Normative - teleological analysis of the New Routes in Penal Execution (Corrections) Project, of the State Court of Justice of Minas Gerais, in the light of International Human Rights Law.

Carlos Frederico Braga da Silva[1]

ABSTRACT: This essay examines in a normative-teleological account international human rights treaties ratified by Brazil regarding the specific purposes of the imprisonment system. By virtue of seeking principles of interpretation, one suggests an accommodation approach of what is set forth in the Brazilian Penal Code provisions concerning *treatment of offenders* foreseen in international human rights law, taking into account each specific purpose. One stresses the importance of the Penal Execution Judge (corrections), to grant the observance of the right to individualized punishment, established in the Brazilian Federal Constitution, mainly to avoid recidivism, thus protecting society and improving justice.
KEY WORDS: Corrections – Human rights law – International standards – Treatment of convicts – Purposes – Recidivism – Judge's duties.

1. Introduction.

This essay examines in a normative-teleological approach the New Routes in Penal Execution (Corrections) Project, of the State Court of Justice of Minas Gerais, taking into account international human rights law ratified by Brazil with regard to the purpose of the imprisonment system and its legal hierarchy within the Brazilian framework. One also assays federal and state statutory law concerning this matter[2], and the juridical effects that have been produced as well.

This study does not consider only criminal law and criminal policy aspects concerning deprivative of liberty sentences, but aiming at a more

[1] State Judge Director of Citizenship and Human Rights Law – Association of the Magistrates of Minas Gerais, Brazil. Master Degree in Comparative Constitutional Law - Cumberland School of Law, Birmingham, Al/EUA. Professor of Constitutional Law and Citizenship and Human Rights Law.

[2] Available at http://www.tjmg.gov.br/info/pdf/?uri=-/responsabilidadesocial/atos-_normativos.pdf, last access in 04.09.2008.

humanistic account it focuses further on constitutional law doctrine and persuasive precedents to highlight the logical meaning of enforcing international law norms within domestic Courts.

The final proposal will be a rational interpretation which could accommodate the application of deprivation of liberty in accordance with the principle of human dignity. Such approach will probably fulfill the normative purpose of reform and social rehabilitation of convicts foreseen in international treaties. The approval of the outcome suggested will depend on accepting the values enshrined in constitutional law as superior ones.

2. International Human Rights Law Emergence.

The Universal Declaration of Human Rights[3] was drafted shortly after the end of the atrocities verified in the Second World War. The UDHR - the most translated juridical document in all times - has been considered by many people a remarkable product of juridical reasoning. Its first article assimilates relevant influence of philosophy, natural law and universalism when asserting that "*All human beings are born free and equal in dignity and rights*". Hence, by declaring that rights came as result of being human, the UDHR rejected the traditional view that rights can only be conferred by governments[4], disclosing that "the right to have rights" is a historic achievement of mankind[5].

Nevertheless, mainly due to the Cold War and to the political conditions that prevailed right after World War II ended, time in which the division between communists and capitalists contributed to accentuate hidden and avowed political divergences, only in 1966 were the International Covenant on

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[3] Universal Declaration of Human Rights, G. A. Res. 217A, available at http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/043/88/IMG/NR004388.pdf?OpenElement (Dec. 10, 1948) [hereinafter UDHR].

[4] Paul Gordon Lauren, The Evolution of International Human Rights: Visions Seen 213-227 (University of Pennsylvania Press, 2d ed. 2003).

[5] Hannah Arendt *quoted in* Flávia Piovesan, Direitos Humanos e o Direito Constitucional Internacional, [Human Rights and International Constitutional Law] 118 (Editora Saraiva, São Paulo/SP, 8th ed. 2007).

Economic, Social and Cultural Rights[6] and the International Covenant on Civil and Political Rights issued[7]. Both of them compound "*The International Bill of Human Rights*", according to the United Nations terminology[8], and triggered the international legal system of protecting these rights[9].

3. International Dispositions Concerning the Functions of Deprivative of Liberty Sentence.

The International Covenant on Civil and Political Rights[10] provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person, as well as that the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation[11]. Hence, it establishes the way in which corrections must run, and also determines its chief goal.

The United Nations adopted standard minimum rules for the treatment of prisoners[12], and it provides that the purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life[13]. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are

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[6] International Covenant on Economic, Social and Cultural Rights, G. A. Res. 2200A (XXI), *available at* http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/005/03/IMG/NR000503-.pdf?OpenElement (Dec. 16 1966) [hereinafter ICESCR].

[7] International Covenant on Civil and Political Rights, G. A. Res. 2200A (XXI), *available at* http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/005/03/IMG/NR000503.pdf?OpenElement (Dec. 16, 1966) [hereinafter ICCPR].

[8] Available at http://www2.ohchr.org/english/law/, último acesso em 08.09.2008.

[9] Flávia Piovesan, op. cit., p. 158.

[10] Art. 10, 1.

[11] *Id*., 3.

[12] Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. Available at. http://www2.ohchr.org/english/law/treatmentprisoners.htm, last access in 26.01.2009.

[13] Principle 58.

appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners[14].

Furthermore, the American Convention on Human Rights establishes that punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners[15]. The mandatory conclusion is that the imprisonment system should at least furnish prisoners the conditions required by law, mainly considering that the first contact of most convicts with a system which intends to fit their values and personalities to a life in society is within the penitentiary system.

It should be noted that the central purpose of international human rights law is to call into question positive legal practices that fail to respect universal values[16]. Interpreting is, undoubtedly, hierarchizing[17]; and in fact law can not be defined other than by the difference it makes in society[18]. Hence, in a Durkheimian perspective, after signing international human rights law treaties the Federative Republic of Brazil makes itself into optimistic societies – those that choose rehabilitation over deterrence, incapacitation, and/or retribution – ; and those societies do so because they view the criminal as a malleable, redeemable, and reclaimable human who can be reabsorbed into society because the cause of his crime is not inherent in his essence but is a result of disease or social causes. Moreover, optimistic societies choose rehabilitation

[14] Principle 59. One should stress the principle 61, which provides that the treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

[15] Art. 5º, 6, available at http://www.oas.org/juridico/english/treaties/b-32.html, last access in 26.01.2009 [hereinafter ACHR].

[16] Gerald L. Neuman, The Uses of International Law in Constitutional Interpretation, 98 A.J.I.L. 82, 85 (2004).

[17] Luís Carlos Balbino Gambogi, Direito: Razão e Sensibilidade, As Intuições na Hermenêutica Jurídica [Law: Reason and Sensibility, Intuitions in the Juridical Hermeneutic] 14 (Editora Del Rey, Belo Horizonte/MG, 2006).

[18] David M. Trubek, Where the Action Is: Critical Legal Studies and Empiricism, 36 Stan. L. Rev. 575, (1984).

because they believe they have the means to effect rehabilitation within these individuals[19]. Finally, they have enough confidence in the collective moral values embodied in their framework, through which they intend to transform most criminals into good citizens.

4. International Human Rights Law in the Light of the Brazilian Supreme Federal Court Jurisprudence.

Indeed, a special place for the values addressed in international human rights law has been duly perceived in the Brazilian constitutional system. Thus, in Brazil international treaties depend upon conjugated wills of Executive and Legislative Branches[20], and are entirely entrusted to the Government of the Federative Republic of Brazil, which is formed by the indissoluble union of the States, Municipalities and the Federal District[21]. Under the Brazilian Constitution the Union shall have the power to maintain relations with foreign States and participate in international organizations[22]. The Constitution also provides as duties of the President of the Republic to maintain relations with foreign States[23] and conclude international treaties, conventions and acts, *ad referendum* of the National Congress[24].

By unanimity, the Full Court of the Brazilian Federal Supreme Court decided that, when signing an international treaty, the President of Brazil represents not only the Federal Government, but also the Brazilian State as a

[19] Ashley T. Aubuchon. 2008. "Rehabilitating Durkheim: Social Solidarity and Rehabilitation in Eastern State Penitentiary, 1829-1850" Available at: http://works.bepress.com/ashley-_aubuchon/10, last access in 17.05.2009.

[20] S.T.F., ADIN n.° 1.480-3, Distrito Federal, Rappourter: Min. Celso de Mello, 04.09.1997, find at http://www.stf.gov.br: "The exam of the current Federal Constitution allows concluding that the execution of international treaties, and therefore their incorporation to the internal order, in the system adopted for Brazil, are derived of a subjectively complex act, resultant of two conjugated and homogeneous wills: of the National Congress, which decides, definitively, by means of legislative decree, on treaties, international agreements or acts (CF, art. 49, I) and of the President of the Republic, that, beyond being able to celebrate these acts of international law (CF, art. 84, VIII), also make use - while Head of State that is - of the ability to promulgate them by means of decree."

[21] C.F. art. 1º.

[22] C.F., art. 21, I.

[23] C.F., art. 84, VII.

[24] C.F. art. 84, VIII.

whole; hence, he does not act as a single Chief of Government, but as Head of State. So, international law treaties are made under the authority of the Federal Republic of Brazil, which has competence and constitutional legitimacy to celebrate international treaties binding on the State of Brazil and to disclose to the international community the sovereign will of the Nation.[25]

The Brazilian Supreme Federal Court decided in the RHC n° 79.785[26] that "[A]s well as it does not affirm it in regard to internal federal statutes, the Constitution did not need to say itself overlapping international treaties: the hierarchy is inherent in unequivocal rules, as the ones that submit international conventions approving and promulgating to the legislative procedure imposed by the Constitution and less demanding than constitutional amendment process and that one that, in consequence, explicitly states that international treaties should be object of judicial review".[27]

On December, third, 2008, the Brazilian Supreme Federal Court analyzed whether an internal federal statute issued in 1969, within the last military dictatorial period, was in conformity not only with the current Constitution, but also with the international human rights treaties subscripted by the Federative Republic of Brazil. And within the challenged federal statute there was a provision that allowed the civil arrest of a person who did not pay a bank debt, a kind of install payments, which has been currently celebrated mainly to finance automobiles acquisition. The Brazilian Supreme Federal Court affirmed the federal statute inconsistent with both the ICCPR and the ACHR, which expressly stated that no one shall be detained for debt. Thus, it is fair to say that within the Brazilian legal system international human rights treaties are considered supralegal, therefore, superior to internal federal statutes inconsistent with them, but do not have constitutional status.

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[25] S.T.F., RE n° 229.096-0, Rappourter: Min. Cármen Lúcia, 16.08.2007, find at http://www.stf.gov.br.
[26] S.T.F., RHC n° 79.785, Rio de Janeiro, Rappourter: Min. Sepúlveda Pertence, 29.03.2000, finde at http://stf.gov.br.
[27] C.F., art. 102, III(b)

Similarly, it is well known that the Brazilian constitutional law doctrine has received influence of the American Supreme Court jurisprudence. In *Marbury v. Madison* the Supreme Court affirmed that "*it can not be presumed that any clause in the constitution is intended to be without effect; and therefore such a construction is inadmissible, unless the words require it*"[28].

According to Brazilian Justice Celso de Mello one can not even censure eventual practices of judicial activism exerted by the Brazilian Supreme Court, especially because, among the innumerable causes that justify this affirmative behavior of the Judiciary Power, which creates a positive jurisprudence, there is a necessity of prioritizing the Constitution of the Republic, which has been many times transgressed and disrespected by pure, simple and convenient omission of the State Branches. Actually, when the Brazilian Supreme Court supplies the unconstitutional omissions, it has restored the Constitution, which had been violated due to the inertia of the State; and in so doing the Court has done nothing more than fulfilling its constitutional mission[29].

Moreover, among the indispensable measures to ensure the foundations of existence, one should include as mandatory duties of the State the reintegration of socially marginalized groups, for example, drug addicts, alcoholics and delinquents[30]. Therefore, the government omission is not acceptable. Even though on exceptional basis, whereas an omission of the other branches is harmful, it is within the duties of the Judiciary Power to determine the implementation of mandatory public politics defined by the Constitution, and to grant effectiveness and integrity to social and cultural rights impregnated of constitutional stature[31].

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[28] Marbury v. Madison, 5 U.S. 137, 161 (1803).

[29] Celso de Mello, Justice of the Brazilian Supreme Federal Court, speech delivered when chief Justice Gilmar Mendes was conducted to the current Presidency of the Brazilian Supreme Federal Court, available at http://www.stf.gov.br/arquivo/cms/noticiaNoticiaStf/anexo/-discursoCMposseGM.--pdf, last visited in 08.28.2008.

[30] Kildare Gonçalves de Carvalho. Direito Constitucional, Teoria do Estado e da Constituição, Direito Constitucional Positivo [Constitutional Law, Theory of State and Constitution, Positive Constitutional Law] 158 (Belo Horizonte: Del Rey, 14ª ed., 2008).

[31] S.T.F., RE-AgR 410715, São Paulo, Rappourter: Min. Celso de Mello, 22/11/2005, find at. www.stf.gov.br.

5. Brazilian Federal Statutory Law.

The Brazilian Penal Code provides that, when delivering a deprivative of liberty sentence, the Judge should consider the judicial circumstances and establish the sanction to be applied, its amount and the initial form of compliance, as necessary and sufficient for crime disapproval and prevention[32]. Moreover, the Penal Execution Law determines that corrections aim putting into effect the provisions of criminal sentence or decision, and at providing conditions for the harmonic social integration of the convicts[33].

By virtue of seeking principles of interpretation, one suggests an accommodation approach of what is set forth in the Brazilian Penal Code provisions concerning treatment of offenders established in international norms, taking into account each specific purpose. The interpreting rule addressed in *Murray v. The Schooner Charming Betsy* should be a guideline: "*[t]he statutes enacted by Congress ought to never be construed to violate the law of nations if other possible construction remains*".[34]

This study proposes using the values addressed within international sources to inform domestic decisions. One should stress that international human rights law does not intend to substitute national legal systems, but the former can supplement the latter, in order to improve the possible legal redress, just in case possible omissions and particular deficiencies occur[35].

Hence, in accordance with the Brazilian Penal Code, first and foremost the criminal Judges must set the sanction to disapprove and prevent crime, thus also attending society's interest. The limit of punishment judicially fixed on each sentence avoids hateful discretion and eternal punishment by the State, thus

[32] Brazilian Penal Code, Article 59.
[33] Brazilian Federal Law nº. 7.210, 11.07.1984, Article 1º.
[34] Murray v. The Schooner Charming Betsy, 6 U.S. 64 (1804). See also ICCPR, Article 5, 2, as well as ACHR, Article. 29.
[35] Flávia Piovesan, Direitos Humanos e o Direito Constitucional Internacional, [Human Rights and International Constitutional Law] 159 (Editora Saraiva, São Paulo/SP, 8th ed. 2007)

publicly revealing to each convict and to the whole society as well the quantity of penalty imposed on. In a second moment, grounded on the principle of human dignity, therefore, the interests of the convict in aggregating values and of the community in preventing recidivism, corrections can not deviate from its primary purpose, which consists of a treatment of reforming and social readaptation of the prisoners.

One should stress that the word *treatment* has been traditionally connected to security measures instead of deprivative of liberty sentences. Hence, an initial resistance to domestically accept the meaning foreseen in international norms is admissible. However, this study considers that the finalistic interpretation is the best one, and understands the word *treatment* not only as a simple medical solution, but also as a complex penitentiary intervention whereby the socialization of prison inmates could be achieved. To be successful, such restorative action has to have multidisciplinary nature and enough effectiveness to prevent recidivism, and should be compulsory provide the convicts within the imprisonment sentence experience. Indeed, the circumstances of each case, added to the prisoner's indispensable consensus and collaboration, which must be personally verified by the correctional judge[36], will rule its development and influence the outcome reached, thus concretizing the constitutional right of individualized punishment[37] in penal execution as well.

6. The State of Minas Gerais Statutory Law.

[36] Joint Decree nº. 862/07, 23.05.2005, which provides rules for removing prisoners subjected to deprivation of liberty sentence for the social reintegration centers - SRS managed by associations of protection and assistance to convicts – APACS, edited by the President of the Court of Justice of the State of Minas Gerais and the Corregidor-General of Justice: "Art. 2º: The prisoner convicted to a deprivation of liberty sentence, under closed, half-open and open regimes, whatever the length of rebuke and crime committed, may be removed to the SRS managed by APACS, through motivated act of the correctional judge, after hearing the public prosecutor and the penitentiary administration, and met the following conditions: I - express, in a written form, interest in being removed and complying with SRS rules."

[37] C. F., art. 5º, XLVI.

The State of Minas Gerais Statutory Law provides as a duty of the State to grant convicts the necessary conditions to their rehabilitation to live in society, thus hiring qualified professionals to achieve this objective[38].

The Judiciary Power, like the other ones, has to obey its own hierarchy. The State Court of Justice of Minas Gerais, among its attributions and concretizing[39] the provisions already mentioned in this essay, as well as taking into account that deprivative of liberty punishment has as an essential aim the rehabilitation of convict, and also that the 4th article of Penal Execution Law prescribes that the State must[40] obtain the community's support concerning official correctional activities, created the "New Paths in Penal Execution (Corrections) Project". Such project aims at giving incentive the foundation of Associations of Protection and Assistance to Convicts – APAC, institution capable of offering a human improvement method to better the convict's conditions of rehabilitation, thus protecting society and increasing justice.

7. Principles and Duties of the Penal Execution Judge (corrections).

When the Judge supplies some omissions concerning fundamental rights he does it in a supplementary way, thus acting provisory and secondarily due to legislative inaction[41]. With regard to international human rights law enforcement, lack of judicial activism actually means judicial omission, which could contribute to a crisis of legitimacy[42]: the intention of the Constitution's authors can neither be ignored nor disobeyed without producing negative consequences.

Justice Celso de Mello has already asserted that the Judiciary Power constitutes the instrument which grants civil freedoms, constitutional guarantees

[38] State Law nº. 12.936, 08/07/1998, section 2.
[39] Resolution nº. 433/04, 28/04/2004, enacted by the Superior Court of the State Court of Justice of Minas Gerais.
[40] Judge Paulo Antônio de Carvalho, from Itaúna County, always stresses the verb use in an imperative way: "*must*".
[41] Dirley Cunha Júnior, Controle Judicial das Omissões do Poder Público [Judicial Review of Public Power Omissions] 334 (São Paulo: Saraiva, 2004).
[42] *Id,* p. 349.

and the basic rights assured by treaties and international conventions subscripted by Brazil. This high mission - which was trusted to the judges and Courts - is characterized as one of the most expressive political functions of the Brazilian Judiciary Power. He also affirmed that the Judge, in the Brazilian Institutional Organization, represents the state agency in charge of materializing the public freedoms proclaimed by the constitutional declaration of rights and acknowledge by the acts and international conventions based on the law of the Nations.

According to Justice Celso de Mello, the Judge has the duty to act as an supporter of the Constitution - and to guarantee its supremacy - in the unconditional defense of the basic freedoms of the human being, ensuring, still, effectiveness to the rights established in international treaties of which Brazil is part. Justice Celso de Mello affirmed that this is the most important social mission and, at the same time, politically more sensible, that has been imposed to Judges, in general, and to the Brazilian Supreme Court, in particular. He stated that notably the judges and Courts have the duty to respect and to promote the effectiveness of the rights guaranteed by the Constitutions and assured by international declarations, in order to allow the practice of a democratic constitutionalism opened to the process of increasing the internationalization of the human being's basic rights[43].

The United Nations Office on Drugs and Crime (Unodc) published the Bangalore Draft Code of Judicial Conduct 2001, adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002 [44]. According to its drafting history "[T]he objective of the meeting was to address the problem that was created by evidence that, in many countries, across all the continents, many people were losing confidence in their judicial systems because they were perceived to be corrupt or otherwise partial." In its preamble

[43] S.T.F, Habeas Corpus 87.585/TO - Tocantins, Rappourter: Min. Marco Aurélio, 12.03.2008, find at http://www.stf.gov.br/

[44] Available at http://www.unodc.org/pdf/corruption/bangalore_e.pdf, last access in 17.05.2009.

was also asserted that “public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society”[45].

Principle 6 should be highlighted. It provides that competence and diligence are prerequisites to the due performance of judicial office. So should principle 6.4, which states that a Judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.

Likewise, the National Council of Justice urges all Brazilian Judges to comply the National Code of Magistrates[46], which establishes that knowledge and training of Judges are intensively special with regard to matters, techniques and attitudes towards maximum protection of human rights and development of constitutional values.

Furthermore, nowadays there has undoubtedly been reciprocal influence among countless legal cultures, and such has been fostered on the ground of globalization development. Similarly, the advent of the international human rights system has changed the conditions of constitutional adjudication in many countries and the coexistence of international and domestic positive legal systems for the articulation and protection of the fundamental rights of individuals may result in cooperation or conflict. But, inevitably, they will affect each other.[47] Thus, the creation of authoritative international human rights norms has had an impact on the fate of human rights. Its role, however, is ultimately subsidiary. The fate of human rights – their implementation, abridgment, protection, violation, enforcement, denial, or enjoyment – is largely

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[45] Available at http://www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf, last access in 17.05.2008.

[46] Approved in the 68ª National Council of Justice Ordinary Session, in 06.08.2008, file nº 200820000007337; published 18.09.2008; available at http://www.cnj.jus.br/index.php?view-=article&catid=170%3Ageral&id=4980%3Acodigo-de-etica-da-magistratura&format=pdf&option-=com_content&Itemid=491, art. 32, last access in 17.05.2009.

[47] Gerald L. Neuman, The Uses of International Law in Constitutional Interpretation, 98 A.J.I.L. 82, 85 (2004).

a matter of national, not international, action. This implies a further particularity in the way international norms are put into practice.[48] In addition, the international legal system lacks not only a legislature but also a developed court system, and it has only weak enforcement powers.[49] As a result, this study sustains that international law language and standard-setting evolution should also penetrate into substantive domestic law through the Courts decision-making process and administrative decisions. Therefore, mainly in matters concerning international human rights law, one can not disregard how constitutionally significant this law is throughout the world.

The constitutionalization of the Law, instead of banalizing even the most serious Constitution's intentions or migrating diverse ordinary rules into that, means the penetration of the Constitution to give form and life to inferior federal statutes. A hermetic Constitutional text can not be conceived, but its association to a constitutional block, which addresses sparse norms, embedded of fundamental values[50].

Hence, the Penal Execution State Judge must apply which is established in the United Nations human rights law treaties ratified by Brazil, as well as in other international norms, mentioned in this essay. One can not disregard the popular support to the *lex talionis* (an eye for an eye, a tooth for a tooth), or in opposition to punishment established by law, submitted to a system of justice considered, most of the times, to be slow, bureaucratic and ineffective. Illegal punishment has been seen as a practical solution or at least as a resource to support the fight against crime[51]. Nonetheless, Judges must keep themselves far from this demagogic point of view and remember their mandatory impartial

[48] Jack Donnely, Universal Human Rights in Theory & Practice ,173 (Cornell University Press, 2d ed. 2003).
[49] Dinah Shelton, International human rights law: Principled, Double, or Absent Standards?, 25 Law & Ineq. J. 467, 469 (2007).
[50] José Tarcízio de Almeida Melo. Direito Constitucional do Brasil [Constitutional Law from Brazil] 41(Belo Horizonte, Del Rey, 2008).
[51] Alberto Carlos Almeida & Clifford Young, A Cabeça do Brasileiro, [The Brazilian's Mind] 132 (Editora Record, Rio de Janeiro/São Paulo, 2d ed. 2007).

condition, thus avoiding the conviction of the Federative Republic of Brazil for state omission, for example, before the Inter-American Court of Human Rights[52].

8. Conclusion.

Actually, one does not have to interpret fundamental rights, but enforcing them. Savigny's classic hermeneutic method barely deciphers the fundamental rights real meaning, because that should be ordinarily used in interpreting private law[53].

The improvement of Rule of Law in Brazil requires rescuing the Judiciary Power credibility and transforming streets into safe places. And when the Judiciary Power engages with the international human rights law with regard to the imprisonment system, it sets an ongoing example of rehabilitating and sends to the whole Brazilian society a valuable moral message: one needs to support the values universally accepted to achieve success against violence and to increase the Law as an effective form of preventive social control.

Hence, the adoption of the New Routes in Penal Execution (Corrections) Project, under a normative-teleological view, means enforcing in real law practice international human rights law treaties ratified by Brazil. It also indicates an authorized interpretation made by a superior administrative organ of the State Court of Justice of Minas, which must be complied and applied by all correctional Judges throughout the state. One can never disregard that it is a project that humanizes penal execution, through which the interested counties and cities could implement a methodology which has reached up to 90% of

[52] ACHR, "Article 63 1.If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party." (...) Article 68 1.The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties. 2. That part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state."

[53] Paulo Bonavides. Curso de Direito Constitucional [Course of Constitutional Law] 592 (17ª edição, São Paulo: Malheiros, 2005).

rehabilitation of convicts and currently counts approximately 1.200 prison inmates. The State Court of Justice of Minas Gerais has adopted the project as a *true penal execution public policy*, because it had officially identified a fruitful partnership able to help the Judiciary Power to develop its constitutional and humanistic duties.

Nowadays, the huge challenge that has been presented is to practically implement the whole methodology, taking into account the specific particularities and perceived needs of each county from the State of Minas Gerais, as well as to furnish all correctional magistrates the structure and juridical reasoning which should be used in their ordinary activities, in order to guarantee that corrections will achieve the compulsory goals established by Law.

As empiric evidence of the successful performance already achieved, it should be emphasized that the county of Nova Lima, which develops the project, has had the best penitentiary institution of Brazil, according to the conclusion reached by the Parliamentary Inquiry Committee created in 2008 to evaluate the Brazilian imprisonment system. It should be also mentioned that the New Routes in Penal Execution (Corrections) Project has been supported by the State Government, which has invested about U$ 9,0 million in building new units throughout the State of Minas Gerais[54].

[54] Journal Estado de Minas, 04.08.2008, section *Gerais*.

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Paul Gordon Lauren, The Evolution of International Human Rights: Visions Seen, University of Pennsylvania Press, 2d ed. 2003.

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