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Hrsg. Helmut Kury

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**Punitivity**

**International Developments**

**Vol. 2: Insecurity and Punitiveness**

Helmut Kury  
Evelyn Shea

(Editors)

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# **Punitivity**

## **International Developments**

### **Vol. 2: Insecurity and Punitiveness**

Helmut Kury & Evelyn Shea

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Contents .....	5
<i>Kury, Helmut &amp; Shea, Evelyn</i> Punitiveness and Insecurity – Introduction .....	9
<b>II.1. Insecurity, Politics and the Media</b>	
<i>Larrauri, Elena &amp; Varona, Daniel</i> Democracy at Work? Public Opinion and Penal Reforms in Spain .....	31
<i>Fortete, César &amp; Cesano, José Daniel</i> The Role of Victimization, Punitive Attitudes and the Mass Media in Criminal Reforms in Latin America .....	53

<i>Mucchielli, Laurent</i> The Rise and Domination of the Law-and-Order Ideology in France (1990 – 2010): Some of its Consequences on the Criminal Justice System and on Social Control .....	85
<i>Mosconi, Giuseppe</i> The Spectre of Insecurity and the “Prospering” of Prisons.....	119
<i>Reuband, Karl-Heinz</i> Changing Punitiveness in the German Population? A Review of the Empirical Evidence Based on Nationwide Surveys .....	131
<i>Kury, Helmut &amp; Oberfell-Fuchs, Joachim</i> Punitiveness – Impacts and Measurements.....	165
<i>Recasens, Amadeu</i> The Development of Punitiveness: The Case of the Police.....	211

## II.2. Measuring Feelings of Insecurity and Punitive Attitudes

<i>Klaus, Witold, Rzeplińska, Irena &amp; Woźniakowska-Fajst, Dagmara</i> Punitivity in Polish Law, Public Opinion, and Penal Policy .....	245
<i>Zarafonitou, Christina</i> Punitiveness, Fear of Crime and Social Views .....	269
<i>Varona, Daniel</i> Citizens and Punitive Attitudes: A Pilot Study of Spanish University Students .....	295
<i>Llobet Rodríguez, Javier</i> Punitiveness in Costa Rica .....	327
<i>Saar, Jüri</i> 20 Years After: Crime, Crime Control and Fear of Crime of the Population in Estonia 1991 – 2010 .....	343
<i>Nikolić-Ristanović, Vesna, Dimitrijević, Jelena &amp; Stevković, Ljiljana</i> Feelings of Insecurity, Victimization Experience, and Students' Attitudes toward Punishment .....	357
<i>Kovčo Vukadin, Irma &amp; Vukosav, Joško</i> Students' Attitudes towards Risk, Victimization and Punishment in Croatia .....	379

## II.3. Has Criminal Legislation become more punitive?

<i>Yenisey, Feridun</i> Revised Punishments and Security Measures in Turkey .....	403
<i>Yoshida, Toshio</i> Punitivity Today in Japan .....	453
<i>Danilov, Andrey Petrovich, Shestakov, Dmitriy Anatoljevich &amp; Kury, Helmut</i> Changes in Criminal Law and Sentencing Practices in Modern Russia: An Assessment of New Elements of Punitiveness.....	509
<i>Tournier, Pierre V.</i> Godot has arrived. French Parliament has finally voted on its Prison Law .....	551
<i>Prinsloo, Johan</i> Punishment in South and Southern Africa .....	585
<b>List of Authors</b> .....	595

# Punitiveness in Costa Rica

*Javier Llobet Rodriguez*

## 1. General information about Costa Rica

Costa Rica is one of the smallest Central American countries (51,100 square kilometers, with a population of 4,451,205 inhabitants in 2008). It has a democratic tradition dating back to 1948. The human development index is 0.847, which puts it in 50<sup>th</sup> place in the world. The Gross National Income per capita is 5,560 (2007). Traditionally Costa Rica has had good ratings in Latin America, particularly as far as health and education is concerned. Life expectancy at birth is 79.12 years (2008), and the infant mortality rate per 1,000 population is 8.95 (2008). The social security system was established in 1943 and covers 70.07% of the working population and 62.07% of the unemployed (2008).<sup>1</sup> The literacy rate is 94.9% (2007-2008). The army was abolished in 1949, which made it possible to allocate a greater part of public spending to education and health. Since the 1980s, development has been oriented toward economic liberalization and export promotion, bringing with it a greater social divide and problems of social exclusion.

## 2. Criminal Legislation

The current Criminal Code was adopted in 1970.<sup>2</sup> Its general part is based on the Model Criminal Code for Latin America, designed by leading Latin American professors in the late sixties and strongly influenced by similar German projects in 1962 and 1966.<sup>3</sup> The special part of the Criminal Code is modeled on an Argentinean

<sup>1</sup> Estado de la Nación en desarrollo humano sostenible. San José, 15<sup>o</sup>. informe, 2009.

<sup>2</sup> Ley 4573, April 30, 1970.

<sup>3</sup> About the Model Criminal Code for Latin America: Novoa Monreal, E. Franz von Liszt und der Entwurf eines lateinamerikanischen Strafprozessbuchs. In: Franz von Liszt zum

project, especially on the draft prepared by Professor Sebastian Soler for Guatemala. The Code established a sanction of imprisonment with a maximum penalty of 25 years<sup>4</sup> and a parallel system of daily fines. It also included security measures for the criminally insane, repeat offenders and for those who committed an impossible crime. The predominant punishment was imprisonment<sup>5</sup>, but there was the possibility of a conditional suspension of the sentence for those without previous convictions and whose sentence did not exceed three years. The death penalty was abolished in Costa Rica in 1877<sup>6</sup>.

The Criminal Code has undergone numerous reforms, especially in its special part. The reform of 1994<sup>7</sup> significantly increased the penalties for crimes of murder and rape, this in a climate of greater fear of crime and public demand for harsher penalties.<sup>8</sup> Maximum prison terms were at the same time pushed up from twenty-five to fifty years. This latter provision met with strong criticism, as the Constitution does not allow life imprisonment. Costa Rica's Constitutional Court, established in 1989, decided however that the 50-year period was compatible with the Constitution.<sup>9</sup> However, security measures for habitual and professional offenders<sup>10</sup> and impossible criminal cases were declared unconstitutional<sup>11</sup>. A number of special laws, in particular concerning drug offences, were also passed.<sup>12</sup> Drug legislation in Costa Rica does not penalize drug use itself, only possession for traffic, for which it establishes

Gedächtnis. Berlin, 1969, p. 208-219; Jescheck, H.-H. Strafen und Massregeln des Mustergesetzbuchs für Lateinamerika im Vergleich mit dem deutschen Recht. In: H. Lüttger et.a. (Editors). Festschrift für Ernst Heintz. Berlin, 1972, p. 717-735.

<sup>4</sup> Cf. Baedeker, S. Die Freiheitsstrafe und ihre Surrogate in Costa Rica. In: H.H. Jescheck (Editor). Die Freiheitsstrafe und ihre Surrogate im deutschen und ausländischen Recht. Freiburg im Breisgau, 1983, p. 1103-1202.

<sup>5</sup> Cf. Tiffer Sotomayor. El sistema sancionatorio en Costa Rica y Alemania Federal. In: Revista de Ciencias Jurídicas (Costa Rica), No. 70, 1991, p. 55-105.

<sup>6</sup> About the death penalty in Costa Rica: Gómez. La pena de muerte en Costa Rica durante el siglo XIX. San José, Editorial Costa Rica, 1985.

<sup>7</sup> Ley No. 7389, April 22, 1994.

<sup>8</sup> Cf. Llobet Rodríguez, J. Seguridad ciudadana y prevención del delito en Costa Rica. In: Rotman, E. La prevención del delito. San José, Investigaciones Jurídicas, 1998, p. 7-66.

<sup>9</sup> Sala Constitucional, Judgment 10543-2001, October 17, 2001; 5244-2002, May 29, 2002 y 14998-2007, October 17, 2007.

<sup>10</sup> Sala Constitucional, Judgment 88-92, January 17, 1992.

<sup>11</sup> Sala Constitucional, Judgment 1588-98, March 10, 1998.

<sup>12</sup> Ley sobre estupefacientes, sustancias psicotrópicas, drogas de uso no autorizado, actividades conexas, legitimación de capitales y financiamiento del terrorismo, Ley No. 8204, December 26, 2001.

very strict penalties, yet without discriminating with respect to different types of drug and the quantity of prohibited drugs. Other laws concern money laundering, corruption<sup>13</sup> and violence against women.<sup>14</sup> Especially the last two categories have preoccupied the population in Costa Rica. Corruption caused particular concern after the scandals provoked by cases such as the Instituto Costarricense de Electricidad-Alcatel and the case of the Caja Costarricense de Seguro Social-Corporación Fischel. There has been also a greater awareness of the problem of domestic violence after a series of domestic homicides in recent years.

The current Code of Criminal Procedure was adopted in 1996 and is based on the Model Code for Latin America of 1988.<sup>15</sup> The prosecution decides whether public charges are to be laid or not. Based on the principle of legality, charges are normally laid if a criminal act has been ascertained, but there are certain exceptions (*criterios de oportunidad reglados*), such as the exemption for the insignificance of the offense<sup>16</sup> and the exemption for Crown witnesses.<sup>17</sup> The Office of Public Prosecution, as well as that of the Judicial Police, are part of the judiciary. So is the Public Defense system which, as a rule, works quite adequately. The Code regulates the rights of victims and even gives them the possibility of taking the role of public prosecutor, independent of the Public Prosecution Office.

Provisional detention was possible if one of three conditions were given: risk of flight, obstruction of justice or the risk of re-offending.<sup>18</sup> The Code provides for a public trial respecting the principles of orality, publicity and immediacy. The Inter-

<sup>13</sup> Ley contra la corrupción y el enriquecimiento ilícito en la función pública, No. 8422, October 6, 2004.

<sup>14</sup> Ley de penalización de la violencia contra las mujeres, No. 8589, April 12, 2007.

<sup>15</sup> About the Code of Criminal Procedure of 1996: Llobet Rodríguez, J. Proceso penal comentado. San José, Editora Dominza/Editorial Jurídica Continental, 2009. About the Model Criminal Procedure Code for Latin America of 1988: Llobet Rodríguez. El nuevo Proyecto de Código Procesal Penal Modelo para Iberoamérica (en comparación con el Derecho alemán). In: Revista Judicial, No. 57, 1992, pp. 33-92; Massa, M./Schipani, S (Editors). Un Codice Tipo di Procedura Penale per L' America Latina (. Padova (Italia), Cedam, 1994.

<sup>16</sup> Cf. Chirino Sánchez, A. A propósito del principio de oportunidad y del criterio de "insignificancia del hecho". In: Asociación de Ciencias Penales (Editor). Derecho Procesal Penal costarricense. San José, Asociación de Ciencias Penales/Colegio de Abogados, 2007, p. 495-514; Llobet Rodríguez, J: Principio de insignificancia y criterio de oportunidad reglado. In: Llobet Rodríguez, J./Chirino Sánchez, A. Principio de oportunidad y persecución de la criminalidad organizada. San José, Areté, 2000, p. 17-149.

<sup>17</sup> Cf. Zúñiga Morales, U. El testigo de la corona. In: Asociación de Ciencias Penales (compiladora). Derecho Procesal Penal costarricense. San José, Asociación de Ciencias Penales/Colegio de Abogados, 2007, p. 583-612.

<sup>18</sup> Cf. Llobet Rodríguez, J. La prisión preventiva. San José, Investigaciones Jurídicas, 1999.

American Court of Human Rights in the case of Mauricio Herrera against Costa Rica (2 July 2004) ruled against Costa Rica and ordered the reform of the appeal system.<sup>19</sup> The appeal possibilities were broadened recently, in order to comply with what the Inter-American Court of Human Rights ordered. The Code of Criminal Procedure provides also for the possibility of compensation agreements between the victim and the defendant, which would allow closing of the case for certain offenses, especially those eligible for the conditional suspension of the sentence. The agreement is regulated by the norms on conciliation, the suspension of the procedure and the reparation of damage.<sup>20</sup> There is also the possibility of an accelerated procedure (*procedimiento abreviado*). If the accused accepts the charges, the judge can reach a decision without going through a public and oral trial.<sup>21</sup> This simplified procedure has been applied in approximately 20% of the convictions. In 2009, the Code of Criminal Procedure of 1996 was amended by the so-called Law for the Protection of Victims, Witnesses and Other Persons Involved in Criminal Proceedings,<sup>22</sup> which limited the application of the criteria of expediency, the "suspension del proceso a prueba" and full compensation for damages, when there has not been any power over things and where there was no violence against people involved. The amendment also extended the possibility of provisional detention, also be viewed as causal "*in fraganti*", in cases of participation in organized crime and where there was a suspected risk of repetition, despite the existence of an established case law of the Inter-American Court Human Rights, which only admitted provisional detention on the grounds of a real risk that the accused would evade criminal proceedings (risk of flight) or tamper with the evidence.<sup>23</sup> The

<sup>19</sup> Cf. Ureña Salazar, J. J.: *Casación penal y derechos humanos*. San José, Editorial Jurídica Continental, 2006; Salazar Murillo, R.: *La condena de Costa Rica ante la Corte Interamericana y su incidencia en la casación penal costarricense*. San José, Investigaciones Jurídicas, 2004; Llobet Rodríguez, J. *El derecho del imputado a recurrir la sentencia*. In: *Nueva Doctrina Penal (Argentina)*, 2007, p. 47-72.

<sup>20</sup> Cf. Llobet Rodríguez, J. *Proceso penal comentado*, p. 127-135, 139-143, 153-159.

<sup>21</sup> Salazar Murillo, R.: *El juicio abreviado. Entre el garantismo y la eficiencia en la justicia penal*. San José, Investigaciones Jurídicas, 2003; Llobet Rodríguez, J.: *Procedimiento abreviado en Costa Rica, presunción de inocencia y derecho de abstención de declarar*. In: Maier, J./Bovino, A. (Editors). *Procedimiento abreviado*. Buenos Aires, Editores del Puerto, 2001, p. 433-452.

<sup>22</sup> *Ley de protección a víctimas, testigos y demás sujetos intervinientes en el proceso penal*, No. 8720, March 4, 2009.

<sup>23</sup> Cf. Corte Interamericana de Derechos Humanos, *Case Suárez Rosero*, Judgment of November 12, 1997, No. 77; *Case Tibi v. Ecuador*, Judgment of September 7, 2004, No. 180; *Case Palamara Iribarne v. Chile*, Judgment of November 22, 2005, No. 198; *Case Acosta Calderón Vs. Ecuador*, Judgment of June 24, 2005, No. 111; *Case López Álvarez v. Honduras*, Judgment of February 1, 2006; No. 69; *Case Servellón García et al. v. Honduras*, Judgment of September 21, 2006, No. 90; *Case Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, Judgment

percentage of remand prisoners has remained stable in Costa Rica since 1989. In 2008 this percentage was 22%.<sup>24</sup> With the amendment, the grounds for remand, and thus the number of remand prisoners will likely increase. The same Law for the Protection of Victims, Witnesses and Other Persons Involved in Criminal Proceedings also increased victims' rights<sup>25</sup> and authorized the possibility of anonymous witnesses.<sup>26</sup> The latter have been criticized from the defense perspective. It is a law that was passed, like the law against organized crime,<sup>27</sup> in a climate that demanded stricter laws to combat the problem of insecurity. It should be noted, however, that the judicial system is quite strong with a stable budget of 6% of the national budget that covers not only the judicial function, but also public defense, prosecution and the judicial police. Prosecutors and the courts are presently collapsing under the large number of cases, and Costa Rica is now faced with the problem of increasingly long trials.

As far as prisons are concerned, in Costa Rica there is only one law that regulates the detention of young offenders,<sup>28</sup> but a proper prison law is waiting for parliamentary approval,<sup>29</sup> so that its implementation is mainly based on regulations and resolutions that have passed the Constitutional Court.<sup>30</sup>

Legislation concerning juvenile delinquency was passed in 1996, in order to harmonize the law with the UN Convention on the Rights of the Child.<sup>31</sup> It provides the possibility of author-victim reconciliation and, as a rule, a system of non-custodial sentences. A prison sentence can only be given for crimes that would have been punished in an adult court with 6 years or more. In these cases the court can impose prison sentences up to 15 years for young offenders under 18 but over 15, and 10 years for those over 12 years but under 15 years. These new maxima were adopted on a law-and-order platform, calling for higher sanctions. The extreme length of these sanctions

of november 21, 2007, No. 93; *Case Yvon Neptune v. Haití*, Judgment of May 6, 2008 and *Case Bayarri v. Argentina*, Judgment of October 30, 2008; No. 74.

<sup>24</sup> In: PNUD. *Informe sobre Desarrollo Humano para América Central 2009-2010*. Abrir espacios a la seguridad ciudadana y el desarrollo humano. Colombia, 2009, p. 236.

<sup>25</sup> Llobet Rodríguez. *Proceso penal comentado*, p. 207-225.

<sup>26</sup> Cf. Llobet Rodríguez, J. *Justicia sin rostro*. In: *La Nación*, June 29, 2008. [http://www.nacion.com/ln\\_ee/2008/junio/29/opinion1597696.html](http://www.nacion.com/ln_ee/2008/junio/29/opinion1597696.html); Llobet Rodríguez. *Proceso penal comentado*, p. 216-220.

<sup>27</sup> *Ley contra la delincuencia organizada*, No. 8754 of July 22, 2009.

<sup>28</sup> *Ley 8460* of October 20, 2005.

<sup>29</sup> Art. 51 of the Criminal Code.

<sup>30</sup> Cf. Murillo, R. *Ejecución de la pena*. San José, CONAMAJ, 2002.

<sup>31</sup> Cf. Tiffer, C./Llobet, J./Dünkel, F. *Derecho Penal Juvenil*. San José, ILANUD/DAAD, 2002.

has been widely criticized as contrary to the Convention on the Rights of the Child, but they were nevertheless endorsed by the Constitutional Court.<sup>32</sup> Despite these high penalties, the existence of alternatives, such as conciliation and the suspension of the trial, has made it possible to apply custodial sanctions only in very exceptional circumstance, so that the number of prisoners under the Youth Criminal Justice Act has remained quite small. Currently, there are however plans of increasing the severity of the juvenile criminal law in counter-tendency to the existing legislation.

### 3. Lack of subjective public security (fear of crime)

In Costa Rica there is a serious problem of objective insecurity, but subjective levels of insecurity (fear of crime) are even higher. As has been indicated by several authors, the problem of fear of crime is closely related to the treatment the subject is given by the media. Also in the Costa Rican press and television journalistic sensationalism and a tendency to dramatize violence have caused a degree of subjective insecurity well above of what is warranted by the actual (high) level of crime. In the national survey on public security of 2006, when asked about safety in Costa Rica, 22.5% responded that the country was very unsafe, 58.9% considered it unsafe, 14.5% safe and 2.7% very safe. 1.4% did not know.<sup>33</sup> In a different survey conducted in 2009, the perception of great insecurity had risen by 4.5 points to 27%. There can be no doubt that crime is considered a threat, as it was indicated as such by 75% of the respondents. 16% thought that crime was somewhat of a threat, 17% considered it a minor threat and only 2% no threat at all.<sup>34</sup>

Crime ranks highest as a factor causing insecurity in Costa Rica, above issues such as unemployment and the high cost of living. Thus in a survey published on 3 December 2009, 45% of respondents replied that the main problem that made them feel insecure was crime, 10% mentioned unemployment, 10% the high cost of living, 8% by the state of the economy, 7% drugs, 7% the global crisis, 6% poverty and 4% corruption.<sup>35</sup> Concern about the issue of crime has increased during 2009: in May it was seen by 16% as the main problem, in September by 25%. It should be said, however, that this heightened perception of the magnitude of the crime problem was measured at a time when Costa Rica suffered a spate of highly publicized violent

crimes, including the death of a college student in the middle of a shootout between gangs. This may be one of the reasons that explains why, in the survey, concern about crime was particularly high among younger respondents between 18 and 29. Another reason for the increased perception of crime as a source of insecurity is related to the importance that political parties have given to this issue during the election campaign.

When asked in another survey conducted in 2009 about the most serious problem facing Costa Rica, 59% responded that it was insecurity linked to crime, while 28% cited economic problems.<sup>36</sup>

In the national survey of public safety of 2006 insecurity as a result of crime also ranked first among the nation's problems. 33.1% considered insecurity to be the number one problem of the country, 28.8% the economic situation, 13% drugs and drug trafficking, 12.5% corruption, 2.6% services, 7.4% other problems, and 2.5% said they did not know or gave no answer.<sup>37</sup>

### 4. Lack of public security and homicide rates

Central America is one of the most violent regions in the world with high rates of homicides per hundred thousand inhabitants, especially in Guatemala, Honduras and El Salvador. Costa Rica has had lower rates of violence, but in recent years has seen a sharp increase in the homicide rate. In 2008, Honduras had a homicide rate of 58 per 100,000 inhabitants; El Salvador of 52, Guatemala of 48, Belize of 32, Panama of 19, Nicaragua of 13, and Costa Rica of 11.<sup>38</sup> Especially in Guatemala, Honduras and El Salvador there is a serious problem of youth gangs, called "maras", which operate with particular violence. The policies implemented in these countries have been heavy-handed, and have rather led to increased violence and even more homicides. In Costa Rica, though there is also a problem of youth gangs, these gangs do have different characteristics, and gang problems are not as serious as they are in other Central American countries.<sup>39</sup>

<sup>36</sup> Encuesta Lapop para IDHAC 2009-2010. In: PNUD. Informe sobre Desarrollo Humano para América Central 2009-2010, p. 205.

<sup>37</sup> Madrigal Pana. Resultados de la Encuesta Nacional de Seguridad Ciudadana 2006. San José, Fuerza Pública/Ministerio de Justicia/PNUD, p. 29.

<sup>38</sup> PNUD. Informe sobre Desarrollo Humano para América Central 2009-2010, p. 69.

<sup>39</sup> About the "maras" in Central America: Llobet Rodríguez. Las maras y pandillas en Centroamérica. In: Justicia Penal y Estado de Derecho. Homenaje a Francisco Castillo González. San José, ILANUD/Editorial Jurídica Continental, 2007, p. 193-217; Portillo, N. Estudios sobre pandillas juveniles en El Salvador y Centroamérica: una revisión de su dimensión participativa. In: Apuntes de Psicología (España), Vol. 21, 2003, No. 3, pp. 475-

<sup>32</sup> Sala Constitucional, Judgment 2743-99, April 16, 1999.

<sup>33</sup> Madrigal Pana. Resultados de la Encuesta Nacional de Seguridad Ciudadana 2006. San José, Fuerza Pública/Ministerio de Justicia/PNUD.

<sup>34</sup> Encuesta Lapop para IDHAC 2009-2010. In: PNUD. Informe sobre Desarrollo Humano para América Central 2009-2010, p. 205.

<sup>35</sup> Encuesta de UNIMER. In: La Nación (periódico), December 3, 2009, p. 4 A.



Costa Rica has not escaped the increase in violent crime and thus in the number of murders per hundred thousand inhabitants since the mid-nineties of the last century, with a more pronounced increase in the last few years. Thus the casualty rate was 6.4 intentional homicides per 100,000 inhabitants in 1999, 6.1 in 2000, 6.4 in 2001, 7.6 in 2002, 7 in 2003, 6.2 in 2004, 6.9 in 2005, 7.7 in 2006, 8 in 2007, 11.1 in 2008.<sup>40</sup> The murder rate is particularly high in the Atlantic zone in the Caribbean region, characterized by serious problems of unemployment, poverty and drug trafficking.

A major concern and a cause of great alarm is the increasing number of robberies with violence. Thus in the Report of the State of the Region (Central) the rate for robbery with violence was given as 93 per 100,000 in 2006, a 29% increase since 2002.<sup>41</sup> Assaults in public places have also increased. In 2004 13.8% of homes were the scene of an assault, this compared to 0.9% in 1989, which would mean a fifteen fold increase during that period.<sup>42</sup> Moreover, there is a serious problem with increasing drug consumption, resulting in numerous thefts associated with obtaining money to buy drugs.<sup>43</sup> The report added that Costa Rica has become a bridge in international drug trafficking, which has strengthened organized crime.<sup>44</sup>

There are also problems related to organized crime regarding human trafficking, vehicle theft, smuggling of weapons, etc.<sup>45</sup> The issue of organized crime has been one of the recent concerns in Costa Rica, and has led to the adoption of a law against organized crime. There was also great concern about the issue of domestic violence,

493; Elbert, C. La violencia social en América Central a través del caso centroamericano de las bandas juveniles "maras". In: Revista Cenecip (Venezuela), No. 23, 2004; Fundación Arias para la Paz y el Progreso Humano (Editor). La cara de la violencia urbana en América Central. San José, Fundación Arias para la Paz y el Progreso Humano, 2006; Cruz, J.-M/Portillo, N. Solidaridad y violencia en las pandillas del gran San Salvador. Más allá de la vida loca. San Salvador, UNA Editores, 1998; ÉRIC (Editor). Marás y pandillas en Centroamérica. Pandillas y capital social. San Salvador, Volumen II, UCA Editores, 2004.

<sup>40</sup> Estado de la Nación en desarrollo humano sostenible. San José, 15º. informe, 2009, p. 418.

<sup>41</sup> Estado de la Región en desarrollo humano sostenible. San José, 3º. Informe, 2008, p. 485.

<sup>42</sup> PNUD. Venciendo el temor. (In) seguridad ciudadana y desarrollo humano en Costa Rica. Informe Nacional de Desarrollo Humano 2005, San José, 2006, pp. 93-94.

<sup>43</sup> Cf. PNUD. Informe sobre Desarrollo Humano para América Central 2009-2010, p. 105.

<sup>44</sup> Cf. PNUD. Informe sobre Desarrollo Humano para América Central 2009-2010, p. 102-106.

<sup>45</sup> Cf. PNUD. Informe sobre Desarrollo Humano para América Central 2009-2010, p. 99-116.

which led first to the adoption of a law against domestic violence followed by a law criminalizing violence against women.

## 5. Prisoners per hundred thousand

The Costa Rican penal system has become more severe in recent years. New crimes have been added to the Criminal Code and penalties have been increased in an attempt to solve the problems of insecurity. This has led to overcrowding in prisons, although the levels are generally lower than in other Latin American countries, the State has contributed to increase the number of prisoners who enter to prison, consequence of various resolutions of the Constitutional Court that have stated that "amparo" as a result of prison overcrowding and the health problems it causes.<sup>46</sup>

Costa Rica has had a pronounced increase in the number of prisoners per hundred thousand inhabitants. In 1980 the rate was 100 and was rising slowly to reach its highest point in 1987 with 161. This was followed by a rapid decrease, reaching its lowest point in 1993 with 87 inmates per 100,000 inhabitants. In 1994 the prison rate rose again to 99, in 1995 to 103, in 1996 to 137, in 1997 to 155, in 1998 to 168, in 1999 to 191, in 2000 to 193; in 2001 there was a small decrease to 191, in 2002 it went up again to 199, in 2003 to 203, and between 2004 and 2008 it oscillated between 210 and 218.<sup>47</sup>

It is difficult to pinpoint precisely the reasons that have led to such a sharp increase. One of the factors that certainly played a part was the increase in sentence length. The average sentence length in 1990 was 5.6 years, in 1991 5.7, in 2000 6.8, and in 2002 7.2 years.<sup>48</sup> Whereas only 55 offenders were sentenced to twenty years or more in 1998, this number had increased to 152 by 2001 and represented 7.5% of the total prison sentences.<sup>49</sup> It is quite possible that this increase was a result of the reform of 1994, which introduced very serious penalties, especially for sexual offences. It is worth pointing out that the average prison sentence in Costa Rica of 7.2 years in 2002 was higher than the average sentence length of 4.5 years in the United States of America.<sup>50</sup>

<sup>46</sup> Sala Constitucional, Judgments 8383-04; 7745-05; 7980-05; 11762-06; 1332-09; 16112-09.

<sup>47</sup> Dirección General de Adaptación Social/Instituto Nacional de Criminología/Departamento de Investigación y Estadística. Anuario Estadístico 2008.

<sup>48</sup> PNUD. Venciendo el temor..., p. 417.

<sup>49</sup> Estado de la Nación. San José, 2002, pp. 309-310.

<sup>50</sup> PNUD. Venciendo el temor..., p. 417.

## 6. Current popular and punitive discussions

One of the negative effects of public insecurity and fear of crime has been a certain deterioration of the legal system. After a campaign led by part of the media went as far as advocating that citizens should take justice in their own hands, harsh steps were introduced for certain sectors. At the same time some of the principles of the rule of law and respect for human rights were tampered with. After an advertising campaign in Costa Rica that warned of the scale of public insecurity with an added exhortation that the country should not fall under the rule of offenders, a survey taken in April 2008 reported that 51% of the respondents expressed strong agreement with the sentence: "If there is a chance to lynch the offender, this is better than to catch him." 38% also agreed with the statement that "sometimes the police are justified to torture someone for information", which was a 10% higher agreement rate than in 2004.<sup>51</sup>

Opinions are also voiced that the human rights enshrined in international law end up protecting criminals and leaving destitute those who are not. Take, for instance, the following newspaper statement: "Do we really have to consider the human rights of the individual who sexually assaulted an elderly woman of about 80 years? Does a thief deserve to be protected by human rights, who break into the sanctity of a home and left behind a dead worker, a widow and two orphans?"<sup>52</sup> The author continues: "Where are the courts? Probably thinking about the human rights of offenders and about more permissive laws."<sup>53</sup> Another article continues on a similar line: "A climate of insecurity caused by the irresponsible indulgence of a series of social scientists and humanists, whose psychological theories have plunged us into a vicious cycle of violence. Now the state and its legal system work by providing a series of guarantees and benefits for offenders and criminals, while the common citizen, who suffers the scourge of the underworld, is defenseless, not because the police is not there, but because it is unable to act. It has reached a point where a criminal is no longer called a criminal but is an 'antisocial', and a prisoner is 'in custody', and society (read: social scientists) are fighting to improve the conditions of his well deserved confinement. Who weeps for the real victims? Who gives them relief from the despair of losing a loved one or the work of their lives, as the state lets the crooks walk free or gives them a punishment of no account?"<sup>54</sup> Ultimately, the criticism of the sparing use of

<sup>51</sup> Herrera, M. Crece respaldo a soluciones violentas contra el hampa. In: *La Nación* (periódico), April 6, 2008.

<sup>52</sup> Cambroner, A. Sobre la pena de muerte. In: *La Nación*, April 16, 2008.

<sup>53</sup> Lara Gamboa, F. Nos están matando. In: *La Nación*, January 31, 2008. See also: Rodríguez, G. El sistema penal sí es alcahuetería. In: *La Prensa Libre*, December 24, 2009.

<sup>54</sup> Heidenreich-Brenes. Populi, vos Dei. In: *La Nación*, April 8, 2008. See also: Arce, A. El garantismo no es alcahuetería. In: *La Nación*, August 23, 2009.

provisional detention or of the easy granting of release translates into a criticism of the presumption of innocence.<sup>55</sup> In a similar vein Rodrigo Paris-Steffens says, "Who is protected by the Code, which allows repeat offenders and criminals, caught red-handed, to be released with ridiculous precautionary measures such as signing for a fortnight, just to prove they have roots, a magical word that goes against all legal sense?"<sup>56</sup>

Some journalists even try to justify taking the law into their own hands and inciting violence against the presumed offender. To quote the Deputy Director of the newspaper *Extra*, Mario Ugalde, who said: "One factor that could be important is the widespread campaign of some 'idiots', who consider any act of defense against criminals a violation of human rights." I wonder if these sick minds and cowards siding with the criminals have not thought about the human rights of the parents, children or siblings who have lost loved ones at the hands of these 'devils'. We're not in a peaceful world. where one pardons criminals; here every day citizens are assaulted and killed, in every family there is a victim, this is no-man's-land ... I wondered if those who defend these criminals indirectly, would think the same way the day that one of them murdered, assaulted or raped a family member." He added: "Pull up your socks (amarrémonos los pantalones y las enaguas)<sup>57</sup> and demand that the scoundrels leave us alone. If the authorities can not stop the slaughter that is happening in our neighborhoods, then let's us ... honestly more than one thug needs a huge beat up so that the bad habit is removed, perhaps that will force them to seek work instead of stealing things from people who earn them by the sweat of their brow."<sup>58</sup>

The issue of crime has also become the main propaganda item for the elections to be held in February 2010. Frequent election advertisements in newspapers, on television, radio and on billboards announce "zero tolerance on crime", "what goes around comes around", "a firm grip on crime", "candidate X will give me security", "no fear of criminals". There is now a struggle among the various presidential candidates to try to prove who of them is tougher on crime. In general, the solutions proposed by the political parties are linked to harsher measures in the practical application of the law, i.e. the police action, as well as a toughening of criminal law, criminal procedure and the prison regime. The proposed solutions include an increase in penalties plus a

<sup>55</sup> Cf. Mayorga, A. Voy a ser delincuente. In: *La Nación*, June 19, 2008; Arce, A. El garantismo no es alcahuetería.

<sup>56</sup> Paris-Steffens, R. La libertad y el libertinaje. In: *La Nación*, August 18, 2008. See also: Murillo, V.-H. Empujón a la violencia. In: *La Nación*, April 23, 2008.

<sup>57</sup> "Amarrémonos los pantalones y las enaguas": Literally: "Tie the pants and skirts". Idiomatic expression in sense of take strong actions.

<sup>58</sup> Ugalde, Mario. Garriotemos al delincuente. In: *Diario Extra* (periódico), June 24, 2008. See the critique of this article: Salazar, P. Preguntas sobre el garrote. In: *Semanario Universidad*, July 16-22, 2008, p. 20.

reduction of the procedural rights of the accused. Few references are made to the social policy of crime prevention.

Given these positions, human rights' defenders have been put on the defensive – suspected of siding with criminals, because they insist on fighting crime while respecting the rule of law, and because they advocate sensible legislation and reject proposals for tough, zero tolerance policies, “war on crime” propaganda and a criminal law, which does not protect the principle of the dignity of the human person.<sup>59</sup> Instead, they highlight the importance of a preventive policy, which starts with a good social policy.

It is important to acknowledge the causes of rising violent crime. Enrique Castillo in a recent book points to structural changes that have occurred in recent decades in Costa Rica as result of neoliberal policies and the promotion of consumerism. These have led to abandoning the principles of solidarity replacing them by individualism, and have brought with them major changes in society, family and the educational system, all of which result in further social exclusion.<sup>60</sup> What is needed are policies for a better income distribution, family integration, awareness of domestic violence, drug prevention, and an improved education system that would lower the dropout rate and give young people more equal chances. Social integration within communities is also important, as is creating opportunities for dialogue within the communities, and providing recreational opportunities for youth, especially through sport.

<sup>59</sup> Cf. Campos, F. Más cárcel y mano dura... ¿La solución? In: La Nación, November 28, 2009; Campos, F. Mitos y falacias sobre el garantismo penal. In: La Nación, September 9, 2008; Vega, F. El dilema de la (in) seguridad ciudadana. In: La Nación (periódico), October 27, 2008; Vega, F. ¿Maximalismo o garantismo? In: La Nación (periódico), September 4, 2009; Víquez, K. “Desechemos a los delincuentes”. Un discurso populista contra la inseguridad amenaza el Estado de Derecho. In: La Nación (periódico), November 30, 2009; Obando, J. ¿Está la falla en el garantismo? In: La Nación (periódico), August 12, 2008; Feoli, M. Simplezas de un diputado. In: La Nación (periódico), August 8, 2009; Feoli, M. Aún hay jueces en San José. In: La Nación (periódico), August 28, 2009; Llobet Rodríguez, J. Auge del populismo punitivo costarricense. In: La Nación, August 13, 2009; Muñoz, M. El sistema penal no es alcahuetería. In: La Prensa Libre, December 22, 2009.

<sup>60</sup> Castillo, E. Vida social y Derecho. Cuarenta años de investigación y análisis. San José, ILANUD/Facultad de Derecho de la Universidad de Costa Rica/Editorial Jurídica Continental, 2008, p. 399-416. About the increase of the crime in Costa Rica: PNUD. Venciendo el temor ..., p. 49-51.

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