Executive Summary

Criminal Procedure Reform and Preventive Detention in Bolivia

Over the past twelve years, Bolivia has undergone a criminal justice system reform that is based on adversarial and constitutional guarantees, from which preventive detention was established to be used exceptionally; however, in practice the criminal courts remain saturated with causes unresolved and the country's prisons remain overcrowded with prisoners without a trial, making preventive detention a serious human rights issue.

Moreover, rising crime rates, the excessive length of the criminal proceedings and the little and weak response of the criminal justice system to the demands of citizens, appear to have influenced and motivated the State to establish its crime prevention policy in a strictly punitive manner based on toughening penalties, creating new offenses and expanding the powers of judicial officers to request and implement preventive detention. This has resulted in applying in practice this institution as a kind of anticipatory punishment against the inability of the criminal system to bring criminal prosecution into an end using the oral, public, and contradictory process that aims to respect guarantees of due process.

Bolivia is currently moving towards new reforms of the justice system, which has put back the debate focused in restructuring the criminal justice system. For this reason, it appears to be imperative to recover the analysis scenarios, policies and alternative measures to the use of preventive detention in the criminal prosecution. The latest judicial and prison statistics show a reality that clearly contradicts the equation that greater authority and coercion to resort to the jail as a remedy, will result in less crime. In other words, the public debate should readdress the issue of alternative measures to return to criminal restorative justice with special emphasis on the victim and their demand for justice, but in turn contribute to progressively reducing the use of preventive detention in the country.

Fundacion Construir, the Justice Studies Center of the Americas, the Office of the United Nations High Commissioner for Human Rights and the United Nations Program for Development, jointly promoted research and Criminal Procedure Reform in Bolivia related to Preventive Detention, seeking to identify the main problems that transcend the excessive use of preventive detention to contribute to the adoption of new alternatives to criminal prosecution while reducing preventive detention rates in Bolivia.

The study was based on two areas: a) an analyses of the judicial and prison statistics in the country, and, b) a review of information collected from observation of practice of interim hearings in the cities of La Paz and El Alto, accounting for more than 20% of the judicial workload in Bolivia. It was sought to assess how the criminal justice system is running at this stage, and what factors cause the application and implementation of preventive detention in the country.

Thus, the research has been conducted along five chapters organized from observation of a general radiography taken to the functioning criminal justice system. The work is intended to enable a comprehensive understanding of the problem from exposing factual and empirical facts affecting the
use and application of preventive detention and to assess its impact on the functioning of the judiciary in criminal matters.

The first chapter makes a retrospection of the actions to overcome a former obsolete inquisitorial system in force in Bolivia until enactment of the 1970 Act which introduced the adversarial accusatorial system and related guarantees of the legal due process. The progressive consolidation of the new system was the result of work and serious commitment on the part of the Bolivian state through the institutions responsible for administration of criminal justice, international organizations that provided technical assistance and financial support and civil society organizations commitment to promote human rights. These efforts resulted in a number of substantial changes within the judicial system aimed at consolidating a justice system more transparent, independent, participatory and based on respect for human rights and civil liberties.

However, shortly after the reform was in full effect, public debate aroused on several reform issues, especially those concerning the treatment of precautionary measures based on the false assumption of complacent tolerance with criminal offenders that prompted the State to again modify criminal policy with measures that strengthened a punitive approach. Thus, between 2003 and 2012 there have been amendments to the criminal code and criminal procedure code, all aimed at stiffening penalties and expanding the discretionary faculties granted to prosecutors and judges to exert and determine custody. As a result, various misdemeanors of scarce social relevance that previously had the possibility to be solved through alternate routes to trials, now are prosecuted in trials overloading the criminal and procedural cases, which in turn increases the levels of delayed justice, since the measures were not taken accompanied by the creation of new courts, and the addition of new human resources and infrastructure to enable the judiciary respond to the lawsuits.

The second chapter of the study responds to the analysis of the technical, human and financial capabilities of the bodies responsible for the administration of criminal justice, the criminal procedures and prison in Bolivia (the Judiciary, Attorney General, Prisons Officials and Public Defender) and the relationship these capabilities have with the rate of cases dispatched annually, which makes evident in a first analysis, that factors related to the delay of justice are of a structural nature and are totally unrelated to the guidelines of the accusatorial adversarial process.

The analysis focused on prolonged pretrial detention, led to the evidence that the current prison system retains 84% of prisoners without a legal conviction. It also exposed the plight of urban and rural prisons of the country, holding overpopulation exceeding 130% in physical prisons installed capacity, making it impossible to comply with the rules of prison treatment to inmates according to their age, gender and legal situation, and also making it difficult to meet the benefits provided by Law 2298, related to work-education opportunities and social reintegration processes, a situation that constitutes a violation of inmates rights and criminal law and prison regulations in Bolivia.

When reviewing the problem of delayed justice and legislative measures aimed at imposing tougher penalties to combat crime in Bolivia, it was necessary to study in detail the judicial statistics regarding disposition of cases, with emphasis on the preparatory phase of trial, which is where application of
preventive detention is determined. The third chapter was dedicated to the analysis, presentation and comparison of judicial statistics generated during the period 2008-2010. Here it was found that the equation “tougher penalties equal less crime” was not only met, but in fact it has had negative impact on the increase in caseload and delay of justice. In reality, the true "real equation" of stiffened penalties and expanded enforcement powers for imposing preventive detention, are responsible for an increased caseload generated by staggered delay of justice in all stages and courts involved in criminal proceedings at the national level but also at a reckless increase of preventive detention rates, which in turn exacerbates overcrowding prisons problems in Bolivia and flags the issue of human rights and public health regarded as more invisible and less cared for by the State.

The fourth chapter of the study examines the critical reality of preventive detention in Bolivia, realizing that the current percentage of un-sentenced prisoners in the country amounts to 84% of the total prison population. This situation leads to an in depth analysis of pretrial detention in Bolivia and the constitutional and international standards in the field of human rights signaling thereby they are violated by excessive and prolonged application of PD.

The fifth chapter presents results of interim hearings observation in the cities of La Paz and El Alto conducted during the first quarter of 2012, where it was found that only 28% of scheduled hearings were effectively performed and the remainder 72% were not, thereby aggravating the backlog of cases and delayed justice. Another important finding during the observation was that actors come along to the hearings without sufficient precautionary evidence for procedural risks, which added to the lack of monitoring and verification systems of the personal circumstances of the accused, prevents the chances of guarantees judges (precautionary) to apply alternatives measures to preventive detention to the accused.

The concluding part of the report takes stock of the results obtained from the research and generates alternative proposals to decongest the system of criminal justice administration and gradually reduce the use of pretrial detention. It aims at strengthening public policy and crime prevention social reintegration, and the reformulation of the system of precautionary measures to overcome the situation of excessive and prolonged use of preventive detention, and recommends abiding to basic rules in the implementation of precautionary measures in criminal prosecution.

Thus the study concludes with a proposed general list of rules for the application of the precautionary measures for the new code of criminal procedures currently being under consideration in the Plurinational Legislative Assembly. Those rules are based on best practices developed in various Latin American countries and are also endorsed by organizations that make up the Global Network of Pretrial Justice, one of whose members is the Fundacion Construir en Bolivia.

The main implications of this proposal on one hand are the inclusion of general rules to regulate and limit the application of preventive detention and on the other hand, the establishment of procedural guidelines for the implementation of precautionary measures.