often seen someone being beaten by the police.

Table 24. Previous relationship with the police (men attended and not attended) (%)

How many times have you:	Never	Once	A few times	Many times
Been stopped by the police	7.9	5.8	28.4	57.9
Been attacked verbally by the police	19.6	4.8	19.0	56.7
Been attacked physically by the police	29.6	13.1	21.7	35.6
Witnessed someone being attacked by the police	15.3	5.2	14.3	65.1
Had your house searched by the police	72.4	14.5	6.2	6.9

Table 25. Previous relationship with the police (women attended and not attended) (%)

How many times have you:	Never	Once	A few times	Many times
Been stopped by the police	47,1	15,3	18,1	19,4
Been attacked verbally by the police	54,8	11,6	10,2	23,3
Been attacked physically by the police	66,7	13,2	9,9	10,2
Witnessed someone being attacked by the police	35,6	7,2	13,5	43,7
Had your house searched by the police	74,3	14,1	5,3	6,4

Source: ITTC/Pastoral Carcerária

Even though police authorities allege that a police check is only done when there is reason to be suspicious, it is certain that this action is fraught with criteria that goes beyond the probability of the commitment of crime, and is conducted on the basis of characteristics such as sex, color or race, and age. The street people the project team interviewed also were more likely to be subjected to police action in an even greater disproportion: 97.2% of all persons living on the street had been stopped by the police.

It is interesting to note that in prisoners' relation to the police there was a difference based on gender: 64.4% of the women had witnessed the police stop and/or act with violence toward another at least once. However, women themselves had been victims of police violence with less frequency than men.

Another issue to be addressed was the prisoner's prior history of involvement with the police as a juvenile offender. It is important to highlight that a few interviewees were out on parole or in semi-open prison arrangements through the juvenile authority when they were arrested as an adult, since a person can remain under juvenile justice authority until 21 years of age if he/she entered the system before the age of 18.

Table 26 **Have been in detention as an adolescent offender (%)**

	Population attended		Population not attended	
	Men	Women	Men	Women
Yes	28.8	17.3	20.3	10.5
No	71.2	82.7	79.7	89.5
Total	100.0	100.0	100.0	100.0

Table 27. **"Have you already done prison time?" (%)**

Have you already done prison time?	Population attended		Population not attended	
	Men	Women	Men	Women
Yes	46.2	31.6	32.1	22.6
No	53.8	68.4	67.9	77.4
Total	100.0	100.0	100.0	100.0

Table 28. **"Have you already served an alternative sentence?" (%)**

Have you already served an alternative sentence?	Population attended		Population not attended	
	Men	Women	Men	Women
Yes	9.0	6.5	9.2	5.1
No	91.0	93.5	90.8	94.9
Total	100.0	100.0	100.0	100.0

Source: ITTC/Pastoral Carcerária

In trying to portray the trajectory of the interviewees through the criminal justice system, the project team tried to discover how many prisoners had already completed a prison sentence or served an alternative sentence; that is, those who had already had their rights restricted in some way. However, the responses the interviewees gave are more representative of their perceptions than reality. In other words, many people who in fact did not receive a sentence which restricted their freedom responded positively to the question because they had already been jailed temporarily at some point in their life. In the same way, persons who said they had completed an alternative sentence may actually have fulfilled an alternative measure resulting from the procedures/decisions of special criminal courts, which technically should not be confused with a criminal sanction. Thus, one must be careful in reading this data. However, the project team judged the data to be relevant, especially those statistics which dealt with completion of prison time, and thus included them in this report because they are illustrative of the interpretations of the interviewees, who did not always see the two situations of being convicted and precautionary imprisonment as being distinct. At play in this lack of understanding was clearly the lack of access to information and inadequate juridical advice. Moreover, this lack of clarity present in the discourses of the interviewees about the type of their custody (precautionary or sentenced) revealed that pretrial prison can have the same impact on a person as prison time due to a criminal conviction.

Table 29. "Are you being charged with another crime?" (%)

Are you being charged with a crime?	Population attended		Population not attended	
	Men	Women	Men	Women
Yes	24.6	16.6	24.4	12.9
No	75.4	83.4	75.6	87.1
Total	100.0	100.0	100.0	100.0

Table 30. Presence of health problems (%)

	Population attended		Population not attended	
	Men	Women	Men	Women
Yes	29.0	38.3	25.8	37.0
No	71.0	61.7	74.2	63.0
Total	100.0	100.0	100.0	100.0

Source: ITTC/Pastoral Carcerária

It is a known fact that the health services in prison units are precarious, and subsequently, pretrial prison may bring harm to persons who have health problems and need treatment. The reports of health issues among the interviewees were significant: 37.7% of women and 27.4% of men had problems. Of the women who said they had health problems, 56.1% said they received some treatment when they were

imprisoned. It was the same situation for men: 47.5%. The problems most commonly mentioned by both the men and the women were various respiratory problems (25%), psychiatric problems (13.2%), and hypertension (11%). HIV victims made up 1.9% (22 cases) of the interviewed population, which represents an enormous disproportion when considering the statistic for the general population of the Southeast region, which is 19.9 cases for every 100,000 inhabitants[26].

The use of illicit drugs is a difficult issue to approach, which is why there are specific strategies for research on this issue, since interviewees generally have more difficulty admitting to current use than past. With this observation in mind, the results of the table below reveal that the use of narcotic substances was present in the history of most of those interviewed at Pinheiros CDP I and the Sant'Ana Women's Prison. Marijuana, cocaine and crack were the illicit drugs most often mentioned.

Table 31. **Use of drugs in the past (%)**

Use of drugs in the past	Population attended		Population not attended	
	Men	Women	Men	Women
Cigarettes	78.7	79.3	68.4	69.6
Alcohol with frequency	36.4	26.8	30.3	19.3
Marijuana	74.4	53.1	67.7	35.7
Glue	21.8	14	17.6	6.1
Cocaine	53.9	45	47.7	27.6
Crack	50.4	39	30.8	21.1
Use of unauthorized prescription medicine	6.5	5.4	5.3	4.3
Other drugs	13.6	5.4	14.4	1.4

Table 32. **Use of drugs in the present (%)**

Use of drugs in the present	Population attended		Population not attended	
	Men	Women	Men	Women
Cigarettes	75.7	75.0	62.4	64.4
Alcohol with frequency	22.9	15.8	18.9	10.4
Marijuana	51.0	23.2	47.4	14.0
Glue	2.7	1.6	3.0	2.2
Cocaine	20.2	13.9	15.8	7.9
Crack	34.7	26.0	16.5	12.2
Use of unauthorized prescription medicine	3.0	0.5	2.3	2.2
Other drugs	4.1	1.9	3.8	0.4

Source: ITTC/Pastoral Carcerária

26 Information from the Ministry of Health, acsessible on <http://sistemas.aids.gov.br/forumprevencao_final/index.php?q=numeros-da-aids-no-brasil>. Last Access on: January 15 2012.

Regarding the access this population has to the network of health services, it is worthwhile to note that among those who declared to be or have been drug users, (74.4% of the total, excluding smokers), almost three fourths said that they had never received treatment for this problem. Those who received treatment opted, in the majority of cases (73%), for inpatient treatment, instead of outpatient therapy options. Yet, the number of drug users abandoning addiction was low (13.8%).

Although the research was not specifically aimed at this problem, the data obtained contributes to the discussion about ineffectiveness of compulsory hospitalization/treatment of drug users, which is what many health specialists have stated.[27] Those interviewees who sought drug treatment did so voluntarily, with or without the support of their family, and still very few were able to abandon the addiction.

Table 33. **Pregnancy (%)**

Pregnancy	Women attended	Women not attended
Yes	10.6	8.0
No	78.3	85.1
Don't know	11.1	6.9
Total	100.0	100.0

Source: ITTC/Pastoral Carcerária

At the time of the interview, most of the pregnant women were in their first 6 months of gestation, and most had had no pre-natal care, which also demonstrates how difficult access to health services is for this population. It is worthwhile to add here that with the implementation of Law Nº. 12,403/2011, women who are in at least their 7th month or have high-risk pregnancies have a right to petition for non-custodial precautionary measures.[28]

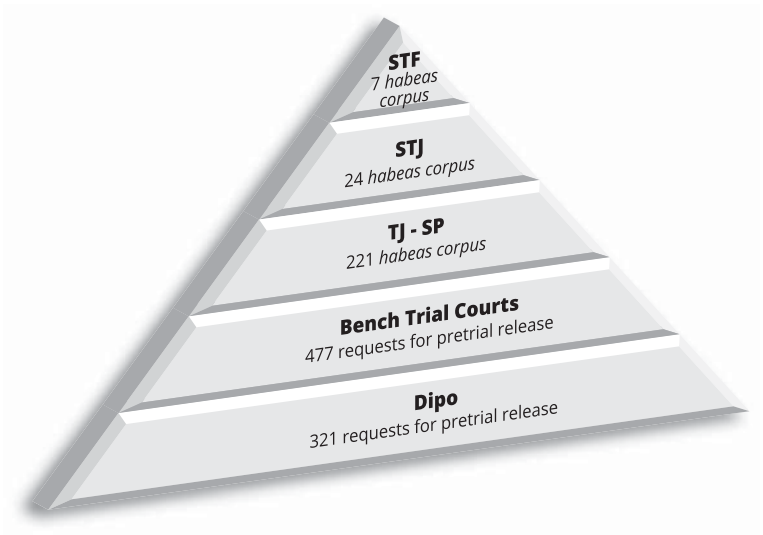
27 Dartiu Xavier da Silveira, professor at the Federal University of Sao Paulo, affirms that in cases where addicts are required to submit to treatment, the rate of recidivism is 95%. In SILVEIRA, Dartiu Xavier da. Dependência não se resolve por decreto., *Folha de São Paulo,* June 25, 2011. Available at: <http://coletivodar.org/2011/06/deve-ser-permitida-a-internacao-compulsoria-de-viciados-em-crack/>. Accessed on May 2, 2012

28 *Art. 318. The judge may substitute precautionary prison for domiciliary when the agent is: I—older than 80 years; II—extremely debilitated because of a serious disease; III—indispensable in special care for persons less that 6 years of age or handicapped; IV-in at least their 7th month of pregnancy or have a high-risk pregnancy. Sole Paragraph. For substitution, the judge will demand apt proof of the requirements established in this article.*

The dynamic of pretrial prison: data from court cases

The graph below sums up the project's activities in the Department of Police Investigation (DIPO), the bench trial courts, the State Supreme Court of Sao Paulo (TJ-SP), Superior Court of Justice (STJ) and the Federal Supreme Court (STF).

Graph 3. **Activities of the project**



Source: ITTC/Pastoral Carcerária

The goal of the research done on police investigations and judicial proceedings was to understand the dynamic of pretrial prison, mapping out determined variables in the concession of prison release. Moreover, the project team planned to offer support in the construction of public policies in the arena of the criminal justice system aimed at problems of pretrial prison. The team proceeded to research the actual case files directly in the courts, in order to build a data collection instrument that would provide a reliable description of the course of litigation, paying particular attention to the information pertaining to pretrial imprisonment and its developments during criminal prosecution as well as the role played by the operators of the criminal justice system.

The questions of the form were divided into six modules:

1. Data about the actual crime (or alleged crime): the police station of origin, the date of occurrence, the data registered in the police report, the number of victims and perpetrators of the crime, the goods/value taken (for property crimes) and their restitution, confiscation of guns, drugs or other objects and materials;

2. Profile of the victim: physical person/juridical entity, sex, age, nationality, birthplace, occupation/profession, marital status, race and level of formal education;
3. Profile of the accused/defendant: sex, age, race, nationality, birthplace, occupation/profession, marital status, level of formal education, declarations made at the police station, first time/repeat offender and crimes charged;
4. Data about the arrest and request for prison release at DIPO: type of arrest, date of arrest, judicial decision, the reasoning for the judicial decision, the specificity and quality of the judicial decision, existence of request for pretrial release, type of request, date of the official protocol of the request, date officially included in the legal process, who made the request, which documents were included in the legal process, prosecutor's statement, judicial decision and reasoning behind the decision, quality of the decision;
5. Data about the movement of the case and the request for pretrial release in the court: charges pressed, accepting of the charges by the judge, response to the accusation, realization of hearing, debates and decision, appearance at the hearing, case outcome, existence of request for release, type of request, date of the official protocol of the request, date officially included in the legal process, who made the request, which documents were legally included, prosecutor's statement, judicial decision and reasoning behind the decision, quality of the decision;
6. Data about the *habeas corpus*: at what level was it filed (local, court, state supreme court or federal court), who made the request, date that it was distributed to a specific chamber, if there was a concession of injunction or decision based on merit

The list of cases consulted by the survey was made from the report of the cases sent monthly (October 2010 to May 2011) to the Public Defender's Office of São Paulo (DPE), as outlined in the terms of agreement. Emphasis was put on collecting information from cases in which there was request for pretrial release from jail, instead of those in which there was a *habeas corpus* filed without waiting for the denial of a petition previously filed in the DIPO or to the court that would hear the case. Thus, between October 2010 and May 2011, considering the reports of cases delivered to the DPE, there were petitions for 561 legal proceedings. Of this total, the survey consulted, *in loco*, 440 cases that were in the criminal courts, the Attorney General's Office, the State Supreme Court, and the central archives of the Ipiranga Complex.

In the consultation of 85 cases, the project's performance was hindered by several factors, such as the concession of prison release from judges acting on their own accord (without a lawyer's request), the naming of a court-appointed or hired lawyer, or even by the concession of prison release resulting from a request made by the DPE. In fact, although there was an agreement that public defenders would not act in cases that would be handled by the project, this duplication of work happened at times.

For some of the cases, the collection was not feasible because the records were not available for consultation for various reasons: there were judges and prosecutors who did not give authorization to view the records, cases were sent to archives in Jundiai, cases that were being held by public defenders and thus without public access, cases with a declaration of judicial secrecy, cases not found, etc. In part, some of these difficulties arose from the fact that the vast majority of cases were still in process. However, the search through cases also revealed the intransigence of the employees of the justice system—who in reality mirror the institutions for which they work—in not fulfilling the principle that the documents are public, one of the pillars of the democratic state. On many occasions, it was evident that prohibiting or creating difficulties for access to the records was based on a fear that the research would show deficiencies in the operators' performance or in the system itself. At other times, the researchers encountered extremely questionable practices; for example, in one case the documents for legal proceedings were at the home of the judge, and therefore inaccessible.

To deal with the situations where a single criminal case had more than one defendant, it was stipulated that for the purposes of data processing, to count each individual assisted by the project as one case/proceeding, that is, in relation to requests made for prison release (pretrial release from jail and/or *habeas corpus*). Thus, the following results are related to the 348 proceedings the project team consulted, that gave rise to 400 cases. [29]

This section of the report is divided into four blocks: (I) general data (data about the defendant and the victims, general case information and the role of the operators of the criminal justice system); (II) drug crimes; (III) non-violent crimes; (IV) violent crimes

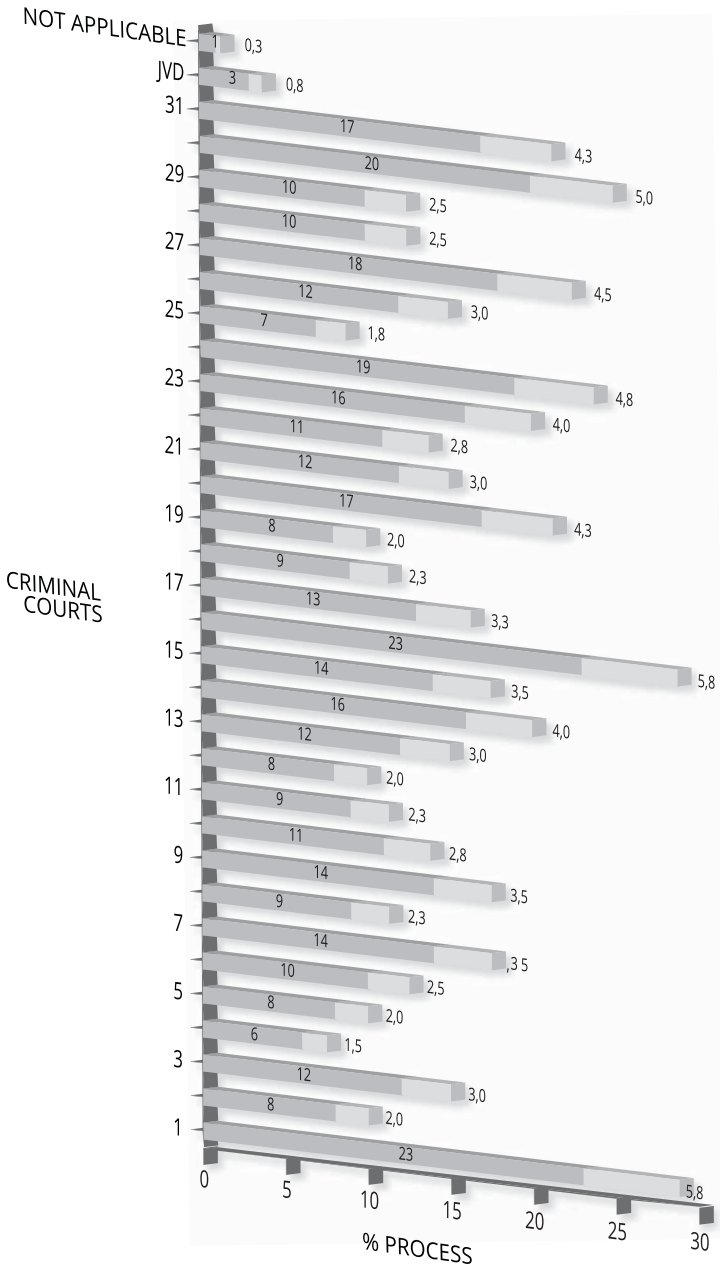
General Information

The examined cases were distributed among 59 police districts of origin; that is, those districts where the occurrence was registered and booked. The districts most often mentioned are the following: the 77th (21.3%), the 4th (11.8%) and the 5th (11%). It is important to remember that during the time when the project team was engaged in the project, the police stations that centralize all recent arrests did not yet exist—they were created in July, 2011.[30]

29 The cases were consulted between March and April, 2011.

30 With the changes in July of 2011, promoted by the Secretary for Public Security, the register of crime occurrences became the sole responsibility of the specific police stations which centralized this process, implanted in nine new sectional police stations in Sao Paulo.

Graph 4. **Distribution of consulted cases by criminal courts (%)**



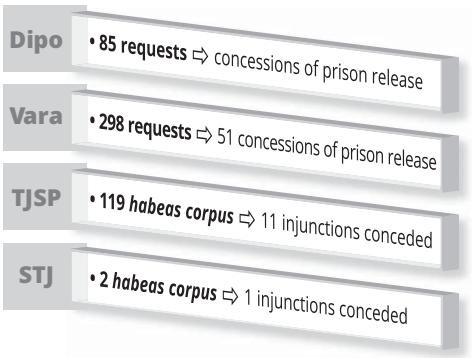
Source: ITTC/Pastoral Carcerária

The judicial cases analyzed by the project were taken from criminal occurrences between August 24, 2010 and May 22, 2011, and were distributed among 31 criminal courts and the Domestic and Familial Violence Against Women court. In one case there was no accusation from the Public Prosecutor and therefore the case was not sent to a court ("not applicable").

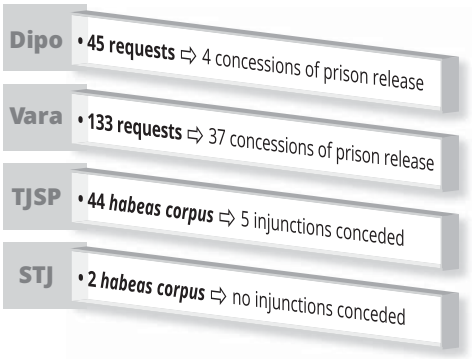
Regarding the length of legal proceedings, it is important to note that significant differences were found between men and women. The period between arrest and the first hearing, arguments and decision, which normally also includes the first meeting between defendant and defense counsel, prosecutor and judge, is on average 109.2 days for men and 135.7 days for women. The data regarding the period between arrest and sentencing in the bench trial courts maintains this discrepancy: 114.0 days for males and 142.8 days for women, on average.

The graphs below synthesize a portrait of the criminal justice system based on the examination of the cases accessed by the research.

Graph 5. Results of the requests for prison release to the criminal justice system – men



Graph 6. Results of the requests for prison release to the criminal justice system – women



Source: ITTC/Pastoral Carcerária

In order to have a more correct reading of the data collected, the project team proceeded to classify the cases according to the types of crimes that appeared in the police reports. With the cases being organized under the categories "drugs," "violent" (crimes committed with violence or serious threats) and "non-violent" (crimes committed without violence or serious threats), it is possible to see the tendencies of the criminal justice system in handling diverse situations.

Table 34. **Distribution of cases analyzed (by category of crime)**

Category of crime	%
Drugs	25.3
Violent	32.5
Nonviolent	42.2
Total	100.0

Table 35. **Number of adolescents who were detained with the crime's accused perpetrator**

Number of adolescents	%
None	91.7
One	6.3
Two	0.9
Three	1.1
Total	100.0

Source: ITTC/Pastoral Carcerária

In some of the analyzed cases (8.3%), adolescents were with the authors of the crimes; that is, persons between the ages of 12 and 18 were with adults at the moment the crime occurred. When dealing with a criminal offense, the standard procedure is to arrest the adolescent and send him/her to the Special Court for Children and Youth. In one third of the cases which involved adolescents, the adult/s was also charged with "corruption of a minor", the crime found in Art. 244-B of the Statute for Children and Adolescents.[31] However, none of these cases resulted in a conviction for this charge by a bench court judge. Taking into account the situations in which adolescents were arrested together with an adult, the most common accusation was drug-related, followed by non-violent crime and finally violent crime.

Table 36. **Number of victims (general)**

Number of victims	%
None	26.7
One	62.1
Two	7.5
Three or more	3.8
Total	100.0

Table 37. **Number of victims (by category of crime) (%)**

Number of victims	Nonviolent	Violent
None	3.6	-
One	83.2	84.1
Two	8.4	10.1
Three or more	4.8	5.8
Total*	100.0	100.0

* This table does not take into account the victim of the drug crimes since the victim is generally "public health."

Source: ITTC/Pastoral Carcerária

31 *Article 244-B. To corrupt or facilitate the corruption of person less than 18 years old, with him committing the penal infraction, or inducing the other to commit it. Sentence: reclusion, one to four years.*

Table 38. Number of defendants (general)

Number of defendants	%
One	63.8
Two	27.0
Three or more	9.2
Total	100.0

Table 39. Number of defendants (by category of crime) (%)

Number of defendants	Drugs	Nonviolent	Violent
One	58.9	62.9	44.2
Two	29.5	29.3	36.2
Three or more	11.6	7.8	19.6
Total	100.0	100.0	100.0

Table 40. Category of gender and crime (%)

Category of gender and crime	Drugs	Violent	Nonviolent
Feminine	61.0	18.8	33.5
Masculine	38.9	81.2	66.5
Total	100.0	100.0	100.0

Table 41. Age range of defendant (%)

Age range of defendant	Drugs	Nonviolent	Violent
18 to 25 years old	51.6	34.5	56.2
26 to 30 years old	17.2	21.8	19.7
31 to 35 years old	14.0	17.0	17.5
36 to 40 years old	5.4	9.7	2.9
41 to 45 years old	7.5	8.5	2.9
46 to 50 years old	1.1	4.2	0.0
More than 50 years old	3.2	4.2	0.7
Total	100.0	100.0	100.0

Source: ITTC/Pastoral Carcerária

The majority of the defendants whose cases were analyzed were males. Regarding both male and female prisoners, most were between 18 and 25 years old (47.5% of men and 42.9% of women), followed by the 26 to 30 age range (21% of men and 17.9% of women).

Regarding the men, the majority of defendants whose cases were analyzed were Brazilian (98.8%) and born in the state of Sao Paulo (69.4%). Almost half (48.4%) were born in the city of Sao Paulo, and 12.3% in other municipalities in the metropolitan region of Sao Paulo, which means more that 60% were born in Greater Sao Paulo. These statistics are almost the same for women: 97.1% were Brazilian, 77.9% were born in the state of Sao Paulo, and 71.6% were born in one of the municipalities of the metropolitan region of Sao Paulo, 59.9% being from the capital city.

Table 42. Occupation/profession of the defendant (general) (%)

Occupation/profession	Men	Women
Declared to have remunerated activity	56.1	56.5
Unemployed	41.8	38.7
Student	2.1	4.8
Total	100.0	100.0

Table 43. Occupation/profession of the defendant (by category of the crime) (%)

Occupation/profession	Drugs	Nonviolent	Violent
Declared to have remunerated activity	52.9	51.6	50.4
Unemployed	42.5	44.4	48.8
Student	4.6	4.0	0.8
Total	100.0	100.0	100.0

Source: ITTC/Pastoral Carcerária

In general, more than half of the defendants said that they had remunerated activity, yet the number of unemployed was also significant (40.3% of the total). Among the activities registered in the police reports, those that do not require professional training prevailed, and they were usually performed in the informal work sector, such as a "helper," "street vendor," "wagon-puller," and "bricklayer" in the case of men; and in the case of women, "housewife," "day worker," "domestic help," and "street vendor." This can be explained to a great extent by the data related to formal education, which follows.

Table 44. Educational level of the defendants (general) (%)

Educational level of the defendants	Men	Women
Illiterate	3.2	0.7
Elementary school/Middle school not completed	22.9	20.7
Elementary school/Middle school completed	56.5	57.9
High school not completed	4.7	5.7
High school completed	11.9	13.6
Higher education completed or not completed	0.8	1.4
Total	100.0	100.0

Source: ITTC/Pastoral Carcerária

Table 45. Educational level of the defendants (by category of the crime) (%)

Educational level of the defendants	Drugs	Nonviolent	Violent
Illiterate	0.0	4.2	1.5
Elementary school/Middle school not completed	24.2	22.3	20.1
Elementary school/Middle school completed	54.7	54.8	60.4
High school not completed	5.3	5.4	4.5
High school completed	14.7	11.4	11.9
Higher education completed or not completed	1.1	1.8	0.0
Total	100.0	100.0	100.0

Source: ITTC/Pastoral Carcerária

The level of formal education was very low: the categories of illiterate, elementary/middle school not completed and elementary/middle school completed add up to 81.4% of the cases.

Table 46. Marital status of the defendants (general) (%)

Marital status of the defendants	Men	Women
Single	77.9	84.3
Married	9.7	5.7
Has companion/living with someone	11.6	7.1
Separated or divorced	0.8	1.4
Widowed	0.0	1.4
Total	100.0	100.0

Table 47. Marital status of the defendants (by category of the crime) (%)

Marital status of the defendants	Drugs	Nonviolent	Violent
Single	86.3	79.6	76.5
Married	4.2	13.2	5.1
Has companion/living with someone	7.4	6.0	16.9
Separated or divorced	2.1	0.6	0.7
Widowed	0.0	0.6	0.7
Total	100.0	100.0	100.0

Source: ITTC/Pastoral Carcerária

Table 48. **"Skin complexion" of the defendants (general) (%)**

Complexion of the defendants	Men	Women
White	34.0	30.7
Brown	50.2	54.3
Black	14.3	15.0
Yellow	0.8	0.0
Other	0.8	0.0
Total	100.0	100.0

Table 49. **"Skin complexion" of the defendants (by category of the crime) (%)**

Skin complexion of the defendants	Drugs	Nonviolent	Violent
White	30.5	35.9	30.7
Brown	56.8	47.3	53.3
Black	12.6	15.0	15.3
Asian	0.0	1.2	0.0
Other	0.0	0.6	0.7
Total	100.0	100.0	100.0

Source: ITTC/Pastoral Carcerária

Regarding the data on color or race, it should be noted that the terminology used by police in the police report is "complexion", accompanied by other characteristics such as type and length of hair, physique and height, eye color, etc. Moreover, it must be remembered that this is a classification assigned by the authority making the report; i.e., the arrested person did not self-identify. However, considering the results obtained from the interviews in the prison units, there was variation, but it was not significant in comparison with the data above.

Table 50. **"Defendant declared that he/she was homeless?" (general) (%)**

Homeless?	Men	Women
No	71.8	82.9
Yes	28.1	17.1
Total	100.0	100.0

Source: ITTC/Pastoral Carcerária

Table 51. "Defendant declared that he/she was homeless?" (by category of crime) (%)

Homeless?	Drugs	Nonviolent	Violent
No	91.6	68.3	73.7
Yes	8.4	31.7	26.3
Total	100.0	100.0	100.0

Table 52. "Declared to be drug user?" (general) (%)

Declared to be drug user	Men	Women
No	55.0	50.0
Yes	35.8	35.7
No response	9.3	14.3
Total	100.0	100.0

Table 53. "Declared to be drug user?"(by category of crime) (%)

Declared to be drug user	Drugs	Nonviolent	Violent
No	38.9	59.9	55.1
Yes	46.3	29.9	35.5
No response	14.7	10.2	9.4
Total	100.0	100.0	100.0

Source: ITTC/Pastoral Carcerária

The data was taken from the police records. The questions about homelessness and drug use were filled out from a document entitled, "Information about past criminal records." There were a high number of people who declared themselves to be homeless. In relation to drug use, it was common for the police not to note anything. The available information, however, indicates that less than half of the arrested *in flagrante* declared themselves to be non-drug users.

Table 54. Relation with the criminal justice system (general) (%)

Relation with the criminal justice system	Men	Women
First time offender	52,7	61,4
Repeat offender	35,8	23,6
Responding to other charges at the same time	7,7	10,0
Repeat offender and responding to other charges	0,4	0,7
No response	0,9	4,3
Total	100,0	100,0

Source: ITTC/Pastoral Carcerária

Table 55. Relation with the criminal justice system (by category of crime) (%)

Relation with the criminal justice system	Drugs	Nonviolent	Violent
First time offender	65,3	44,9	62,3
Repeat offender	23,2	40,7	26,1
Responding to other charges at the same time	7,4	9,6	8,0
Repeat offender and responding to other charges	0,0	1,2	0,0
No response	4,2	3,6	3,6
Total	100,0	100,0	100,0

Source: ITTC/Pastoral Carcerária

Regarding the relation to the criminal justice system, the majority of those arrested in the analyzed cases did not have any prior convictions; thus the prisoners were technically first-time offenders.

For the current study, the project team considered it important to obtain information about the victims of the analyzed cases so that the team could understand their profile and see the similarities and differences in relation to the profile of the accused. Moreover, since even today the traditional, penal proceedings allow for very limited participation of the victim, to know whether their characteristics to some degree influenced how the case proceeded and finishes was of interest to this investigation.

In 73.3% of the cases there were multiple victims, totaling 311. Of this number, 236 were individuals, and 75 were legal entities. In some of the analyzed cases, the victim asked that personal information be maintained confidential, and therefore it could not be collected. Moreover, in some instances, the personal identification of the victim as appeared on the police reports did not have all of the information. Following is the data about the victims (individuals) obtained by the research.

Table 56. Type of victim (by category of crime) (%)

Type of victim	Nonviolent	Violent
Individual	58.9	94.2
Entity	41.1	5.8
Total	100.0	100.0

Table 57. Gender of the victim (general)

Gender of victim	%
Feminine	43.6
Masculine	53.8
Unknown	2.5
Total	100.0

Source: ITTC/Pastoral Carcerária

Table 58. Gender of the victim (by category of crime) (%)

Gender of victim	Nonviolent	Violent
Feminine	50.0	35.4
Masculine	49.1	62.1
Unknown	0.9	2.5
Total	100.0	100.0

Table 59. Age range of the victims (general)

Age range of the victims	%
Less than 18 years old	6.8
18 to 25 years old	26.1
26 to 30 years old	13.7
31 to 35 years old	10.3
36 to 40 years old	10.7
41 to 45 years old	7.7
46 to 50 years old	9.0
51 to 55 years old	3.4
56 to 60 years old	3.8
More than 60 years old	3.8
Unknown	5.6
Total	100.0

Table 60. Marital status of the victim (general)

Marital status of the victim	%
Single	58.1
Married	24.4
Has companion/living with someone	5.6
Separated or divorced	5.6
Widowed	2.6
No information	3.8
Total	100.0

Source: ITTC/Pastoral Carcerária

Regarding the birth country of the victim, 94.3% were born in Brazil. Regarding the birth state of the Brazilian victims, most were from Sao Paulo, making up 63.9% of the cases. Also in relation to the victims born in Brazil, the birthplace most commonly registered was the city of Sao Paulo (53%). Another 6.5% of the victims were born in the metropolitan region of Sao Paulo, which means that almost 60% of the victims were born in the metropolitan region of Sao Paulo.

Table 61. "Complexion" of the victim (general)

Complexion of the victim	%
White	73.4
Brown	18.5
Black	2.1
Yellow	1.3
Indigenous	0.4
No information	4.3
Total	100.0

Source: ITTC/Pastoral Carcerária

Table 62. Educational level of the victims (general) (%)

Educational level of the victims	%
Illiterate	0.4
Elementary/middle school incomplete	7.7
Elementary/middle school completed	16.7
High school incomplete	4.3
High school completed	36.9
Higher Education incomplete	5.6
Higher Education completed	19.3
No information	9.0
Total	100.0

In regard to both race and level of formal education, the profiles of the victims are in stark contrast to that of the defendants. While the victims were mostly white (more than 70%), the defendants were mostly brown and black, adding up to 67%. In the data for schooling, we also saw an inverted pattern between victims and defendants: the range of schooling most often stated by the victims was between high school and college (more than 66%); while for the defendant, it was elementary/middle school (more than 80%). The professions registered among victims were also demonstrative of the differences between victim and the accused. In the following list of victim professions, a great number of university-educated professions were represented: lawyers, helpers, systems analyst, architects, self-employed, administrative assistants, salespersons, cashiers, store owners, chefs, designers, electricians, business owners, nurses, engineers, students, photographers, public servants, waiters/waitresses, journalists, manicurist, valet, mechanics, doctors, factory workers, drivers, musicians, blue collar workers, military police, doormen, advertising agents, receptionists, business representatives, sociologists, taxi drivers, therapists, etc.

The role of those who work in the criminal justice system

Quite relevant to the role played by the criminal justice system authorities is the idea that the information produced during the pre-trial phase—more specifically, the phase that focuses on the work of the military and civil police—is the determining factor for the trial´s proceedings and outcome. Often, the *in flagrante* status of the act was sufficient for a guilty verdict, barring questions by prosecutors, judges and even the defender about the legality of the arrest and the evidence collected at the time of the arrest.

Moreover, the project team perceived that throughout the duration of the process, the codification of the criminal acts changed (i.e., the classification of conduct in accordance with criminal law, or the charges leveled against the accused). These changes were made because of some demand of the justice system, absent of any event or reason that could justify the changes, such as a request for more investigation from the prosecution, for example. To examine this issue more thoroughly , the team proceeded to collect information on the changes of the legal classification of the crime from the initial police report to the judge's sentence (police report, the police chief's report at the end of the police investigation, the charges and the sentence), the results of which can be seen in the table below. For purpose of analysis, the team considered the classification of the offense charged at the following moments: the police report (BO), the final report of the police chief, the charges filed by the prosecution, and sentence handed down by the criminal court judge. Each step of the process was evaluated and placed in one of the categories. "Mitigation

of the crime" and "aggravation of the crime" imply a change in the classification of the act: from a more serious conduct to a less severe (e.g., from aggravated robbery to theft), and vice versa (from attempt of larceny to committed larceny). In the category "indifferent," the team placed cases in which the conduct/act did not change in its classification.

Table 63. Evolution of the classification/Determination of the charges (%)

Evolution of the classification	From Initial Police Report to Final Police Report	From Final Police Report to Filing of Charges	From Filing of Charges to Decision
Mitigation of the crime	13,5	13,4	27,7
Indifferent	77,7	56,7	70,3
Aggravation of the crime	8,9	29,8	1,9
Total	100,0	100,0	100,0

Source: ITTC/Pastoral Carcerária

The data shows that the work of the police investigation had little effect on the classification of the conduct: in almost 80% of the cases there was no change between the initial police report and the report which closes the police investigation. It is important to highlight that from reading these cases, the project team confirmed that the police investigation was very limited and very quick, which without a doubt happened because the authorship of the crime had already been made clear, given the person was caught in the act (*in flagrante*). In the cases in which there was mitigation of the conduct between the police report and the final report (13.5%), there was usually a reclassification of the crime in the mode it was committed.

In the evolution of the crime's classification, it is interesting to note that the representative of the Public Prosecutor's Office put a more severe classification on the charges than the police chief in 29.9% of the cases. The Prosecutor usually changed the modality status from "attempted" to "committed," and even added other charges, which certainly interfered with the granting of release by the judicial authority. Considering the relation between the different players in the criminal justice system and the data obtained, it is possible to point out that this process of making the charges more serious than what was on the original police report represents a moment of significant divergence.

As the case passed from charging to sentencing in the first degree, there was a significant number with mitigation of the charges (27.7%), which is probably explained not only by addition of evidence (depositions and court interrogations) but also by the presence of the defender. Still, one can see that, as a rule, there was a degree of agreement between the charges phase and the sentencing phase, since 70.3% of cases were classified as indifferent, i.e., there was no change in the classification of the severity of the alleged crime.

In relation to the DIPO judge's foundation for maintaining the imprisonment, in 92.8% of the cases, no justification was given. In the vast majority of these cases, the same standard response was consistently recorded (as follows):

> *Being aware of the crime in flagrante, before any legal assistance by the defense, and with specific attention to Resolution Nº. 87 from 09/15/2008, from the E. National Council of Justice, I render decision.*
>
> *Given that the hypothesis of the crime in flagrante is present, having the arrest report of flagrante delicto formally in order, and not envisioning any illegality evident in the ordered constriction, there are not as yet reasons to allow the release of the accused.*
>
> *Moreover, first and foremost, as to the lack of evidence to satisfy all legal requirements to deserve the benefit, and because the demonstration of any connection of the author of the crime with the district of occurrence is absent, there is no case for a concession of pretrial release.*

Table 64. Request for release at DIPO

Request for release at DIPO	%
No	71.8
Yes	28.2
Total	100.0

Table 65. Request to the court for release

Request to the court for release	%
No	7.0
Yes	93.0
Total	100.0

Source: ITTC/Pastoral Carcerária

Regarding the requests for release presented to the DIPO courts, it is important to highlight that in 96.7% of the cases examined, the Public Prosecutor's Office advocated for maintaining the person in prison. Further, very rarely were there situations in which the decision to maintain imprisonment was accompanied by some concrete justification for maintaining precautionary custody. It is also important to point out that in the few cases where the prosecutor was in favor of release (3.3%), the judge was not of the same opinion. In 93.8% of the requests made to DIPO, the judicial decision was to maintain imprisonment. The arguments most often used to justify the decision (and there were many) were: the absence of proof of fixed residence (58.2%), absence of licit employment (55.7%), the guarantee of public order (54.1%), convenience of criminal investigation (45.9%), grave nature of the crime (41%), to ensure the application of criminal law (23.8%), and recidivism of the accused (23%).

In relation to the quality of the decision which denied the request for release, 53.5% of the decisions were generic (with no mention of the specific case) and 46.5% were individualized (with mention of the specific case).

The case proceedings that happened in the bench trial courts revealed clearly how the legal authorities regard precautionary imprisonment which, because depriving someone of his/her liberty is an extreme measure, should be reconsidered carefully at each stage of the process, and if maintained, should be clearly justified. However, this was not what the project team found in the cases studied: upon pressing charges, in 91.7% of the cases in which the person was imprisoned, the prosecutor made no mention of prison; in 6% of the cases, the prosecutor made mention of imprisonment and was in favor of maintaining it; and in the remaining 2.3%, the prosecutor was in favor of release. At the moment that the judge officially accepted the charges, in 82.2% of the cases in which the accused was in prison, there was not mention of imprisonment, and therefore no explanation of the reason for its maintenance. In 17.8% of the cases the judge opined with respect to precautionary measures, with 8.5% of these cases ending in release.

With the request for release before the criminal court, the prosecutor's office was overwhelmingly opposed to concession of release (93.3%). If, regarding prosecutorial opinions, there were no significant changes between the DIPO and the bench trial court, the same was not true in relation to judicial decisions. Judges of the criminal courts were more likely to accept requests for release than their colleagues at DIPO, a decision which was found in 23.2% of cases, a much higher number than the 6.2% recorded at DIPO. Thus, it can be concluded that in the courts there was a greater gap between the positions of the prosecutor and the court decision. In fact, considering the total number of prosecutor manifestations contrary to a concession of release, in 17.5% of cases, the judge did not align himself with the prosecutor.

The arguments present in the decisions regarding requests for release varied significantly between the DIPO and the courts. In the criminal courts, the most recurring arguments for maintaining precautionary custody were the guarantee of public order (65.3%), convenience of criminal investigation (41.5%), the gravity of the crime- independent of the situation, conditions or persons involved (32.1%), and to ensure the enforcement of the criminal law (24.5%). The most common arguments in the DIPO were the absence of proof of permanent residence and proof of legal occupation, present in 18.9% and 17.4% of the analyzed criminal courts' decisions, respectively. In the set of decisions in which imprisonment was maintained, 64.6% were generic, and 35.4% made mention of the specific case, which is different from the distribution verified at DIPO.

In the majority of the cases, there was no inclusion of documents to support the petition filed requesting pretrial release for the defendant, despite the great pains taken by the team to obtain them. At the beginning of the project, the project team believed that the presence of these personal documents would be crucial to increasing the probability of a release, since the team knew of the recurrent arguments such as "lacks connection with the district where the crime occurred" in the decisions

which denied the request. The data about the principal arguments used to reject the requests at DIPO corroborated with this initial perception. However, the living conditions of the arrested individuals, who belong to the lowest levels of the socio-economic pyramid (see the complete data in the "Results of the survey: profile of the pretrial population"), made it difficult to obtain documents proving a permanent address or engagement in regular, remunerated activity. It was not uncommon among those attended by the project to report precarious living arrangements (living in shacks in shantytowns, shared rooming situations, squatting on land, and living on the streets) and informal or irregular job situations (day laborers, street vendors, etc.).

Table 66. Personal Documents which support the petition at DIPO

Documents which support the petition at DIPO	%
Document(s) filed	18,7
No documentation	81,3
Total	100,0

Table 67. Personal Documents which support the petition to the case judge

Documents which support the petition to case judge	%
Document(s) filed	24,8
No documentation	75,2
Total	100,0

Source: ITTC/Pastoral Carcerária

Moreover, the project team observed that proof of residence and work were not determining factors for conceding release. In the cases in which documents were collected, 76.2% of the decisions maintained restriction of liberty anyway. When considering the number of persons who did not present documents and were not released (82.7%), it is clear that there was a difference, but not as significant as would be expected. Thus, when there were no documents, the judges justified their decision on this fact. However, when there were documents, other arguments were used to deny the request for release.

The survey also sought to determine the frequency with which those released pre-trial actually appeared for their case proceedings, in particular preliminary hearings, arguments and decision. Among women who were released on their own recognizance, 53.8% of them appeared for the hearing, a very close percentage to that of the men, which was 53.3%. As noted previously in this report, many people subjected to the justice system do not understand the legal process. The various judicial bodies which have contact with those arrested do not adequately clarify and guide inmates about their cases, which results in misperceptions, and may explain the low turnout of people who had received pretrial release. Direct contact with inmates in prisons revealed that they lacked a distinctive understanding of the various ways of obtaining liberty - acquittal or pretrial release. "Leaving on the judge's orders," in the language of prisoners, can be understood by the released prisoners as the end of the case, and therefore they considered themselves excused from attending proceedings.

Drugs

Table 68. **Charges in the police report (drugs)**

Charges in the police report (drugs)	%
Art. 28 caput of Law 11.343/06	1.1
Art. 28 caput and art. 33 caput of Law 11.343/06	1.1
Art. 33 caput of Law 11.343/06	78.9
Art. 33 caput of Law 11.343/06 and other certified crimes	5.3
Art. 33 caput, art. 34 and/or art. 35 of Law 11.343/06	11.6
Art. 33 caput, art. 34 and/or art. 35 of Law 11.343/06 and other certified crimes	2.1
Total	100.0

Source: ITTC/Pastoral Carcerária

In terms of conduct related to the drug law, one of the most pressing problems is the distinction between the crimes of trafficking as opposed to the use of narcotics. The legislation assigns very different consequences for each: for using drugs, as specified in Article 28 of Law 11.343/2006, diverse sentences other than deprivation of liberty are given, while for trafficking, as described in Article 33 of said law, the punishment is detention and a sentence that fits the "heinous crime" standards. The law determines that the classification should be based on the nature and amount of the illegal substance seized, the location and conditions of the seizure, and the social and personal circumstances, conduct and antecedents of the agent (paragraph 2 of Article 28 of Law 11,343 / 2006).

During the duration of the project, the project team verified that in practice, the distinction between user and trafficker was based on subjective criteria and social stigmatization, giving rise to arbitrary decisions on the part of the criminal justice system authorities. For drug users, this creates a situation of extreme insecurity and vulnerability before the police and judicial authorities, as the drug laws are just one more tool for the oppression of and control over the poorest strata of society.

There were innumerable complaints from those the project team attended that when the police arrived and found people using drugs in a group, they freed some of the users and arrested others, as a form of retaliation. The choice between who would be freed and who would be arrested was based on the record of the individual—first time or repeat offender—on skin color or race, on clothes, and on his/her social class. It was possible to perceive the immense power that the current drug laws confer on the police, who can classify any determined conduct as they wish, depending on how any particular agent sees and interprets the world around him/her—all of this on the playing field of the drug world that is already so susceptible to corruption and extortion. As Julita Lemgruber points out in her book, *O (Des)Controle da Polícia*

no Brasil [Police (Out of) Control in Brazil], the first classification of the criminal act done by the police decisively influences the course of the case, from the choice of registering the act or not, to accusing a suspect or not, from the way in which interrogation happens, to the way the records are put together and sent on to the prosecutor.

Thus, the classification of the crime takes place in a power relation which makes strategic differentiations of the transgressions practiced by different, socially located groups. It is a situation which serves to contribute to the continuance of an unequal social fabric in which the law and its application are not the same for all. This *modus operandi* is influenced and reinforced by the idea that drugs are the source of all social ills, and the trafficker is the enemy of the "orderly and peaceful" society. Extremely harsh laws, like Law 11,343/2006, were created by the war on drugs, which made drug trafficking a heinous crime, with automatic denial of pretrial release and alternative sentencing.

The authority's process of constructing the profile of a trafficker, coupled with the hardening of drug laws, has generated massive incarceration of young, poor people from the outskirts of the city, who are more easily co-opted into working in the area of drug dealing. This economic activity seems to be much more profitable than the few and precarious jobs offered by the market, and has earnings more consistent with the consumer needs of the population.

According to recent data, between 2007 and 2010, the prison population sentenced for drug crimes rose an impressive 62% in contrast to the 8.5% rise of other crimes. The use of narcotics, however, has not shown any sign of diminishing. Nonetheless, the drug issue is still seen as a police and criminal justice problem and not a challenge to be to be dealt with on several fronts, especially from a health perspective. Bearing in mind the relationship between drug trafficking and violence, it is important to highlight that in only one case was there confiscation of arms, and in two cases there was confiscation of a fake or toy gun and/or a pocketknife or something similar.

The Center for Studies of Violence research (NEV, 2012) about *Pretrial Prison and Drug Laws* highlights the lack of attention to pretrial prisoners accused of drug trafficking:

> *In respect to pretrial prison, it is possible to approach this theme under the lens of the right to defense since in some cases not even a request for pretrial release has been made. The established dynamic—in which it is seen that only some crimes are subject to provocation from the Public Defender's Office—in the Court ends up determining, in a discretionary way, who will have the right to have their imprisonment up for discussion, and who is condemned to "pretrial prison." However, it is the right of the defendant and the responsibility of the defense to question the motives that led to the privation of liberty for an individual before he/she is declared guilty. In this sense, two constitutional guarantees come together—the right to defense and the presumption of innocence—to show that there are problems regarding the respect of individual rights and guarantees (p. 125).*

Table 69. Confiscation of drugs

Confiscation of drugs	%
Only crack	28.7
Only crack and cocaine	16.1
Marijuana + cocaine + crack	17.2
Marijuana + cocaine	14.9
Cocaine + crack	9.2
Only Marijuana	6.9
Marijuana + cocaine + other	2.3
Marijuana + crack	2.3
Marijuana + cocaine + crack + other	1.1
Marijuana + other	1.1
Total	100.0

Table 70. Total of drug confiscation by type

Total of drug confiscation by type	Weight (g)	%
Crack	997.0	7.9
Cocaine	3,830.2	30.2
Marijuana	7,849.1	61.8
Other	19.3	0.1
Total	12,695.6	100.0

Source: ITTC/Pastoral Carcerária

Other confiscated substances were ecstasy, hash and lança-perfume, an ethyl chloride inhalant (total of 19.3g).

Table 71. Quantity of marijuana

Quantity of marijuana	%
›0-10g	18.6
›10-50g	30.2
›50-100g	16.3
›100-500g	23.3
›500g	11.6
Total	100.0

Source: ITTC/Pastoral Carcerária

Table 72. Quantity of cocaine

Quantity of cocaine	%
›0-10g	32.2
›10-50g	30.5
›50-100g	15.3
›100-500g	20.3
›500g	1.7
Total	100.0

Table 73. Quantity of crack

Quantity of crack	%
›0-10g	51.9
›10-50g	40.7
›50-100g	3.7
›100-500g	3.7
›500g	0.0
Total	100.0

Source: ITTC/Pastoral Carcerária

Table 74. Confiscation of objects/materials (drugs)

Confiscation of objects/materials (drugs)	%
No	15,8
Yes, material related to the production or packaging of drugs	16,8
Yes, other	67,4
Total	100,0

In 67.4% of the cases there was confiscation of material not related to the production or packaging of drugs; cash and cell phones being among the goods most often confiscated. Many times, photos of the monetary notes were in the investigations to show that they were small bills, which would facilitate the exchange and eventual sale of the drug. In lesser numbers, notebooks with written money amounts were confiscated, which would be evidence of the accounting of the trafficking.

Table 75. Request for release to DIPO (drugs)

Request for release to DIPO (drugs)	%
No	70.5
Yes	29.5
Total	100.0

Table 76. Request for release to the court (drugs)

Request for release to the court (drugs)	%
No	10.5
Yes	89.5
Total	100.0

Source: ITTC/Pastoral Carcerária

In relation to requests for pretrial release sent to DIPO, in all of the cases the requests were denied by the judge. Taking into account the requests for release sent to the criminal court, the decisions made in favor of release totaled 14.9%. It is interesting to observe that in none of the cases analyzed was there a manifestation supporting release from the representative of the Public Prosecutor's Office, neither in the DIPO, nor in the criminal court. In almost 35% of the cases in which the judicial decision was to maintain imprisonment, there was the use of the argument of legal prohibition of a concession of pretrial release (Article 44 of the Law 11,343/2006). [32]

Table 77. Guilty Conviction and length of sentence (drugs)

Ruling sentence and punishment (drugs)	%
Punishment not involving imprisonment	10.0
20 months	36.0
>20 months and <36 months	8.0
>36 months and <60 months	10.0
>60 months and <84 months	24.0
>84 months	12.0
Total	100.0

Table 78. Case outcome (drugs)

Case outcome (drugs)	%
Conditional suspension of the case	1.1
Acquittal	6.3
Sentence (guilty)	52.6
Decision still pending	40.0
Total	100.0

Source: ITTC/Pastoral Carcerária

32 Article 44 states that the crimes set forth in Articles. 33, caput and par. 1, and 34-37 of this Law are insusceptible of bail, probation, grace, pardon, amnesty and pretrial release, also conversion to alternative measures is prohibited (Law 11,343/2006). On May 2012 the STF determined that the article 44 prohibition of pretrial release is unconstitutional. Nevertheless, judges still base their decisions in drug cases on this article and, with that, avoid pretrial releases with the argument that they are legally prohibited.

In the cases where a non-custodial sentence was given (10%), there was a mitigation of the charges from drug trafficking to the crime of possession of narcotics for use.

Table 79. Court Fine* (calculated in days (R$XX/day)) (drugs)

Court Fine (drugs)	%
0 to 166	20.0
167 to 299	24.4
300 to 499	11.1
500 to 799	35.6
More than 800	8.9
Total	100.0

* Court fine is in addition to custodial or non-custodial sentence. It is calculated in days and each day represents a certain money value.

Table 80. Initial type of imprisonment (drugs)

Initial type of imprisonment (drugs)	%
Imprisonment	88,9
Work release	2,2
Parole	8,9
Total	100,0

Table 81. Substitution of alternative sentencing in place of imprisonment (drugs)

Alternative measures substitution (drugs) (non-custodial)	%
No	91,1
Yes	8,9
Total	100,0

Source: ITTC/Pastoral Carcerária

Considering the totality of the cases examined by the research related to drug laws, in 6.3% of the cases, there was a mitigation of the crime to use of a narcotic substance (art. 28 of Law 11,343/2006), which resulted in the conditional suspension of the case, or in the application of alternative sentencing when there was a conviction. In the case of situations where the classification of the sentence corresponded to drug trafficking (44.2% of total cases), the quantum of the sentence most commonly applied was one year and eight months (36%), having had therefore, the recognition of trafficking in a privileged sense.[33]

Except for those cases still opened in the bench trial courts, the data gathered during the research shows that 29.8% of cases ended in a sentence other than privation of liberty, which reveals the disproportion between precautionary measures and the final response of the criminal justice system.

33 *Art. 33 [...]. § 4th In the crimes defined in caput and §1st of this article, the sentences may be reduced by one sixth to two thirds, prohibited from conversion to alternative measures, given the agent is a first time offender, no preceding convictions, not involved in criminal activity nor integration with organized crime (Law 11,343/2006, in the previous editing of RSF 5, from February 15, 2012, suspended the use of the expression "prohibited from conversion to alternative measures.")*

Non-violent Crimes

Table 82. **Classification of police report—nonviolent crimes**

Classification of police report—nonviolent crimes	%
Simple theft/shoplifting (committed)	24.6
Simple theft/shoplifting (attempted)	10.8
Aggravated theft (carried out)	31.7
Aggravated theft (attempted)	16.8
Simple theft and other crime(s)	1.2
Aggravated theft with other crime(s)	4.2
Larceny/embezzlement by fraud (attempted)	1.2
Receiving of stolen goods (committed)	3.6
Damage	1.2
Falsification and use of fraudulent document	1.8
Crimes that endanger the population (Law 10,826/03 and Art. 250 of CP)	3.0
Total	100.0

Table 83. **The stolen property was returned?—nonviolent property crimes**

The stolen property was returned?—nonviolent property crimes	%
Yes. Fully	91.0
Yes. Partially	2.1
No	6.9
Total	100.0

Source: ITTC/Pastoral Carcerária

The data regarding the returning of goods in the case of nonviolent property crimes is demonstrative of the low degree of damage caused by these acts, and shows in a clear way the contradiction between the concrete impacts of the crime and the use of maximum state control, the deprivation of liberty.

Table 84. **Request for release at DIPO--nonviolent**

Request for release at DIPO--nonviolent	%
No	63.5
Yes	36.5
Total	100.0

Table 85. **Request to the court for release --nonviolent**

Request to the court for release --nonviolent	%
No	13.2
Yes	86.8
Total	100.0

Source: ITTC/Pastoral Carcerária

Among the requests for pretrial release sent to DIPO, there was a favorable decision for the prisoner in only 9.6% of the cases. In the criminal court, because of the project's pressure, there was a significant increase in affirmative responses: a concession of liberty was granted in 40.4% of the cases.

Table 86. **Conviction and length of sentence --nonviolent**

Guilty conviction and length of sentence- nonviolent	%
12 months	50.9
›12 months and 24 months	36.8
›24 months and 36 months	7.0
›36 months and 60 months	5.3
›60 months and 84 months	0.0
›84 months	0.0
Total	100.0

Table 87. **Case outcome after court trial—nonviolent**

Case outcome after court trial - nonviolent	%
Conditional suspension of the case/ probation	10.8
Acquittal	8.4
Guilty sentence	34.1
No outcome (still pending)	46.7
Total	100.0

Table 88. **Court Fine (calculated in days (R$XX/day)) - nonviolent crimes**

Court Fine - nonviolent crimes	%
0 to 5	31.6
6 to 10	43.9
11 to 15	15.8
16 to 20	1.8
More than 20	7.0
Total	100.0

Table 89. **Initial type of imprisonment--nonviolent**

Initial type of imprisonment (nonviolent)	%
Imprisonment	15.8
Work release	33.3
Parole	47.4
Not listed in the sentence	3.5
Total	100.0

In the cases where the type of initial imprisonment is not included, it was because the custodial sentence was substituted for a sentence less restrictive of a person's rights (house arrest, avoiding certain areas or establishments like bars, etc.)

Table 90. **Alternative measures substitution - nonviolent**

Substitution for a sentence restricting rights- nonviolent	%
No	64.9
Yes	35.1
Total	100.0

Table 91. **Conditional suspension of sentence--nonviolent**

Conditional suspension of sentence--nonviolent	%
No	91.2
Yes	8.8
Total	100.0

Source: ITTC/Pastoral Carcerária

In light of the case information survey results, it is possible to affirm that in 10.1% of the cases which were finalized at the trial level, the response of the justice system was as serious as the precautionary measures; i.e., the sentence maintained imprisonment with the sentence starting in prison. In the rest of the cases (89.9%),

the outcome consisted of a conditional suspension of the case (probation), in acquittal, or in sentences which restricted liberty in varying degrees (work release, parole, probation, alternative sentencing, etc.).

Even before the new system of precautionary measures was introduced, less serious crimes were already subject to judicial measures aimed at avoiding the constraints of penal cases, or in the case of judgment and conviction, to avoid prison as a State response. Thus, Law 9,099/1995 already allowed for the conditional suspension of the case, and Article 44 of the Penal Code allowed for lighter sentencing (alternative sentencing) for crimes without violence or serious threat, when the defendant is not a repeat offender of a violent crime, or if she/he were not being convicted of the same specific crime.

Thus, the project team turned up various cases of defendants who could benefit from Law 9,099/1995; or even if convicted on the exact terms of the charges, would receive alternative sentencing according to the terms of Article 44 of the Penal Code. Thus, they were maintained in precautionary imprisonment until sentencing, even though the penal code would grant him/her liberty, even if found guilty.

Thus, one can see a perverse legal system which subverts itself. If the code requires alternative sentencing (and not deprivation of liberty) for a determined crime committed without violence or serious threat by a first time offender or an unspecified repeat offender, how then could a judge leave the defendant imprisoned for several months, releasing him/her only after conviction? [34]

Even though the response is described in the law, this has been a means widely used by judges in the criminal forum of Barra Funda. This system of precautionary imprisonment—of defendants accused of crimes for which they should receive alternative sentencing, even if convicted on the charges—is clearly disproportional and inconsistent with the criminal procedure.

But, as reflected in the opinion of some judges when stating in their decisions that "orderly society is tired of these types of crimes," to maintain pretrial imprisonment becomes a way of doing "justice," in defiance of the law, making the judge a type of sheriff, who very often justifies such positioning in his/her decisions with the following reasoning: "The judge should be a man of his time, and as such cannot dodge society's concerns for order and justice." But one must ask: the anxieties of which society; or better, which part of society?

The case of M.V.C. illustrates well this situation: even though a first time offender, he spent one month and sixteen days in prison at Pinheiros CDP I, accused of stealing by breaking and entering. Convicted at the end of the case, on the exact

34 Non-specific recidivism is when the person commits a crime after already having a confirmed sentence for another crime, but of a different character – e.g. first sentence is shoplifting, second is drugs.

terms of the charges which were judged totally valid, M.V.C. received an alternative sentence and was released, without opposition from the Public Prosecutor's Office.

To the punitive mindset pervasive among the justice authorities, M.V.C. got what he deserved, for if the law was too soft, at least he was maintained in prison for as long as possible. What can be perceived, however, is that for the first time in his life, M.V.C. remained for seven days in an overcrowded, humid, dark, disease infested cell in the intake/inclusion wing, and for another month and nine days was in a no less crowded cell located in Section 3 of the Pinheiros CDP I.

Thus, the rights of the defendants become an obstacle to their liberty: there is a reversal in which the person remains imprisoned while awaiting proceedings, even with the presumption of innocence, and is released when found guilty by the judge.

Throughout the course of the project, the team uncovered many cases of theft and robbery involving tiny amounts of goods/materials. In two cases, there were prison sentences for persons accused of taking R$1.00. In other cases, people were imprisoned for not paying for a feminine hygiene product, or accused of stealing deodorant or toothpaste. There was even one case of a young person who stole a pair of falsified designer sunglasses on Rua 25 de março (a popular commercial street filled with clandestine, "pirated" market goods in the center of Sao Paulo). In these and other similar cases, the team made the petition based on the principle of insignificance to the appropriate judicial authority, requesting pretrial release.

In the cases in which the accused were deemed first time offenders, the judges generally released them *ex officio*; i.e., without the defense having requested liberty. However, if on the one hand first time offense guaranteed liberty, on the other hand, recidivism became the determining criterion for maintaining the imprisonment of the accused, even if it was not recidivism in the constitutional parameters, with a definitive sentence from another charge. [35] Thus, when dealing with repeat offenders or those with prior arrest, the principle of insignificance was ignored. The court began to analyze not the facts, but the subjects, their histories and their social stigmas.

In the petitions, the project team pointed out the necessity of deciding if the damage done by the supposed conduct was minimal—without saying inexistent—and therefore incapable of justifying the involvement of the responsible state apparatus for the administration of justice. In other words, the reasoning tried to show that the penal action only made sense if the crime supposedly committed had caused a significant/measurable amount of damage and harm to the victim and the society. Thus, the team presented the following arguments:

35 Art. 5, item LVII of the Federal Constitution: None will be considered guilty until the final sentence is given, or until after the final appeal is decided.

Another foundation of the principle of insignificance resides in the idea of proportionality which the sentence should hold in relation to the seriousness of the crime and the damage caused. In cases of the tiniest effects on the legal good, the content of the injustice is so small that there is no reason whatsoever for the imposition of reprimand. Even a minimal application of penalty would be disproportional to the social impact of the act. (MAÑAS, 1994, p. 58)

With the same objective, the team cited the jurisprudence of the Federal Supreme Court (STF). [36]

In one paradigmatic case, the argument of insignificance- called "petty theft" (of insignificant value) was used in an accusation of robbery (art. 157 CP). R.O. I. was imprisoned, being accused of robbing R$1.00 and a subway/transportation card—with no monetary value—using the verbal threat, "give it over or I'll hit you," without using a gun or any other instrument which threatened harm to the victim. However, in spite of no prior arrests, R.O. I. remained in prison for six months and twelve days before sentencing, and was then sentenced to a prison time of five years and four months in a penitentiary.[37]

Thus, the project team sought to defend the idea of the principle of proportionality for criminal conduct (its offensiveness and real harm caused), and at the same time point out a totally repressive, disproportional response from the State.

Violent Crimes

Table 92. **Classification in the police report (violent)**

Classification in the police report (violent)	%
Simple robbery (attempted)	15.2
Simple Robbery (committed)	34.1
Aggravated robbery (attempted)	2.9
Aggravated robbery (committed)	41.3
Domestic Violence (physical injury in domestic context)	2.2
Robbery and another crime	4.3
Total	100.0

Table 93. **The stolen property was returned? (violent property crime)**

The stolen property was returned? (violent property crime)	%
Yes, fully	81.4
Yes, partially	7.0
No	11.6
Total	100.0

Source: ITTC/Pastoral Carcerária

36 STF, HC 84.412/SP, Min. Rel.: Celso de Mello, Segunda Turma, DJ 19.11.2004.
37 Case Nº. 050.10.08247-0; 14th Crime court of the Forum of Barra Funda

Similar to what happens with nonviolent property crimes, the data reveals that in the majority of cases there is full restitution of the good(s), not causing material harm to the victims.

Table 94. Request to DIPO for release

Request to DIPO for release	%
No	82.6
Yes	17.4
Total	100.0

Table 95. Request to court for release

Request to court for release	%
No	7.2
Yes	92.8
Total	100.0

Source: ITTC/Pastoral Carcerária

An examination of the cases allows one to infer that the pretrial prisoners accused of crimes committed with violence or serious threats confront great resistance from the judicial powers. Requests for release sent to DIPO and the criminal courts were systematically denied, having success in only 3.3% of the total cases.

Table 96. Conviction and length of sentence (violent crimes)

Conviction and length of sentence (violent crimes)	%
12 months	2.5
›12 months to 24 months	12.7
›24 months to 36 months	8.9
›36 months to 60 months	24.0
›60 months to 84 months	48.1
›84 months	3.8
Total	100.0

Table 97. Case outcome (violent crimes)

Case outcome (violent crimes)	%
Probation	1.4
Acquittal	6.5
Guilty sentence	57.2
No outcome (pending)	34.8
Total	100.0

Table 98. Court Fine* (calculated in days (R$XX/day)) (violent crimes)

Court Fine (violent crimes)	%
0 to 5 days	16,4
6 to 10 days	25,3
11 to 15 days	43,0
16 to 20 days	3,8
More than 20 days	11,4
Total	100,0

* Court fine is in addition to custodial or non-custodial sentence. It is calculated in days and each day represents a certain money value.

Table 99. Initial type of imprisonment

Initial type of imprisonment (violent)	%
Imprisonment	54.4
Work release	34.2
Parole	11.4
Total	100.0

Source: ITTC/Pastoral Carcerária

Of all the studied cases which involved crimes classified as violent, 34.8% were still pending decision. When there was a response from the criminal justice system in the records, in 46.8% of the cases, the decision was not for total custodial measure (probation, acquittal, work release, house arrest, alternative sentencing).

Table 100. Alternative measures substitution

Alternative measures substitution	%
No	96.2
Yes	3.8
Total	100.0

Source: ITTC/Pastoral Carcerária

Anticipating what the empirical data would in the end confirm, the project requested the judicial system to remove the precautionary measure of pretrial prison imposed for crimes of robbery (a crime that involved violence or serious threat). The basis for argument was the fact that the law in Article 33, Paragraph 2 of the Penal Code, allows the accused of this crime—taking into account his/her recidivism and the quantum of the applied sentence—to complete the sentence in work release or even parole.

The case of a young man named R.H.S.J. can illustrate the issue:

Arrested on September 1, 2010, R.H.S.J. was accused of attempted robbery (art. 157 caput, c/c art. 14, II, both from the Penal Code). He was a first time offender, no prior arrests and less than 21 years old (mitigating circumstance, Art. 65, I Penal Code). Even if he would eventually be convicted for the exact terms of the charges, R.H.S.J. would be entitled to parole, pursuant to Art. 33, paragraph 2, line "c" of the Penal Code. However, the arguments were to no avail in the first level of hearings. Therefore, a *habeas corpus* was sent to the Sao Paulo State Supreme court, which denied the injunction.

On November 16, 2010, before the merit of the request for *habeas corpus* was ruled upon, R.H.S.J. was convicted by the 8th Criminal Court of Sao Paulo for the exact charges brought by the Public Prosecutor's office, sentencing him to two years of house arrest. Thus, in a sort of perverse juridical irony, after two months and seven days of prison in the overcrowded Pinheiros CDP I, R.H.S.J., now convicted, was given liberty so that he could finally serve his sentence.

Photos make the difference

I. P. L. was 46 years old, had no past criminal record, was transvestite, HIV positive, and had a degenerative disease in his central nervous system. Because of the latter, at 40 years of age, he lost movement in his legs and lost his hearing. He also needed to change the bandages on his legs daily, and the skin on his legs was in a constant state of rawness and decomposition. He was caught carrying nine packets of cocaine (totaling 3.7 grams), hidden in the bandaging on his legs. He was sent to Pinheiros CDP I, where he spent eight months and five days in the sick ward, which has little light and ventilation compared to the other sectors of the prison.

In order for him to get some sun, I. P. L. needed a good-willed, prison employee to wheel him outside for some fresh air, which did not happen often. The administration of the unit said that they "didn't have the personnel to be at the service of I. P. L.," thus confirming his complaints that he would go many days without leaving the small, humid cell in which he was being held.

I. P. L was arrested on October 3, 2010, and was denied the right to await trial and the course of the process in freedom, even though he was a first time offender. He then received a one year and eleven month sentence to be served in a penitentiary, and a fine of 195 days (this is a court fine in addition to custodial or non-custodial sentence. It is calculated in days and each day represents a certain money value.).

Upon taking up the case, the team sent a request of *habeas corpus* to the Sao Paulo State Supreme Court, showing that maintaining I. P. L. in prison was both a high risk to his already poor health, and was a form of cruel and unusual punishment, violating the dignity of his person. Moreover, the petition demonstrated the irrationality of police arrest and systematic imprisonment of persons accused of trafficking infinitesimal amounts of drugs, often first time offenders, as was the case of I. P. L. For such cases in the past, the Federal Supreme Court had given non-custodial, alternative sentencing.

In spite of medical reports attesting that I. P. L. was deaf and HIV positive, his prison health record had no documentation showing the existence of the degenerative disease of the central nervous system. Thus, using a strategy which could be considered a little unorthodox, the team, via the prison administration, obtained

photos of I. P. L. which were sent attached to the petition in order to sensitize the judges. The traditional, impersonal medical reports were substituted by these actual photos which demonstrated his suffering and human degradation.

In an unprecedented decision, breaking from the juridical habits of Sao Paulo courts, I. P. L., already convicted of drug trafficking in the first degree, received from the Sao Paulo State Supreme Court the right to await the decision of his trial in freedom. His immediate release was granted. Thus wrote the Sao Paulo court on July 2, 2011:

> *Thus, the absence of adequate medical treatment – difficult to obtain in the prison system - may cause serious risks to the health of the petitioner.*
>
> *Regarding this specific situation, in which the patient demonstrated the necessity of submission to specialized treatment outside the prison, it is appropriate, in respect to the principle of human dignity, to grant the request.*
>
> *Further, it is shown that the accused is a first-time offender with no criminal record, despite the seriousness of the offense.*
>
> *Therefore, given the proven exceptionality of the case, effective immediately, the order is given for the accused to be able to wait for the final judgment of his conviction in freedom.*
>
> (HC 0030078-94.2011.8.26.0000; TJ/SP)

After I. P. L. was released, the project team tried to guarantee for him the social benefits outlined in the Organic Law of Social Assistance (LOAS). However, even before the team was able to get these rights for him. I. P. L. was arrested again on the same charge of drug trafficking in small quantities, which illustrates the difficulty of breaking down the social dynamics that pull individuals into "criminal careers." For the new case, I. P. L. was defended by the State's Public Defender's Office.

The PlayStation Swindler

S. A. S. remained in prison for five months and eleven days at the overcrowded Pinheiros CDP I, accused of attempted swindling. He supposedly tried to sell an empty shell of a video game player for R$100, as though it were the complete video game player. At the end of the case, he was absolved. However, his imprisonment only ended when the order for his release was issued from the Federal Supreme Court.

According to the accusation, the police "searched two individuals talking in a public space, one of them being the accused, who showed the victim a box sup-

posedly containing the video game player PlayStation 2, for which the victim paid a quantity of R$100 (one hundred reals).” Soon after the transaction occurred, the police approached both, discovering that S. A. S. had only given the shell of the video game player, with paper stuffed inside, thus tricking the buyer. The supposed victim did not suffer any property loss as the entire amount of the sale was restored to him. The defense requested pretrial release through reduction of the accusation, and subsequently a pretrial release since there was no specific recidivism on the part of S. A. S.

In asking for *habeas corpus* to be granted from the Sao Paulo State Supreme Court, there was an injunction request for the concession of pretrial release without bond, or, secondarily, the imposition of precautionary, alternative sentencing, as determined by Law 12,403/2011. This request was denied.

Due to the refusal of the Sao Paulo Appeals Court to grant an injunction for pretrial release without bond or apply alternative sentencing under Law 12,403/2011, a new *habeas corpus* was filed in the Superior Court, of which the injunction was also rejected without any knowledge of merit, claiming that a court level had abeen skipped, because there was no final decision in the Sao Paulo supreme court. The Superior Court based their dismissal on Docket 691 of the STF, which prevents a higher court from judging a *habeas corpus* that has only been denied at the injunction level in the lower court.

The case was then taken to the Federal Supreme Court, to which was requested flexibility regarding the application of Docket 691, as has happened in some decisions of the Supreme Court, which, in cases of clear illegality, can relativize its own summary and consider the case.

It was shown that the imprisonment of S. A. S. was clearly disproportional and incoherent, given that the type of charge brought up against him (attempted swindling), if convicted, would mean alternative sentencing, making it just to substitute custody for alternative sentencing, as outlined in Art. 44, Paragraph 3 of the Penal Code. Moreover, imprisonment was completely disproportionate to the gravity of the crime for which he was charged, for it was not committed with violence to the victim. Also, given that in the end all the money was returned to the victim, there was no material harm.

Thus, in a decision quite symbolic and likely to strengthen in an important way the jurisprudence of the Supreme Court, Docket 691 of the STF was made flexible and, recognizing the principle of proportionality, the court ordered the immediate release of S. A. S. (HC 110079 / STF).

The release that took three days

J. E. F. never had any experiences with the penal justice system. At 44 years of age, caught in a cycle of chemical dependency on crack, he abandoned his family and went to live on the streets in the center of Sao Paulo. It did not take long for him to enter inside the walls of Pinheiros CDP I, the place where many male crack users from the center of the city end up, generally being accused of crimes like theft, unarmed robbery, or of alleged drug trafficking (alleged because the line between user and trafficker in the judicial system depends on the subjectivity of the police authority on call at the moment). Thus, J. E. F. was accused of snatching a wallet from the hands of a Metro (train) rider who was waiting in line to buy a ticket. He was followed by the supposed victim and quickly detained by Metro security, who returned the wallet and its contents to its owner.

After attending the accused at Pinheiros CDP I, the project team made contact with his family, who verified that they had lost contact with him for some time, and offered to bring his documents as well as to accompany him so that he would not return to his cycle of crack use upon leaving the prison.

Judicially speaking, maintaining imprisonment in cases such as that of J. E. F. was clearly disproportional, since the crime of simple theft has a minimum one year sentence, and as such, a first-time offender such as J. E. F. is guaranteed the right of conditional suspension of the case, as outlined in Art. 89 of Law 9,099/95. Further, even if the case was not eventually suspended—as this depends on the proposal from the Public Prosecutor — if the first-time offender was charged with theft, he/she would have the right to substitute a custodial sentence for alternative sentencing, as outlined in Art. 44 of the Penal Code. Therefore, what would be the logic of maintaining someone in precautionary imprisonment who if convicted would be released anyway?

However, despite the obviousness of the principle of proportionality between preventative imprisonment and the sentence to be imposed, it required the enactment of the new Law 12,403/2011, which established the practice of precautionary measures, for this principle of proportionality to be put into practice by some judges.

The project team made the request for pretrial release on behalf of J. E. F., which, despite the contrary position of the prosecution, was granted by the acting judge on a Friday, late afternoon. But because the fulfillment of the release order needed to be carried out together with the notification of the summons for the defendant to appear at the already designated hearing , the summons had to be delivered by a court clerk, who in this case was no longer in the forum at the end of the afternoon that Friday. Thus, sadly ironic, despite having won his freedom, J. E. F. spent Saturday and Sunday in jail when he should have been released immediately.

On Monday at 9 a.m., J. E. F.'s mother was already at the prison gates of Pinheiros CDP I, waiting to receive her son, and the court clerk arrived at 1 p.m. as did the project team. However, at the end of the afternoon when the team was ready to leave the prison unit, J. E. F. had still not been released. When the team sought to understand the reason for the delay, some prison workers said that he would only be released on the following day, for the "working hours" were almost over, and J. E. F., who had been taken from his cell in order to receive the summons and the release from the court clerk, had later been sent back to his cell inside the prison, "by mistake."

The project team then contacted the person responsible to explain the problem and affirmed that they would only leave when J. E. F. was freed. After many radio contacts between the agents to "clarify" the case, J. E. F. was freed around 7:30 p.m. Mother, son and the project team walked together to the train station.

The R$ 1,00 theft that cost 5 years

One very emblematic case of the Weaving Justice project was that of a young man, P. who was attended for the first time on October 19, 2010 at the Pinheiros CDP I, when he began with legal assistance from the project which included various requests to the superior courts and much contact with relatives.

P., who was born in the state of Bahia, had been in Sao Paulo for just a few months. He came to work as a hairstylist; and being homosexual, he believed that in Sao Paulo he would find less discrimination and more opportunities for his life. He lived with the owner of a hair salon, who trusted him and even let him organize the finances of the hair salon. On October 16, 2010 he was arrested and accused of robbing R$1.00 and a metro card—with no proven value—using verbal threats, but no weapons. He was a first-time offender with no previous record.

P. remained in prison for six months and twelve days awaiting sentence. The delay between his arrest and sentencing was due to the difficulty in finding the co-author of the crime for final judgment, since she, who also was imprisoned, had given a false name in the police report.

In this period, the project team filed a *habeas corpus* with various legal substantiations which continued all the way to the Superior Justice Tribunal. In one of the *habeas corpus*, there was a plea for pretrial release because of the insignificance of damage caused, known as "petty theft," (or "crime of insignificance") as well as pretrial release for P., who was a first-time offender and had proof of fixed address and legal occupation. In another plea made later, the project team requested pretrial release because of an excessive amount of time passed in prison without trial, (over

the maximum 60 days as outlined by Art. 400 of the Penal Trial Code[38]), and even exceeding the more abstract "reasonable time of proceedings," as outlined in the Federal Constitution[39] and international accords which Brazil has signed. [40] Both pleas were unsuccessful, and P. stayed in prison for more than six months before judgment.

Because of his sexual orientation, during this time P. began to receive various threats inside of Pinheiros CDP I, including extortion from a group of prisoners who belonged to organized crime and were present in that unit. His mother even received various calls from inside the prison demanding that she deposit R$200 in a bank account, which she did two consecutive times. It was then that P. talked with the project team and asked them to intercede for him. He requested transfer to another prison unit. He was granted the request and sent to Pinheiros CDP II, where homosexuals are better accepted.

The father of P., Antonio, was already living in Sao Paulo when his son came to the city, but he had not maintained contact because of his son's sexual orientation. However, when P was arrested, the team made contact with his father, and the link between the two was re-established to some degree. Antonio participated in a church which did not accept sexual diversity and thus had difficulty in accepting his own son's homosexuality, and went for long periods of time without visiting him. The mother, Maria de Fatima, who resided in the city of Salvador, had been to Sao Paulo two times, spending enormous financial and psychological resources to see her son, and receiving support from the team insofar as it was able to give. On April 28, 2011, P. was judged, and received a sentence of five years and four months in a penitentiary for the crime of robbing R$1.00 and a metro card, through the use of verbal threat and no arms. The sentence was aggravated because there were two people involved.

In fact, since P. was a first time offender (even the judge who sentenced him acknowledged that he had no prior records), and the sentence was fixed at five years and four months of prison, he should have begun his time in work release conditions, as outlined in Art. 33, Paragraph 2, line "b" of the Penal code. [41]

38 Code of Criminal Procedure, Art. 400: The preliminary hearings and final decision are to be held within sixty (60) days of arrest, proceeding with taking statements from the victim, the hearing of witnesses presented by the prosecution and the defense, in this order, except as provided in Art. 222 of this Code, as well as clarification of the experts, the confrontation of witnesses, and knowledge of people and things, and then interrogating the accused. (Amended by Law Nº. 11,719, 2008).

39 Federal Constitution. Article 5 LXXVII. To everyone in the judicial and administrative area, all are assured of a reasonable length of proceedings and ways to guarantee the speed of their progress. (Subsection added by Constitutional Amendment No 45 of December 8, 2004)

40 American Convention on Human Rights. *Article 7, Subsection 5. Right to personal liberty (...) Every person arrested, detained or held shall be brought promptly to the presence of a judge or other authority authorized by law to exercise judicial power and has the right to be* ***tried within a reasonable amount of*** *time or to be set free, with no damage to the case as it proceeds forward. The person's release may be subject to guarantees to assure his appearance in court.*

41 *Art. 33, Paragraph 2 – Sentences which deprive liberty should be executed in a progressive form according to the merit of the condemned, observing the following criteria and excepting the hypothesis of a transference to a more restrictive sentence:*
a) those condemned to more than eight years should begin to complete the sentence in prison
b) ***those first time offenders condemned, whose sentence is more than four years but does not exceed eight years, may, from this principle serve the time out on parole*** *(emphasis added)*
c) the condemned first time offender, whose sentence is equal to or less than four year may begin to serve this sentence out on parole. Paragraph 3 – The determination of where the sentence should begin will be done by observing the criteria set forth in Art. 59 of this code

However, the judge of the case ordered that he would do his initial time in a penitentiary, using the argument that the seriousness of the crime, in her words, "terrorizes so much the population of this city." The judge also mandated that the prison time be done in a penitentiary because the crime had been committed "in broad daylight," showing that the agent of the crime acted in a "bold" fashion. However, by Brazilian law, crimes committed during the night have harsher sentences, as in the stereotypical case of thievery during the night, the penalty for which is much harsher than the same crime committed during the day. Thus, the opposite situation of the crime being committed during the night could be used to set the conditions of prison beyond what the law requires, alleging the boldness of the agent who does not respect the "night rest of the society." The judge used pure rhetoric to get around the intent of the code in Art. 33, Paragraph 2 of the Penal Code, without presenting any valid motivations, and even violated the summaries of the Federal Supreme Court[42] and the state's higher courts on this issue. [43]

Yet, the Public Defender's Office did not appeal the decision as expected, allowing the sentence to become final. After the project team talked with the public defender responsible for the case, he filed a *habeas corpus* in the Sao Paulo Tribunal, requesting that the sentenced serve his time on work release, as the law provides, but not altering the status of "final sentence" of P. This harmed a possible plea for pretrial release from the Federal Supreme Court, because in Brazil, until the sentence is final, a person is still considered to have "provisory" status.

The Sao Paulo court, however, denied the request for starting the sentence in work release regime. So the Weaving Justice team filed a new *habeas corpus* in the higher court, which denied the injunction, as the judgment of merit was still pending. The Federal Supreme Court refused to hear the case since there was still not a decision from the superior court, following Docket 691 of the Supreme Court.

While these impersonal juridical battles were going on in the courts, P. was feeling the effects of his oppressive imprisonment, having contracted tuberculosis from his overcrowded cell. Since he was already HIV positive, his health became extremely debilitated, and his weight dropped to a mere 42 kg (92 pounds).

After completing eleven months of prison with precarious health, P. was awarded the benefit of serving the rest of his time on work release. However, the decision rendered on September 9, 2011, by a judge from the National Council of Justice (CNJ) remained only on paper, and two and a half months after receiving the benefit, P. was still locked up in a prison center when he should have been released.

42 Docket Nº. 718 – Federal Supreme Court: The judge's opinion on the seriousness of the crime in the abstract does not constitute apt motivation for imposing harsher prison conditions than allowed under the sentence imposed. Docket 719 - STF: Mandating harsher prison conditions than the applied sentence permits requires apt motivation.

43 Docket Nº. 440 – Federal Supreme Court: Fixed on a sentence-base in the legal minimum, it is forbidden to establish prison conditions more onerous than reasonable due to the penalty imposed, based solely on abstract gravity of the offense.

Because of this situation, the team filed a request to the Department of Criminal Proceedings of Sao Paulo, so that, due to prison overcrowding and the inefficiency of the state in granting work release for the prisoner, P. could be on house arrest while he waited for space in the work-release program. However, this request took one week just to be legally included in the case, and up until the time of this writing, there was still no response.

Pretrial release for accused drug trafficker

L. J. A.S., 24, worked as an actor for adult films and did day labor for a telephone company in Sao Paulo. He was living in a hotel as he had just arrived recently to try a new life in Sao Paulo.

The project attended him on September 29, 2010. He was arrested on September 19, 2010, accused of drug trafficking. According to the police report, he was caught with 17 rocks of crack (6.8 grams) and R$3,083.90 was found in his hotel room.

The request for pretrial release was filed on October 7, 2010, along with his personal documentation (proof of residence and work). The request pointed out that he was a first time offender with no previous record. The petition underlined the principle that even though eventually convicted, he would be paroled and given alternative sentencing instead of a prison sentence, in conformity with the directions from the Superior Justice Tribunal (v. HC 164.976/MS, HC 160.672/SC, among others) and recent decisions from the Federal Supreme Court in HC 97.256/RS.

It is noteworthy that the family of the accused lived far from the capital, and had difficulty accompanying his case. The project had direct contact with a friend of L. J. A. S., which was important for documentation and family relations. The friend brought toiletries and came various times to ITTC headquarters, bridging the gaps between the team and the family.

Pretrial release was denied at DIPO and in the courts by the judges, who alleged that such action is not permitted for the crime of drug trafficking. The *habeas corpus* was filed in the State Supreme Court on January 12, 2011, reaffirming the constitutional power to restrict heinous crimes relating to pardons, amnesty and bail, but not addressing or limiting pretrial release. Therefore, any stipulation to the contrary inserted in lower ranking laws goes against the principle of the supremacy of the Constitution. The injunction was denied.

He was released on March 16, 2011, five months later, having been conceded the *habeas corpus* filed in the State Supreme court with a unanimous vote:

….the fifth article of the Constitution.…never authorized the ordinary lawmaker to produce norms that prevent pretrial release for certain, determined crimes, as some law operators plan.

….It is also important to remember that a first time offense with no prior records has bearing on cases of eventual condemnation and may suggest a reduction or even substitution of physical punishment.

Moreover, the accused has been imprisoned since September of 2010, without having ever begun the criminal proceedings.

L. J. A. S. had his hearing set for April 5, 2011. His friend tried to attend the hearing, but was not allowed. Despite an attempted intervention by the project team, he still was not permitted into the hearing.

Drug-user, mother of five, arrested for "trafficking"

M. and A. were arrested and accused of drug trafficking and for association with trafficking (because there was more than one person in the case). According to the police report, they were chased through the streets by police who were called on the scene by Copom (citizen denouncement by telephone). M. and A. were apprehended after entering a shack. The police found nothing on them. Asked about the shack, they told the police it was their home. The police, even though they had no search warrant, entered the residence and searched it. According to M., her five children were at home. Fearing the tumultuous situation the presence of the police had caused in her home, she said she was a marijuana user and only possessed the substance for her own use. The police found a package of cigarettes with four portions of a substance that seemed to be marijuana in a little box. M. informed the officer that she stored it for her own use in a way that her children did not have access to it.

M. was attended by the project on February 14, 2011. Before this, there had been contact with an agent of the National Catholic Prison Ministry who became responsible for finding the whereabouts of her children, T. (10), A. (8), R. (7), J (6), and little J. (1 year and 6 months), all of whom had witnessed their mother's arrest. The team members, who were always in contact with their Prison Pastoral Ministry partners, received an email with information that the children had been taken in by a neighbor who was awaiting the arrival of the children's grandmother.

On the day the team was giving the mother legal counsel, they informed her of what they had learned from the Prison Pastoral. She cried from relief. It is important to mention that other detainees also became emotional, knowing that her children were okay. It was evident that M., in her suffering, had been consoled by her prison companions during the five days that she went without any information about the well-being of her children. Her fear was that they had been taken away by Child Protective Services.

The team requested her release on February 22, 2011. In short, regarding A., the team requested release due to improper search and lack of evidence, and for M., in addition, asked for an appropriate response considering that she was a drug user, observing the prohibition of imprisonment following Art. 28 of Law 11,343/2006. On March 29th, after one month of prison, she was released due to lack of evidence. M. was sentenced by Art. 28 to community service.

Conclusions

Even though the initial hypothesis was based on the presumption that a greater number of public defenders was necessary for pretrial prisoners to have access to justice, the project showed that this alone is not sufficient to guarantee that goal. The public defender's actions frequently run into bureaucratic roadblocks and authoritarian practices deeply ensconced in the criminal justice system.

The effectiveness of assistance to this fragile population may demand more than action from public defenders. It may demand assistance from social workers and other professionals, because many inmates cannot count on family support to work in their favor for pretrial release. On the other hand, the project showed that immediate access to a public defender is important in securing not only access to justice, but also in preserving fundamental rights and preventing torture against the person in prison. A lack of clarity on the part of the interviewees was also noted, with regards to the terms of their custody (precautionary or already sentenced). This revealed that pretrial prison is commonly perceived among the prisoners as if they were already sentenced. This needs clarification for each individual.

In relation to the profile of the prisoners, both the information from the interviewees in the prison units as well as the information collected from the criminal trial documents reveal the selectivity of the criminal justice system. Young people between the ages of 18 and 25, black or brown, born in Sao Paulo, minimal formal education, and working in jobs in the informal sector of the economy: these make up the profile of the interviewees at Pinheiros CDP I and the Sant'Ana Women's Prison. The majority of those who responded to the questionnaire were working at the moment they were arrested, earning low salaries but still helping to sustain the family to some degree or another. Motherhood was the norm for the women, who were responsible for the care of their children.

It is important to highlight that the project dealt with people marked by social fragility, with little or no access to the limited network of public services and facilities. The rare use of shelters registered among homeless prisoners, health services among sick prisoners, pre-natal services among pregnant women, and treatment among drug users: these are only some of the elements that reveal the lack of services available to this population. Moreover, the number of people living in the streets and people living with HIV is significant in the results obtained by this research.

The profile of the prisoners obtained from the interviews is consistent with that obtained from the case research. However, the discrepancy between the profile of offenders and their victims should be pointed out: different from the former, the latter are mostly white, at least high school educated (with a significant number having advanced degrees), and with jobs commensurate to their level of education.

This population of pretrial prisoners corresponds to a portion of the population which is consistently subjected to repressive police action. The moment of arrest frequently included violence, especially physical violence for the men and sexual harassment or assault for the women. When asked about their previous interactions with the police, the inmates in the CDP I of Pinheiros frequently reported suffering or witnessing confrontations with police and police aggressions. In addition, there were many complaints about police violence at the moment of arrest. The high number of cases of torture or other forms of violence alleged by inmates, and the lack of any investigation on the part of the prison administration show how the prison system remains silent in the face of the violence suffered by prisoners prior to inclusion in the system, despite specific regulatory norms.

The contact with these situations of institutional violence confirms the conviction that the creation of mechanisms for transparency and control of police activity is urgently needed. Just as important is the demand for effective forensic medical exams, for the creation of preventative monitoring mechanisms, for independent ombudsman and internal affairs departments, as well as for separating the forensic medical examiners from the Secretary for Public Security. This latter measure is critical, because in the current structure these experts are subordinated to the Public Security Department and the police. This situation makes any official complaint difficult because they are denouncing their own colleagues. Moreover, the research demonstrates the urgent need for training of the police in working with vulnerable populations.

The project also showed how decisive is the posture of criminal justice system authorities as well as the police. Judges and prosecutors—even public defenders—corroborate with the selectivity and the violence promoted by the police, and rarely question the necessity of pretrial imprisonment. There is great resistance on the part of the authorities, who do not even consider the details of the actual case and issue statements and decisions characterized by generalities and weak argumentation. The principle of presumption of innocence is inverted. The person is automatically imprisoned, as if his/her arrest constituted sufficient proof of guilt; or as if precautionary imprisonment functioned as the anticipation of a sentence which would not even be applied at the end of the case.

The project team uncovered various cases in which the defendant was being accused of a crime for which he/she could receive alternative sentencing. However, the accused remained in precautionary imprisonment until the sentencing, which in the end, would set him/her free even though convicted (in other words- in prison while "innocent until proven guilty" and set free once found guilty).

It is interesting to return to the data obtained with the analysis of the case outcomes: in cases related to drugs, 70.2% received a final decision from the criminal court for imprisonment; in the cases of violent crimes, 53.2%; and in the case of nonviolent crimes, 10.1%. One can see the contradiction, besides the disproportion, between precautionary imprisonment and the final outcomes present in a significant number of the cases examined.

All of this leads to the conclusion that pretrial imprisonment has been used in Sao Paulo as political instrument of population management and in the cases dealt with here, designed to control a specific sector of the population.

The low quantity of drugs seized in the cases studied, and the return of stolen property in the majority of cases involving property crime are important elements in the discussion of damage done by the criminal act.

During the execution of the project, Law 12,403/2011 was enacted, which altered the devices relative to precautionary measures. The report offers abundant material to evaluate its impact, since it has succeeded in painting a portrait of the dynamics of pretrial prison in Sao Paulo.

Likewise, through the project's interventions, it was shown that the argument for security and preservation of discipline always worked to the detriment of the rights of the prisoners, especially the right to material, juridical and health assistance.

The quantity of violations of prisoner rights witnessed by the team suggests the need for better control of prison and judicial governance, a necessary mechanism and which perhaps has to be independent.

So that there may be transparency, the prisons cannot be places impervious to public scrutiny; it is necessary to elevate society's knowledge of and participation in the realities of the prison units, their conditions and those human beings who are there, be they prisoners or staff.

The findings of the present study should raise other questions and challenges relative to pretrial prison and its impact. The recommendations below point to positive changes, and in some way, suggest new areas to be researched for future projects.

A look at the women

In spite of the declared intention of working in the Santa Women's Prison with the objective of understanding the women prisoners better, the data from the questionnaires and the research still revealed little about the situation of female prisoners. There is a lack of concrete data about women who commit crimes, even on the national level. But it is clear is that there is no denying the relationship between women and drugs.

The little data available reveals that on a national level, 62% of the crimes of women are directly related to drug trafficking (Law 11,403/2006). It is necessary to add here that many women also steal (Art. 155) and rob (Art. 157) to buy drugs. Thus, many of the indices revolve around drugs.

The research demonstrates that 81% of female committed crimes were nonviolent (adding together the categories "nonviolent crimes" and "drug trafficking crimes"), while 57% of male crimes were in these categories. Of this 81%, 38.8% were crimes of drug trafficking. It is important to remember that the research was done soon after arrest and before the possibility of pretrial release; thus, the number of female prisoners charged for stealing is 38.5%.[44] It is also interesting to note that men were more often arrested in public spaces (78.6%) than women (56%), while women had a higher rate of arrest in commercial establishments (21.9%) than men (6.8%).

Currently, it is not uncommon for a woman to be caught for trying to enter into a prison unit with drugs. Almost 4% of the women interviewed were arrested at a police station or a prison unit. The women who were arrested during a search in the penitentiary were intending to take the drugs to their imprisoned partners. The majority of them said that their husband/boyfriend was being threatened by the other prisoners in the unit, and if the women did not bring the drugs, their partner would be killed. In these cases, the women were arrested as drug traffickers, and only the prison agents involved in the arrest were witnesses for the case. During the case, there was no evidence of any type of investigation around the allegations of the women that they were obliged to carry the drugs.[45]

Moreover, women are becoming more and more the breadwinners of the home; of the population interviewed, 53% of the men said they had children, while 81.2% of the women said the same, and 14.1% of the women had five children or more. Regarding cohabitation, only 23.7% of the men said they lived with their children, while 56.2%% of the women said that they lived with their children before arrest.

44 Because stealing/shoplifting has a higher chance of pretrial release. So- the initial percentage of the population arrested for stealing diminishes as the judges grant pretrial release, thus increasing the percentage of people in prison for other crimes.

45 This theme deserves a more thorough research, given that many women are being criminalized for trying to enter prison units with drugs, but not necessarily with the intention of trafficking them.

This data is significant in that more than 64% of the women declared themselves to be single, divorced or widowed, and that they did not have partners or spouses to share the cost of raising the family. On the other hand, fewer of the women were homeless (13.5%) compared to men (31.8%)

The research shows that women are less frequently victims of physical or verbal police violence related to the moment of confrontation in the street, but when mistreatment happened with women, it was almost always sexual violence. They related that when the person who arrested them was a man, they were beaten less, but heard more language offensive to their female dignity (a description of their body, the use of words which are offensive to their sexuality or to their body), including proposals for "sexual bribes," which involved not being arrested in exchange for sexual favors. When there was physical violence, it was frequently sexual abuse (male police officers fondling the woman's body), and not infrequently the moment of confrontation was intimidating, given the discrepancy between the police force / masculine strength and the situation in which the woman was arrested. Some stated that the arrest was made in front of their children, and one even said that the police threatened to abuse her daughter if she did not surrender herself.

Recommendations

1 – The government of the State of Sao Paulo should promote public processes for hiring public defenders so that they may meet the demand for access to justice among the prison population, given that the current number of public defenders is inadequate.

2 – The State Supreme Court should create means to facilitate access to case information, for both public defenders as well as prisoners. For the latter, the information should be made available in clear, intelligible language.

3 – The National Congress should alter the penal case legislation to create a "custody hearing" so that the inmate can be heard immediately after arrest by the judicial authority, in the presence of a prosecuting attorney and a public defender.

4 – The federal law should expressly prohibit the maintenance of pretrial prison when the crime of which the person is accused demands the application of alternative sentencing.

5 – The Public Defender's Office should guarantee the permanent presence of public defenders inside the prisons so that it may promote quick access to justice, reduce the tension between prisoners and guards, and preserve the rights of the prisoner.

6 – The State Supreme Court, the Public Prosecutor's Office, the Public Defender's Office and the State Secretaries for Public Security and Prison Administration should conduct training sessions for legal, police and prison authorities regarding the prevention and restraint of violence against the prison population.

7 – The inspection bodies, especially the prosecutors, judges and public defenders, should regularly monitor detention locations.

8 – The State of Sao Paulo should approve the law which creates the state preventative mechanism, in accord with the UN Protocol, to monitor detention locations with the objective of deterring practices of torture.

9 – Given an allegation of violence at the moment of arrest, the organs of prosecution, especially the Public Prosecutor's Office, should immediately guarantee a forensic medical exam to investigate any occurrence of torture or other forms of mistreatment of the prisoner.

Bibliography

CLEMMER, Donald (1940). *The prison community.* Austin: Holt, Rinehart and Winston, 1968.

HOWARD, Caroline (Org.). *Direitos humanos e mulheres encarceradas.* São Paulo: Instituto Terra, Trabalho e Cidadania e Pastoral Carcerária de São Paulo, 2006.

LEMGRUBER, Julita et al. (Org.). Controle externo da polícia: ocaso brasileiro. *O (des) controle da polícia no Brasil.* In: CONFERÊNCIA INTERNACIONAL SOBRE O CONTROLE EXTERNO DAPOLÍCIA,1., 2002, Rio de Janeiro. *Anais...* Rio de Janeiro: Centro de Estudos de Segurança e Cidadania,2002.

MAÑAS, Carlos Vico. *O princípio da insignificância como excludente da tipicidade no direito penal.* São Paulo: Saraiva, 1994.

NEV, Núcleo de Estudos da Violência. *Prisão Provisória e Lei de Drogas: um estudo sobre os flagrantes de tráfico de drogas na cidade de São Paulo,* 2012, mimeo.

SÁNCHEZ, Jésus-Maria Silva. *La expansion del derecho penal: aspectos de la política criminal em las sociedades postindustriales.* Madrid: Civitas.

SCHOR, Silvia Maria; VIEIRA, Maria Antonieta da Costa. *Principais resultados do censo da população em situação de rua da cidade de São Paulo,* 2009, mimeo.

Realization

ITTC
INSTITUTO TERRA, TRABALHO E CIDADANIA

PASTORAL CARCERÁRIA
"Estive preso e vieste me visitar"

Support

OPEN SOCIETY FOUNDATIONS