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Modes of Governance and Social Rehabilitation Policy in Chile

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Governance and Social Rehabilitation Policy in Chile

Abstract

I will describe and analyse how the case of Chile has addressed its Rehabilitation Policy in terms of the main actors and its roles, the differences in power relations and the shared aims from the governance perspective (Peters and Pierre, 1998; Pierre and Peters, 2000; Rhodes, 2007; Tenbenschel, 2005). To summarise, the case of Chile seems to be an emergent mode of governance but the State still have a central position in its Penitentiary network. There is an increase of complexity in the interactions between State and non-State actors around the Social Rehabilitation policy. Also, it is possible to identify new actors distributing the power relationships, but they do not have a clear and permanent role in the policy making system as the State actors does through their regulations. Also, it is interesting the case of Chile in policy steering and the participation of Stakeholders, shared aims, functionality or even, self-marginalised. In addition, the State institutions in this field are precarious and tend to be delegated to the Municipalities with interest to face this issue at the local level, as a key policy factor. As a result, the strengthening State Institutions could slow the process, in the purpose to include new actors, changing the formal structure in the organisation of the Penitentiary System.

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Chapter 1 Introduction

The aim of this research is twofold. Firstly, this research will explore whether reliance on “new modes of governance” (i.e. governance through markets, governance through networks) in Social Rehabilitation policy in Chile has enabled the government to secure better outcomes. Secondly, this research will explore whether, more generally speaking, greater reliance on new modes of governance in this has diminished state policy-steering capacity in this policy domain. According to some governance scholars (Rhodes, 2007: 1244), reliance on new modes of governance tends to empower non-state actors and erode state capacity. However, others disagree arguing (from a meta-governance perspective) that reliance on new modes of governance does not erode state capacity, this because government tends to continue metagovern from a distance in ways that are not always immediately recognised (Bell and Hindmoor, 2009). In sum, prison reforms in Chile will be used as a test case to examine whether, in this instance, state capacity eroded as a result of reliance on new modes of governance, and as a result of non-state actors gaining greater policy-steering capacity. The analysis will also consider the findings from a normative perspective, thereby evaluating whether or not unelected actors have gained policy influence at the expense of elected government officials, and -if so- whether this poses a problem for democratic accountability.

Before analysing the ways in which policy-making changed in Chile with regards to Penitentiary institutions, and the ramifications this had on state capacity, it might be useful to describe the wider social and political context in which Chilean Social Rehabilitation policy evolved, and the institutions that were set up to incarcerate offenders. The aim of this research is to ascertain whether the use of new modes of governance has weakened the Chilean government’s policy steering capacity, and empowered non-state actors, or whether (alternatively) central government has retained or perhaps even increased policy steering capacity despite (or perhaps paradoxically thanks to) the use of new modes of governance.

Rather than to focus narrowly on government’s ability to secure its priorities, and to arrive at conclusions based on formal government statements about policy

objectives and policy attainment, the research will take a broader perspective and also examine the ways in which the use of new modes of governance has empowered or disempowered other (private and public) stakeholders. The conclusion will evaluate all findings and ascertain whether this change in modes of governance has empowered non-state actors and diminished state 'steering capacity', or whether the state has retained full steering capacity despite greater involvement of non-state actors.

First, this report will look at the introduction of new modes of governance as a theoretical framework, including the Governance Debate and its main currents such as Governance and Metagovernance scholars (Peters and Pierre, 1998; Pierre and Peters, 2000; Rhodes, 2007; Tenbensen, 2005), as well as the changes that State Capacity has experimented in the last decades. Next, it will refer to the case of Chile in terms of its Social Rehabilitation Policy, indicating historical antecedents, legal aspects and presenting the current policy strategy in this field with main actors playing different roles but also about the absences of them. Thirdly, the Consequences for Stakeholders will be analysed by exploring formal and informal relationships among the Penitentiary Actors, which reveals network challenges in terms of shared aims, equity and participation in the policy-making process. Finally, it will raise an evaluative approach in the policy performance in terms of its outcomes, coherence, modes of governance and steering capacity.

Currently, the case of Chile reports a new approach in terms of Social Rehabilitation policy, emphasising the interaction among different non-state sectors to dialogue about the Social Rehabilitation System, such as civil society, public safety institutions and the private sector (Ministerio de Justicia y Derechos Humanos, 2017: 12), which have introduced complexity in the last two decades.

I will argue that the case is reflecting an emergent mode of governance which is challenging the government and particularly its state capacity as well as becoming a complex dynamic system in which new actors are interacting to contribute in this public area. My interest in this topic is sparked by the problems concentrated in the most forgotten and discredited group of Chilean society, that is, people who

committed crime and they are involved in the Prison Service at some level. There is a significant social inequality in the country, which is allowing the phenomenon of criminalise poverty, lack of education and other minorities (Centro de Políticas Públicas UC, 2017; CESC, 2018). Based on the Organisation for Economic Cooperation and Development (OECD) Reports, Chile is known as a prosperous country in the region with a neoliberal approach, but it has not solved its problems of social inequality, maintaining an important socioeconomic gap and lowering the levels of social protection, which is one of its major problems due to its Gini coefficient value stands at a record 0.5, becoming the highest in the OECD countries members.

The Chilean government has adopted some changes in its public policy in term of Social Reintegration. Recently, the government has carried out significant initiatives towards better opportunities for Social Rehabilitation which have derived in the launch of the new Public Policy of Social Rehabilitation in 2017. The Ministry of Justice and Human Rights leads this policy through the role of Gendarmería de Chile or the Chilean Prison System, which is the state actor playing the major role in the Penitentiary network.

Nevertheless, the situation is not favourable. For example, according to Human Rights Reports in 2013 and 2016, the Chilean prison conditions were harsh including torture and violence among inmates known by prison officials. Some of the problems detected were related to prison overcrowding and physical conditions like substandard sanitary conditions and antiquated facilities as well as insufficient medical services, violence is also a common factor in prisons. In addition, there are problems associated with administration in terms of the potential for conflict of interest due to the Chilean Prison System is being the investigating body for complaints of violations of Human Rights.

Similarly, based on Reports by the Supreme Court as an independent monitoring of the penitentiary system in Chile, they seek to verify if the Chilean Prison System is achieving their purpose of attending, guarding and rehabilitating persons in prisons, who concluded the same poor conditions are affecting the dignity and safety of prisoners in terms of the effects of overcrowding and lack of rehabilitation activities

relating to education or employment, which is also not compatible with the protection of basic human rights.

International academic organisations like Centro de Estudios de Justicia de las Américas (CEJA, 2017: 10) have studied particularly the situation of the penal system in Chile, recommending improvements such as the creation of coordination among institutions related to the area for enhancing the performance of the whole system. It also refers to the need for developing studies and qualitative evaluations to analyse results and quality of the public service, as well as the reformulation of the current structure of the justice system in order to improve service delivery. Moreover, CEJA (2017: 11) states it is important that endorsing stakeholder engagement into this network around Social Rehabilitation policy, through improving relationships and building an institutional system to better coordinate them. Also, there is a need to revitalise monitoring and evaluation by permanent and qualified staff in the Chilean System.

For the first time, the government of Chile has a specific public policy on Social Rehabilitation in 2017, which is also singular in this case due to focusing on the reduction of recidivism by effective tools and programs to offenders. This public policy admits this mentioned public tendency to the use of penal legislation, emphasising social prevention and persecution of crime rather than social reintegration devices. It is also possible to acknowledge that the final aim in this recent strategy is to improve public safety, which is normally confused by the public in terms of exclusive benefits for offenders, but this policy refers to improving the public offer to protect communities by reinserting people who committed crimes.

In this sense, this research can be justified from an economic perspective in terms of avoiding the excessive use of the Criminal Justice System like prison sentences which are extremely costly for public spending, by creating better alternatives to address problems such as overpopulation in prisons and human rights violations (Morales, 2012: 127).

The new policy refers explicitly to the governance of the Social Reintegration policy in order to ensure implementation and the effective reintegration or rehabilitation of offenders, guaranteeing their human rights and involving a participative and gender perspective. Officially, this objective is understood as a way to govern which provides greater decision-making capacity to those who are not part of the public apparatus, which means civil society organisations, academia and the private sector.

It is fundamental for the analysis to look at the policy foundations, in order to remark the importance of the Advisory Committee for Social Rehabilitation which is commanded to debate, dialogue and make public policy, including state and non-state actors, but also there are institutions which were not called to participate. Through their work, directed by the Ministry of Justice and Human Rights, it was created the new policy of Social Rehabilitation, which seeks to make an effective social reintegration for people who committed crimes by a public policy respectful of human rights, with a gender and participatory approach (Ministerio de Justicia y Derechos Humanos, 2017: 8).

The main Stakeholders in the case of the Penal System in Chile must include actors who are affected by the criminal justice system such as the Government, offenders, police officers, correctional officers, politicians, judges, lawyers, probation and parole officers, court personnel, local government, victims of a crime, security industry, the media, social media, businesses, families, schools and other members of community.

In terms of previous research, there is not much investigations in Chile concerning modes of governance in this particular area, but the government in general has been explicit about some changes in the last decades in terms of shifting the paradigm towards a horizontal, dynamic and more competitive way to govern (Arriagada, 2012:10). Proof of that is the continuous interests to make changes into the Social Rehabilitation policy as a national issue, representing the major concern for the Chilean public according to Public Opinion Surveys.

This analysis will explore the academic debate about governance started in Europe (Peters and Pierre, 1998; Pierre and Peters, 2000; Sørensen and Torfing, 2007; Tenbenschel, 2005) focusing on the role of governments and the position of interest groups in sharing power, and governing through networks like the Chilean state contracting private actors to provide a public service and including non-state Stakeholder in the policy making process. As Pierre and Peters (1998) refer, the changes could be noted by analysing emerging contracting, partnerships between public and private sectors and different interactions among other non-governmental organizations. Considering the above, my primary research question would be: What has the mode of governance been in Chile regarding the Social Rehabilitation policy, during the last two decades?

The main motivation to try to answer this question is the current shift within the Chilean policy about Social Rehabilitation which is permitting the inclusion of new actors and better relationships to improve the offender treatment in order to reduce crime. Thus, it is relevant to analyse how the interaction has developed in the public policy process so far, which role are the main actors playing and what are the greatest challenges.

It is also significant to study this field because Chile, along with other Latin American countries, have been permanently concerned about security and violence issues, where governments are facing complex problems relating to the management of crime and decreasing the high rates of incarceration, fear of crime in the population, as well as providing effective responses for decreasing delinquency (Villagra, Espinoza and Martínez, 2014: 9). Actually, public safety and concerns about crime are some of the most important topics for Chilean Public opinion, and it has been a relevant factor for policymakers in evaluating the implementation of public policies related to resolve the security problem, and enhancing quality of life for citizens (Morales, 2012: 123).

This research supports that Chile has a state-centric approach, even considering the changes of relationships between the State and society, due to the political power is still considerable for the State by playing a leading role. Also, a growing reliance on less coercive policy instruments is observed, however, the power and control of

making policy priorities and defining objectives remain on the State in the Chilean Penitentiary System.

Chapter 2 Methodology

This research will analyse this problem through a case study research, defining the case as the mode of governance in Social Reintegration Policy in Chile, which has been changed in the last two decades, when the state strategy became explicitly open to involve new actors in the development of an integrated approach to reduce crime. My hypothesis would be related to the rise in complexity within Social Rehabilitation policy which is challenging state capacity and integrating new relevant actors, including an analysis through governance theories and, reinforcing in particular State and non-State relationships, but supporting that Chile has a state-centric approach.

In epistemological terms, (Hay, 2002: 89) it is interesting to analyse the relationship between relevant political actors such as the public, NGOs, justice institutions like the Chilean Prison System, and the environment, which are defining the type of governance operating in the Chilean case. Therefore, the approach would be following the Interpretivism rather than Positivism perspective, even though I will utilise quantitative methods such as Statistical procedures to mainly describe population, costs and effects in this topic. This means, I will argue that a qualitative approach through interpretative methods could explore better this political phenomenon, especially in relation to contested and complex topics such as power relations, historical aspects, social impact or recidivism (BID and FPC, 2013). Also, by the Interpretivism as Weber argued, it is feasible to address a coherent approach about subjectivity in terms that the object to study is a social construction, which means there are multiple interpretations of this social context, in which the researcher perspective is just one of them.

Considering the above, it is also relevant to evaluate the incidence of power in the interactions, because the nature of the public policy context and the variety of the actors playing different roles in which the subordinate relation could influence opinions for instance. Thus, there is an important ethical consideration in order to include an adequate range of stakeholders, from public and private sector which are part of the emergent network in the Social Reintegration policy in Chile, due to the distribution of power tends to be unbalanced in terms to identify who are biggest beneficiaries from this mode of governance as well as the losers.

Finally, considering the results of the investigation, I intend not only to contribute to the knowledge in one of the areas of governance and public policy in my home country, but also, I would like to finish with some concrete and feasible suggestions in terms of public policy proposals such as the need for new studies and greater linkage with academia or to invest in improving the training of public staff regarding the new challenges from new modes of governance.

Chapter 3 The Introduction of new modes of governance

a. Governance Debate

Before considering the consequences of the new introduction of new modes of governance in Chile's prison governance system, it might be useful to provide an overview of the literature on governance and meta-governance. The Governance Debate in Political Sciences has its origin in Europe in the 1990s, becoming one of the most prominent themes in public management literature over the past decades (Tenbenschel, 2005). The discussion has started around the dominant role of governments in the welfare state, including more areas of policy involvements and a strong network structure by a top-down approach, as well as hierarchical and authoritative. Governance debate has begun in a context where new interactions with the private sector appeared, and the idea of government having a central role is questioned, which facilitates this emerging governance debate over the state capacity to govern as it has in the past (Peters and Pierre, 1998: 224).

As Peters and Pierre (1998) argue the governance debate has several elements, which are involving less power of the State for steering society and controlling policy. In terms of the dominant elements, the importance of network is relevant to understand the governance model in terms of the significant influence of the private sector as a collection of non-formal actors which have capacity for self-organisation and enough resiliency to challenge government control. Also, it can be analysed by a legitimacy crisis of governments in terms of its poor performance.

In this context, governance as a concept is not exempt from complications due to its regular use in current debates in the social sciences, involving different meanings and implications (Tenbenschel, 2005: 270). Pierre and Peters (2000: 12) state that popularity of this concept implies its capacity to cover the whole group of institutions and interactions within the governing process, which leads to a certain ambiguity and breadth in the concept.

Consequently, governance could be understood as a term which links the political system and its environment, assuming new ways to steer the economy and society which involve collective goals and strategies to achieve them. Therefore, the central interest is to explore capacity of governments to provide this governance, in terms of providing direction to society both directly or indirectly.

Governance in structural terms defines four common governance arrangements: hierarchies, markets, networks and communities. The first one conduces through vertical structures in which the state is seen as an idealised model of democratic government and public bureaucracy. Thus, governance as hierarchies is steering by law as the Weberian model of public service states, however, given the fails and this new emphasis on flexibility, diversification and informal exchange of power between the public and private area, western societies have become increasingly horizontal, including new networks, actors and coalitions of interests (Pierre and Peters, 2000: 16). Nevertheless, governance through hierarchies retains its important role in many political contexts, both nationally and institutionally, by controlling legislation and grants, as the case of Chile (Pierre and Peters, 2000: 18).

Secondly, Governance as markets is also a structural mechanism through allocating Resources by efficiency criteria, considering self-interest arguments as the main motor in the exercise of power. Also, there is an assumption to manage public problems as market-like situations which would need interventions related to mechanisms of market to resolve them (Pierre and Peters, 2000: 18). However, its idealised form and logic makes difficult to resolve common problems when there is not an individual economic incentive.

In third place, governance as networks refers to policy arrangements commanding political life by groups of key actors with common interests, which can vary regard to their degree of cohesion. Policy networks facilitate coordination among the public and private sectors as well as the availability of resources in the of public policy implementation. In addition, the mutual dependence between the State and the networks is observed by the government interest on the network expertise and its representation, which are useful instruments for the policy process. Nonetheless, it involves certain obstacles for the development of collective interest, given the self-referential approach of networks which diminishes the democratic process by the separation of control and responsibility in terms of the permanent claim of citizen for state accountability (Pierre and Peters, 2000: 20).

Governance as communities is considered the fourth model of governance that has the notion in which communities can resolve their common problems with a minimum of state involvement. In this sense, communitarian governance determines an image of community as members with a positive participation in collective matters. However, it seems to reject other models of governance, arguing less public bureaucracies and trusting on the collective responsibility into the community, which is overly idyllic and philanthropic (Pierre and Peters, 2000: 21).

On the other hand, it is possible to understand governance in terms of a process involving dynamic outcomes of social and political actors, which differs from the emphasis on explanations about institutional arrangements as it mentioned. From this process perspective, governance seems to be related to interactions among

structures in a dynamic way, changing constantly its configuration and objectives over time (Pierre and Peters, 2000: 22).

This is like the ideas of Treib, Bähr and Falkner (2009: 3), who seek to clarify the concept of governance and mode of governance, arguing its common concerns for the interaction between state intervention and societal autonomy, but they are underlining different facets of the phenomenon. The same authors use categories to structure overviews about modes of governance which are politics, polity and policy, understanding the term governance as a change in the State nature, in which the actor constellation is changing during formulation and implementation of policies, as well as in the method of steering politically.

In these terms, governance is often understood as a process of co-ordination within networks, referring to societal steering (cited on Jordan and Schout, 2007 in Treib et al., 2009: 3). There are also another three understandings based on whether governance is seen as belonging predominantly to the politics dimension, polity dimension or policy dimension (Treib et al., 2009: 4). The first realm is focused on the power relation between political actors, in which the interorganizational networks is characterised by interdependence and resource exchange (Rhodes, 2000). Secondly, he refers to governance as a rule system shaping actions of social actors in terms of its structural perspective, through a spectrum between 'market' and 'hierarchy' encompassing further modes of governance such as 'community', 'associations' and 'networks', as Pierre and Peters (2000: 19) have previously defined it. Nevertheless, this perspective sustains that they are not pure or ideal types rather than real types, that is, it is possible to find hybrid modes of governance with elements of other ways to steering and coordinating the policy process.

Thirdly, governance is understood as a mode of political steering, highlighting its policy dimension in terms of the use of different types of steering instruments to define how to achieve certain policy outcomes. Thus, forms of social influence and control such as command and control, incentive and supply, information, deliberation and persuasion, becoming in policy instruments like hierarchical regulation, market-based mechanisms or voluntary agreements (Treib et al., 2009).

Finally, there is a distinction of governance referring to the above three dimensions which sustains that every mode of political steering necessarily involves public and private actors, traditional and non-traditional types of governance, as a way to understand the concept comprehensively. Thus, this research will adopt the notion of governance, as a broad definition that include not only non-hierarchical, co-operative and soft-modes but it also covers hierarchical mode and heavy-handed end of the continuum, therefore, the following analysis is grounded on an encompassing notion of governance).

In practical terms, this means that the Social Reintegration policy in Chile could have a complex modes of governance which involves features of different 'ways of steering and coordination of interdependent (usually collective) actors based on institutionalized rule systems'.

Sørensen and Torfing (2009: 234) refer to the debates around differences between the rise of steering ambitions and the steadily fragmentation of life in social and political terms. The way to govern through the formation of networks has been used as a strategy to face wicked problems and promote participation in public policy making, like Chile is approaching to the Social Rehabilitation problems. The authors recognise the complexity in the topic, seeking to discuss about how to assess effective performance and democratic quality of governance networks.

As it mentioned, the public management literature used to be focused on debating which mode of governance was preferable in normative terms, but recently the trend is related to recognising the complexity of the public practices and its combination of modes, as well as the compatibilities and tensions originated by this mixture (Tenbensen, 2005: 268).

Tenbensen (2005: 269) refers to the main approaches on governance, the more noticeable one is based on economics, sociology and organisational theory, and the less well-known tradition draws from social anthropology. Both perspectives seek to go beyond the classic dichotomy between market and hierarchy, but there are

differences in order to accentuate the drivers of each mode, policy networks and cultural dimensions shaping the public administration.

b. State Capacity Shift

The state capacity at the end of the twentieth century has become a contested issue, there are new perspectives on government which change its role in society and its capacity to pursue collective goals, nourishing the current academic debate about governance and these emergent actors (Pierre and Peters, 2000: 7). Pierre and Peters (2000: 22) discuss two perspectives on the Governance debate which refer to the concept of governance as structure and as process.

Since the late 20th century, it has been observed that a rise in state capacity is changing by having greater openness to influences coming from non-governmental organisations through partnerships such as interest groups, as the mentioned case of Chile. Kjær (2011) has followed Rod Rhodes' work on governance in terms of his definition, the inclusion of political economy analysis and the political practice impact in terms of state capacity. Rhodes' writings remain influential in the sense that governance is seen as multiple centres of governing without a strong notion of sovereign authority, as he argued, which explore his idea of 'changing boundary between state and civil society'.

There is a tendency to weaken the State power in the face of the resolution of social problems, which is partly because of its resource base reduction and partly due to changes in the State's external environment. These changes are related to the globalisation of financial and other markets, taking a major role and control over the economy, to the detriment of State capacity (Pierre and Peters, 2000: 16). Moreover, the power of transnational institutions or international agreements are significant in terms of influencing policy decisions such as Human Rights Declarations.

Bell and Hindmoor (2009: 115) refer to the economic debate around consequences of marketisation as a way of allocating resources in the public sector, which is

related to the paradigm of neoliberal governance. Their focus is on the relationship between marketisation and state capacity, thus, market understood as a social arrangement which allow voluntary exchange of goods and services, including the notion of private property rights, competition and the price mechanism to allocate resources.

On the other hand, state capacity can be constrained by the Society-Centric approach in which the horizontal system and broader sociological view allow power to leak to Non-state actors, demonstrating a significant change in the way to make politics. In general, the patterns of government have changed in terms of societal actors would become influential over policy and administration, which is affecting the way to see governments as weakened and incapable of 'steering' (Peters and Pierre, 1998).

Bell and Hindmoor's arguments are related to two strands about these changes, the first one sustains that marketisation's effect has produced substantial power to the private sector, operating independent of government control. The second argument establishes that States have lost control in terms of achieving economic and social objectives, incorporating new actors and new values as mode of governance, such as the use of the market as an alternative way to pursuit policy goals (Bell and Hindmoor, 2009: 115).

They maintain the idea of successes and failures in some cases of marketisation, remarking how the major players like the business sector have replaced government hierarchy, introducing new actors and new values as a mode of governance. However, there are difference in the relationship between states and markets which requires deep analysis to understand the exercise of power to achieve economic and social objectives, as Keating (2004) says. In this sense, the marketisation of governance can be presented in six reforms, privatisation, deregulation, external markets, contracting-out, public-private partnerships and internal markets.

Similarly, Peters and Pierre (1998) discuss the diminished capacity of governments in influence the economy and society, as well as how relationships between

government and the private sector have changed. It is also related to Rhodes's ideas (1997) in terms of governance without government, emphasising the role of networks, partnerships and markets. The idea is similar to the new public management but it has distinctive elements. Traditional conceptualisation of public sector is changing during the past several decades, especially about national governments roles which has fluctuated from major and powerful actors influencing economy and society to diminished capacity to govern, involving new actors and global pressures. Also, there is a traditional conception of governing related to the relationship between government and the private sector, which can be understood as 'governance without government'.

Chapter 4 Case of Chile: Social Rehabilitation Policy

c. Historical Antecedents

Chile has a specific political response to crime, which refers to the widespread use of prison as the main way of responding to social problems such as poverty or drug abuse (Centro de Políticas Públicas UC, 2017: 12; Villagra et al., 2014: 32). In fact, today Chile has 229 prisoners per 100.000 inhabitants¹, which is high compared to the world average, reaching a prison population rate of 144 persons per 100.000 inhabitants.

This important growth of the penitentiary population is controversial because there are not similar trends related to criminal rates, which are relatively stable. Therefore, the crisis in the Penal System in Chile is not just related to the Public Safety area but it is also a general political issue, which refers to socioeconomic factors, inequality and other structural elements, affecting the impact of the public service in terms of this punitive, expensive and ineffective response acquired in the last decades.

¹ Based on an estimated national population of 18.23 million at end of February 2018. More information at <http://www.prisonstudies.org/highest-to-lowest/prison-population-total>

Moreover, it is very singular the offender's composition in the Chilean System, which is focused on certain groups and certain kinds of crime such as men and poor people mostly, and crime associated to property and drugs (Genchi, 2018). In this context, the aim of the Social Rehabilitation policy would face this social problem by a different approach or mode of governance, with better strategies and networks to implementation, rethinking the way to punish from a governmental perspective.

On the other hand, in Chile the first government interest to introduce changes in the system were observed on the Criminal Procedure Reform² since the year 2000 by the Lagos's government, when the inquisitorial system progressively became an adversarial system, in which the functions of investigating, prosecuting and judging are divided in each legal procedure. This positively affected the efficiency of the whole penal system in terms of institutions, public participation and protection of victims' rights (CEJA, 2017: 10; Matus, 2018).

There was a critical situation in the prison system related to an extraordinary increase of the penal population, inability to implement rehabilitation and reintegration programs, staff shortages and the deteriorated state of infrastructure (BID and FPC, 2013: 31). In the case of social rehabilitation policy in Chile there were two main strategies in the beginning, the use of public funding to develop better penitentiary programs, creating new relationships with other agencies and, to build new prisons with private investment through the 'Concessions Act' in 2000, which was commanded by the Ministry of Public Works.

In other words, there was a political context in which the state was recognizing state capacity problems and its incompetence in driving the Social Rehabilitation issue, given its complexity and the need to establish strategic alliances with other sectors. The 'Penitentiary Infrastructure Concessions Program' was designed mainly to reduce prison overcrowding by building more efficiently and providing better conditions of habitability, care and assistance to criminal population. In this mixed system, the state pays the private sector a periodic amount for the design,

² <https://www.bcn.cl/leyfacil/recurso/reforma-procesal-penal>

construction, maintenance and delivery of the penitentiary services such as food, laundry, health and social reintegration.

Other legal modifications were introduced on this public issue in the following years such as the Law 19.856 about Reduction of Sentences which was introduced in 2003, to establish a method for reducing the time of measures based on demonstrated outstanding behaviour of offenders, which was the first approach to a gradual release to the community, concentrating on good conduct detected by Chilean Prison System rather than the punishment duration. In the same year, the Decree 685 of the Ministry of Justice brought later the accepted regulations for its implementation and later, the Law 20.603 introduced new Replacement Penalties, modifying the former Law 19.856 in 2012.

The Ministry of Justice and Human Rights convened an intersectorial council in 2009 in order to generate a space for reflection to consolidate a proposal for a penitentiary policy in Chile. This Penitentiary Reform Council (Consejo para la Reforma Penitenciaria) was able to address all the sentencing systems of the Chilean Prison System not only in prisons, due to the state responsibility of those who serve some conviction in order to help with their Social Rehabilitation process such as Non-Custodial Measures.

This Council was formed by renowned scholars and experts from various institutions, who proposed a series of recommendations for a new penitentiary policy, in the document "Penitentiary Reform Council" (2010) Recommendations for a new penitentiary policy by Ministry of Justice and Human Rights (2017: 11). Furthermore, this year the first Integral Program of Social Reintegration was implemented based on evidence such as the Risk-Need-Responsivity (RNR) Model by Andrews and Bonta (2010). Additionally, in December 2010 a huge fire affected the Preventive Detention Centre of San Miguel located in the capital, in which 81 prisoners died in terrible conditions of security and dignity³, revealing the penitentiary crisis of the

³ More information at <https://www.elmostrador.cl/noticias/opinion/2014/05/01/los-verdaderos-responsables-de-la-tragedia-de-la-carcel-de-san-miguel/>

country. That was the genesis of the NGO 81 Reasons, formed by the relatives of those who died in the tragedy. Interestingly, the impact of this event was not focused on direct changes to the Public Policy but referred to modifications on penitentiary procedures and protocols, described below.

This increase of new institutions and policy mechanisms to face Social Rehabilitation issues in Chile continued over the time, in this way for example in 2012 the Chilean Prison System created a new department oriented to the post-conviction period through a Resolution which establishes a new external organisation named Postpenitentiary Department⁴ dependent on the Technical Subdirectorate of the institution (or Subdirección Técnica de Gendarmería de Chile), replacing the former National Board of Inmates (or Patronato Nacional de Reos) and formalising the aim to provide professional support and assistance to people who have fulfilled their sentences. Later, in October 2013, the ‘Support Centres for Social Integration’ (CAIS by its Spanish initials) were created as public agencies oriented to eliminate Criminal Records and to support the Social Rehabilitation process, once a sentence has been fulfilled.

The next years were characterized by new agencies and regulations such as the inauguration of the ‘Human Rights Protection and Promotion Unit’ for Chilean Prison System in 2014. Furthermore, in 2016 its Social Rehabilitation Division developed Technical Standards on Probation and Intensive Probation, as a way to provide specialized intervention for offenders in these sentences but also formally as a complement to the mentioned Law 20.603. Recently, the Ministry has launched its local initiatives in Social Rehabilitation through the ‘Volver a Empezar’ Program⁵, a pilot program executed in 10 Municipalities, in which the training for public servants and its networks management seem to be the key aspects to assist ex-offenders coming back to the community.

⁴ <http://www.gendarmeria.gob.cl/panar.jsp>

⁵ <http://www.minjusticia.gob.cl/comienza-capacitacion-a-funcionarios-de-10-municipios-del-programa-de-reinsercion-social-volver-a-empezar/>

d. Addressing Social Rehabilitation

In the case of Chile, as it mentioned before the Ministry of Justice and Human Rights states as its objective ‘to move towards a more efficient system, capable of granting security guarantees to citizens, which are conciliated with effort of rehabilitation for the penal population as well as to safeguard international standards of respect to Human Rights’ (Arellano, 2001: 10).

According to the Government Decree 2.859, the Chilean Prison System establishes its nature and objective as a public service that depends on the Ministry of Justice and Human Rights, which has the objective to support, guard and contribute to the Social Rehabilitation of offenders. The Prison Service is defined as a hierarchical institution, disciplined and obedient to the rules established on the respective normative, having a top-down approach and a structure divided by the National Direction and Regional Directions, according to its Organic Law.

Based on the legal discourse, Social Rehabilitation is one of the sentence justification in Chile, which means the punishment is oriented to successfully and safely include ex-offenders in the community. As it said, this is also supported by international agreements that Chile has ratified in the last decades, which was reflected in the Organic Law of the institution and other regulations for penitentiary establishments, confirming external influence the Penal System as well as directing the relationships among public and private actors as a central component of the policy.

Based on the Social Rehabilitation Policy in Chile, the concept of Social Rehabilitation refers to the full integration to the society of a person who committed crime. The Ministry of Justice and Human Rights defines this policy as intersectoral and specialized in terms of its shared interests and objectives among the Criminal Justice System, Civil society and Public Security, as well it is Human Rights based in order to adjust to international agreements in which Chile has subscribed (Ministerio de Justicia y Derecho Humanos, 2017: 3)

These advances in policy were highly related to two main international agreements that Chile ratified about prison conditions and offender treatments⁶ such as the Universal Human Rights System⁷ and the Inter-American Human Rights System, which reinforces the notion of offering opportunities to improve their insertion to the community.

The UN Human Rights System has a variety of documents which are part of the International Bill and Human Rights like the International Covenant on Civil and Political Rights which was established in 1975 the treatment with humanity and respect for the inherent dignity of human person for all persons deprived of their liberty, need of segregation to receive an appropriate intervention as well as its essential aim of their Reformation and Social Rehabilitation.

Also, the United Nations set 'Nelson Mandela Rules' about promoting minimum human conditions of imprisonment, similarly to the Bangkok Rules in 2011 for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders and, the Tokyo Rules⁸ which refer to the Standard Minimum Rules for Non-Custodial measures, encouraging participation of communities in this process and rationalisation of incarceration.

Secondly, the Inter-American System of Human Rights is another international mechanism responsible for monitoring, promoting and protecting human rights in the American region, which is composed of two relevant elements such as the American Convention on Human Rights⁹ adopted in San José, Costa Rica in 1969 (it was ratified by Chile in 1990 in order to modify penitentiary regulations).

Similarly, the Convention created the Rapporteurship on the Rights of Persons Deprived of Liberty which is working group examining and monitoring detention

⁶ All the normative framework available at <http://www.reinsercionsocial.cl/marco-normativo/>

⁷ More info available at <http://www.un.org/en/index.html>

⁸ Available at <http://www.un.org/documents/ga/res/45/a45r110.htm>

⁹ More information at

<http://www.cidh.oas.org/Basicos/English/Basic3.American%20Convention.htm>

conditions in the Americas. From this framework, the ‘Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas’ was adopted in 2008, holding that the Reform, Social Adaptation and Personal Rehabilitation of the condemned, as well as the Resocialization and Family Reintegration, in addition to the protection of victims and society are the essential purposes of the Penal System.

Considering this international legal framework, the Social Rehabilitation policy was conceived by the Ministry of Justice and Human Rights as a recompilation of the penitentiary work and knowledge in terms to collect the variety of policy arrangements and institutions involved.

Thus, the foundations of the Social Rehabilitation policy are closely related to the creation of the mentioned Prison Reform Council in 2009 and later, in 2017 the Advisory Committee for Social Rehabilitation, both were multidisciplinary institutions but the Committee has a formal and permanent performance for developing the new public policy, in order to socialise, coordinate and validate it in the political arena. In June 2017, the Advisory Committee was established for the first time in the central region and two months later it was installed regionally¹⁰. According to the Ministry of Justice and Human Rights, the role of this particular Committee has been central for developing this policy in terms of representing and concentrating government interests (Ministry of Justice and Human Rights, 2017: 75).

e. Main actors and its Roles

The crucial criterion to distinguish the types of governance is the relationship between public and private actors in the process of policy-making, which places the

¹⁰ More information at <http://www.elmostrador.cl/noticias/opinion/2017/08/12/comite-asesor-para-la-reinsercion-social-se-constituye-en-todo-chile/>, <http://www.minjusticia.gob.cl/comite-asesor-para-la-reinsercion-social-completa-instalacion-en-zona-central-del-pais/>, <https://www.youtube.com/watch?v=hCzuNpmdTqU>, and <http://www.minjusticia.gob.cl/se-constituye-comite-asesor-regional-para-la-reinsercion-social-en-atacama/>.

concept of governance in the context of interest intermediation or public-private relations (Treib, Bähr and Falkner, 2009:4).

As it said before, the Ministry of Justice and Public Policy has been mainly developed and steered the Social Rehabilitation policy in Chile since the 20's, through a specific institution which is the Chilean Prison System, a public service to assist, monitor and contribute to the Social Integration of offenders, as the Article 1 of its Organic Law says. Moreover, the Ministry plays a role within the Judicial Branch, connecting the Executive and Judiciary. One of its relevant areas is the establishment of sector policies, plans, and programs regarding penitentiary treatment and rehabilitation of inmates through its agency known as Chilean Prison System.

Its objectives are associated to ensure effective enforcement of detentions and sentences that the Judiciary determines, as well as to provide dignified attention and treatment, respecting and recognising their Human Rights, and finally, the Prison System aims to promote behaviour, skills and capacities which increase probabilities of a successful Social Rehabilitation process of the penal population, involving at the same time their families, institutions, businesses and community in general.

After the official release of the new Public Policy under the control of the Under Secretary of Justice, the Advisory Committee for Social Rehabilitation has taken a major role in coordinating stakeholders by having regular meetings among State and non-State actors. In fact, the legal framework based on the Decree 816 which refers to two levels of agency, local or regional and, a central level of Advisory Committee linked directly to the Ministry of Justice and Human Rights. Likewise, it is led by the Under Secretary of Justice and other authorities from the government gathering every three months, including the participation of other state institutions, international representatives, public and private sector, academic organisations and Civil Society associations related to the Social Rehabilitation field.

According to the Ministry in charge, the Committee seeks to provide a space of debate and dialogue among stakeholders, both from public and private sectors such

as public services, academia, and Civil Society organisations through this formal and permanent instance to socialise around Public policy implementation in the field. Thus, its objective is to assist the Ministry of Justice and Human Rights in the formulation of plans, programs, benefits and services which promote the reintegration of people who have been convicted.

Nevertheless, based on the Decree 816 the participation of non-state institutions is not stable, which means that its permanence in the Committee is not guaranteed throughout the annual work. Thus, all the members are invited to participate in a non-deliberative and ad-honorem nature, which can be problematic in terms of keeping continuity in facing the policy issue due to the fact that there is no mention of specific participants, diminishing the power of the non-State Stakeholders.

Based on the Committee work, those who are included in the policy-making process can be divided in the following nine categories:

1. State formal institutions, including ten Ministries: Ministry of Justice and Human Rights; Ministry of the Interior and Public Security; Ministry of Sport; Ministry of Health; Ministry of Education; Ministry of Social Development; Ministry of Culture, Arts and Heritage; Ministry of Women and Gender Equity; Ministry of Labour and Social Security and the Ministry of Economy, Development and Tourism, which are represented by a rectangle in the middle of the Map 1. Similarly, some Public Services related with the policy issue are explicitly mentioned by the Advisory Committee such as the National Minor's Service (or Sename by its Spanish initials), National Service for Older People (Senama) or the National Service of Training and Employment (Sence).
2. Judiciary, involving some key institutions of the Justice System and courts such as Public Defender's Office or the Public Ministry.
3. Legislature representatives such as the Chamber of Deputies and the Senate.
4. Local governments represented by the Association of City Councils implementing Social Rehabilitation Programs like the Municipality of Estación Central and the Municipality of La Pintana.

5. International representatives, in which are involved indirectly International Human Rights Agreements and other institutions such as the Inter-American Development Bank.
6. Academia sector like Centres for Studies or Universities, i.e. Citizen Peace Foundation and Center for Studies on Public Safety (CESC by its Spanish initials) and the National Institute of Human Rights.
7. Private sector related principally to employment such as Industries interested on work with prisoners such as the Confederation of Production and Trade (CPC by its Spanish initials), the Chilean Chamber of Construction and the Telefónica Foundation.
8. Religious participants from the Evangelical and Catholic Chaplaincies for the Prison Service.
9. Civil Society organisations i.e. the Bar Association, and the Senate Table of Social Rehabilitation.

In terms of functions, this Committee is an institution to advise the Ministry about Social Rehabilitation matters, identifying its critical aspects of the system and its challenges. The Advisory Committee analyses permanently programs, coordinating and promoting them, as well as it encourages studies in order to update knowledge on the subject, incorporating evaluation of current results. Moreover, it is relevant the role of the Committee in terms of support for social networks, reinforcing local, regional (by its 15 Regional Subcommittees) and national levels together with new actors from the public and private sectors, such as a formal space for Academy in order to make research, innovation and advices in steering policy problems (Ministerio de Justicia y Derechos Humanos, 2017).

At the same time, the Advisory Committee takes account seven prioritized areas of Social Rehabilitation policy, highlighting Human Rights approach, improving labour and educational sectors, but also including the strengthening of institutions for Social Rehabilitation such as the Postpenitentiary System. Together, the Advisory Committee Plan contains the planning, divided into tasks and goals specified by subcommittee, defining both short and long term aims, where the stakeholders

contribute according to their knowledge and scope (Ministerio de Justicia y Derechos Humanos, 2017b: 2).

In the exercise to introduce new actors, it is also fundamental to contemplate how economic resources are distributed, in this case from the Ministry of the Interior and Public Security to City Councils and Non-governmental organizations (NGOs) and their local programs of Social Rehabilitation and Public Safety and other areas to prevent crime. Furthermore, in Chile there are public resources going to fund local government's programs in the framework of Safe Chile Plan of Piñera presidential period between 2010-2014, through the National Public Safety Fund (Fondo Nacional de Seguridad Pública¹¹ in Spanish, FNSP), which can be analysed from the perspective to delegate power to new actors in order to transfer public funds and responsibilities to other organisms such as Municipalities, Non-profit organisations, community organisations and universities. By annual applications, the various agencies can be awarded financing to develop a project related to public safety, including social rehabilitation as a policy area. The Ministry of the Interior and Public Security through the Undersecretary for the Crime Prevention chooses a number of projects every year, investing more than AUD\$ 7 million.

Chapter 5 Consequences for Stakeholders

f. Formal Actors relationships

In terms of the legal framework (Ministerio de Justicia y Derechos Humanos, 2017: 14), as it mentioned there are international and national set of norms linked to the Social Rehabilitation Process, which have two main roles, as a statement of the principles that defend politics in terms of rehabilitation as the main objective of the sentences, and as a regulator of policy mechanisms which contribute to successful Social Reinsertion by providing specialised intervention. In other words, the legal instruments around the policy provide the sense of the punishment through a Human Rights perspective oriented to Social Rehabilitation as the main goal, as well as the

¹¹ Fondo Nacional de Seguridad Pública, more information at <http://www.fnsp.gov.cl/>

legal elements play a characteristic role in order to set the rules for intervention, evaluation and other policy stages.

In relation to National legislation, there is not an integral regulation for Social Rehabilitation policy but it is rather a series of regulations dispersed from different ranks of the law which are associated to this issue in Chile. In this sense, the legal mechanisms used to address the policy are mainly Government Decrees, Decrees and Laws focused on different issues related to sentence procedures, ways to reduce incarceration and general regulations of penitentiary system, all of them working as a disaggregated or scattered system in Chile.

There are regulations about sentence procedures such as the cited Law 19.856 on Reduction of Sentence, or the Management of Penitentiary Establishments like Decree 518 which are reacting to problems in the Penal System such as overcrowding or Human Rights violations reported by Human Rights institutions such as the periodic reports of the National Institute of Human Rights (INDH by its Spanish initials). Comparable norms have been necessary to implement a broad intervention model incorporated in 2013 to the Chilean Prison System or technical standards for specific sentences, mainly by choosing the normative way to make changes in this area.

Formally, two shifts in the policy could be identified as regulations or actors promoting inclusion of other members of society, which is related to the mentioned Penitentiary Infrastructure Concessions Program in 2000 in order to include the private sector to build, manage and provide service to the Penal System, as well as the Labour and Training Statute for Penitentiary Work (the Decree 943 in 2014) that needed partnership with this sector to provide job opportunities for this population. It is also possible to analyse the creation of the Postpenitentiary Department as a political initiative which works in the community and its partnerships to achieve successful Social Rehabilitation processes.

In addition, the Under Secretary of Justice in that period, Nicolás Mena¹², referred to the constitution of the Advisory Committee for Social Rehabilitation as an unedited initiative to help policy-making process in terms to enhance projects and programs by the interaction of different sectors. As it said, it is a transversal group which set its strategy on an Annual Work Plan divided by seven priority areas, including strengthening the state institutions like the Advisory Committee and the Postpenitentiary Department of the Chilean Prison System as central stakeholders and key elements for the Penitentiary network and its relationships.

Although, the Penitentiary Reform Council in 2009 was the predecessor in terms of reflection on penitentiary matters, but the Committee seems to give major continuity to the necessary dialogue among a number of institutions to contribute to the policy-making process in a technical and formal manner (Ministry of Justice and Human Rights, 2017: 76). The Committee meets four times a year, following the Sub Secretary of Justice's considerations combined with interests from other actors, they must also follow an annual plan including processes and results, which is annually accountable. Moreover, part of its functions is related to articulate the penitentiary stakeholders in Chile, involving the strengthening of the local, regional and national networks, both public and private, besides incorporating the Academy in the investigation, innovation and contribution to the solution of critical issues.

Following the documents by the Advisory Committee (Ministerio de Justicia y Derechos Humanos, 2017c: 10), each group of stakeholders has an assigned function or role associated to its respective domain, expressly those governmental institutions like the Ministries which have shared aims in terms of assist the same population, but those roles are broader in cases of non-State institutions which have not had common guidelines, approaches and scope in Social Rehabilitation terms.

Thus, all Ministries except Sport and Culture, Arts and Heritage, have integrated Social Rehabilitation objectives to its agenda, mentioning clearly offenders as part

¹² <https://www.elmostrador.cl/noticias/opinion/2017/08/12/comite-asesor-para-la-reinsercion-social-se-constituye-en-todo-chile/>

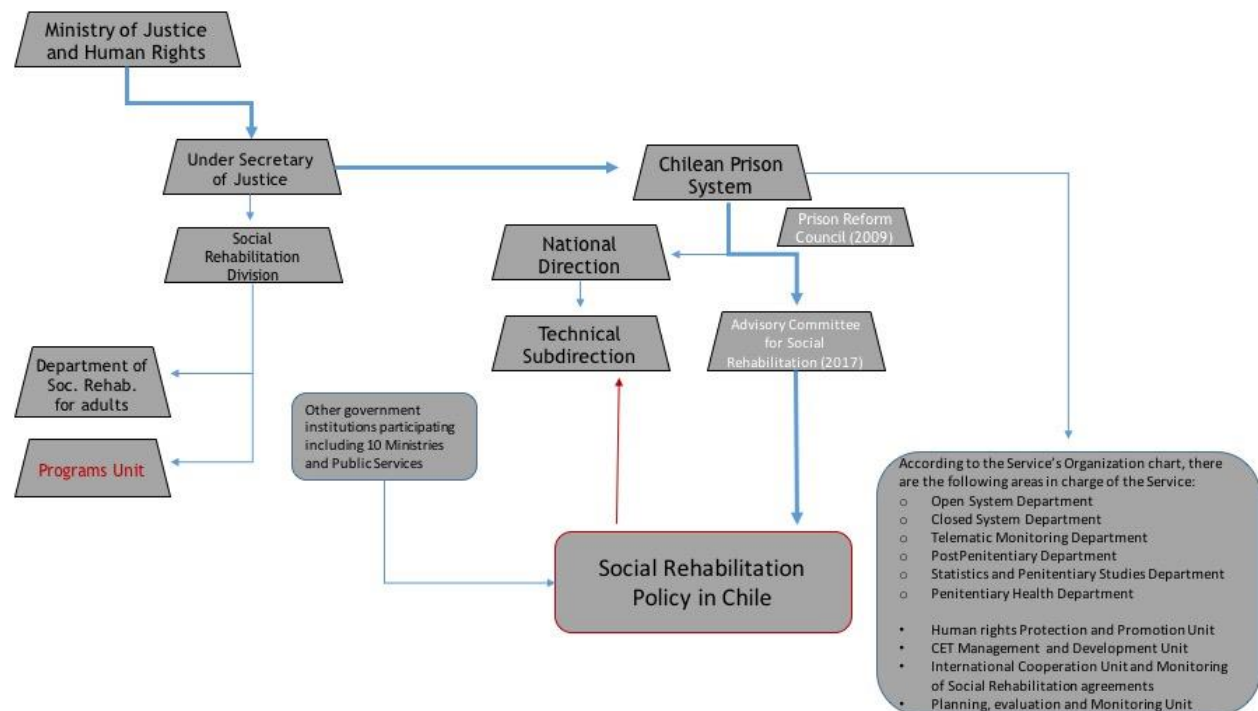
of its scope. These contributions are crucial for the development of the policy in terms of providing basic Public Services like Health, Social Security and Education but also, they are assisting and linking with specific problems around Social Rehabilitation such as employment, training or connections with the community.

There are some formal contracts between the Prison System and those Ministries and its services, which are mainly ‘Collaboration Agreements’ to brace policy connections in different topics such as installing educational programs, labour programs or initiatives oriented to improve their possibilities to successful return to the communities. However, there is a small number of programs directly running by those Ministries and they are not accountable for the Committee (i.e. Labour Reinsertion Program by the Ministry of the Interior and Public Security).

In addition, it is observed that there is an intention to improve or collaborate to the Social Rehabilitation issue by each Ministry, either by analysing, proposing or evaluating policy in general, but considering all policy area. According to the Advisory Committee, the Ministry functions are varied in scope and commitment, seeking to improve policies, to contribute to policy design, to support policy implementation, to promote equality and non-discrimination, to modernise and, facilitate the services developed for this population.

The ‘Map 1’ shows how the Formal Actors through its government institutions are organised by a hierarchical model, highlighting the role of the Ministry of Justice and Human Rights as the central actor, steering the main State Stakeholders around Social Rehabilitation policy. Moreover, the Ministry derives to the Chilean Prison System by the Under Secretary of Justice, the function to attend, ensure the security and contribute to the Social Rehabilitation policy as the official institution which guards offenders. Additionally, the Department of Social Rehabilitation for adults depends on the Social Rehabilitation which at the same time support the penitentiary public agency by its work with the National Direction and the Technical Sub-direction facing the launch of this public policy. Thus, the Advisory Committee for Social Rehabilitation is under the supervision of the Prison System, regulated by the Decree 816. The formal structure of the mentioned public service, is represented below.

Map 1: Formal Actors Map



g. Informal Actors relationships

Contrariwise, there is an alternative way to interact in the penitentiary network in which the roles are not clearly defined relating to the Informal relationships and non-State Actors. For example, the functions for Judiciary representatives do not have a specific role, similar to the Legislature sector which feed the Penal System through sentences for offenders as an input of the Penitentiary process. Furthermore, part of this group of Informal actors are local governments, international agreements and its institutions, the Academia, the Private sector, the key influence of Religious sector and the participation of the community by Civil Society organisations, which are not necessarily a homogeneous group of actors.

The Academic sector, representing by Centres for Studies and Universities have participated actively in the last few decades, providing significant data and knowledge and promoting debates in the field by annual reports for example. The Committee considers their role as a technical contribution in terms of providing evidence to support the guidelines for Social Rehabilitation in the country.

Although there is no priority reference to the inclusion of the Academy in the Penitentiary network, its participation is seen in each of the instances that have historically been developed to make this policy, therefore, its role seems to be significant for Social Rehabilitation field, but less published and focused on the initial processes of policy making process, analysing and proposing ideas to make better decisions.

In reference to the Private sector and its role, there is an incipient framework of Corporate Social Responsibility in order to contribute to society by integrating this vulnerable group. Nevertheless, the main function for Private members is to generate productive instances for the penal population through the strengthening of its plans and programs and employment strategies. It is possible to say that the inclusion of the private sector is more declarative rather than practical in terms to it is identified by the State as one of the challenges and pillar to build the public policy.

The Religious members of the Committee play a distinguished role in the Penal System in Chile, which explained its participation in the policy process in order to reinforce the 'spiritual development' of the offenders by the Decree 703 about Religious Assistance and the right to profess and practice any freely chosen beliefs. Also, they preserve the mentioned Mandela Rules about offender treatment to protect penal population.

The role of both Churches, the Catholic and the Evangelic by its National Chaplaincies, is to promote religious support through different activities such as social assistance, formation values, cultural activities, systematic study of religious texts, which have not been proved as useful for Social Rehabilitation (Ministerio de Justicia y Derechos Humanos, 2017a: 68). However, the systematic role of this group is significant in terms of the direct contact with offenders, they are working inside jails, giving distinctive protection to offenders who follow particular religious, which refers to other kind of power and exposes a controversial role in order to understand who is the beneficiary in this relationship.

In terms of Local government or representatives from the territorial level, they are convened for generating of local and community networks that facilitate and contribute to the processes of Social Rehabilitation. Based on the Work Plan of 2017 (Ministerio de Justicia y Derechos Humanos, 2017b: 16), the Postpenitentiary Department as new agency of Social Rehabilitation is commanded to manage relationships at the local level, linking to the community through this state institution rather than include them openly, which can be understood as a rejection to share power in this field.

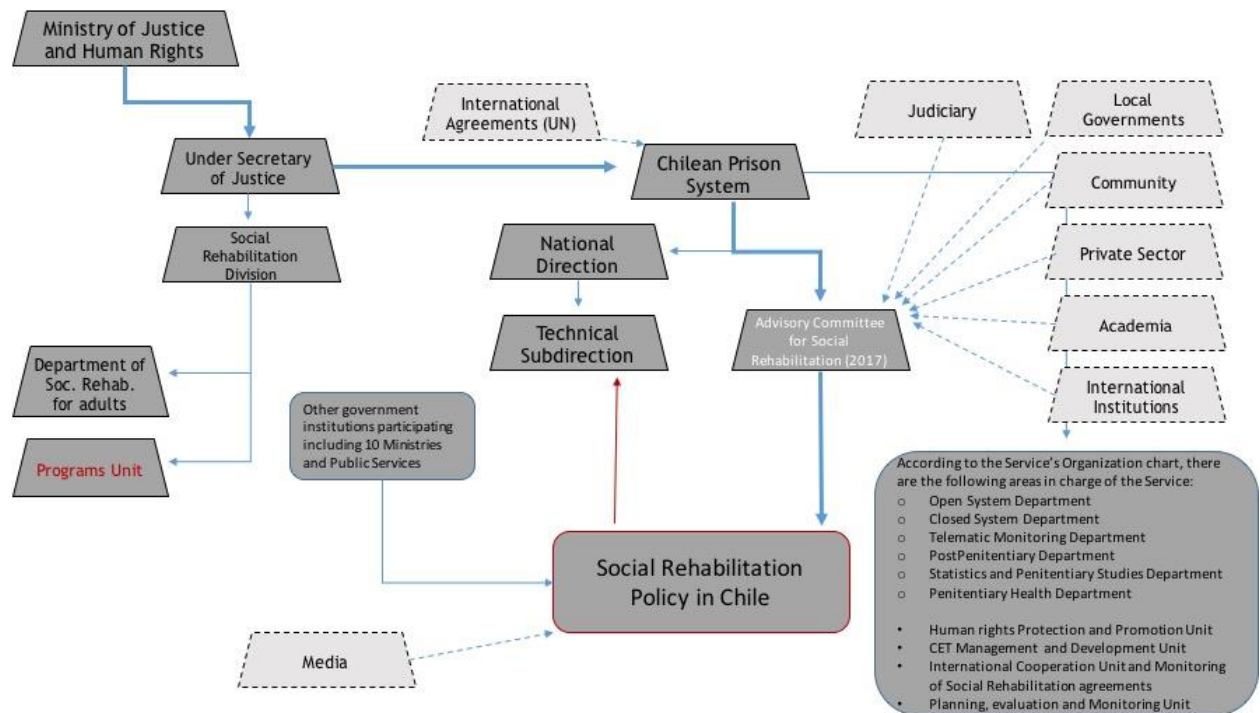
Consequently, talks about State sharing power in the policy-making process, incorporating innovative stakeholders, accepting its historical contribution to Social Rehabilitation policy. Moreover, while State Stakeholders are very similar in their roles which basically must follow defined and organized functions in a bureaucratic manner, non-State members are a heterogeneous group, which varies from structures, policy aims, scope, representativeness and levels of powers; such as the case of religious members and its participation during the sentences of offenders comparing with the different role of local governments which are involved in the post-Penitentiary process.

However, it is important to note that the Ministry of Justice and Human Rights through the Advisory Committee also excludes actors who might be relevant in the policy process. The absence of more participants from de Civil Society or community like schools, social groups, the Media, families or even the involvement of offenders and their families, represent doubtful intentions to include and motivate these groups and its interests by the government, though they can collaborate significantly.

The following 'Map 2', is referring to Formal and Informal Actors in the Social Rehabilitation Policy in Chile, it maintains the Formal map shown above but this time the informal actors have been added, who are represented with different colours and dash types. These new actors are swiftly related to the Advisory Committee, which in turn leads the course of Social Rehabilitation policy, involving

relationships more horizontal in order to nurture the work of the Advisory Committee, contrary to what happens in the former hierarchical model. The Media is also represented close to the policy itself, because it seems acting directly in the field, although this research does not refer mostly to its role.

Map 2: Formal and Informal Actors Map



h. Network challenges

Following the mentioned conceptions of governance, Chile seems to be an interesting case due to its dynamics of steering and coordination, in which the State is still central and capable of governing society but the relevance of seeking how actors, public and private, control public activities and produce desired outcomes. That is why it is relevant to consider Non-State Stakeholders for analysing the Social Rehabilitation policy.

The efforts to unify the former public agencies to a broader structure provide major coherence to the policy, however, new institutions and regulations also slow the process at least in the first stage of implementation. For instance, the transformation from 'Patronatos Locales de Reos' to 'Support Centres for Social

Integration' or CAIS was significant for the Prison System in terms of providing more resources and value to this area of the Social Reinsertion process.

Although the Penitentiary Network was active previously to the launch of the new Public Policy, during the last 20 years the participation of its members has fluctuated by the time, but they seem to share similar goals related to Social Rehabilitation. Some of the challenges for this network referring to clarity about roles, while State actors are modelling its actions through legal documents such as internal regulations, which defines main purposes and expected behaviour. It is common that those state actors that do not present sufficient flexibility to changes, are self-marginalised from this network such as the case of associations of prisoner relatives, who usually tend to denounce bad conditions of incarceration, rather than being part of a policy making process.

In terms of normative challenges, besides the fact that the regulation is disaggregated and with different legal figures for its application, it is necessary to integrate the initiatives in this material to provide a consistent and internally coherent policy. The Ministry of Justice and Human Rights (2017: 21) recognises as future challenges to study and update the standards by analysing laws and regulations on the subject, collecting new knowledge about criminology and international principles of Human Rights as well as improving procedures of classification, mechanisms of progressiveness of the sentence, elimination of criminal records and permanent judicial control of the Penal System.

In addition, there are criticisms about the deficient public policies around the Social Rehabilitation in Chile such as the opinion of representatives from the San Carlos de Maipo Foundation which are developing research and executing Social Rehabilitation programs directed to women and people related to the prison system such as families and the business sector. There are also cases of non-state actors who are not participating because apparently, they do not share similar goals or strategies like the 'NGO 81 Reasons' which is not interested in dialogue or trust in public institutions with historical Human Rights problems.

Other considerable challenge in this policy issue is the trend to apply a local approach in facing Social Rehabilitation process rather than the use of an individual focus in this treatment, this is, there is a focus in the local government responsibility by transferring directly economic resources to Municipalities, for example, as the case of FNPS. In this sense, the state approach does not include the formation of new institutions at the local level rather than to training Municipality teams about needs of the penitentiary population or sensitisation of the Public.

Chapter 6 Governance or Metagovernance

i. Evaluation policy

The disaggregated legal system in the Social Rehabilitation policy seems to have more interest for the public policy in the last two decades, because it is changing its composition and power distribution. The history about how Chile is addressing the Social Rehabilitation issue highlight the legal regulations in its different levels of power and its jurisprudence, varying from Law Decrees to Laws of the Republic, in addition to different state agencies, which could confuse the functioning of the Penitentiary system.

In relation to the recent public policy about Social Rehabilitation which is involving the variety of roles and Stakeholders, both from the State and Non-state actors, it is possible to say that the ambiguity of its interactions is pretty common in this area of the governance mode. As it mentioned, the roles for the State Stakeholders are defined and clearer than the non-State Stakeholders ones, as well as it is presented as a participative mode of governance described by the Public Policy itself, however, there are remarkable absences such as the commented 'NGO 81 Reasons'. Furthermore, there is not clarity of a critical vision of Stakeholders and their collaborative work, even when they have shared aims, which can be analysed as a vague feature of the public response.

In addition, there are important elements to improve in the public area which were recently identified in the National Seminar organised by one of the Stakeholders in

the Penitentiary network: CESC (2018: 10), those were related to interactional challenges in order to better coordinating the implementation of Social Rehabilitation programs at the local level. Thus, the evaluation of access and coverage remains precarious in this issue, as well as the Job placement for this population, it is also necessary to modernise the Decree Law 409 to remove Criminal Records, and to improve the connection with Municipalities.

Some academic institutions like the Center of Studies in Citizen Security (CESC) or the Peace Citizen Foundation argue insufficient budget for Social Rehabilitation programs, problems in delivering evidence-based practices, quality standards deficit, as well as deficient evaluation system to estimate the policy impact.

The Seminar could analyse the key elements for Social Rehabilitation (CESC, 2018: 18) considering that more than 99.000 people are annually releasing from any sentence of the Penitentiary system, such as the importance of the relationship with the Municipal network to face socioeconomic needs or the community support to reinsert citizens returning to the territory through non-discrimination practices.

There is an emphasis on the creation of solid network to cover the variety of intervention areas in Social Rehabilitation, which can be understood as part of this new mode of governance that is involving new Stakeholders, both from the public and private sector interacting coherently towards the policy goal to Social Reinsertion. The National Seminar (CESC, 2018:20) discussion was inclined to assess poorly the regulatory update on facilitating, for example, the elimination of Criminal Records once the conviction has ended, which can be criticised from the perspective of the violation of the privacy rights of a person.

The participants of this Seminar, most of them part of the Penitentiary network involved, recommend to work on the common definition of Social Rehabilitation that could be used for any institution, formal or informal, providing coherence and integrity for intervention. In addition, they refer to an essential aspect in this policy matter, which is the need to coordination among all the actors across the Social Rehabilitation area, including non-State actors, the private sector, Civil Society organisations, State institutions at different levels (local, regional or national), and

the perspective of new stakeholders, which constitute a big challenge to policy makers. Importantly, the conclusion of this Debate assumes as one of the facilitator of the Social Rehabilitation activities is the effective articulation of the local network, through conventions and protocols (CESC, 2018: 44).

j. Policy steering in Social Rehabilitation

As mentioned, the mode of governance is mainly hierarchical with some features of horizontal relationships but those are contained often in a State framework which is following international agreements related to the protection of Human Rights. In this sense, the same non-State actors are participating in the making policy process, debating but not leading the course of politics. There is an openness to an instrumental use of Stakeholders to know their experiences in Social Rehabilitation, rather than to make them real part of the policy making process.

Some of the features which can refer to less state intervention are absence of sanctions in the performance of the Committee, incorporating a flexible approach to implementation and procedural regulation. However, the economical funding is coming through Regional Governments which grants major power to the territory actors like NGOs, local governments or the private sector, because they are able to apply to these public funds to run Social Rehabilitation programs if there is a connection with the Academia sector, for instance. Even so, each institution has a different way to proceed, which means there are other alternatives to contribute to Social Rehabilitation policy in Chile.

On the other hand, the centralisation is quite evident due to the excess of initiatives working in the central area of Chile (especially in the capital Santiago), which produces less concern on the rest of the regions of the country. The Safe Chile Plan during the first Piñera presidential period was the first approach to the local terrain by the Social Rehabilitation programs of the Ministry of the Interior and the Human Rights. While there were efforts to incorporate regional experiences in the Advisory Committee work, most of the programs are focused on Santiago and its suburbs.

Similarly, it is possible to observe a power transference from the Central State to local governments through competitive funds from projects financed by the Regional Government, deriving State central responsibility in other formal territorial bodies such as Municipalities with high rates of offenders returning to their communities. On the other hand, although the Regional Advisory Committees were included on the Policy making process, the case is focused on the central region of Chile, involving the regional perspective but at a minor level, as it said.

Chapter 7 Conclusion

In relation to the Formal actors' relationships, the influence of the legal framework is relevant from both national and international institutions such as Convention on Human Rights by the United Nations. At least until the creation of the new Public Policy in 2017, Chile had adopted a number of different regulations, from Decrees to Laws, demonstrating a non-integral system. However, the legal reform path seems to be the government choice to make changes in the area through two significant events in the policy process, the Concessions Act and the Decree 943 on Penitentiary Work, involving new Stakeholders and opening the Penitentiary network to new challenges in terms of governance. Moreover, the role of a new organisation such as the Advisory Committee for Social Rehabilitation, which is the actor coordinating the interactions among Stakeholders in the policy-making process.

In terms of Informal actors' relationships, this is a heterogeneous group with a variety of structures in its institutions, as well as policy aims, scope, representativeness and levels of power. The case of Chile and the emergent mode of governance is characterised by the presence of these new Stakeholders which are not formally inserted on the State Penitentiary network, defined by this legal perspective as it was explained previously.

Some of the new actors are from the Academia, the Judiciary, International agreements, the Private sector, the Religious sector and local governments.

The consequences for Stakeholders have produced some network challenges due to the dynamism of the field, the case of Chile is interesting in terms of Policy Steering due to the role of the State is still central but the presence of non-State actors is clear and fruitful. The governmental purpose is to strengthen the Penitentiary Institutions, which is complexing the policy area, slowing process and its performance through a mode of governance mainly hierarchical but using a distinctive local approach.

The evaluation of this policy is related to the mentioned disperse legal framework which contends ambiguous roles and rules in the Penitentiary system and some incipient outcomes such as the insufficiency of the budget in Social Rehabilitation. There is also a need to improve the coherency in this policy in order to build a common definition and better articulations among Stakeholders.

Finally, in reference to the main question of this research, it is possible to observe an intention to unify public initiatives in Chile by the new public policy on Social Rehabilitation, intentions that are coming from most of the Stakeholders, both State and non-State actors, in which the role of the Ministry of Justice and Human Rights is central through its public agency the Chilean Prison System, which is attending directly offender population and it is commanded to assist the process of return to the community. Nevertheless, its mode of governance is not pure because it has features of a hierarchical model and market logic to steering this policy, which was observed in the way to include new members and the diminished state 'steering capacity'.

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Chapter 9 Appendices

a. Social Rehabilitation Policy Timeline:

#	Year	Important Events	Presidents
1	2000 - 2005	Criminal Procedure Reform, implemented gradually by the Ministry of Justice in all the regions of Chile, until 2005.	Ricardo Lagos (2000-2006)
2	2000 December	'Penitentiary Infrastructure Concessions Program', which was commanded by the Ministry of Justice in partnership with the Ministry of Public Works.	
3	2003 February	Law 19.856 about Reduction of Sentences to establish a method for reducing the time of measures based on demonstrated outstanding behaviour of offenders. Later, Decree 685 of the Ministry of Justice, which approves this Law's regulations.	
4	2008	Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas' adopted from the Inter-American System of Human Rights.	M. Bachelet (2006-2010)
5	2009 June	Penitentiary Reform Council, an intersectorial council convened to generate a space for reflection to consolidate a proposal for a penitentiary policy in Chile.	
6	2010 December	Prison Fire of Penitentiary Centre of San Miguel, which killed 81 inmates, revealing terrible penitentiary conditions.	S. Piñera (2010-2014)
7	2010	Safe Chile Plan in the first Piñera presidential period (2010 to 2014), which starts to fund Social Rehabilitation programs at the local level ('Programa Barrio en Paz' as example)	
8	2011	Bangkok Rules ratification by the government of Chile, which are oriented to protect women offenders through an especial regulation from the United Nations Universal System of Human Rights.	
9	2012 May	Creation of the Postpenitentiary Department of the Chilean Prison System.	
10	2012 June	Law 20.603 about Replacement Penalties, modifying the Law 18.216, but both are in effect.	

11	2013	The Senate establishes the Thematic Table of Social Rehabilitation and Human Rights.	
12	2013 October	‘Support Centres for Social Integration’ (CAIS), which replace the former institutions ‘Patronatos Locales de Reos’.	
13	2013 December	Incorporation of intervention Model to the Chilean Prison System.	
14	2014 May	Decree 943 on Penitentiary Work.	Michelle Bachelet (2014-2018)
15	2014	Inauguration of the ‘Human Rights Protection and Promotion Unit’ for Chilean Prison System.	
16	2015	The ‘Mandela Rules’ from the United Nations Universal System of Human Rights, articulated the essence of ‘Minimum rules for the Treatment of prisoners’ adopted by the Prison System in Chile.	
17	2016 March	Technical Standard on probation and intensive probation.	
18	2017	‘Volver a Empezar Program’ by the Ministry of Justice in conjunction with 10 Municipalities.	
19	2017 June	The Advisory Committee for Social Rehabilitation was founded by the Ministry of Justice and Human Rights	
20	2017 December	Launching of the Public Policy of Social Rehabilitation, as a product of the Advisory Committee.	
21		National Human Rights Plan, contained in Law 20.885 (2016), formed the Under-Secretary for Human Rights. It holds a series of topics, in which the promotion of Social Rehabilitation is considered as a main objective for people deprived of freedom.	
22	2018	The Draft Law of Sentences Execution ongoing by the Ministry of Justice, using Participatory Dialogues to include Stakeholders opinion.	S. Piñera 2018-2022
23		Law 20.931 Law for the effective application of the Penalties for crimes of Robbery, Damage and Concealment, and Criminal Prosecution.	

b. Formal and Informal Stakeholders of the Penitentiary Network

Formal Actors	Informal Actors
Ministry of Justice and Human Rights	International Agreements (UN
Under Secretary of Justice	Judiciary
Social Rehabilitation Division	Local Governments
Departament of Social Rehabilitation for adults	Community

Programs Unit	Private sector
Chilean Prison System	Academia
National Direction	International institutions
Technical Subdirection	Civil Society organisations
Advisory Committee for Social Rehabilitation	
Social Rehabilitation Policy	
Other government institutions participating (including 10 Ministries and Public Services	