Executive Summary

Criminal Procedure Reform and Preventive Detention in Bolivia

Over the past twelve years, Bolivia has pursued a series of criminal justice reforms incorporating both new constitutional guarantees and new provisions in its Criminal Procedural Code (the Code) as a result of its transition from an inquisitorial to an adversarial system. These new reforms mandate that preventive detention be used only in exceptional circumstances; however, in practice, the criminal courts remain inundated with unresolved cases, and the country's prisons remain overcrowded with prisoners awaiting trial—causing preventive detention to remain a serious human rights violation in Bolivia.

Moreover, rising crime rates, the excessive length of criminal proceedings, and the weak response of the criminal justice system to the public’s perception of citizen insecurity all appear to have influenced and motivated the State to apply its crime prevention policy in a strictly punitive approach. Thus, the manner in which the new provisions have been implemented has led to stricter penalties, the creation of new offenses, and expanded powers of judicial officers to request and implement preventive detention. In effect, the courts have implemented the Code in a way that has resulted in the use of preventive detention as anticipatory punishment. At the same time, the judiciary has been unable to efficiently and speedily complete the trial process using oral, public, and adversarial structures that respect guarantees of due process.

Bolivia is currently moving towards yet another structural reform of the justice system, with the debate still focused on restructuring only the criminal justice system. As part of this process, it is imperative that reformers place a greater emphasis on alternative measures to pretrial detention. Judicial and prison statistics present a reality that clearly contradicts the belief that greater use of pretrial detention results in less crime. The public debate must balance the emphasis on victims and their demands for justice with the use of alternative measures that will sustain criminal restorative justice and contribute towards reducing the use of preventive detention.

Fundación 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 supported research for Criminal Procedure Reform in Bolivia Related to Preventive Detention; this report identifies the main problems associated with the excessive use of preventive detention and aims to contribute to the adoption of alternatives to criminal prosecution while reducing preventive detention rates in Bolivia. The study focuses on two areas: 1) judicial and prison statistics in the country, and b) observations from pretrial hearings in the cities of La Paz and El Alto [accounting for more than 20% of the judicial workload in Bolivia] exploring the operation of the current criminal justice system and factors motivating the application and implementation of preventive detention.

The report comprises five chapters analyzing factors included in a functioning criminal justice system and is organized to enable a comprehensive approach to the problem. Factual and empirical arguments regarding the factors affecting the use and application of preventive detention are addressed, followed by an assessment of their impact on the functioning of the judiciary in criminal matters.

The first chapter reviews the inquisitorial system that was previously in force in Bolivia and then explores the enactment of the 1970 Act introducing the adversarial system and the related guarantees of due process that accompanied the transition to the adversarial system. The transition to this new
system involved collaborative efforts among several sectors: the Bolivian state through the institutions responsible for the administration of criminal justice; international organizations that provided technical assistance and financial support; and civil society organizations committed to human rights. The combined efforts of these sectors resulted in a number of substantial changes within the judicial system aimed at the creation of a justice system that would be more transparent, independent, participatory, and based on respect for human rights and civil liberties.

However, shortly after the reform took effect, public debate erupted in response to several reform issues, especially those concerning preventive detention; public perception was based on the false assumption that the use of alternative measures promotes a complacent tolerance of criminal offenders. These citizen concerns prompted the State to again modify policy measures in line with a punitive approach. Between 2003 and 2012 there have been many legal amendments to the penal and criminal procedural codes, which have aimed at stiffening penalties and expanding the discretion allowed prosecutors and judges to require preventive detention. As a result, various misdemeanors that previously were managed through processes other than trial are now prosecuted through trial processes. This has contributed to an overloaded caseload in the criminal justice system. In turn, there have been increased in the levels of delayed justice, since the increase in caseload was not accompanied by the parallel creation of new courts or the injection of new human resources and infrastructure that would have enabled the judiciary to respond efficiently and quickly.

The second chapter of the study analyzes the technical, human, and financial responsibilities of those institutions—the Judiciary, the Attorney General, the Prison Administration, and the Public Defender (the National Service of Public Defense – SENADEP)—responsible for the administration of prisons and criminal justice in Bolivia. It also examines the relationship between those institutions and the annual rate at which cases are resolved, and shows that the factors related to the system’s lengthy delays of justice are structural, and are not rooted in the principles of the adversarial process.

The study, which focuses on prolonged pretrial detention, found that 84% of prisoners in Bolivian prisons have not been convicted of a crime. The report exposes the plight of those prisoners who live in overcrowded prisons that are filled to 130% of their capacity. As a result of overcrowding, the State is in violation of the rules of prison treatment related to the requirement that inmates be separated based on age, gender, and their legal situations as well as well as Law 2298, which provides for work-education and social reintegration opportunities. The inmates’ rights are violated, according to the guarantees provided by Bolivian criminal law and prison regulations.

The third chapter analyzes and compares judicial statistics (between 2008 and 2010), particularly those regarding the disposition of cases at the preparatory stage of the trial, where the determination is made as to whether preventive detention will be ordered. The study highlights problems surrounding delays of justice and measures aimed at combating crime through tougher sentences. The inquiry found that the idea that “tougher penalties equal less crime” is false, and in fact causes increased caseloads and delays in justice. In reality, stiffened penalties and increased powers to impose pretrial detention are responsible for increased caseloads and staggering delays in justice in all courts at the national level. There has been a reckless increase in the use of pretrial detention, which in turn has led to prison overcrowding and the associated human rights violations and public health issues that accompany those violations. Further, because these rights violations are hidden from view, they receive little attention from the State.
The fourth chapter examines the reality of pretrial detention in Bolivia, and shows how critical the situation is, considering that 84% of the total prison population is made up of unsentenced prisoners. This chapter demonstrates how constitutional and international human rights standards are violated by the excessive and prolonged application of pretrial detention in Bolivia.

The fifth chapter presents the results of the study’s observation of pretrial hearings conducted in La Paz and El Alto during the first quarter of 2012. These observations show that only 28% of the scheduled pretrial hearings were effectively performed, while 72% were not, aggravating the backlog of cases and delaying justice. Further, actors often came to the hearings without sufficient evidence to argue in favor or against the imposition of pretrial detention. As a result, judges were unable to monitor and verify the circumstances of the accused, and, as a result, they were unable to apply alternatives to pretrial detention.

The report concludes by suggesting alternative ways of streamlining criminal justice administration and gradually reducing the use of pretrial detention. The proposals aim to strengthen public policy, prevent crime through greater social reintegration, and reform the system of precautionary measures to lessen the excessive use of pretrial detention. The report also recommends that the State adheres to certain basic rules when implementing precautionary measures.

In addition, the report includes a proposed list of rules for the application of precautionary measures for the new criminal procedures, which are currently under consideration in the Plurinational Legislative Assembly. These proposed 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 Fundación Construir in Bolivia. Implementing these rules would regulate and limit the application of preventive detention and would also establish procedural guidelines to be considered in implementing precautionary measures.