(RE)PENSANDO DIREITO

Manaus' Massacre as a Result of the Crisis in the Brazilian Penitentiary System: an Analysis in the Light of the International Human Rights Law

Massacre de Manaus como Resultado da Crise no Sistema Penitenciário Brasileiro: uma Análise à Luz do Direito Internacional dos Direitos Humanos

Marcos Vinicius Viana da Silva
Doutorando em Ciência Jurídica pela Universidade do Vale do Itajaí - UNIVALI, com bolsa do UNIEDU/SC, Mestre em Ciência Jurídica pela Universidade do Vale do Itajaí - UNIVALI, Bacharel em Direito – Formado na Universidade do Vale do Itajaí – UNIVALI – Mérito Estudantil da formação acadêmica, Professor Universitário das Matérias de Propriedade intelectual, Direito Internacional e Direito Constitucional. Juiz Leigo do Juizado Especial Civil de Navegantes, Domínio da língua Inglesa; Portuguesa, Espanhola e Francesa. Com Intercâmbios Institucionais e Culturais para França, Espanha e Itália. E-mail: mvsilva0805@gmail.com. Endereço do CV: http://lattes.cnpq.br/0483045958159744.

Erick da Luz Scherf
Atualmente cursa o 4º período do bacharelado em Relações Internacionais na Universidade do Vale do Itajaí (UNIVALI) – Campus Itajaí. Atua como pesquisador na área de Direitos Humanos no Centro de Ciências Sociais e Jurídicas da UNIVALI. Formado como Técnico em Agropecuária pelo Instituto Federal de Educação, Ciência e Tecnologia Catarinense – Campus Camboriú (Ensino Médio integrado ao Curso Técnico). E-mail: erickscherf@gmail.com. Endereço do CV: http://lattes.cnpq.br/1584254039089718.

RESUMO

O presente artigo expõe uma análise dos recentes acontecimentos ocorridos em Manaus, capital do Amazonas, estado do norte do Brasil. Uma cachina matou 56 presos no Complexo Penitenciário Anísio Jobim, uma unidade que abriga em torno de mil pessoas e passou por uma rebelião que assassinou e feriu vários prisioneiros. Este artigo tem como objetivo analisar como o massacre na prisão de Manaus acentua a crise sistêmica encontrada nas penitenciárias brasileiras e quais são as normativas internacionais relativas aos direitos humanos que este viola, utilizando o método descritivo-explicativo e tendo o direito internacional dos direitos humanos como marco teórico. Em concordância com isto, foi bastante claro identificar por meio da análise feita neste artigo que, há uma crise profunda nas instituições brasileiras que levou ao agravamento da crise no sistema penitenciário do país. Apesar de todas as violações à dignidade humana que o Estado brasileiro propaga em seu território, especialmente com a população carcerária, o Governo brasileiro ainda não foi responsabilizado pelas várias mortes ocorridas por negligência a seus prisioneiros.

Palavras-Chave: Massacre de Manaus. Sistema penitenciário brasileiro. Violação dos direitos humanos. Sistema Interamericano.

ABSTRACT

The current article exposes an analysis of the recent events which have happened to occur in Manaus, the capital of Amazonas, a north Brazilian state. A butchery killed 56 inmates at "Complexo Penitenciária Anísio Jobim", a

Brazilian penitentiary, a unity that shelters around one thousand people, and has passed through this rebellion that murdered and injured several prisoners. This paper aims to analyze how the massacre in Manaus' prison accentuates the systemic crisis found in Brazilian penitentiaries and what are the international normative provisions regarding the human rights that it violates, using the descriptive-explanatory method and the international human rights law as theoretical framework. In concordance of it, it was quite clear to identify a systemic crisis in the Brazilian institutions which led to the one in the penitentiary system. Despite of all the violations to the human dignity the State propagates within its territory, especially with the prison population, the Brazilian Government hasn't been hold accountable for the several deaths that occurred due to its negligence over its prisoners.

Keywords: Manaus' massacre. Brazilian penitentiary system. Human rights violations. Interamerican System.

Introduction

The Brazilian institutional crisis in its penitentiary system brings serious consequences for the contemporary society, in addition to violating not only the role of the fundamental rights and guarantees enshrined in the Federal Constitution of 1988, but also the international normative provisions regarding human rights in the Interamerican and the global context.

The slaughter that took place in Manaus' prison was the largest since Carandiru's massacre, in São Paulo, another Brazilian state, that caused one hundred and eleven deaths in October 1992. Therefore, it is necessary to analyze the crisis installed in Brazil's prison system, through the case witnessed in Manaus, in order to highlight the constant violations of the human dignity propagated so far, describing the environment of Brazilian prisons which have failed to fulfill their role of rehabilitation of prisoners to life in society a long time ago.

Nonetheless, it is imperative that we evocate the international responsibility of the Brazilian State, given the violation of human rights in the matter under analysis. Taking into account the growth and improvement of the Inter-American System for the Protection of Human Rights. The often-propagated massacres in Brazilian penitentiaries directly violate the American Convention on Human Rights and its other conventional instruments ratified by Brazil, disregarding the basic principle of international law, the observance of pacts (*pacta sunt servanda*) and international human rights law, the protection and guarantee of human dignity.

Therefore, this article aims to analyze how the massacre in Manaus' prison accentuates the systemic crisis found in Brazilian penitentiaries and what are the international normative provisions regarding the human rights that it violates, using the descriptive-explanatory method and the international human rights law as theoretical framework. The researching method chosen was the bibliographic research, using not only the conventions Brazil ratified in which involve the international provisions regarding human rights, but also the doctrines over the debated theme.

Thus, this paper is divided by three sections, the first one is entitled "Brazilian penitentiary system: chaos and neglect" which intends to describe, briefly, the historical and political aspect of the penitentiary system inside the Brazilian State along with its crisis. The second section is called "Manaus' massacre and the violations of the international human rights law" and is designed to highlight the recent events that took place in Amazonas, a north Brazilian state, in order to identify what were the violations of the international human rights law propagated. Last, but certainly not least, the third section named "The necessary reform of the mechanisms of human rights protection within the Interamerican System" attempts to expose the current mechanisms available to the individual human beings and families of those people who were killed arbitrarily, and also suggests some changes in the present instruments the Inter-American System provides for the protection of human rights in the regional context.

1 Brazilian penitentiary system: chaos and neglect

This first section intends to draw an overview on the aspect of the construction of the prison system in Brazil, trying to identify what are the main challenges and barriers that need to be overcame to end up the numerous violations to the human rights that have been perpetuated since its foundation.

With that said, according to Machado, Souza and Souza (2013, authors' translation), it was in the 19th century that the first prisons with individual cells started being built in Brazil, and the Penal Code of 1890 opened possibilities for new types of arrestments, such as: sentences restricting individual liberty, with a maximum sentence of thirty years, as well as cell imprisonment, compulsory labor and disciplinary detention. Also, our prison system, since its foundations, was based in the English model, which is called "Progressive model", stated in England in the 19th century as well. This structure considers the behavior of the inmates, taking into considerations the actions they take while they're inside the prison, verifying if they present what is consider to be a good conduct and work, and if they went for all the phases properly, they can get probation.

Although, the root of the problems was not the type of the system that was copied and introduced in the country, but the penitentiary system itself. Conforming to Pacheco (2008, authors' translation), the clearly moralizing aspect the prisons are willing to achieve, along with the increasing of harsher punishments and the complete isolation can never reach the "rehabilitation" it was supposed to reach. And after the events occurred in 2003 and 2006, of extravasation of the internal violence of the penitentiaries, the Brazilian government sought a kind of prison "cleaning", removing the members that could generate a "contamination" by its alluded dangerousness, redirecting them to Federal Penitentiaries of Maximum Security, faithfully hoping that would solve

the problems, but in a fruitless way, hadn't caused any effective impact in solving the penitentiaries' crises.

In agreement with Freixo (2016, authors' translation), a Brazilian congressman, in interview for the journal "Science and Collective Health", in 1995 the prison population was of 148.000 prisoners, and this number reaches over 600.000 in 2015. This tremendous growth is one of the biggest on the planet, Brazil is only behind Indonesia on the expansion of the population imprisoned. According to him, the growth of the Brazilian population is around 1.3% or 1.4% per year and the prison population reaches 10% per year. He says that a moment will come, and he did the calculation, that if the country continue in this proportion, in 2081 we will have 90% of the Brazilian population arrested.

Other issue to be pointed is that the crisis in our penitentiary system could be easily related to the crises in our judicial power, which has caused a lot of debates around the reform of our judiciary branch, as reported by Scherf and Morales (2016, authors' translation), since the 1900s, efforts have been made to institute a systemic reform in the Judiciary, which has progressed with the formulation of the Draft Amendment to the Constitution nº 96 of 1992 that culminated in Constitutional Amendment nº 45 of 2004, bringing significant changes for the improvement of the Brazilian judicial system and the democratization of the access to justice.

But what does the crisis in the judicial system have to do with the one in the prison system? Well, since our Justice is expensive, slow and debilitated, it directly reflects on the prisons administrated by the State. According to Vitto (2014, authors' translation), in the National Survey of Penitentiary Information, the number of prisoners without conviction in the Brazilian prison system reached 212.224 in December 2014, representing 34.10% of the prison population, in consequence it contributes for the increase of the overpopulation in Brazilian penitentiaries.

Along with the overpopulation and the problems with the access to justice, the perpetuation of violations of several fundamental rights stated in the Brazilian Constitution and the conventional instruments ratified by the State in the international arena is more than common. Conforming to Gontijo (2008, authors' translation), the prisoners enter the penitentiary system to comply a sanction resulting from the violation of a legal prerogative, but it doesn't justify the inhumane treatment they're given, which far exceeds their sentences, where they end up starving or eating spoiled food, being exposed to cold or excessive heat, living in absolute promiscuity in overcrowded cells exposed to all sorts of diseases without any medical care.

As stated by Beccaria (2011), the purpose of penalties isn't to torment and afflict a sentient being, nor to undo a previously committed crime, but to repel those actions, preventing the criminal to cause new damages and also as an example for the others to not perpetuate the same outlaw

actions. The conditions that the Brazilian prisoners have been so far submitted, can be as well named as torture, confirming to Rodley (2002, p.2), acts of torture can be considered as "the relative intensity of pain or suffering inflicted: it must not only be severe, it must also be an aggravated form of already prohibited (albeit undefined) cruel, inhuman or degrading treatment or punishment".

Besides that, the Brazilian State not only violates the fundamental rights of their prisoners, but also offers no chance for rehabilitation to life in society. According to Santiago (2011, authors' translation), in a pragmatic way, Brazil does not provide the resocialization of the inmates, they are treated in inhuman ways and they are not offered the dispositions placed on the legislation. In the country, the major legislation over the prisoners' rights is the Law of Penal Execution (1984), that ensures the right to education, healthcare, legal assistance and others measures related to the role of the fundamental rights.

Although, still in agreement with Santiago, currently, the most important right, when in it involves the process of resocialization, the access to education, has not been granted to the prisoners, either because they do not find establishments with the minimum structure to meet their needs, or because there are no educational services compatible with the schooling of the detainee. Therefore, they have minimum chances to exercise their fully citizenship, if, they survive the system, fulfilling their sentence and getting the freedom after all.

In short, Brazilian's penal system, along with the Legal apparatus need an urgent reform, with the intention to humanize Justice in Brazil, getting the attention of its public policy makers to the matter of human rights, because only when they demystify the idea that an inmate imprisoned does not need access to his or her fundamental rights it'll be possible to start making improvements in the Brazilian's prison system. The conservative wave that have been soaking the country's Justice nowadays not only prejudices the dignity of the ones imprisoned, but also opens space to the non-observance of others rights settled by Brazil's Constitution and the international conventional means the Brazilian State is a part of.

The principle of the human dignity concerns all human beings, regardless of what have they done in their past, that doesn't mean that criminals mustn't pay for their crimes, although, it is imperative that the State provides a non-hostile environment for its prisoners, where they're able to full fill their sentence and also would be able to be fully integrated in the civil society, if they do show they're willing to, but it will never be known, if no one gives them the chance. Thus, starving people to death, private them to their basic rights such as access to food and medical care, can never be the solution for the criminality problem in Brazil.

2 Manaus' massacre and the violations of the international human rights law

This section is designed to highlight the recent events that took place in Amazonas, a north Brazilian state, in order to identify the violations to the role of fundamental rights through the non-observance to the international human rights law and its instruments ratified by Brazil. The penitentiary "Anísio Jobim", the place where the butchery was witnessed, was, according to the Secretariat of State for Penitentiary Administration of Amazonas (2017, authors' translation), inaugurated in 1982, in the government of Gilberto Mestrinho, former Governor of the state. It first received the name Agricultural Colony "Anísio Jobim", and conforming to the Secretariat, it came to full fill a gap that the State of Amazonas felt long ago, since the criminal laws of the country had, since the beginning of the last century, foreseeing the possibility of imprisonment in agricultural establishments.

The Agricultural Colony and later the Anísio Jobim Penitentiary Complex, was given the name of Manoel Anísio Jobim, former Judge of Amazonas. As the Agricultural Colony emerged under the umbrella of the primitive general part of the Penal Code of 1940, as the third phase of the sentence of imprisonment, since the first phase was total isolation, the second phase of work during the day, and the third stage of compliance with the sentence in a penal colony, in the form of the 30th article of that legislation. Promulgated the new general part, the Law 7.209, of July 11, 1984, clearly established the three regimes of compliance with custodial sentence, the Agricultural Colony reserved the second phase of implementation, the semi-open regime (SECRETARIAT OF STATE FOR PENITENTIARY ADMINISTRATION OF AMAZONAS, 2017, authors' translation).

This Brazilian penitentiary has the capacity of sheltering 454 inmates, but conforming to Henriques, Gonçalves and Severiano (2017, authors' translation), nowadays it shelters around 1.224. The rebellion that would cause 56 deaths in the location, started at January first, 2017, and would be controlled only 17 hours later, on January second in the morning. In interview, the Secretary for Public Security in Amazonas stated that the massacre was a consequence of the fight between two different criminal factions, Capital's First Command, originally from São Paulo (Brazilian state located in the southeast), against North's Family, from Amazonas. This is the second most lethal rebellion in the history of the Brazilian prison system, behind only the Carandiru's Massacre, which occurred in São Paulo in 1992, where 111 prisoners were murdered by police troops (ALESSI, 2017, authors' translation).

Pursuant to Salla (2006, authors' translation), the rebellions in Brazil, since the 90's, have been provoked often from disputes between organized groups that use rebellion as an instrument of disorder to settle accounts, to kill rival leaders, to avenge the deaths of comrades in other prisons, to renegotiate relations between criminal groups and, sometimes, between them and the staff.

According to the author, the Brazilian State hasn't been capable of ensuring the basic standards for the imprisonment of individuals. Prisoners, irrespective of their dangerousness, age, recidivism or type of crime, are collected in establishments, generally crowded, in poor sanitary conditions, and are kept mixed from the time they remain on trial until the post-trial period. The State does not ensure basic conditions of incarceration, such as legal, social, medical, hygiene, uniform and even food. This precariousness in services provided stimulates the network of solidarity among prisoners and places many of them in the dependence of well-organized criminal groups who mobilize resources to meet the needs of their members, such as advocates, family support, medical care and etc. (SALLA, 2006, authors' translation).

In addition, most of the Brazilian penitentiaries have been working without any control or maintenance of the State, which means that almost all the daily activities inside the prisons are organized by the prisoners. The lack of agents to work inside the penitentiaries demonstrates that there is a gap in the imposition of rules by the Prison Administration. Therefore, the well-organized groups of criminals find their way to freely run the prisons and to impose their own rules over the inmates, in this sense, in the course of disputes over the control of these activities, the rebellions and deaths are strategies for obtaining the adhesion of the prison mass, or at least for their connivance with the leadership exercised by a certain group, as well as protest against the inhuman conditions they are submitted to (SALLA, 2006, authors' translation).

Consequently, the Brazilian State is the main subject to be blamed for the uncontrolled rebellions and the several deaths that took place at the penitentiary "Anísio Jobim" along with the others that have happened throughout the history of the Brazilian prison system, because once someone enters the respective system, he or she is under the responsibility of the State, as it's written in the Law of Penal Execution on its 10th article, in which guarantees that the assistance to the inmate is the State's duty, aiming to prevent further crimes and provide resocialization as well (BRASIL, 1984, authors' translation). Therefore, they must be provident with the basics services that guarantee the human dignity, such as medical care, food, and access to Justice, so it becomes possible for them to full fill their sentence and to be able to be reintegrated among society later on.

After recognizing the responsibility Brazil holds we need to identify what were the mechanisms of international protection of the human rights the country had disrespected, which includes the treaties and other conventional instruments that were consequently violated after the incidents. On that account, we are going to consider the instruments held by the Inter-American System for the protection of human rights, acknowledging that its jurisdiction is to be considered the most important in the American context.

A new perspective is to be risen, essentially after the Second World War, where the international law has assumed a different role, not serving only to regulate the relations between States, but to ensure the protection to the fundamental rights, subsequently the enormous infringements to the human dignity propagated by totalitarians regimes around the world, calling out for international mechanisms for the protection of human rights, whether by jurisdictional or political means. And that's where the United Nations were founded, in 1945, in a scenario of post war, with the intention to provide not only peace, but to promote and stimulate the respect to the human rights and the fundamental liberties (FERREIRA FILHO, 2016, authors' translation).

In the perspective of the international protection, there are three main documents responsible to enunciate the observation of the human dignity where we can find violations by Brazil in the matter of the prison system and the massacre itself. The first one is the Universal Declaration of Human Rights (UDHR) proclaimed by the United Nations General Assembly in 1948, setting out, for the first time, fundamental human rights to be universally protected. The second, named International Covenant on Civil and Political Rights was ratified and accessioned by the General Assembly as well, in 1966. And the third one is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, from 1984.

The Brazilian State clearly doesn't observe the UDHR, when it comes to ensure the right to live of its prisoners, allowing criminals to kill themselves inside the prisons, mainly because of intern disputes. According to the UDHR in its third article "Everyone has the right to life, liberty and security of person" (UNITED NATIONS, 1948, p. 2). As well as the fifth article "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (UNITED NATIONS, 1948, p. 2), due to the constant degrading treatment the inmates receive in the time they're imprisoned, as was mentioned in Salla's analysis of our penitentiary system. The eighth article raises other concern, the access to justice, that is often denied to the prisoners "Everyone has the right to an effective remedy by the competent national tribunals" (UNITED NATIONS, 1948, p. 3).

When it comes to the Covenant on Civil and Political Rights, from 1966, we are able to find more violations of the fundamental civil and political rights propagated by Brazil, such as the disrespect to the sixth article, subsection one "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life" (UNITED NATIONS, 1966, p.4). Once again, the butchery that happened under the State responsibility, in Manaus, obviously violates the right to life. In addition, it also disregards the seventh article of the same convention, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment […]" (UNITED NATIONS, 1966, p.4). Along with the sixth and the

seventh, the tenth article (subsection one) reaffirms the observance of the human dignity, now specifically of those who found themselves away from society "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person" (UNITED NATIONS, 1966, p.7).

The last mechanism settled in the international arena to be pointed here, is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified and opened for signature by the United Nations General Assembly in 1984. The first article considers that torture is, consonant to the United Nations (1984, p. 1):

> […] any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

In this sense, we must consider that the massacre in the penitentiary "Anísio Jobim" clearly violates the present instrument, once the acts of torture are propagated with consent or acquiescence from the Public Administration, that allowed this nature of inhuman treatment to have place inside the prison, only acting to control the rebellion and the murders after 17 hours of bleeding.

Although, in the regional plan, the protection of human rights is certainly more developed, because, even though there are formal conventional means to recommend the observation to the human rights, in the international arena, it's difficult for them to be more than just a recommendation. The regional systems were born to provide more effective instruments (directed to each region on the globe) capable to put in exercise the jurisdiction and the jurisprudence regarding the fundamental rights of international courts of human rights.

According to Steiner (1994) apud Piovesan (2015, authors' translation), there are, nowadays, three main regional systems incubated to take into practice the protection of the human rights, the European, the Inter-American and the African. Additionally, there's a preposition to create an Arabian and an Asian system, as stated by Piovesan (2015, authors' translation), which regional system presents its own legal apparatus. The Inter-American system, that Brazil is submitted, has as major instrument the American Convention on Human Rights from 1969, which establishes the Inter-American Commission of Human Rights along with the Inter-American Court of Human Rights.

The American Convention was signed in San José, Costa Rica, in 1969, and would come into force in 1978. Only State-members of the Organization of American States (OAS) have the right to join the Convention. The Brazilian State has accepted the jurisdiction to the Inter-American Court of Human Rights in December 1998, through the Legislative Decree nº 89. Thus, the State is under the jurisdiction of the Court, responsible to judge the cases where the American Convention is violated. In this sense, Brazil is the one to be hold accountable for the elaboration of dispositions, in the domestic law, to make effective the rights and liberties announced in the treaties which the country is part (PIOVESAN, 2015, authors' translation).

Wherefore, we need to identify what were the dispositions settled by the American Convention in which Manaus' massacre happened to violate, under the responsibility of the Brazilian State. The first one is the right to life, since according to Souza and Senra (2017, authors' translation), one month after the incident there's still a lot of non-recognized corps in Manaus' Legal Institute. But consonant to the authors, in the middle of 56 deaths, one of them have proved to be the most shocking one: as a result of the rebellion, the faction who runs the penitentiary (North's Family) beheaded and withdrew the viscera of an inmate (we rather not name to preserve his integrity), the head was served on a tray and given to the family. The prisoner was previously arrested because he used to shoplift supermarkets seeking for food to provide for his twenty siblings.

As settled by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the acts of torture, which in this case lead to death, don't need to be caused directly by the Public Administration to violate the present instrument, thence, we can interpret those acts of torture as a responsibility of the State, since it happened under its consciousness, violating the right to life stated at the American Convention on its fourth article, subsection one, concordant to the OAS (1969 p. 2): "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life". Along with the fifth article, subsection two, that directs the protection to imprisoned individuals, as settled by the OAS (1969, p.3): "No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person".

Taking this scenario into account, we must rise other conventional instrument Brazil has ratified, and therefore, has the obligation to observe: the Inter-American Convention to Prevent and Punish Torture, from 1985, absorbed into Brazilian's Legal System in 1989 by the Presidential Decree number 98.386. The second article defines what is torture, conforming to OAS (1985 p.1):

> For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish. The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.

Therefore, understanding the concept of torture through the case here analyzed (Manaus' massacre), we can say that torture have actually happened, being used as a personal punishment, by the factions who are practically in charge of the prison's administration, under the State consent. As in concordance with the third article from the same convention, which settles who shall be hold accountable for the crime of torture: [the] public servant or employee who acting in that capacity orders, instigates or induces the use of torture, or who directly commits it or who, being able to prevent it, fails to do so (ORGANIZATION OF AMERICAN STATES, 1985, p.1). Supplementary, the seventh article calls out for the responsibility of the States to train, properly, its prison agents, responsible for the security of the State's dependencies, as proposed by the OAS (1985, p.1):

> The States Parties shall take measures so that, in the training of police officers and other public officials responsible for the custody of persons temporarily or definitively deprived of their freedom, special emphasis shall be put on the prohibition of the use of torture in interrogation, detention, or arrest. The States Parties likewise shall take similar measures to prevent other cruel, inhuman, or degrading treatment or punishment.

Although, it is common to see abuses committed by police officers and other public officials in the Brazilian prisons. The National Penitentiary Department found signs of irregularities such as facility degradation, prisoner abuse, overcrowding, health care failures, and lack of security in 56 inspections conducted in Brazilian prisons in 2012, about 20% (11) of the inspected prison units have been found to have evidence of ill-treatment or torture of detainees by prison officers (KAWAGUTI, 2013), a number that has considered increased due to the growth of the rebellions inside the prisons, especially in Brazil's northeast.

Summarily, even though Brazil has been part of international treaties and conventions that expatiate about the role of the fundamental rights, especially the civil and political ones, as highlighted here, such as the right to life and security, the actions taken by the country in its prison system clearly goes against all the principles settled by the international conventional mechanisms Brazil has signed up for. The disrespect to the costumes and main traditions rooted in the international society since the second post-War is transparent, where the principle of the human dignity is fully denied for those who find themselves away from society. It is a shame, that after

many years of depravation, humiliation and blood seas, the government does nothing to change this situation that can be witnessed nowadays.

For this purpose, it is imperative to strongly reiterate the responsibility of the Brazilian State, not only in the domestic area, but also in front of the challenging ongoing world order that requires that States to not ignore, but to propagate the defense of the human values, regardless of the individual's precedence or backgrounds, since the human rights are universal and everyone shall have access to it. For this reason, it is needed to call out for the international responsibility of Brazil towards the Inter-American System for the protection of human rights, where non-governmental institutions or the organized civil society should summon up the jurisdiction of the System, through the Inter-American Commission of Human Rights, due to the several violations of the international human rights law that happened under the State's aegis.

3 The necessary reform of the mechanisms of human rights protection within the Interamerican System

This section attempts to expose the current mechanisms in the American context for the protection and implementation of the international human rights, in the scope of the countries who adhered the American Convention on Human Rights from 1969, but also aiming to analyze the present instruments, in order to identify it effectiveness or inefficacy on the impact of its jurisprudence in the countries member of the OAS.

First of all, it is necessary to understand the principle of the international responsibility of the State, for a further comprehension of why the International Organizations exist, and why regional organs such as the Inter-American System were created in the first place. According to Rezek (2014, authors' translations), the State is responsible for the practice of illicit acts in the international arena, thus, it must repair the damage caused. Although, until the post Second World War, in practice, there were no international organisms to call out for this responsibility the State possesses.

Until the foundation of the United Nations (UN) in 1945, conforming to Rezek (2015, authors' translation), it wasn't possible to state that there was an organized consciousness, in the public international law, about the importance of human rights. Of course, there were some treaties, but they weren't universal, they served as tools to conceive rights to a certain part of a population within a State. It was only in 1948, with the Universal Declaration of Human Rights, born inside the UN, that the States started to pay more attention to this new role of rights settled in the international scene as a model to be followed.

Nevertheless, the Universal Declaration is not a treaty, which means that it doesn't have immediate legal effects, because conforming to Ferreira Filho (2016, authors' translation), the declaration intends not to edit rules of law, but to be essentially educative, serving as a pattern, where the States should base their actions not only in the international perspective but in the domestic perspective as well. As a result of it, other instruments were created, inside the UN, such as Conventions on several types of rights. However, due to the numerous numbers of States, the different territorialities and peoples around the globe, it is in the regional context that we find more effective instruments responsible for the insurance of the human rights protection.

In consequence, the Organization of American States was created, to full fill this gap of an international organism responsible for directing actions of States within and outside its territory, stablishing not only general principles, but rules that are made to guarantee the harmonic existence of the international society. As stated by Meyer (2016, p. 2):

> The Organization of American States (OAS) is the oldest multilateral regional organization in the world. It was founded in 1948 by the United States and 20 Latin American nations to serve as a forum for addressing issues of mutual concern. Over time, the organization expanded to include all 35 independent countries of the Western Hemisphere (though Cuba currently does not participate). The organization's areas of focus have also shifted over time, evolving in accordance with the priorities of its member states. Today, the OAS concentrates on four broad objectives: democracy promotion, human rights protection, economic and social development, and regional security cooperation. It carries out a wide variety of activities to advance these goals, often providing policy guidance and technical assistance to member states.

It's in this context that the Inter-American System for the protection of human rights was created, to help reaching one of the OAS' goals, the human rights protection. Pursuant to Piovesan (2015, authors' translation), the most important instrument within the Inter-American System is the American Convention on Human Rights (also known as Pact of San Jose, Costa Rica), created in 1969, entering into force in 1978. Only State-members of the OAS are allowed to adept the Convention. The American Convention stablishes a Legal apparatus for monitoring and implementing the rights it enunciates, which are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

Therefore, we need to differentiate the legal powers of both Inter-American Commission and the Inter-American Court, both important, but that exercise different competences. In this sense, the Inter-American Commission on Human Rights is integrated by seven members of high authority in the matter of human rights, who can be from the various nationalities of the American States. The members of the Commission are elected by the UN's General Assembly, for a period of four years, with the possibility of one reelection (PIOVESAN, 2015, authors' translation).

Also in line with Piovesan (2015, authors' translation), the competence of the Commission is to promote the observance of human rights, making recommendations to the States, prescribing the right measures to protect those rights, as well as prepare studies and reports if necessary, and also request information from the Governments related to the measures adopted to promote the effective application of the American Convention.

The Inter-American Commission, exercises the respective functions: conciliatory (between the Government and social groups who find their rights violated by the State); advisor (by counseling the American countries to adopt the right actions on the human rights promotion); criticism (to inform about the situation of human rights within and State-member of the OAS); legitimating (when a State decides to repair the flaws of its intern process related to the observation of human rights, due to the recommendations of the Commission); and protective (when it intervenes in urgent cases to claim the Government to suspend its actions of violations and to inform about the acts before practiced). As well as to analyze the complaints made by individuals, or a group of individuals who considers to exist violations of the rights stated by the Convention, and if all the alternative dispute resolution mechanisms in the inter-American scenario are exhausted, the case is referred to the Inter-American Court (PIOVESAN, 2015, authors' translation). Since its foundation, it has been played an important role for the American context, as informed by Meyer (2016, p. 11):

> In the first decades after its 1959 inception, the IACHR's documentation of human rights violations brought international attention to the abuses of repressive regimes. Although the human rights situation in the hemisphere has improved significantly as countries have transitioned away from dictatorships to democratic governments, the IACHR continues to play a significant role. Among other actions, the IACHR receives, analyzes, and investigates individual petitions alleging human rights violations. It received nearly 2,200 such petitions in 2015. It also issues requests to governments to adopt "precautionary measures" in certain cases where individuals or groups are at risk of suffering serious and irreparable harm to their human rights.

Differently, the Inter-American Court of Human Rights works as a jurisdictional organ and is composed by seven judges, from different nationalities from the OAS' States and elected by their personal title by the countries which are part of the American Convention. The Court possesses two competences: advisory and litigation. In the advisory plan, any member of the OAS, ratifying or not the Convention, can request juridical interpretation over the American Convention or any other treaty related to the protection of the fundamental human rights within the American States. The Court can also form an opinion over the compatibility of the domestic law of the American countries with the dispositions found in the Convention (PIOVESAN, 2015, authors' translation).

In the other hand, the litigation competence exercised by the organ, is proved to be the most important. The Court has jurisdiction to examine the cases which there are complaints about

violations of the legal provisions settled by the American Convention. If it's acknowledged that the violations happened to occur, the organ will determine the adoption of the necessary measures to restore the rights disrespected. And it can also condemn the State to pay a fair compensation to the victim (PIOVESAN, 2015, authors' translation). The decisions of the Court, with the exception of the advisory opinions, are mandatory, according to the Article 68, subsection I of the American Convention, which was internalized in Brazil through the Presidential Decree nº 678 from 1992, that promulgated it (GIUNCHETTI, 2010, authors' translation).

Although, even though the States cannot appeal the decisions deliberated by the Inter-American Court in its litigation competence, it has been proved that its jurisdiction hasn't worked effectively in several cases Brazil was condemned for violating the role of rights settled by the American Convention and others conventional instruments held by it. As Giunchetti stated (2010, authors' translation), the decisions of the Court involving the Brazilian State can barely be more than just 'international political acts', due to the lack of a legislation in the country's domestic law which translates clearly and automatically the decisions of the jurisdictional organ. In short, the decisions propelled by the Inter-American Court, cannot generate coercive means to direct the actions of the State within its legal system.

According to Mazzuoli (2016, authors' translation), the Inter-American System does not possess an effective system of execution of the Inter-American Court's sentences within the States' domestic law condemned by it. The biggest challenge is not in the indemnification part of the sentence, but on the difficulty of performing internally the duties of investigating and punishing those responsible for human rights violations. In that matter, the decisions cannot be fully applied inside Brazil if the country decides to not do so, serving just as recommendations which can or cannot be followed by the condemned States.

Therefore, in contempt of the importance of the Inter-American System, we need to call out for a reform of its mechanisms that, unfortunately, hasn't been effective when it comes to the implementation of the Inter-American Court decisions on human rights violations. In this sense, Flávia Piovesan, the national secretary of human rights in Brazil, offers some reasonable options of reform in her book called "Human Rights and the International Constitutional Law".

The first one refers to the justicialization the System requires, where the States must guarantee the implementation of the Court's decisions, producing immediate juridical effects within the States' domestic law. Brazil must create legal mechanisms to implement the decisions over not only the cases it has been condemned for violating human rights, but the cases which happened to third countries also part of the American Convention. Other suggestion would be, relating to the administration of sanctions to the States that won't follow the international decisions, to stablish

the power of the System to suspend or evict these States from the OAS, with the help of the General Assembly. And the last, but not least, is related to the democratization of the Inter-American System, allowing the direct access of individuals to the Inter-American Court, nowadays opened only to the Commission and the States (PIOVESAN, 2015, authors' translation).

Final considerations

In concordance of what was studied in this article, it is quite clear to identify a systemic crisis in the Brazilian institutions which led to the one in the penitentiary system. Despite of all the violations to the human dignity the country propagates within its territory, especially with the prison population, the Brazilian State hasn't been hold accountable for the several deaths that occurred due to its negligence over its prisoners. Brazil disrespects not only its own legal provisions, settled by its Constitution, but also the international instruments regarding the human rights protection in the Inter-American and Global context.

In this sense, the accountability of the Brazilian State is yet needed, where it can no longer ignore the international instruments built to protect and ensure the human rights universally. Brazil is part of several international treaties of human rights, but so far, they seem to be only pieces of paper, having no sort of authority to direct the State's action in the matter of human rights observation. It's imperative that the Inter-American System for the protection of human rights to seek for a reform of its mechanisms, creating harsher legal sanctions to call out for the responsibility of the States for ensuring, observing and protecting human rights within the Inter-American context.

The conservative institutions along with a negligent Public Power in Brazil cannot be more powerful than the international society and its rules. It has taken years of fighting to stablish a new perspective over the Public International Law, to the establishment of the human dignity principle and to create mechanisms where human rights are able to be applied and exercised all around the world. For that reason, the international organizations mustn't allow the countries to do whatever they decide it's better with their civilians, mainly inside their prison systems, otherwise we won't be able to build a harmonic international society that looks out for the respect and practice of the dignity of the human being.

In the scope of future researches, we suggest the study of new mechanisms and actions that could be developed inside the regional systems responsible for the justicialization of the human rights, in order to guarantee the effectiveness of the sentences propelled by the International Courts, who are the main organs when it comes to the international litigation for the human rights,

being very important actors in the international arena, but that unfortunately, nowadays are struggling against the negligent position of conservatives countries such as Brazil.

References

ALESSI, Gil. **Massacre em presídio de Manaus deixa 56 detentos mortos**. 2017. Available on: <http://brasil.elpais.com/brasil/2017/01/02/politica/1483358892_477027.html>. Access on: 29 Jan. 2017.

BECCARIA, Cesare Bonesana di. **An Essay on Crimes and Punishments**. Indianapolis: Liberty Fund, 2011. Available from: <http://files.libertyfund.org/files/2193/Beccaria_1476_EBk_v6.0.pdf>. Access on: 26 Mar. 2017.

BRASIL. Lei nº 7210, de 11 de julho de 1984. **Lei de Execução Penal**. Brasília, Available on: <http://www.planalto.gov.br/ccivil_03/leis/L7210.htm>. Access on 27 Jun. 2017.

FERREIRA FILHO, Manoel Gonçalves. **Direitos humanos fundamentais**. 15. ed. São Paulo: Saraiva, 2016.

FREIXO, Marcelo. Desintegração do sistema prisional, segurança pública e exclusão social. **Ciênc. saúde coletiva [online]**, Rio de Janeiro, v. 21, n. 7, p. 2171-2178, July 2016. Available on <http://www.scielo.br/scielo.php?script=sci_arttext&pid=S141381232016000702171&lng=en&nrm=is>. Access on 11 Jan. 2017.

GIUNCCHETI, Camila Serrano. **GLOBALIZAÇÃO E DIREITOS HUMANOS,** ESTUDO ACERCA DA INFLUÊNCIA DA CORTE INTERAMERICANA DE DIREITOS HUMANOS SOBRE AS INSTITUIÇÕES DOMÉSTICAS: O CASO DO PRESÍDIO "URSO BRANCO" (RO). 2010. 195 p. Thesis (PhD) - International Relations Course, University of Brasília, Brasília, 2010.

GONTIJO, Heliovania Feitosa Canuto. **Violação dos direitos humanos dos presos**. 2008. 87 p. Paper (Graduation) – Undergraduate Law Course, Catholic University of Brasília, Brasília, 2008.

HENRIQUES, Camila; GONÇALVES, Suelen; SEVERIANO, Adneison. **Rebelião em presídio chega ao fim com 56 mortes,** diz governo do AM. 2017. Available on: <http://g1.globo.com/am/amazonas/noticia/2017/01/rebeliao-no-compaj-chega-ao-fim-com-mais-de-50-mortes-diz-ssp-am.html>. Access on 29 Jan. 2017.

KAWAGUTI, Luis. **Ouvidoria constata degradação e abusos em prisões do Brasil**. 2013. Available on: <http://www.bbc.com/portuguese/noticias/2013/05/130510_ouvidoria_prisoes_lk>. Access on: 03 Feb. 2017.

MACHADO, Ana Elise Bernal; SOUZA, Ana Paula dos Reis; SOUZA, Mariani Cristina de. SISTEMA PENITENCIÁRIO BRASILEIRO: ORIGEM, ATUALIDADE E EXEMPLOS FUNCIONAIS. **Journal from the Law course of the Faculty of Humanities and Law**, [S.I], v. 10, n. 10, p.201-212, aug. 2013.

MAZZUOLI, Valério de Oliveira. **Curso de Direito Internacional Público**. 10. ed. São Paulo: Revista dos Tribunais, 2016.

MEYER, P.J. **Organization of American States**: Background and Issues for Congress. 2016. Available from: <https://fas.org/sgp/crs/row/R42639.pdf>. Access on: 19 Feb. 2017.

ORGANIZATION OF AMERICAN STATES. **AMERICAN CONVENTION ON HUMAN RIGHTS**. 1969. Available on: <http://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights.pdf>. Access on: 03 Feb. 2017.

ORGANIZATION OF AMERICAN STATES. **INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE**. 1985. Available on: <http://www.oas.org/juridico/english/treaties/a-51.html>. Access on: 03 Feb. 2017.

PACHECO, Alcides Marques Porto. **CRISE DO SISTEMA PRISIONAL:** O CASO DAS PENITENCIÁRIAS FEDERAIS DE SEGURANÇA MÁXIMA ESPECIAL. 2008. 224 p. Essay (Master in Criminal Sciences) Faculty of Law, PUCRS, Porto Alegre, 2008.

PIOVESAN, Flávia. **Direitos Humanos e o Direito Constitucional Internacional**. 15. ed. São Paulo: Saraiva, 2015.

REZEK, José Francisco. **Direito Internacional Público**: Curso Elementar. 15. ed. São Paulo: Saraiva, 2014.

RODLEY, Nigel S. **THE DEFINITION(S) OF TORTURE IN INTERNATIONAL LAW**. 2002. Available from: <http://www.corteidh.or.cr/tablas/r08113.pdf>. Access on: 26 Mar. 2017.

SALLA, Fernando. As rebeliões nas prisões: novos significados a partir da experiência brasileira. **Sociologies**, Porto Alegre, v. 8, n. 16, p.274-307, Dec. 2006. Available from: <http://www.scielo.br/scielo.php?pid=S1517-45222006000200011&script=sci_abstract&tlng=pt> Access on: 21 Apr. 2017.

SANTIAGO, Glaydson Alves da Silva. **A POLÍTICA DE RESSOCIALIZAÇÃO NO BRASIL:** Instrumento de Reintegração ou de Exclusão Social?. 2011. 117 p. Essay (Master in Education), Paraíba Federal University, João Pessoa, 2011.

SCHERF, Erick da Luz; RIBEIRO, Pedro Afonso Morales. A REFORMA DO PODER JUDICIÁRIO E A DEMOCRATIZAÇÃO DO ACESSO À JUSTIÇA: UMA ANÁLISE DAS INFLUÊNCIAS DA SECRETARIA DE REFORMA DO JUDICIÁRIO COMO CONTRIBUTO PARA A EFETIVAÇÃO DOS DIREITOS FUNDAMENTAIS. In: XIII International Seminar Social Demands and Public Policies in Contemporary Society, 13., 2016, Santa Cruz do Sul. **Proceedings**. Santa Cruz do Sul: Unisc, 2016. p. 1 - 17. Available on: <http://online.unisc.br/acadnet/anais/index.php/sidspp/article/view/15782/3681>. Access on: 16 Jan. 2017.

SECRETARIAT OF STATE FOR PENITENTIARY ADMINISTRATION OF AMAZONAS. **Complexo Penitenciário Anísio Jobim**. 2017. Available on: <http://www.seap.am.gov.br/complexo-penitenciario-anisio-jobim/>. Access on: 17 Jan. 2017.

SOUZA, Felipe; SENRA, Ricardo. **'Trouxeram a cabeça do meu irmão em cima de uma bandeja':** o drama das famílias das vítimas do massacre de Manaus. 2017. Available on: <http://www.bbc.com/portuguese/brasil-38836492>. Access: 03 Feb. 2017.

UNITED NATIONS. **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**. 1984. Available on: <http://www.ohchr.org/Documents/ProfessionalInterest/cat.pdf>. Access on: 01 Feb. 2017.

UNITED NATIONS. **International Covenant on Civil and Political Rights**. 1966. Available on: <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>. Access on: 01 Feb. 2017.

UNITED NATIONS. **Universal Declaration of Human Rights**. 1948. Available on: <http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf>. Access on: 01 Feb. 2017.

VITTO, Renato Campos Pinto de (Org.). **National Survey of Penitentiary Information**: December 2014. 2014. Available on: <http://www.justica.gov.br/seus-direitos/politica-penal/documentos/infopen_dez14.pdf>. Access on: 16 Jan. 2017.

ZOMIGHANI JÚNIOR, James Humberto. **DESIGUALDADES ESPACIAIS E PRISÕES NA ERA DA GLOBALIZAÇÃO NEOLIBERAL:** Fundamentos da insegurança no atual período. Thesis (PhD). Faculty of Philosophy, Letters and Human Sciences, University of São Paulo, São Paulo, 2013.

Recebido em: 22/09/2017
Aceito em: 06/11/2017

Como citar este artigo?
DA SILVA, Marcos Vinicius Viana; SCHERF, Erick da Luz. Manaus' Massacre as a Result of the Crisis in the Brazilian Penitentiary System: an Analysis in the Light of the International Human Rights Law. **Re(pensando) Direito**, Santo Ângelo/RS. v. 07. n. 14. jul./dez. 2017, p. 109-127.