



## Prisons: factory of criminal organizations

*Prisons: factory of criminal organizations*

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### SUMMARY

This article aims to examine how criminal organizations were created and how they recruited people. With this in mind, Law 12,850 was published on August 2, 2013, which defined organized crime in the Penal System, introducing new rules and concepts for this type of crime. Several new tools have also emerged to help combat criminal organizations, making them much more effective. But, after more than three years, has this new law brought relief to society regarding the growth of criminal organizations? In a "chaotic" context, where there is a lack of state control, countless new situations of chaos emerge in the prison system. This is where we analyze whether we can inhibit the evident advance of the power of criminal organizations, often created and fostered within Brazilian prisons, which are true factories of raw material for these organizations. Data from security agencies will be analyzed to demonstrate the growth of criminal organizations and the reasons for this phenomenon, as well as presenting, without obviously exhausting the subject, public policies to inhibit their advancement.

**Keywords:** Prisons. Criminal Organization. Law No. 12,850.

### ABSTRACT

This article aims to verify how criminal organizations were created and their recruitment of people. Under this focus, Law No. 12,850 of August 2, 2013 was published, which defined organized crime in the Penal System, where there are new rules and concepts of this type of crime. Several new tools have also emerged to help combat criminal organizations, making them much more effective. But after more than three years, has this new law brought encouragement to society with regard to the growth of criminal organizations? In a "chaotic" context, of lack of State control, countless new situations of chaos emerge in the prison system and it is where it is analyzed whether we can inhibit the evident advancement of the power of criminal organizations, often created and fostered within Brazilian prisons that constitute true factories of raw material for these organizations. Data from security agencies will be analyzed that will demonstrate the growth of criminal organizations and the reasons for such a

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## INTRODUCTION

The current prison system undoubtedly produces criminals, as idle time and coexistence with different types of people (with different crimes) provide exchanges of experiences. Brazilian prisons have become offices for organized crime leaders, overcrowded conditions and precariousness show that, without planning, there are no possibilities for rehabilitation and resocialization of inmates.

Given the state's fragility in combating organized criminal groups, In 2013, Law No. 12,850 was published in Brazil, which presents articles of a legal nature. criminal and criminal procedural law and brings, as an unprecedented form, the legal definition of crime organized.

Initially, it will be important to conceptualize the organization. criminal and its difference from the criminal association that was long required by legal scholars as well as by law enforcers. An important step was given in this sense. The emergence of criminal organizations takes us back to a very ancient time, as far back as the emergence of criminal activity. Identify the timing and causes of the emergence of these groups is also necessary to understand the scope they took, which will be discussed in the sequence of this article.

Afterwards, the chaos in the prison system will be addressed and how organizations criminals act in the face of this state inertia. The truth is that we are facing a social and political chaos where the organizations are the ones who win this battle criminals who take advantage of society's ills and the State's inefficiency to recruit more "soldiers" into this powerful scheme and thus ensure the these people survival conditions that should be provided by governments.

We have news that more and more criminal organizations sponsor and increase their groups, even being holders of a parallel power that "govern" several neighborhoods, favelas and even prisons with their strong power of action.

With overcrowded prisons and the lack of due attention from the State, increasingly more criminal organizations meet the needs, not just give attention basic, such as food, hygiene materials, but also drugs, cell phones, making these inmates tied to and dependent on this network of crime, including when they leave the prison system, where even their families are threatened if they do not comply with the orders of the organization that were dependents.

Thus, it is not clear how to dissociate the chaos of the prison system from the birth of criminal organizations, and such emergence is attributed exactly to the historical disrespect that is practiced against the prisoner, it is not even observing rights and principles enshrined worldwide, such as human dignity.

The topic is of great relevance both in the legal and social fields, since all people, indirectly or not, are affected by such a crime. In order to achieve the objectives listed above, this scientific article was carried out through the use, above all, of readings of doctrines and articles, which consists of the literature published around the topic under analysis, such as books, magazines, individual publications and written press.

## 1 CONCEPTS AND CHANGES

Although a more specific concept of organized crime has emerged with the advent of Law No. 12,850/2013, criminal organizations already existed since the most remote times of civilization. Because there is no legal system Brazilian a more effective treatment against this type of criminal, art. was used. 288 of the Penal Code to define this type of crime:

Art. 288. 3 (three) or more people joining together for the specific purpose of committing crimes:

Penalty – imprisonment, from 1 (one) to 3 (three) years

But such a concept seemed outdated in the face of crimes committed by several people gathered together for a single purpose: to commit unlawful acts. As I said Luiz Flavio Gomes even before the creation of the new Law:

Organized crime has a diverse texture: it is transnational in nature, as it does not respect the borders of each country and presents similar characteristics in several nations; it holds immense power based on a global strategy and an organizational structure that allows it to take advantage of the structural weaknesses of the penal system; it causes high-level social damage; it has great expansion potential, encompassing a range of criminal behaviors without victims or with diffuse victims; it has the instrumental means of modern technology; it presents an intricate scheme of connections with other criminal groups and an underground network of connections with the official frameworks of the social, economic and political life of the community; it gives rise to acts of extreme violence; it displays a power of corruption that is difficult to see; it weaves a thousand disguises and simulations and, in short, it is capable of inertiating or weakening the Powers of the State itself. (GOMES, 1997, p. 75)

Brazilian legislation was outdated, making it impossible for crimes committed by criminal organizations were investigated and punished in according to its harmful power. Without the adoption of a delimited concept it became even more difficult to choose a legal-social method to combat to organized crime.

And thus, Article 1 of Law 12,850 was created, from which a criminal organization can be defined:

“A criminal organization is considered to be an association of 4 (four) or more people structurally organized and characterized by the division of tasks, even informally, with the objective of obtaining, directly or indirectly, an advantage of any nature, through the practice of criminal offenses whose maximum sentences are greater than 4 (four) years, or which are of a transnational nature.”

There are thus two basic distinctions to be drawn: Association criminal is the union of three or more people for the specific purpose of committing crimes, provided for in art. 288 of the Penal Code. A criminal organization is the union of 4 or more people who are structured in an orderly manner, dividing their tasks with habitual and permanent, even if informally, with the aim of obtain advantage of any nature through the commission of criminal offenses whose maximum penalty is greater than 4 years.

This differentiation is very important so that we can understand where, how and why criminal organizations emerged and how they are treated before the legislation.



## 2 THE EMERGENCE OF ORGANIZED CRIME IN BRAZIL

Organized crime is a notorious fact in our society. All days we are warned through the spoken and written media of countless cases of more and new criminal organizations that emerge to terrorize the entire population. And not only in the less favored classes, but also at the top of Power, we experience large economic groups, formed by countless people, with a common purpose: to commit criminal offenses of all kinds, organized in groups.

The origins of organized crime are not easy to research. However, It is true that criminal organizations are as old as the activity itself criminal. Thus, it is very likely that this origin is related to the origin of the man, considering his ability to follow or not the social objectives to them imposed by the community that surrounds it and in the face of obstacles that arise during the human existence itself.

It should be noted that, in the 70s and 80s, the emergence of the Command Red occurred when common prisoners and political prisoners joined together and exchanged information, providing criminals with greater knowledge of the world politician. The publication on the Portal of the Public Ministry of the State of Ceará narrates the following:

“The permanent coexistence between political prisoners and ordinary prisoners made it possible to exchange knowledge. The political prisoner provided information that had never been passed on to ordinary prisoners. People with a high intellectual and cultural level came together with others who did not have them (perhaps due to their low level of education in many cases), but who had knowledge of the world of crime (...)

(...) Cultural exchange provided common criminals with a new vision, a greater awareness of the world around them, they absorbed their ideas and applied them to their criminal activities. As a consequence, a more elaborate type of crime emerged, planned with more care.” (MAIA, 2011, p. 7)

Thus, according to the above report, there was coexistence between common prisoners and prisoners politicians which provided an exchange of knowledge. Bringing people together with high knowledge of politics with people with criminal thinking, but with low education, there was a perfect scenario for the emergence of criminal organizations.

In an article published on the Boletim Jurídico website, the authors describe it this way:  
about the creation and operations of one of the most feared criminal organizations:

“ In São Paulo, in the mid-1990s, a criminal organization called PCC (Primeiro Comando da Capital) emerged in the maximum security prison attached to the Taubaté Custody and Treatment Center. It has diversified criminal activities in several Brazilian states. According to the founders of Primeiro Comando da Capital, it was created in response to the abuse and oppression that existed in the Brazilian prison system, especially in São Paulo. This is why, like Comando Vermelho, it is guided by the ideals of freedom, justice and peace. The PCC sponsors rebellions and rescues of prisoners, robs banks and cash-in-transit vehicles, extorts relatives of inmates, extorts them through kidnapping and drug trafficking, and has international connections. In addition, it murders members of rival factions, both inside and outside prisons.

”

To conclude the walk through the history of criminal organizations, we highlight two sentences, one from Lima (2014, p.473) “product of an absent State, organized crime is one of the biggest problems in the globalized world of today”, and another by Pacheco (2011, p.23) “therefore, it is concluded that criminal practice at levels of greater or lesser organization is as old as the history of nations, which is not surprising, since crime is a factor that makes up social coexistence since the most distant times”. The texts of both authors demonstrate that the Organized crime is one of the biggest problems in the world and this activity has always been present in society and has only grown over time.

### **3 RELATIONSHIP BETWEEN CHAOS IN PRISONS AND INCREASE IN CRIME ORGANIZED**

By the concept of criminal organization brought up above with the advent of the Law No. 12,850/2013 and with notes on the emergence of organizations criminal activities, especially within prisons and penitentiaries, we can draw a parallel between the poor structure of Brazilian prisons and the emergence/growth of organized crime.

The growth of organized crime is due to the complete absence of social and urban public policies and crime control policies corroborated by the misery in which a large part of the Brazilian population lives. In a country where there are few chances for the majority of the population, where the distribution income is unequal, unemployment is on the rise, that is, where there are no

once the minimum guarantees for a dignified life are implemented, organized crime emerges as a life option, since it offers, even through illicit means, the possibility of a more dignified and humane life. As Lavorenti & Silva explain (2000), "criminal organizations gain even more strength when they start to take a paternalistic attitude when offering social benefits, in order to take advantage of them if the absence of the State, which reinforces the idea of the existence of a true anti-State or parallel state."

The space that should have been occupied by the State was unfortunately occupied by criminal organizations, thus taking on large dimensions that are not even even the new Law may repress. For the neediest population, being part of a criminal organization, in many cases, reflects in a better life, without to meet basic needs. For those who are considered more wealthy, participating in this type of organization is sure to increase your income and earnings. Such is the reality that some say that Organized Crime is such like a cancer in the heart of society, since it corrupts all its segments in all spheres of power.

As can be seen above, in the not too distant past, crime organized emerged to defend the rights of prisoners who were incarcerated. Soon after, the main product of the organizations' promotion criminal activity was illicit drug trafficking. But with the advent of technology - and this is even abundantly available within prisons – globalization has occurred in all branches of crime such as robberies, kidnappings, homicides and more recently widespread corruption within the constituted Powers in our Country.

Criminal organizations are able to structure themselves in such a way organized that they form a force parallel to the State. Often, have ramifications in different segments of society and government (corrupt authorities from various levels of government), which ends up vilify the democratic rule of law itself.

Population growth is reported in the news every day prison, as crime is becoming increasingly bold and certain of impunity. After enter the world of crime, especially in large cities, many of which people, not to say the majority, have no alternative but to be part of criminal organizations that already exist. It can also be said that many times



people who enter the prison system were already part of factions, being guided by bosses who are already deprived of their freedom, following orders. Thus, it is stated that increasingly the biggest criminals, even when deprived of freedom, has the power to organize factions and from within the prisons control any and all types of criminal activity.

The overcrowding of Brazilian prisons strengthens criminal factions and, therefore, directly influences the safety of the population. The absence of the State in prison units leaves room for the creation of a parallel State, with source of income, rules and their own justice, guaranteed by these criminal groups. As stated by federal deputy Domingos Dutra (PT-MA), rapporteur of the CPI of Prison System (completed in 2008), criminal organizations occupy the void left by the State:

"When a member of these organizations dies, it is not the government, but the criminal group that pays for the burial. The State does not provide a defense attorney, but the criminal faction pays for the lawyer. When the person is taken to a prison in another city, the PCC (Primeiro Comando da Capital) pays for the transportation of the family members for the visit".  
"These organizations control inside and outside the prison. These groups control the system, they control the State that makes a pact with these organizations to be able to manage the prison system" (Favero *apud* Dutra, 2010)

The Final Report of the Assembly Subcommittee on the Prison Situation  
Legislative Assembly of the State of Rio Grande do Sul, dated October 2011, contains the following observation:

"From the moment they enter the prison system, prisoners are made aware of the rules, they know that they must respect the norms that govern the prison, this includes unconditional respect for the gangs' commands. We found that the inmates are hierarchically organized internally. The organization is so great that the galleries, also called "city hall" by the prisoners, have a mayor and even secretaries. However, the election of those in charge is a measure of force and not exactly a democratic procedure. We also found that the prisoners who enter the prison system are expected, from the moment they arrive, to join a faction, if they do not already have one. For many, becoming a member of a faction is a matter of survival. The faction protects the inmates in its custody, whether through internal actions such as security and supply of supplies, or through external actions such as providing care to their families. However, the protection offered by the factions is not a charitable act; help is demanded through work and eternal loyalty to the faction. The factions are strong and some points make them even stronger. For example, the fact that the State does not provide the necessary supplies to the inmates. The provision of material assistance to the inmates is done by the factions and their families,



not by the State, they are hygiene materials, food, clothing.” (\_\_\_\_, 2011)

According to Sallin:

“Factions are groups structured around a vertical leadership nucleus, which imposes codes of conduct and judgments on the inmates in its gallery. In this way, the recognition of factions by management strengthens this type of leadership, reaffirming their notoriety in the penitentiary system and their power over the rest of the inmates.” (SALLIN, 2008, P.27)

The power of criminal organizations is so present in prisons, going from the choice of the gallery in which the prisoner will reside until his stay, being a kind of tranquility that the prisoner has when entering the gallery, because there, he will feel protected by this group, obeying the imposed rules by them, otherwise you will no longer be able to remain in that gallery, being able to create a kind of conflict for himself, even harming his permanence in the prison house.

In addition to this situation of the prisoner joining certain factions, his family who stays outside, often in a vulnerable situation, is also “protected” by this same group, which guarantees both the prisoner and his family survival conditions, with everyone being held hostage by the faction's orders.

This shows that, in most cases, subjects integrate into the group not because they identify with the faction, but rather because of a lack of options: firstly, to protect their physical integrity and, secondly, for the need for socialization and adaptation to the social environment in which they were inserted, a process that Bitencourt (1993) calls imprisonment.

When participating in a public hearing at the Human Rights Commission of Chamber of Deputies, former Minister of Justice José Eduardo Cardozo, when speaking about reducing the age of criminal responsibility, he stated:

“Our prisons are true schools of crime. Criminal organizations operate in these units and control violence outside the prisons. We know that the command of much of the violence, crime, drugs and situations that terrorize citizens comes from inside the prison.” (Cardozo, 2015)

Faced with all the problems mentioned above, we have a State that is completely inert, passive in the face of the situation and often a partner of the factions that “organize” Brazilian prisons. In an interview with the website Portal Terra, the prosecutor

gaucho Gilmar Bortolotto, says that in Rio Grande do Sul, he has access to information from inside prisons by establishing a relationship of trust with the prisoners. However, according to him, the use of this type of investigation by the police is delicate due to the risks to which he and the prisoners are exposed. A mother here (at the Public Ministry) and says that her son owes R\$500 to so-and-so, who is who is selling drugs in there, and that his son is sworn to death. When it's in the gut of that system, the information you receive is different," he says.

Situations like these are common within the current system crisis. As cited by Dias (2010), in his article "Integration between police military and civil police: some considerations", when he declares the force that the First Capital Command in Brazilian prisons, mainly in the State of São Paulo:

"[...] extending its control over almost the entire prison system, the PCC began to control the illicit activities carried out inside and outside the prison. In addition to promoting some goods and services for some prisoners and their families, the PCC imposed itself as a regulatory and mediating body of social relations in the prison, exercising the role of arbitrator and determining decisions in the most diverse forms of conflicts between the prison population and between the latter and the staff, participating directly or indirectly in the management of the prison units by interfering in the most diverse social processes that occur there" (DIAS, 2010, p. 394).

In the debate of the first edition of Sul21 Debates, held on the 4th of November 2015, Judge Sidinei Brzuska currently responsible for the Court of Porto Alegre Central Prison evaluates:

"The main problem involving the state prison system is cultural. "The prison system has become a business that makes money for crime. The Central Prison is the best example of this. For crime, the worse the prison system is and the less the state invests in improving it, the better for its business. The worse the prison, the better it is for crime. The criminals took advantage of this. About 20 years ago, the profile of our prison system changed. Before, prisons only received things from the street. They started sending things to the street too, especially money. The system is not failing today because it has become a business and makes money. The prisoners are desperate to occupy the new prison in Canoas and start operating there too. And society wants to continue piling people up in this scheme. I feel like I'm talking to the wall." (Duarte *apud* Brzuska, 2012)

It is very important to bring to light the conclusions of the Prison Task Force carried out in the year 2010/2011 by the National Council of Justice, in all prisons in the country. These conclusions gave rise to the report: “ System X-ray Brazilian penitentiary” which contain the following statements about the system gaucho penitentiary:

“In Rio Grande do Sul, prisons have become fertile ground for criminal organizations. The State is currently dealing with the “monster” it created by allowing gangs to dominate the prison system. When a new inmate walks through the doors of a prison, he is forced to work for the organization he is “affiliated” with and, in exchange, receives what the State does not provide, such as security and food supplements. The insecurity created inside the prison – a crime laboratory – crosses the walls and becomes public.

“Prisoners affiliated” with criminal organizations that control prisons in Rio Grande do Sul receive supplementary food, security, drugs, family support and other benefits that are not provided by the State. “The factions operate in many prisons in Rio Grande do Sul.

They are only unable to enter a few units, where the State is present”, reported the judge coordinating the Mutirão, Douglas Melo.

The result is an increase in escapes, insecurity on the streets and society's rejection of prisoners. Despite several attempts to create quota laws to encourage the entry of ex-prisoners into the job market, the population's prejudice keeps them marginalized and without prospects for social reintegration. “Society needs to become aware that it is also responsible for finding solutions to welcome inmates into its environment,” concluded the report by the Task Force. (\_\_\_\_, 2011)

The supervising judge João Marcos Buch, from the Prison Task Force held in the year 2014 for two weeks at the Central Prison of Porto Alegre – RS, in interview given on the day the results of the campaign were delivered, highlighted the influence of criminal factions within the prison and recognized by the State:

“It is necessary to negotiate with the gangs. Bargaining chips with the mayors of the galleries. The mayors are sovereign lords over the lives of the inmates inside. The inmates obey the mayors more than the State. It is not that the Military Police do not have control and command of the prison unit, however, crossing the bars - and entering the galleries - the mayors of the criminal gangs are the ones in charge. And he concluded: The same law that leads to incarceration needs to be applied inside the prison. And if this law is not applied, the savage state is realized inside and it is obvious that we will suffer out here.” (Buch, 2014)

So one thing is certain, there is no denying the existence of a organized crime, or rather, real criminal enterprises. Today, although there is criminal activity carried out by a single individual or by a small group, this is no longer as profitable which ends up generating the criminal associations.

Crime became organized and acquired technology, at the same time as the country sought the globalization of the economy, so that both criminal activity how the country's economy grew intertwined, making it difficult nowadays separate them, since this would in many cases cause the end of an activity lawful economic.

## CONCLUSION

Based on the above, and through numerous readings to conclude this article, One thing is certain: there is no denying the existence of criminality organized, or rather, real criminal companies, inside prisons Brazilians. We have a failed prison system, ineffective in its purpose, which that is, to treat this prisoner so that he does not commit crimes again and to return him to society.

The disrespect for the rights of prisoners, both on the part of those who should to ensure your safety, as well as on the part of the Judiciary, were some of the factors observed in this article, as drivers for the creation and expansion of organized crime.

From the moment we have an inert State, far from meeting the needs basic needs of prisoners, a Parallel Power is created that can do anything and everything provides – including security within the prison – both for the inmate and for your family who are at the mercy of criminal organizations, causing thus, this “network” grows more and more and in an uncontrolled manner.

Another major driving force behind the growth of organizations criminals is the overcrowding of prisons. People, even if they are perpetrators of crimes, including disgusting ones, they should not live like animals in prisons, without basic infrastructure, often without food, clothing and materials hygiene, not to mention the disregard for the legal assistance they should have to receive.

The prison system is bankrupt and far from being able to adapt, from being able to provide security to our society and to those who live inside prisons



Brazilians. Thus, criminal organizations take advantage of all the reasons already exposed to literally “manufacture components” for their large crime network. Prisons that were supposed to correct are increasingly becoming a factory of delinquents.

A new Law emerged to conceptualize, expand investigative methods and punish the crime of criminal organization more severely. But it's nothing. It is important to create laws capable of dealing with crime if the State remains inactive in its main function is to provide conditions for the return to social life.

Combat the causes that generate crime and that end up bringing about individual to be arrested, with adequate public policies, not only in terms of criminal procedure, but also in the social field, would be some of the conditions for reducing the number of people imprisoned and for consequence of the increased power of criminal organizations.

Thus, far from exhausting the topic, which will still be discussed by many and expanded, what we have today is a new procedural criminal law, which conceptualized the crime of criminal organization – which has been required for a long time – against modernization of crimes, but which alone is small in relation to the major ones problems presented.

What is needed is public policies that aim to prevent people from entering. for this failed and ineffective system, but if they happen to enter, they should also be their basic needs are met, so that they are not led to stay prisoners of the criminal organizations that today “manage” the prisons Brazilians.

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