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Chavism and Criminal Policy in Venezuela, 1999-2014

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Abstract

For a long time, the Venezuelan democracy was an exception in South America due to a party system that was based on what was known as the 'Punto Fijo Pact'. At the start of the 1980s a series of economic, social and political events began to occur, which caused this 'exceptionalism' to stagger and disrupt the institutionality of the traditional Venezuelan democratic State. The events led to a deep national crisis and the birth of a new political era. By the end of the 1990s, there had been a significant shift towards left-wing governance. Hugo Chávez Frías subsequently won the presidential elections in 1998. This paper analyzes some aspects of the criminal policies that were implemented during the reign of left-wing leader Chávez till his death in 2013 and thereafter by Chavist party president elect, Nicolás Maduro during 2013-2014. Four stages can be identified in the behavior of incarceration rates. The first stage, from 1999 to 2000, was characterized by the lowest recordings of incarceration rates and the lowest measured percentage of preventive detention in Venezuela in thirty years. The second stage, from 2001 to 2005, saw a slight increase in the incarceration rate which then remained stable. The third stage, from 2006 to 2012, and the fourth stage, from 2013 to 2014, are characterized by sustained increases in preventive detention, incarceration and murder rates.

Keywords

Incarceration rates; Venezuela; criminal justice policy; Chávez; left-wing governance.

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From a representative democracy to a participative and protagonist democracy

For a long time, the Venezuelan democracy was an exception in South America, due to a party system that was based on what was known as the '*Punto Fijo* Pact'. The system involved the exchange of presidential power between two parties, Democratic Action and COPEI (also called Social Christian Party (*Partido Socialcristiano*) or Green Party (*Partido Verde*)), and the distribution of statewide power quotas. Even though we can say that this formal democracy appeared to be different from the other dictatorships in the Southern Cone (the geographic region composed of the southernmost areas of South America, south of and around the Tropic of Capricorn), the ruling governments still persecuted and murdered political opposition members and leaders within leftist organizations.

At the start of the 1980s a series of economic, social and political events began to occur, which caused this 'exceptionalism' to stagger and disrupt the institutionality of the traditional Venezuelan democratic State. The events led to a deep national crisis and the birth of a new political era. By the end of the 1990s, there had been a significant shift towards left-wing governance. Hugo Chávez Frías subsequently won the presidential elections in 1998 with 56.2 per cent of the votes, leading a broad civic-military movement of a progressive and nationalist nature. The movement mobilized and brought together various sectors of society that were looking to create change by rejecting previous neoliberal policies.

When Chávez took power he established a regulatory review of existing laws that privileged the economic elites and passed laws in favor of the most vulnerable and excluded groups. However, these changes created a climate of polarization and conflict due to resistance to the loss of power from the economic, political, media, religious and labor groups that, up until that time, had been privileged (López 2002). The situation finally escalated into a general strike organized by the opposition, which ended in a coup in April 2002. In addition, a powerful general strike known as the oil strike or oil lockout was organized, which, together with efforts to sabotage the restart of oil production, aimed to paralyze the main economic activity of the country.

From 2004 onward the population, which suffered from poverty, begins to push for the removal of privileges and the implementation of strong measures for the redistribution of wealth. As a result, the Bolivarian government led by Chávez became increasingly more entrenched and popular amongst the working class. As Biardeau (2007) points out, to bet on Bolivarian socialism meant to change life and the subjectivity configured from the logic of capital, the development of human potential through praxis, not from changes beyond the subjective level.

Subsequent elections showed strong Chavist victories, while support for Bolivarianism continued to strengthen in all elections from 1998 onward, consolidating the movement as the most important political force in the country (López 2009: 33). But after winning the referendum in 2009 that guaranteed Chávez the opportunity to run for a third term, he died in 2013 after battling cancer. Another presidential election was therefore held and the Chavist party candidate, Nicolás Maduro, won by a narrow margin. Today the Bolivarian process faces great challenges: the continuity of progressive leftist policies that were developed during the Chávez government; overcoming a powerful economic war; and curbing urban violence and people's feelings of insecurity.

This paper analyzes some aspects of the criminal policies that were implemented during the Bolivarian political process until 2014. Four stages can be identified in the behavior of incarceration rates. The first stage, from 1999 to 2000, was characterized by the lowest recordings of incarceration rates (see Figures 1 and 2) and the lowest measured percentage of preventive detention in Venezuela in thirty years. The second stage, from 2001 to 2005, saw a slight increase in the incarceration rate which then remained stable. The third stage, from 2006 to 2012, and the fourth stage, from 2013 to 2014, are characterized by sustained increases in preventive detention, incarceration and murder rates.

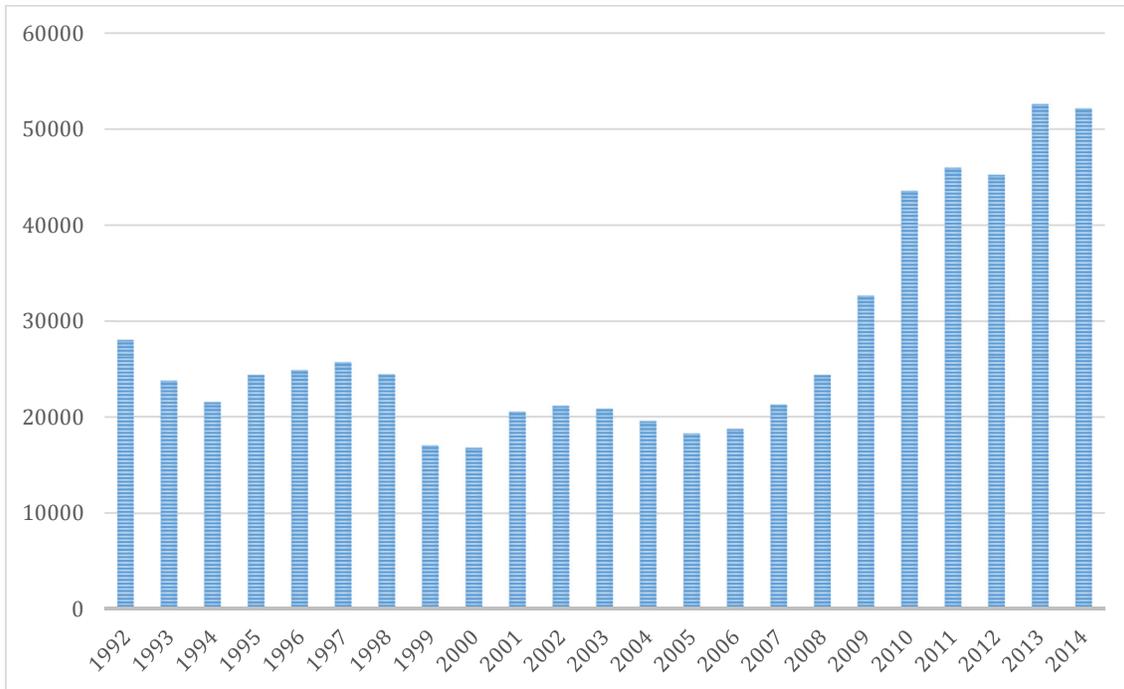


Figure 1: Total prison population in Venezuela, 1992-2014

Source: *Dirección Nacional de Servicios Penitenciarios* (1992-2011); *Ministerio del Poder Popular para el Servicio Penitenciario* (2013). Data from 2013 correspond to the month of July and, from 2014, until August

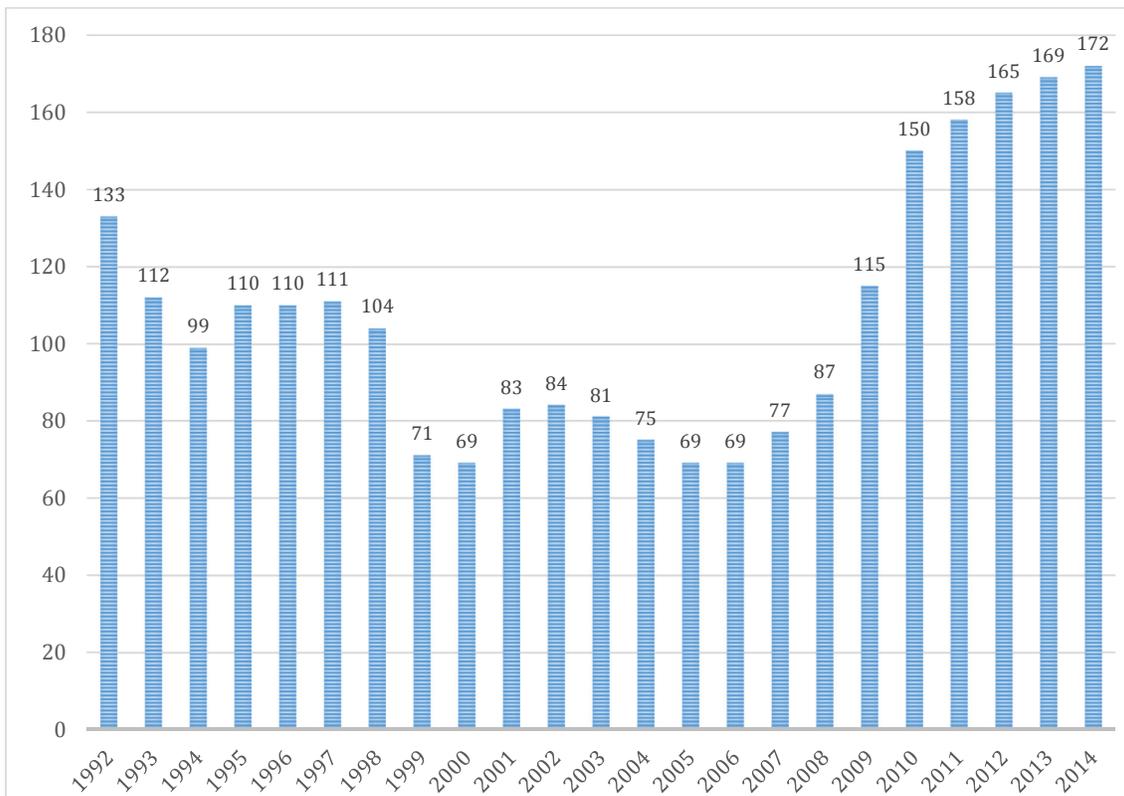


Figure 2: Incarceration rate per 100,000 inhabitants in Venezuela, 1992-2014

Source: *Dirección Nacional de Servicios Penitenciarios* (1992-2011); *Ministerio del Poder Popular para el Servicio Penitenciario* (2013). Data from 2013 correspond to the month of July and, from 2014, until August

The paper presents an analysis of the reforms of the Organic Code of Criminal Procedure and the Penal code reforms during each stage; the political context in which they were approved; and the discourse that accompanied these initiatives of the State's public authorities.

First stage: 1999 and 2000

The first two years of the Chávez Government of the Bolivarian Revolution, which implemented the Organic Code of Criminal Procedure (OCCP) in 1998, recorded the most significant decrease in incarceration rates over the preceding 30 years. The OCCP transformed the nature of criminal proceedings from inquisitorial to accusatorial, and established 'trial in freedom' as a general rule. In addition, preventive detention became an exception, in contrast to the governance during the previous Code of Criminal Procedure. As a result, a drastic decrease can be observed in incarceration rates, from 104 per 100 thousand inhabitants in 1998 to 69 people per 100,000 inhabitants in 2000 (Figure 2).

These changes occurred with a government that, for the first time in Venezuelan democratic history, was not aligned with the hegemonic political and economic power actors' interests. Another important aspect was the existence of a new constitution, which had been approved in a referendum. The new constitution held trial in freedom as a principle, one that inspired the OCCP. The constitution additionally aimed to create a prison system that ensured the rehabilitation of inmates and assurance of detainees' human rights by sentencing detainees to punishments that did not require the restriction of liberty.

Also for the first time in 30 years, the number of convicted detainees was higher than the number of accused detainees. The ratio of prosecuted prisoners (convicted) to provisional (indicted) detainees changed from 58.5 to 41.5 in 1998, to 38.4 to 61.6 in 2000 (see Figure 3).

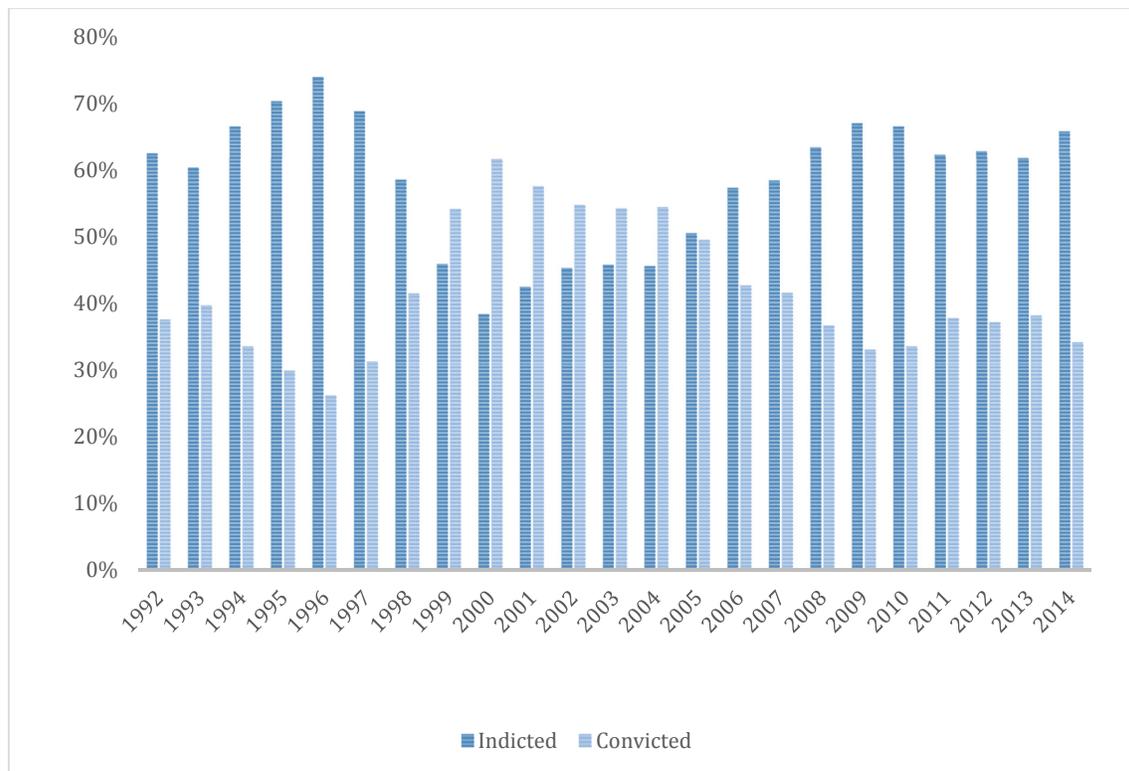


Figure 3: Composition of the prison population according to legal status, 1992-2014

Source: *Dirección Nacional de Servicios Penitenciarios* (1992-2011); *Ministerio del Poder Popular para el Servicio Penitenciario* (2013). Data from 2013 correspond to the month of July and, from 2014, until August

The decrease in incarceration rates coincided with not only a slight decrease of the main types of crime but also with an increase in the homicide rate. Although this increase in the homicide rate had been a trend since 1989, it accelerated during the early years of the Bolivarian Revolution when crime rates decreased from 1,030 per 100,000 inhabitants in 1998 to 977 in 2000 (see Figure 4), while homicides rates increased in the same period from 20 per 100,000 inhabitants to 33 (Figure 5) (*Documento de la Gran Misión a Toda Vida Venezuela* 2012).

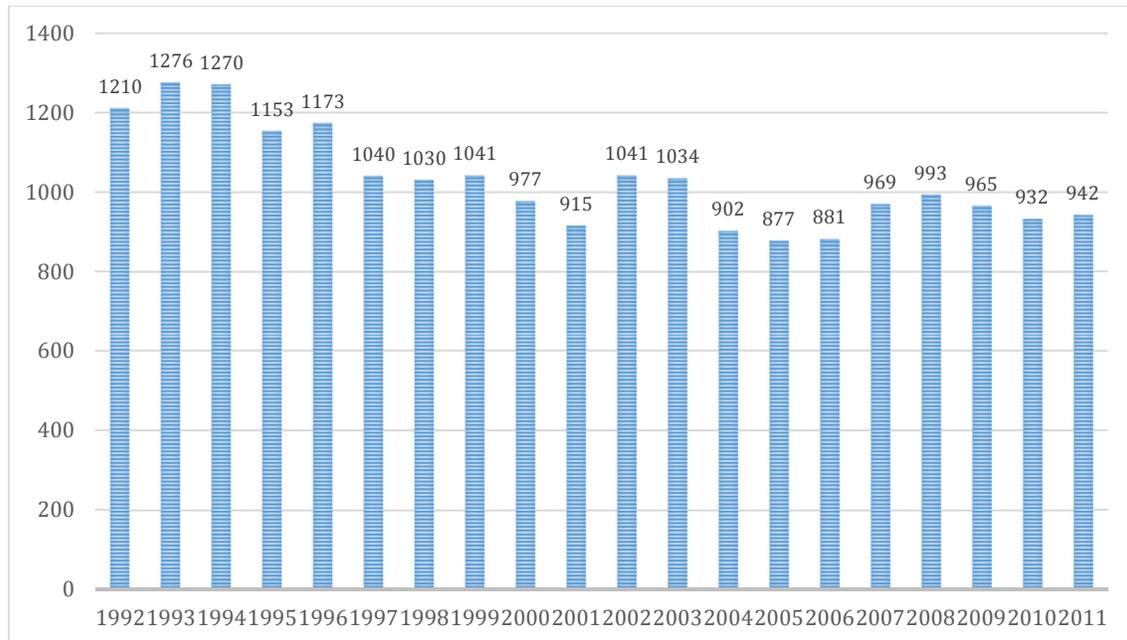


Figure 4: Major crime rates per 100,000 inhabitants in Venezuela, 1992-2011

Source: Compiled from data from *Documento de la Gran Misión a Toda Vida Venezuela* (2012), with data provided by the CICPC

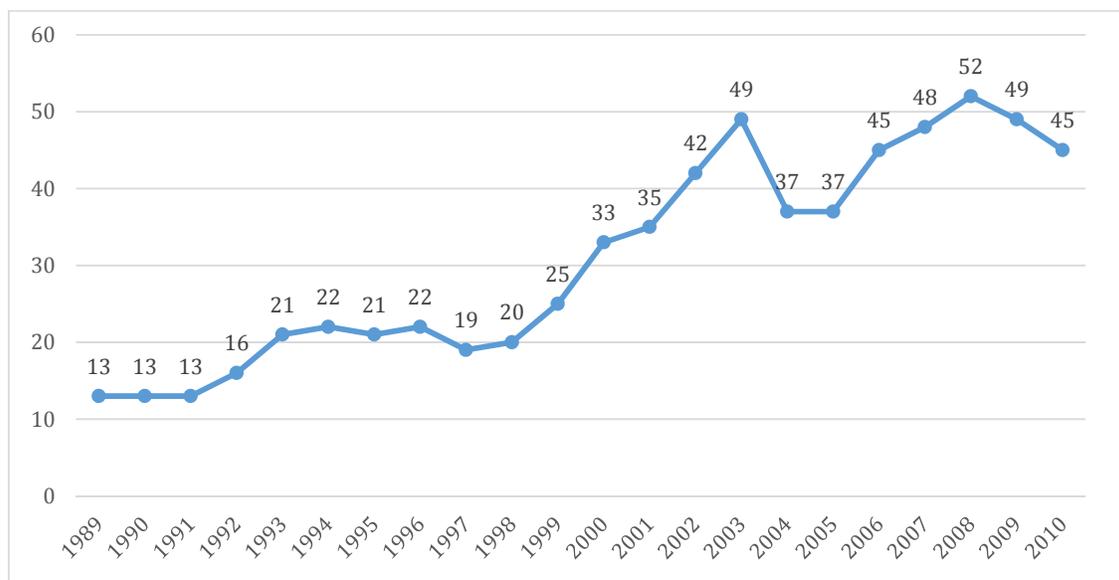


Figure 5: Homicide rate per 100,000 inhabitants in Venezuela, 1989-2010.

Source: Compiled from data from the *Cuerpo de Investigaciones Científicas, Penales y Criminalísticas* (CICPC) and the founding document of the *Documento de la Gran Misión a Toda Vida Venezuela* (2012)

With the increase in the homicide rate, the general public perception of insecurity also increased. The discourse debates that followed blamed the OCCP for the growth in violence and called for reforms that would restrict trial in freedom and the implementation of alternative punitive methods.

In the National Assembly, the Chavist movement grappled with recognizing the social and economic inequalities that prevailed in society and the inadequate implementation of the OCCP as the causes for the increase in violence (Asamblea Nacional 2000: 26-27). Although the OCCP was not formally questioned, a plea was held for the restriction of procedural benefits. These benefits were said to lead to the apparent increase in impunity and crime, due to a lack of training of judges and other players in the criminal justice system (Asamblea Nacional 2000: 7-14). Some minority voices in the National Assembly questioned the relationship between the application of the OCCP and the increase in crime, and attributed the difficulties in its implementation to a lack of resources. From the minority's point of view, resources were necessary to adapt the institutionalization of the criminal justice system (for example, more tax) to the new orientation of the OCCP (Asamblea Nacional 2000: 5-6). In the end the arguments in favor of restricting the procedural benefits and increased penalties prevailed and, in response to the public concern about increased insecurity of certain crimes, the reforms to the OCCP and the Penal Code were adopted in the second half of 2000.

The OCCP reform increased the effective imprisonment time by limiting compensation agreements and sentence reduction for admission of the facts. It also broadened and increased the use and legitimate length of preventive detention, in addition to lengthening the legal time frame to pass judgement on the release of the individual under arrest.

With regard to the Criminal Code, the reform was characterized by the classification of forced disappearances in addition to a hardening of penalties, mainly for offenses related to trafficking, possession of weapons, and offenses against property such as theft in public transport.

The position held by Supreme Court of Justice (SCJ) about the responsibility of the OCCP in relation to increased crime was even more conservative than that of the National Assembly. For Magistrate Alejandro Angulo Fontiveros, the OCCP's benefits were spurious, and the implementation of the Code was directly related to increased insecurity. This position in relation to procedural benefits and the retributive function of penalties also became evident in judicial decisions and interpretations of the laws made by the SCJ in which the SCJ often favored the restriction of benefits and alternative penal methods, an orientation which went against the constitutional guidelines.

The representatives of the Public Ministry and the National Executive Branch took a less punitive position on the matter. The Attorney General of the Republic was adamant in affirming that 'it is simplistic to argue that the OCCP is responsible for the increase in crime and that it only obstructs criminal law'. He attributed the difficulties in the implementation of the policy to a lack of political will to allocate the necessary resources for institutional arrangements by the State, resources that were required to reform criminal proceedings (Tribunal Supremo de Justicia 2001; previously sourced at <http://www.tsj.gov.ve/informacion/notasprensa/2001/090501-4.htm> but no longer available).

In the same vein, the Ministry of Internal Affairs and Justice dismissed that the rise of violence could be attributed to the implementation of the OCCP. Instead the Ministry linked the rise to structural factors such as poverty and judicial and police corruption. President Chávez similarly related the increase in crime and violence to social causes, gearing his discourse toward improving social indicators (*Informes de Memoria y Cuenta del Presidente de la República* 1999, 2000).

Second stage: 2001-2005

The second stage was characterized by two very important legislative reforms; that of the OCCP in 2001 and the Criminal Code in 2005. Both initiatives were driven and approved by Chavism as the major political force in the National Assembly.³

The 2001 reform, which had the largest and most regressive effect on the OCCP, brought about important modifications to the principle of trial in freedom and the forms of punishment without restriction of liberty. The number of crimes that could result in preventative detention was expanded, the imprisonment limit that could be considered for trial in freedom was decreased from five to three years, and the factors that could be considered as a flight risk were increased (*Reforma Código Orgánico Procesal Penal 2001: Article 253*). In the same vein, the maximum period of preventative detention was increased as well as the possibility of extending permissible coercive measures when detainees' release dates were imminent, but only when there were considered to be serious reasons to justify this and the established minimum penalty for the offense was not exceeded (*Reforma Código Orgánico Procesal Penal 2001: Article 244*).

In relation to forms of punishment without the restriction of liberty, the requirements were tightened, restricting the scope of these measures to the non-repetitive prison population while at the same time increasing the enforcement of effective sentencing times to include more detainees (*Reforma Código Orgánico Procesal Penal 2001: Article 501 and 508*). Rosales (2012) points out that the reform brought back the increased policing of criminal justice, returning to the police apparatus the dominance that it had in the past, which occurred under the pretext of addressing the rise in crime and the demand of citizens to control it. In such a situation the police force administers punishments and, in doing so, selects the clientele of the penal system. This usually means targeting the most vulnerable, not necessarily because they commit the most serious crimes but rather because of their greater vulnerability (Rosales 2006).

Despite the modifications, the incarceration rate changed very little during this period. By 2001 the rate stood at 83 per 100,000 inhabitants, an increase of 14 points over the level of 69 recorded for 2000. In the two years that followed the rate remained relatively stable, closing at 81 per 100,000 inhabitants in 2003. The rate then began to decline again, decreasing to 69 per 100,000 inhabitants in 2005, similar to the one recorded for 2000.

The start of a downward trend in the convicted population and an upward trend in prosecuted population can be observed from 2001 onward. The transformation peaks in 2005, as shown in Table 1.

Table 1: Convicted and prosecuted populations in Venezuela, 2000-2005

<i>Year</i>	<i>Convicted</i>	<i>Prosecuted</i>
2000	61,6	38,4
2001	57,5	42,5
2002	54,7	45,3
2003	54,2	45,8
2004	54,4	45,6
2005	49,5	50,5

Source: Based on data supplied by the *Dirección Nacional de Servicios Penitenciarios*

In the National Assembly, the opinion matrix that accompanied the 2001 OCCP reform process was characterized by a widespread perception of increased insecurity. Whereas this could be

explained by social causes such as poverty, unemployment and inequality, it also became associated with the implementation of more flexible liberty-depriving measures under the OCCP. President Chávez attributed the increased perception of insecurity to the sensationalist handling of the topic by the media in order to discredit the government and benefit their personal political aims. He faced the crime issue by maintaining a focus on addressing social causes, such as poverty and inequality (*Informes de Memoria y Cuenta del Presidente de la República 2002*). As a result, some segments of the political opposition began to accuse Chávez of being an accomplice to crime.

At the same time, the 2001 reform of the OCCP occurred in a context of high political conflict, characterized by a strike organized by the Venezuelan Federation of Chambers and the Confederation of Workers of Venezuela (PDVSA) in 2001 and in 2002. PDVSA workers also joined a second strike, which rejected the new oil policy that aimed to regain control over the company that had been the main source of income for the country and until then had worked with high levels of autonomy while benefitting private interests. Additionally, a coup took place in 2002, which was immediately reversed thanks to grassroots mobilization supported by the military sectors that defended the constitutional order, after which President Chávez returned to his official duties. This increased the levels of conflict in the months that followed and, in 2003, the opposition abandoned their insurrectional approach and assumed an institutional approach, as envisioned in the Constitution, to advocate for a change in government. They did so by calling for a referendum in order to decide whether President Chávez should be recalled from office. The referendum was held in 2004 and resulted in the ratification of the President.

Security during this period of major political unrest was characterized by increased homicide and crime rates (see Table 2) and a move away from the years of stability previously enjoyed by the Chavez government.

Table 2: Homicide and crime rates in Venezuela, 2000-2005

<i>Year</i>	<i>Homicide rate</i>	<i>Crime rate</i>
2000	33	977
2001	35	915
2002	42	1,041
2003	49	1,034
2004	37	902
2005	37	877

Source: *Cuerpo de Investigaciones Científicas, Penales y Criminalísticas (CICPC)*

Although these indicators reflect a decrease in homicide and crime rates, a new amendment to the Criminal Code was adopted which created new criminal offenses in 2005. The reform hardened prison sentences and limited alternative measures to liberty restriction for offenses that were considered to be serious crimes, which corresponded largely with the majority of crime occurrences. Theft sentences were increased from 6 months-3 years, to 1-5 years. Robbery sentences were also increased from 4-8 years, to a prison term of 6-12 years. In the same vein, some crimes were banned from potential procedural benefits and alternative methods to serving a sentence. As Rosales (2006) points out:

... a parliamentary review board proposed a partial ‘punctual’ reform [which] dismantled the system and increased the repression and indictment in areas that, without serious thought, were felt to need to be addressed. As a consequence, the

reform added to the already dramatic legislative disorder which had been present throughout Venezuelan criminal legislation for decades. (Rosales 2012: 184)

The President of the Republic argued against the proposed amendments to the Criminal Code and, with the use of his presidential veto, maintained the recognition of non-liberty restricting measures as an acquired rights. Non-liberty restricting measures thus prevailed over restrictive measures under the hallowed rights in the Constitution and, in doing so, warned of a prison crisis that had the potential to lead to the removal of these benefits. Meanwhile, the Public Prosecutor's Office expressed their refusal of the reform by presenting an appeal for annulment before the Constitutional Chamber of the SCJ, leaning towards a protective discourse and minimalist criminal law while questioning the effectiveness of increased penalties as a strategy to combat insecurity, a measure that historically has resulted in the incarceration of the poorest while the major economic powers involved in the crime could count on impunity. The Public Prosecutor's Office additionally denounced that the modifications made to the precautionary measures and alternative forms of punishment went against the Constitution and the OCCP. And lastly, it drew attention to the potential prison crisis as a consequence of the reform (*Diario El Nacional* 2005).

Conversely, the Supreme Court held a conservative view and was disposed towards the restriction of flexible punishment measures. With regard to the legal or constitutional nature of the procedural benefits, the Supreme Court was inclined to define them as benefits with a legal character rather than fundamental rights, which meant that the procedural benefits could be awarded with differential treatment depending on the gravity of the offense (Judgment 1654 2005). This differential treatment was justified by arguing in favor of a balance between the individual rights of the offending individual and collective rights of society (Judgment 3067 2005).

The National Assembly for its part, even though it had declared it would adopt the comments made by President Chávez, in practice welcomed the position of the Supreme Court and maintained the text of the amendment made to the Penal Code. The amendment included limitations to the access to procedural benefits and alternative punishment measures for crimes that were considered serious (*La Gaceta* 2005). With this amendment to the Criminal Code in 2005, the prison population that was awaiting sentencing increased significantly, returning to levels similar to those measured during the Fourth Republic. This meant that the progress made during the first years of the Chavist government was gradually crumbling.

Third stage: 2006-2012

Four reforms to the OCCP were realized in, respectively, 2006, 2008, 2009 and 2012. The first three initiatives were driven by the Chavist movement within the National Assembly and the last was approved directly by the President of the Republic through a constitutional exercise of power performed under an Enabling Law. The critics within the opposition focused on highlighting the structural problems of the prison system, such as overcrowding, poor infrastructure and procedural delays, claiming that the issues in the prison system were not going to be solved by the reforms, but rather that some modifications might aggravate them even further.

While the reforms claimed to ease the restrictions adopted in the 2001 OCCP reform, they did not modify the scope of preventative detention but rather focused on the measures that allowed detainees to serve an alternative punishment. The increased incarceration and detained individual rates substantiate this claim.

The 2006 reform made the access to alternative punishment measures more flexible, such as working outside the prison, probation and an open penitentiary system, and by allowing individuals with a criminal record to again become eligible for these benefits (*Reforma Código Orgánico Procesal Penal* 2006: Article 500). Additionally, it repealed the requirement that certain

offenses had to serve at least half their imposed sentence to gain access to the Conditional Suspension of Execution of Sentences; instead they had to meet the same requirements as any other crime (*Código Orgánico Procesal Penal* 1998: Article 493). As for sentence remission in relation to work and study, it was decided that the redeemed time should be calculated from the start of the time served, not from after serving half of the sentence, as had been the case in the 2001 reforms (*Reforma Código Orgánico Procesal Penal* 2006: Article 507).

The discourses that accompanied this reform within the National Assembly mainly revolved around the need to reduce the procedural delays, to decongest the courts and prisons and, to a lesser extent, to enhance rehabilitation possibilities, which as stated in the constitution should direct the prison system governance.

The incarceration rate for this year remained the same as that recorded in 2005 (69 per 100,000 inhabitants). However, the percentage of detainees in preventive detention increased to 57.3 per cent which aggravated the prison situation, causing several prison strikes that resulted in deaths and injuries. The most common means of protest were hunger strikes, self-kidnappings and people resorting to the practice of sewing their lips together. In this period prison deaths increased from 381 in 2005, to 388 in 2006, to 458 in 2007 (see Figure 6). The number of injuries increased from 721 in 2005, to 934 in 2006, to 1,103 in 2007 (see Figure 6). The number of injuries increased from 721 in 2005, to 934 in 2006, to 1,103 in 2007 (*Dirección Nacional de Servicios Penitenciarios* n.d.).

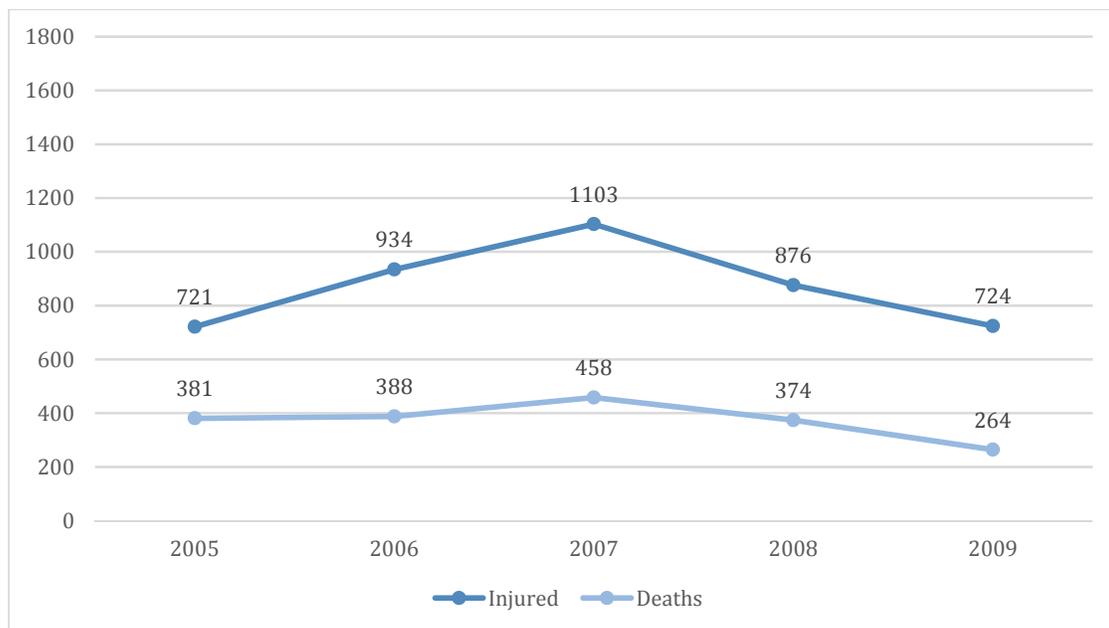


Figure 6: Number of detainees injured and killed, 2005-2009

Source: *Dirección Nacional de Servicios Penitenciarios*

The political context in which the reform took place was characterized by presidential elections, in which President Hugo Chávez ran for re-election and won with a 62.8 per cent majority. From that moment onward Chávez adopted a series of measures to consolidate forces by creating the United Socialist Party of Venezuela, which included key leaders of other parties who supported him. This allowed him to enter the political and legislative sphere and consolidate the necessary reforms related to the proposed improvements in the socioeconomic conditions of the population.

Between 2005 and 2006 three events shook Venezuelan society which, especially at a governmental level, triggered alarm. This resulted from the involvement of police officers in the

killing of a group of students, the kidnapping and murder of a well-known businessman, and the killing of three teenage brothers. From that moment, there is a clear demarcation in the policies directing the security forces. The implemented actions were not the result of social demands or public demonstrations – although we cannot deny their influence – but were conceptualized from above. In other words, it was the government itself that occasioned significant changes in the security policies, focusing on combating police corruption and working towards a strong political control of public institutions and the police forces.

Consequently, a Police Reform Commission (Conarepol) was created in 2006. It resulted in the discontinuance of one of the most questionable police forces, the Metropolitan Police, and replacement by the Bolivarian National Police Corps. At the same time the National Experimental University of Security developed a new policing model, which upheld the same ideas in terms of the enactment of laws by police and continued to hold a predominantly preventive character. It is also important to mention the creation of the General Police Council, which was responsible for the design of public policies in terms of policing necessary for the implementation of the police reform (Conarepol 2006a, 2006b, 2006c; Díaz and González 2014).

During 2006, the homicide rate increased by 8 points compared to the levels recorded for 2004 and 2005, to settle at 45 per 100,000 inhabitants. The 2004 and 2005 levels stood at 37 per 100,000 inhabitants, after experiencing a peak of 44 in 2003.

According to the Study of Criminal Victimization and Police Perception conducted by the Conarepol in 2006, the most frequent crimes were robbery, in all its forms, with a rate of 3881.5 per 100,000 (43.1 per cent of crimes) and theft, with a rate of 2057.9 per 100,000 (22.9 per cent of crimes). These were followed by the crime of threats, with a rate of 889.2 per 100,000 (9.9 per cent); and personal injury, with a rate of 434.5 per 100,000 (4.8 per cent). The overall victimization rate stood at 8,986.4 per 100,000, higher than the official national rate for all crimes in the country situated at 1,010 per 100,000.

In 2008, the OCCP was reformed once again. The reform consisted of a modification to the proportionality principle, whereby detention could not be imposed if the seriousness of the offense was disproportionate to the circumstances of its commission and the probable penalty. It additionally stated that the minimum sentence of more serious crimes should in some cases take the personal coercion limit as a minimal sentence, but should in no case exceed two years. Prior to 2008 there was no established standard, so the judge had more discretion. Undue delays attributable to the accused or his defense were also viewed as a situation that could result in the extension of personal coercion.

The discourse within the National Assembly that accompanied these initiatives viewed alternative punishments as benevolent treatments, which should only be granted to those who had committed minor offenses. For those who committed more serious crimes the most desirable course of action would still be to let them serve their full sentence. The political discourse, in other words, was torn between respecting human rights from the hand of penal guarantees, and hardline policies related to severe criminal law (Asamblea Nacional 2008: 19).

President Chávez, for his part, argued that prisons were the deposits of the poor all over the world. In his eyes the solution to the difficult issue lay with the humanization of the prison system through the construction of inclusive features. In other words, prisons inmates would have the opportunity to train, study and work. Later his discourse changed even further and he started to problematize the humanization of prisons to the point that, at the inauguration of a new prison, he spoke out about his deepened view on prison issues, referring to the book *Discipline and Punish* by Michael Foucault, while even raising the topic of a sort of penal abolitionism.

Nevertheless, his discourse did not produce specific measures or policies and, accordingly, the incarceration rate continued to climb, especially for preventative detainees. The incarceration rate for 2008 was situated at 87 per 100,000 inhabitants, ten points higher than that recorded in 2007, of which only 36.7 per cent of the prison population was convicted. Similarly, the homicide rate continued to rise and stood at 52 per 100,000 inhabitants. The crime rate also increased for 2008 to 993 per 100,000 inhabitants. This followed a downward trend that had begun in 2003 and continued until 2007, when rates started to rise, from 881 to 969 per 100,000 inhabitants.

In the electoral political sphere, new governors and mayors were elected in 2008 in which the Chavist forces won 22 of the 23 governorships under dispute, as well as 327 of the 335 municipalities. Hence, the Chavist movement continued to grow.

In 2009 another criminal policy change occurred when a new reform removed the requirement to have no former criminal record to be eligible for conditional suspension and included a minimum security classification prognosis (*Reforma Código Orgánico Procesal Penal 2009: Article 493*). Due to the modification introduced in the requirements of the 2006 and 2009 reforms, the 2001 reform became more flexible with regard to the possibility of accessing these benefits. Additionally, they modified the maximum penalty from three to four years to be able to be considered eligible for conditional suspension, although some forms of crime remained excluded such as crimes against humanity and drug trafficking.

The discourse within the National Assembly that justified these initiatives followed from the need to reduce the procedural delays, to decongest the courts in order to speed up processes, and to respond to the prison issue (*Asamblea Nacional 2009b*). However, the incarceration rate continued to rise, reaching 115 per 100,000 inhabitants in 2009. Moreover, the convicted population reached 66.9 per cent of the prison population, a record high level during Bolivarian process up until this point.

In terms of security, the homicide rate fell slightly to 49 per 100,000 inhabitants, and the crime rate to 965 per 100,000 inhabitants. The Sociodemographic Diagnosis of the Prison Population conducted in 2010-2011 by the Superior Prison Council (*Consejo Superior Penitenciario 2011*) noted that the demographic of the prison population had not changed from traditional Latin American statistics, with an overwhelming majority of convicts still male, between 18 and 40 years of age (see Figures 7) and belonging to a lower socioeconomic stratum (Figure 8).

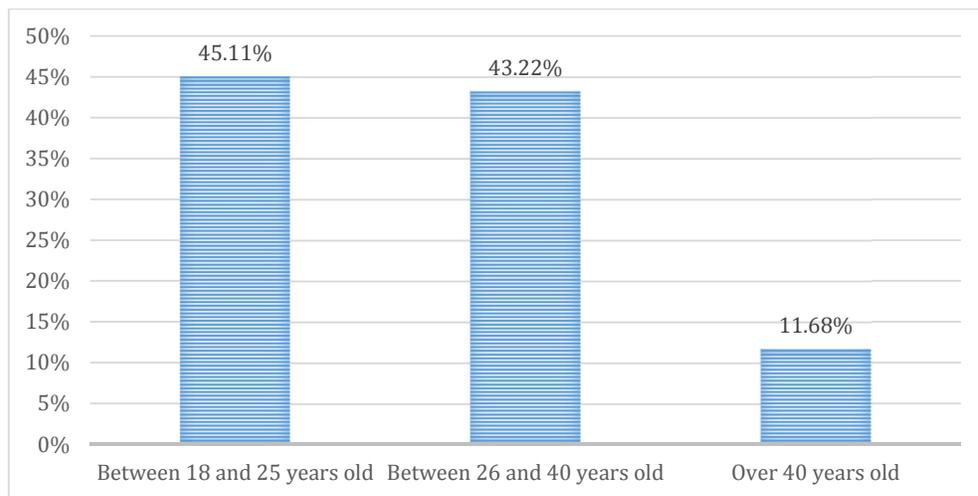


Figure 7: Composition of the prison population by age 2010-2011

Source: Sociodemographic Diagnosis of the Prison Population 2010-2011 (*Consejo Superior Penitenciario 2011*)

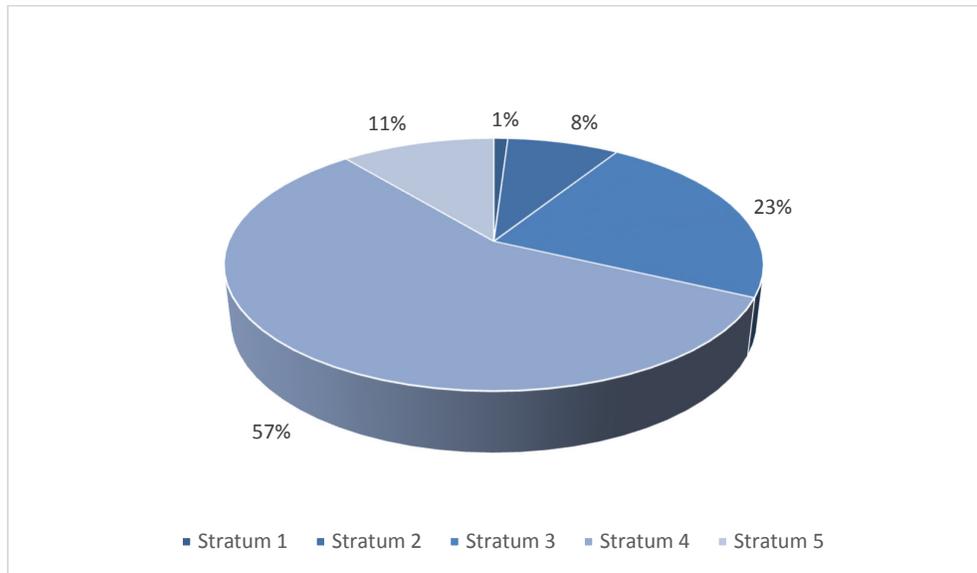


Figure 8: Composition of the prison population by socioeconomic stratum, 2010-2011

Note: Stratum 1 is the highest socioeconomic level; stratum 5, the lowest.

Source: Sociodemographic Diagnosis of the Prison Population 2010-2011 (*Consejo Superior Penitenciario 2011*)

The prison population between 2010 and 2011 consisted of 39,694 individuals who were mostly convicted for theft, and use and sale of small amounts of drugs, which, although they often caused social unrest, had little impact on community life. The criminal policy could thus be viewed as drawing only on ‘traditional crime’. Traditional crime regularly attributes the roles of victim and victimizer, in which the latter is for the most part reserved for the most vulnerable, exposed to marginalization and poverty. They thus reproduce the existing structural inequality in which only certain groups are considered as potential offenders on the basis of their social and economic conditions due to the structural orientation of public policies (Ayos 2013).

The Chavist forces reaffirmed themselves again when President Chávez called for another referendum to approve a constitutional amendment in 2009 that would allow for him to be re-elected for a third term. He won with 54.86 per cent of the votes. From that moment onward, and especially in the last years of his government, it can be noted – with great concern – that the significant advances in the eradication of poverty and inequality in Venezuela (see Figure 9) did not translate into a decrease in crime rates.⁴ On the contrary, there was an increase in violent crimes and the use of firearms, which points to the reality that the social policies were not sufficient to deal with these phenomena.

Additionally, the capitalist model began to be viewed as a driving factor of violence. This was because capitalism was claimed to drive the need for recognition, status and power, especially among young people, in addition to selfishness, individualism and consumerism. Perhaps an explanation, as pointed out by Antillano (2012: 713), is that the governing party began to justify the increase in crime by appealing to other factors (mainly socio-cultural), now that the great social reform and investment during their tenure did not have the envisioned impact on the reduction of violence. Not only did the violence not decrease but it was increasing, so a change in the lifestyles of the youth was viewed as needed. A cultural change could deal with the ‘cultural damage’, as President Chávez said in an interview that took place in 2012:

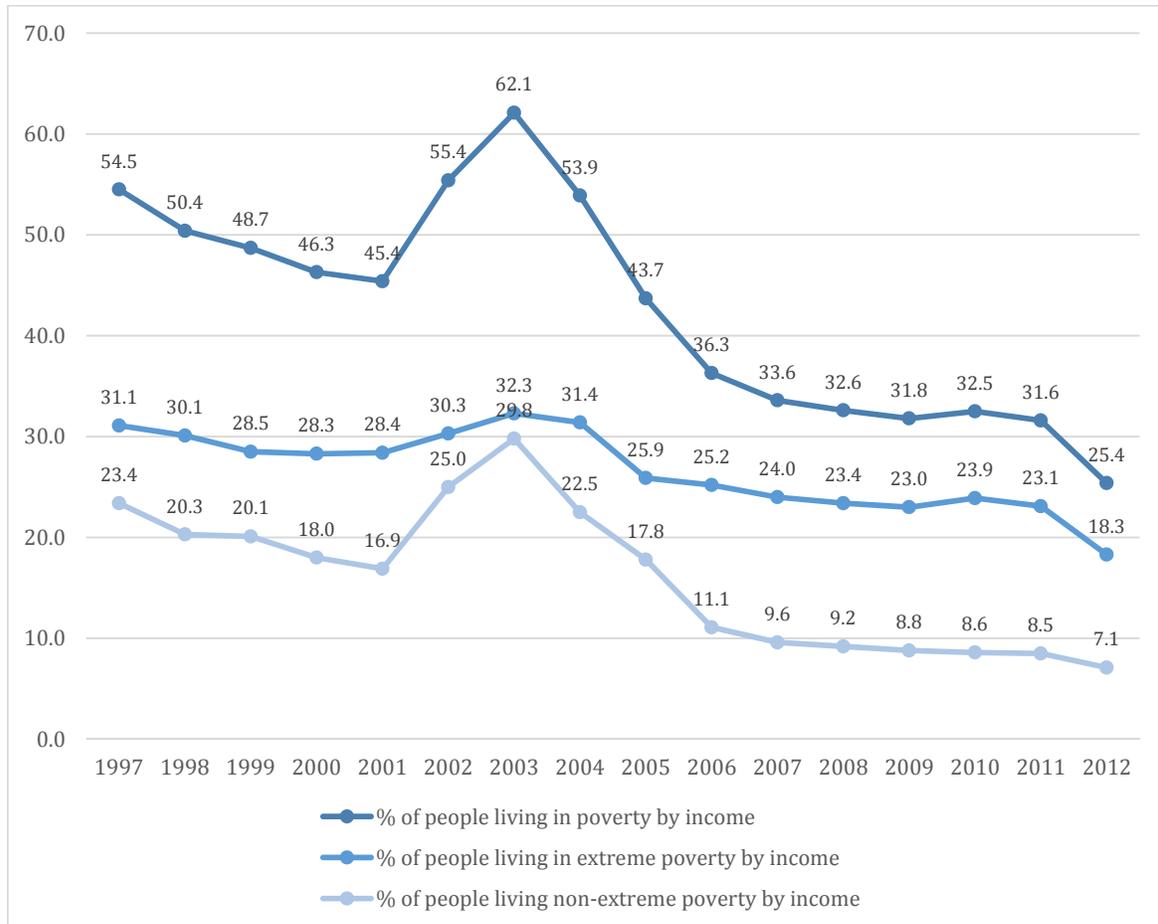


Figure 9: Poverty rate by income in Venezuela, 1997-2012

Source: *Instituto Nacional de Estadística*

... even though today we have an education system ... there is no more hunger in Venezuela, opportunities to study ... however, there is a percentage of Venezuelans who suffered during their childhood, who suffered violent inoculations, because that is another issue, the cultural side, the films, some media broadcasts that incite violence, violent toys, inciting drug use, that is a factor that greatly influences violence in the neighbourhoods, the drugs, alcoholism ... It is a cultural deed, it is the cultural damage.

But the left-wing discourse of the President did not manage in general terms to find party leaders who were capable of interpreting their ideals, at least in this field, and translating them into legislative proposals or penal policies. As a consequence the procedural reforms resulted in advances, setbacks and an overload of criminal agencies due to a lack of financial and human capacity to respond to the situation.

The reform of the police force that had been initiated years before had not managed to put a stop to the advancements of crime. Rather one might view the proliferation of police personnel and police forces as a way to process the more 'easy' cases by focusing on common criminal offenses, and thus contributing to the increasing incarceration rate, especially in preventive detention.

Similarly, the modifications to the OCCP, even though they were attempts to address procedural delays and overcrowding in prisons, in practice did not change the scope of preventive detention.

Preventative detention had been extended in 2001 and limited the access to alternative punishment measures for those already convicted, which in part explains why the incarceration rate continued to rise.

There were other actions that tried to put a stop to the rising crime rates and alleviate the serious prison crisis that was marked by high levels of violence and overcrowding. One of the measures was the creation of the Ministry of Correctional Services in 2011. Other measures focused on designing security plans with conventional control strategies that focused exclusively on reactive responses to crime, by increasing the number of police officers. The measures neither implemented new strategies that acted beyond the criminal field nor refocused on strategies that had preventive goals in order to reduce crime.

Thus crime control continued to focus on reactive sentencing rather than social crime prevention. In light of this were the security plans that were issued during this period which were characterized by their situational, reactive and short-term nature. Even if they were structured to show that they benefited crime prevention ideas, in practice they were accompanied by repressive measures and reactive police operations. As Garland (2005: 85) notes, as important as the paper was in describing the role that social measures should play in reducing crime, the bureaucratic demarcations ultimately determined what was done.

In 2012 the last reform was made to the OCCP and the conditional (probationary) suspension of criminal proceedings for offenses resulting in a sentence of maximum eight years was resumed, as had been the case before the 2001 reform. More serious crimes would thus potentially become eligible for this benefit, while at the same time it excluded those who had benefited from the measure in the previous three years, thus punishing recidivism. In addition, the number of crimes excluded from conditional (probationary) suspension of criminal proceedings was increased, especially for serious offences (*Reforma Código Orgánico Procesal Penal 2012: Article 43*). In a similar vein, the requirement of a maximum penalty of five years to suspend criminal action was raised to eight years if it was a low frequency offence that did not seriously affect the public interest; and the number of crimes that were excluded from being able to apply for the principle of prosecutorial discretion was augmented (*Reforma Código Orgánico Procesal Penal 2012: Article 38*). In relation to working outside institutions, open prison regime and parole, the 2012 reform hardened the eligibility requirements (*Reforma Código Orgánico Procesal Penal 2012: Article 488*). It was established that, in the case of crimes considered to be severe, one could only proceed with alternative measures upon completion of three quarters of the original sentence.

Generally speaking, the reform aimed to reduce the use of preventive detention and increase alternative measures for crimes which result in punishments of less than eight years of imprisonment. Additionally, crimes that were considered severe were excluded from potential benefits or detainees would have to opt to increase their total sentencing time to be able to access those benefits. In spite of this the incarceration rate continued to rise during 2012 to 164 per 100,000 inhabitants, of which 62.7 per cent were convicted.

Before the end of this period, a turning point in the area of security policies occurred when President Chávez created the Great Mission of All Life Venezuela, as the first integral public policy in the field with a focus on humanist and socialist crime prevention. The plan was based on a structural approach to crime through a set of multifunctional measures with the intent to speed up proceedings while also making them accessible to the population. Additionally, new measures that would enable intervening in minor conflicts by way of an alternative punitive system were announced (Unes 2012: 78).

Even though President Chávez once again won in the presidential election with a 55 per cent majority and Chavism managed to continue the consolidation of its forces, the attempt to implement the Mission was threatened by Chávez's serious illness and subsequent death.

During this period an increase in violent acts and homicides can be observed. The increase resulted in a sustained upward trend from 2004. Despite a slight decrease in 2010 when the rates fell from 49 to 45 homicides per 100,000 inhabitants, the increase resumed its growth in 2011, reaching a rate of 50 per 100,000 inhabitants.

Fourth stage: 2013-2014

The last period is marked by the death of President Chávez, who led Venezuela from 1999 until 2012, and the start of the first term for Chavist President Nicolás Maduro. Chávez's death was a hard blow for the country and resulted in a large-scale economic war. The political opposition, aware of this turmoil, attempted to bring about a change in the correlation of forces in the exercise of power.

In the presidential elections of 2013, Nicolás Maduro won by a margin of only 1.49 points, which was equivalent to a decrease of 1,599,828 votes, compared to the results of the presidential elections six months earlier when Chávez won with a margin of 10.76 points. In response, the 'coup' sector of the opposition led an insurrectionary strategy in 2014, to discredit the new government with the use of violent demonstrations in some economically privileged cities that were governed by the opposition. As a result of the violent event, 43 people were killed and more than 800 people were injured.

Additionally, President Maduro faced an economic war provoked by national and international business sectors aiming to weaken the national economy. The war was characterized by strong actions of hoarding, and speculation on, and exportation of, the country's basic food products, in response to regulations and price controls imposed by the State as a means of fairer sales of these products.

What also shocked the public was the murder of an ex-beauty queen and her husband in early 2014. This resulted in the issue of security becoming strongly embedded in the discourse of the opposition. These murders strengthened criticism of the State's ineffectiveness in controlling crime and especially violent crime.

During these years, security policy was guided by various short-term actions. One of them was the deployment of a civilian-military operation called the 'Homeland Security Plan'. The plan was implemented as a replacement for the hardening of components of the Great Mission of All Life Venezuela. The plan was developed by the Public Safety and the National Armed Bolivarian Forces and aimed to strengthen control points and expand the areas of surveillance and patrols in the most dangerous urban areas, spreading extensive police tactics in the form of short-term operations. This represented a return to prominence of the military in public security, the role of which had been progressively eradicated through police reforms in the government which began in 2006 and continued over the course of President Chávez tenure.

Another action in 2014 was the Pacifying Plan aimed at fighting criminality by creating strategic plans, informed by public consultation, which were aimed at developing the policies already mentioned. These included, among others, the disarmament plan; the strengthening of the Peace and Life Movement; the development of organizational strategies and activation of youth around sports and culture; the development of safe and peaceful spaces; and social discipline in prisons (*Ministerio del Poder Popular para la Comunicación y la Información 2014*).

However to date no official figures have been published that show the effectiveness of the implemented plans, nor official statistics on the movements in the rates of crime. Government spokesmen claim that the homicide rate dropped to 39 per 100,000 inhabitants; however the data are disputed by anti-government bodies, such as the Venezuelan Violence Observatory, which

indicates a rate of 79 homicides per 100,000 inhabitants. It has to be said, however, that these data also lack detail and sources to prove their reliability (*Noticias 24* 2014).

During this period there were no reforms in the field of criminal procedures. However in 2013, in the area of criminal law, the so-called *Special Law to Prevent and Punish Torture and other Cruel, Inhuman and Degrading Acts* was adopted, which had been an outstanding obligation since Venezuela had become a signatory to the United Nations' *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* (*Gaceta Oficial* 2013b). A commission for the promotion and monitoring of preventative policies against torture was created and the *Law for Disarmament and Arms Control and Ammunition* was also promulgated (*Gaceta Oficial* 2013a).

During 2014 the partial reform of the *Organic Law on the Right of Women to a Life Free of Violence* was approved, in recognition of the demands of the women's movement. The reform entailed femicide being incorporated as a crime (*Gaceta Oficial* 2014b). In the same year the *Organic Law of Fair Prices* was promulgated in order to regulate the fair pricing of goods and services, as a means of controlling the economic situation (*Gaceta Oficial* 2014a). Additionally, prison terms of 1-14 years for some offenses were established. So the normative approach trended towards punitiveness, but not in the sense of increasing the penalties for common crimes. Rather they adhered to the demands of particular sectors, such as social movements and human rights organizations, and those seeking punishments in order to persecute behavior that threatened economic stability.

In 2013 the prison population stood at 50,365, equivalent to a rate of 169 per 100,000 inhabitants. By August 2014 the prison population accounted for 52,099 people with an incarceration rate of 172 per 100,000 inhabitants.⁵ This reflects a trend, commencing in 2007, towards greater use of imprisonment in response to crime, a trend to which the police operations have undoubtedly contributed.

Concluding summation

During the **first stage (1999-2000)** governmental policies were concentrated around social inclusion programs which aimed to reduce poverty, unemployment and inequality. In the field of criminal law, by virtue of the new constitution, the penitentiary system prioritized non-liberty depriving forms of punishment. Additionally, the procedural system moved from being inquisitorial to being adversarial, establishing trial in freedom as a rule. This quickly brought with it a significant decrease in detainees, incarceration rates and overcrowding of the prison system. But the developments failed to resist the growing discourse that related the increase of violent crime to the new procedural benefits proposed by the OCCP, the new legal instrument, which led to punitive reforms in 2000.

In the **second phase (2001-2005)** a punitive shift occurred and a more regressive and punitive reform to the OCCP than the reform in 2000 was adopted in 2001. This initiative, which was approved by a National Assembly with a Chavist party majority, restricted the possibilities of trial in freedom, extended the application of preventive detention and limited alternative forms of sentence enforcement. Additionally, the Penal Code was modified, new criminal offenses were created, penalties were increased, and alternative non-liberty restricting punishment measures were restricted for some crimes. These reforms did not significantly affect the incarceration rate but did increase the percentage of preventive detainees in the system.

The **third stage (2006-2012)** is characterized by hyperactivity in the legislative area resulting from four criminal procedure reforms to the OCCP. The reforms aimed to ease the procedural delays and the subsequent overcrowding of prisons, but did not change the scope of preventive detention and limited the access to alternative punishment measures for those who were already convicted. The 2012 reform draws the attention because, on one hand, it seems to extend the

conditional (probationary) suspension of criminal proceedings and that of criminal proceedings by principle of prosecutorial discretion but, on the other hand, it tightened the requirements to access work outside institutions, the open prison regime and parole.

A shift to the left – but also counterturns – occurred during this period. On the one hand, there was police reform characterized by the creation of policing standards, the establishment of a governing body in the field, the creation of a university to form State Security Organs, and the issuing of an integral public policy in terms of citizen security. But, on the other hand, measures were implemented that prioritized crime control through the installation of checkpoints in economically disadvantaged urban areas. This explains the increase in the incarceration rate, noting a significant increase from 87 per 100,000 inhabitants in 2008, to 150 per 100,000 in 2010.

Whereas substantial improvements of social conditions meant that poverty and inequality continued to decline, the homicide rate continued to climb. Antillano (2004) explains that, despite the implementation of redistributive social policies, they were not able to totally reverse the causes of exclusion. This led to inequalities and the widening of social gaps amongst the working class, which indirectly caused tension while eroding the bonds of class and community, leading to situations of violence and conflict (Antillano 2014: 10).

The **fourth stage (2013-2014)** is characterized by policies aimed to reduce political conflicts as a reaction to undemocratic attempts by the opposition to destabilize and delegitimize the government. Criminal laws, which were introduced in terms of security policy, focused on creating a solution to these problems by defining economic crimes and installing safety measures to contain crime.

At this stage a shift occurred in the orientation of the new policing model. A plan was unfolded that combined checkpoints and patrols deployed by the police and armed forces, but which in practice had a strong militaristic orientation. The murder and incarceration rates continued to rise due to the selective nature of the safety measures implemented among the working class and which favored the prosecution of ‘petty’ crime.

The orientation of social policies was maintained but a small setback was recorded due to the economic situation facing the country. In relation to inequality during this period a decrease in the Gini coefficient – the index of income inequality where a value of zero represents absolute equality and a value of 100 absolute inequality – from 0.404 in 2012 to 0.382 in 2014 was recorded (Figure 10) and this improvement can still be observed at the time of writing.

We conclude with a summary of our observations. In terms of social and economic matters the orientation of the Chavist Government was characterized by a sharp turn to the political left which deconstructed the prevailing neoliberal orientation that had prevailed until that time. However, this did not translate into criminal policy, which was generally immersed in profound contradictions. For instance, criminal policy at times showed attempts to move towards a position of guaranteeing civil liberties and at other times seemed to drive toward punitive hardening. Criminal and security policies were, during most of this period, a subsidiary subject, little studied and addressed, acting reactively to specific problems that sought to restructure, often through punitive appeal.

The periods during which the main punitive orders were presented were the second and fourth stages identified in this work. These periods also correspond with the highest levels of political conflict and were marked by attempts to create an institutional breakdown fostered by parts of the political opposition. All the shifts that can be identified in the four stages reflect tensions about the orientation of crime control policy within the Chavist movement, in which the circumstantial dominance of punitive positions and positions of civil liberties guarantees have not been able to consolidate and maintain permanent positions.

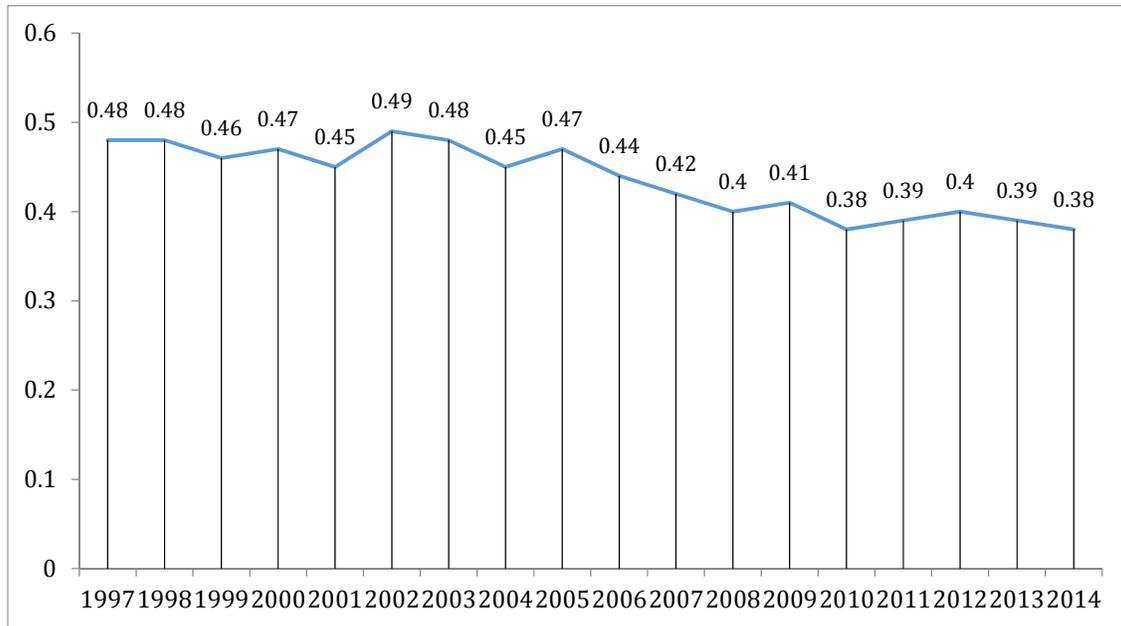


Figure 10: Gini coefficient in Venezuela, 1997-2014

Note (a): This is a measurement of income inequality where a value of zero represents absolute equality and a value of 100 absolute inequality

Note (b): Data refers to the first semester of each year

Source: Household sample survey – National Institute of Statistic, INE

The most progressive discourse within the State was that of President Chávez and that of the Public Prosecutor’s Office. In contrast, the most conservative discourse was held by the National Assembly and the Supreme Court which prompted more conservative trends and called for tougher penalties and imprisonment, by restriction of alternative punishment measures and the expansion of preventive detention. The public discourse of President Chávez was always aimed at decreasing punitive measures and even came to outline a sort of penal abolitionism. Chávez reclaimed the use of social inclusion strategies in order to improve the conditions that led to crime by pointing out that making prisons more humane was like humanizing capitalism. Towards the end of his presidency he appealed to socio-cultural factors as causes of youth violence, while identifying consumerism, individualism and selfishness as motivations to resort to crime. Nevertheless, levels of violence remained on the rise even though there were substantial improvements of social conditions based on the reduction of poverty, exclusion and inequality. This made it harder to explain how these conditions were directly associated with the causes of crime.

In recent years the issue of security gained a more important position in the Chavist discourse, until it became the main point on President Nicolas Maduro’s agenda. Maduro stressed the need to take action against insecurity and crime in his first term by increasing police and military operations and control measures in high-crime areas.

The incarceration rate increases mainly with indicted individuals and, even though crime and violence continue to rise, policy makers generally do not question the effectiveness and relevance of the indiscriminate use of imprisonment. This is perhaps explained by the high electoral political costs involved in betting on less coercive measures in the area of criminal law and security in the context of a Venezuelan society where violence, insecurity and crime are major concerns in people’s daily lives.

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- ¹ To correspond with authors, email martha_lia@yahoo.com. Neyda Peña and Bárbara Tineo participated as assistants in this research.
- ² This article was originally published in Spanish (available at http://biblioteca.clacso.edu.ar/clacso/gt/20160404115404/Postneoliberalismo_penalidad.pdf) and was translated for this special issue.
- ³ The opposition, which remained a minority force during this period, assumed a supportive attitude of the 2001 OCCP reform proposed by the Chavist movement.
- ⁴ The poverty rate in 2011 stood at 31.6 per cent, almost 20 per cent lower than in 1998, when it was 50.4 per cent; and the Gini index stood at 0.39, a decrease of nearly a point from the 0.48 reported in 1998.
- ⁵ The data about the prison population were provided by the Ministerio del Poder Popular para el Servicio Penitenciario. The reference about year 2014 only accounts for data until August.

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