

Delinquency Proposals from the Alianza por Chile: In the Right Direction

We are dealing with an integral package of measures concerning the different stages of the criminal flow. It is imperative to evaluate and rank the proposals made by the authority, giving special urgency to those pointing at reducing recidivism and improving future reintegration, such as the construction of new prisons, drug rehabilitation measures and labor reintegration, both for youngsters and adults.

In the past weeks, the discussion about delinquency in Chile has concentrated a great deal of the public agenda. On the one hand, new public security statistics were given, as the reported number of crimes of greater social connotation (DMCS)ⁱ for the first quarter of 2011 was presented by the Ministry of the Interior, which showed an increase of 10.1% in relation to 2010. However, we know the limitations of reporting as victimization indicator.ⁱⁱ

On the other hand, several disagreements between the institutions which are responsible for public security have become evident; institutions such as the Ministry of the Interior and Public Security, Ministry of Justice, Supreme Court and Public Ministry. These differences are focused on profound approaches concerning the accountability of each institution in the field of public security.

In this context, in the past weeks congressmen of the *Alianza por Chile* – namely deputies of Renovación Nacional (RN) Cristián Monckeberg and Alberto Cardemil, and senator of the *Unión Demócrata Independiente* (UDI) Juan Antonio Coloma –, supported by experts of this sector – among others, LyD -, have proposed a set of anti-delinquency measures in the different stages of the criminal flow: prevention and dissuasion, prosecution and sanction, and reintegration and rehabilitation, considering also the proposals regarding juvenile crime issues. Therefore, the present document

analyses the underlying diagnostic and the merits of the proposals we consider most important.

Prevention and Dissuasion

The first measure which is worth highlighting is the coverage extension of the *Sistema Tático de Análisis del Delito* (STAD – Crime Analysis Tactical System), fostered by the Undersecretary for Crime Prevention.

Evidence shows that good police management is a key factor in crime reduction.ⁱⁱⁱ The Chilean STAD, copied from the successful COMPSTAT (Comparative or Computer Statistics) of the New York Zero Tolerance Plan, is a management control instrument for the investigative work and the police analysis task, focused on the generation of periodical geographically referenced data (each block of a commune) concerning crime phenomena, which allow creating effective crime prevention and criminal prosecution tactics, including the PDI (Investigative Police), the local prosecutor's office and the municipality; at the same time, it generates an accountability system for police work. If it is correctly applied and evaluated, it should entail a revolution in this area. Currently, it is being applied in all the prefectures of the Región Metropolitana, but it should be extended to the whole country.

Another interesting proposal is to increase the number of interventions in high complexity neighborhoods. At present, an intersectoral pilot plan on this matter is being carried out in the *Población La Legua*; however, the idea is to evaluate this program and to apply it to other high complexity neighborhoods in 2012. The relevant issue of this plan is that it does not only deal with coordinating disperse social policies among different public organizations, but with focalizing these on the risk factors that have a bearing on crime committing. In this perspective, the Government's recent announcement concerning the intervention's extension in 2012 to two new neighborhoods – La Cañamera in Puente Alto and La Palmilla in San Joaquín - presenting high unemployment, crime and school drop-out rates, seems positive.

Finally, in prevention matters, we can emphasize the proposal which seeks to make march leaders accountable for damages, including the requirement of guarantee letters.^{iv} We believe that this measure points at the right direction, since it establishes incentives for the organizers of meetings, marches and protests in public properties, to

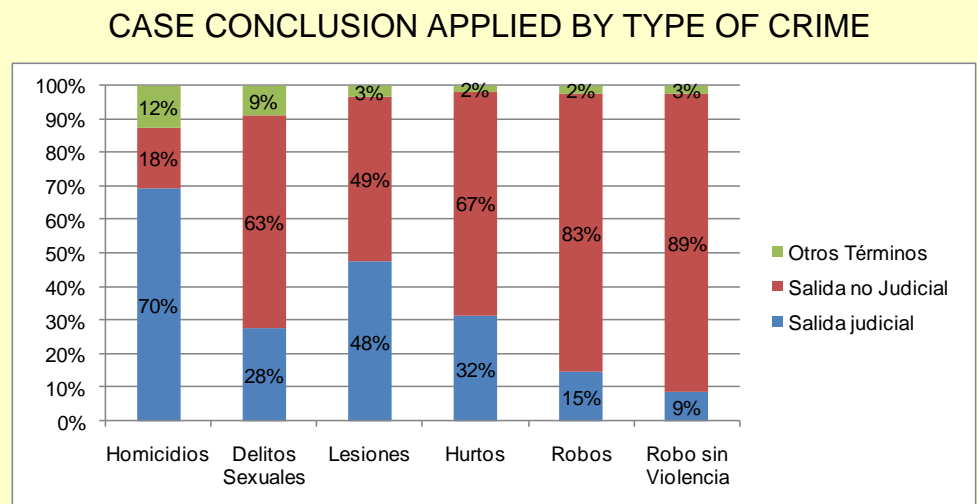
take the necessary measures and warranties to minimize or eliminate the use of the said protests to commit crimes against public or private properties or against people. Although it is an ex post accountability – once a crime has been committed -, the requirement of a guarantee letter to the organizers allows effectively guaranteeing this accountability, at least in part of the potential damages.

Criminal Prosecution

Here, we can highlight the proposal aiming at reforming the corporate government of the Public Ministry, by introducing a “Criminal Policy Council”, which is the base to establish the goals and tasks of the prosecutor’s office, thus supporting and advising the person in charge of the Ministry’s management. Although the proposal suggests an external council, we believe that it should be an internal one, that is, a new way of understanding the Public Ministry’s top management, which currently falls on one person (the National Prosecutor), through the creation of a Public Ministry Council, presided over by the National Prosecutor, following the institutional design model of *Banco Central*.^v

Likewise, we can draw attention to the proposal which modifies the Public Ministry’s management evaluation criteria. Currently, they foster the use of interim files which are handled in the same manner as the judicial outcomes, so they should be replaced by “efficiently concluded cases”, which is an incentive that clearly improves the prosecutors’ due evaluation.

Chart 1



Source: Prepared by LyD with data from the Public Ministry Statistical Bulletin.

According to the Statistical Bulletin of the Public Ministry, in 2010 the judicial outcomes reached 42% while the facultative conclusions in the hands of the prosecutors reached 58%, where the interim files represent alone 46% of the total number of concluded cases in the penal system. In fact, for the first time in the last years, the first two quarters of 2011 register an increase in relation to the former semester (47%). Even in crimes such as larceny and non-violent thefts, non-judicial outcomes reach 70% or more, thus generating a sensation of complete impunity (see Chart 1).

As a matter of fact, as the prosecutors themselves recognize, their evaluation system is mainly based on the number of pending cases, so the incentive is clear: to reduce those pending cases quickly by means of interim files. The proposal aims at the right direction when modifying this criterion and rewarding prosecutors through objective parameters that reflect the quality of the cases' conclusion, reduction of the interim files by judicial outcomes, number of sentences, sentence years obtained, etc. We also believe that the prosecutors' evaluations should be public.

Finally, in relation to the evaluation plans for judges, it would be interesting to make some progress in the creation of new evaluation mechanisms for judges, which eliminate the current rating system, and which is based on indicators with different weighting factors, thus guaranteeing the evaluation's and evaluator's objectivity, and which considers the users' opinion, and the idea of strengthening the current scheme of performance commitments based on institutional and collective goals, by incorporating individual variables.

Rating can no longer be the main instrument of the Judiciary's performance; there is enough evidence suggesting its inefficiency. It does not only prevent the evaluation of the judges' performance, but it also seriously affects the internal independence of the judges. Along these lines, the evaluations of the judges should be based on objective, public indicators, and we could include other indicators related to their professional development. Additionally, these should be evaluated by an external, mixed organism with representative members of the Supreme Court and other judges, former judges and management experts, who should deliver a public report.

Rehabilitation and Reintegration

In this regard, we can emphasize the proposals of speeding up the construction of four new prisons – aiming at promoting the reform proposed by the government concerning these matters, ideally by leasing the four new prison facilities – and promoting the work of prisoners and ex-prisoners through a policy which fosters work inside the prisons, by means of alliances with the private sector and government programs, thus improving the access of prisoners to the labor market.

Both proposals are related to each other and deal with an urgent need in Chile: to reduce overcrowding and give prisoners a real possibility of future reintegration. It is therefore necessary to go on reducing prisons' overcrowding, which currently amounts to 46%^{vi} (a figure that has been reduced from the 60% existing in 2010 and which was strongly increased by the earthquake), by building prisons and allowing the effective application of rehabilitation and reintegration programs. We believe that the consulting services and the implementation of the proposals from Altegrity should entail a revolution in this area, which also consider that prisoners' work in basic maintenance aspects of the prisons (low security ones).

Regarding reintegration matters, we can highlight the proposals aiming at extending drug rehabilitation and incorporating adequate financing, so that alternative sentences may also include rehabilitation processes. We believe that it is important to give special emphasis to the Rehabilitation and Reintegration Program of *Gendarmería* (corps of prison guards), whose budget for 2012 is only 3.6% of *Gendarmería*'s total (equivalent to US\$18.2 millions^{vii}), and to foster the implementation of two new treatment centers in the social reintegration places of Iquique and Puerto Montt, and a center for the internal population of Colina II.

As for the rehabilitation of those serving non-custodial sentences, we think it is important to strengthen the Drug Treatment Courts (DTC), a measure that was recently agreed in the National Council of Public Security. These types of treatment have shown recidivism rates of 16.4%, while traditional proceedings show recidivism rates of 43.5%.^{viii} This means that we have to keep progressing in the implementation and evaluation of the DTCs; to make a follow-up of the cases where a treatment has been imposed as a condition for the conditional suspension of the proceeding; and also, to highlight it as

one of big challenges of the current bill which modifies Law Nr 18,216 on alternative measures.

Conclusions

The different anti-delinquency proposals presented by the *Alianza por Chile* seek to integrally improve the relevant features of the different stages of the criminal flow. It is imperative that the authority evaluates and ranks these proposals, giving special urgency to those pointing at reducing recidivism and improving future reintegration, such as the construction of new prisons, drug rehabilitation measures and labor reintegration, both for youngsters and adults. As for criminal prosecution, we believe it is essential to find a new approach for the incentives of the Public Ministry's work, in order to reduce the non-judicial outcomes.

ⁱ *Delitos de Mayor Connotación Social*. Crime Statistics Reports (third quarter 2011). www.seguridadpublica.gov.cl

ⁱⁱ In fact, reporting by itself does not reflect the victimization levels; they are rather a complement of the surveys (ENUSC or Índice Paz Ciudadana Adimark), due to their significant biases. Nevertheless, even though the results presented by the Ministry of the Interior may reflect a greater confidence in the police (entailing a greater number of reporting) and not necessarily a crime increase, the considerable rises in the reported homicides (31.6%) and rapes (13.9%), do allow us to infer that the victimization of these crimes has increased, since surveys are not good measurement methods for these two crimes.

ⁱⁱⁱ See Franklin E. Zimring: *The City that became Safe* (Oxford, 2011).

^{iv} Additionally, it is essential that there is further training for Carabineros in relation to protests' control (preventive, tactical actions, etc.) and on the coordination with the Public Ministry (and the Ministry of the Interior) for the judicial prosecution of these offenses; currently, this coordination is not optimal and sentences are null.

^v This Council is to be integrated by five members, who are to hold the position for 10 years, and it is to be partially renewed every two years. The appointments are to be made by the President of the Republic of Chile with the agreement of the Senate, by two thirds of its acting members. The President of the Republic appoints the National Prosecutor among its members (President of the Public Ministry), who is to be in charge of executing the agreements of the Council and presiding over the Public Ministry. The regional prosecutors are to be appointed by the Council and they are to hold their position as long as the Council relies upon their confidence. The Council is to set the goals and tasks for each regional prosecutor, according to the situation of each community.

^{vi} Public Account, Ministry of Justice, December 9th 2011.

^{vii} Budget Law 2012. www.dipres.gov.cl

^{viii} Plan Chile Seguro (Safe Chile Plan). Undersecretary for Crime Prevention.