



Violation of Fundamental Rights in Prison Overcrowding

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ABSTRACT

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This article examines in detail the impacts derived from the excess population in our nation's prisons, as well as the violated primary rights of prisoners, all considering international standards, the lack of capacity in prisons and the inhumane conditions that affect health and physical integrity. The study is qualitative and bibliographic review, in addition information was searched from different databases of indexed scientific journals. As a result, the overpopulation crisis in Peruvian prisons is highlighted, with an excess of 130% over their real capacity. Likewise, we address the lack of infrastructure and the phenomenon of punitive populism as causes of the problem. It is concluded that the serious problem is overcrowding, which harms the human dignity and fundamental rights of inmates in Peru.

1. INTRODUCTION

The decision to send a person to jail is an extreme measure taken when he has violated the laws established in society and has infringed the rights of other individuals. In that sense, a series of rights and freedoms that are inherent to his condition as a free citizen are restricted, such as freedom of movement, privacy, intimacy, property, political and labor rights [1].

However, there are rights that cannot be deprived even while in prison because they are fundamental and inherent to the person. When prisons are overcrowded, several fundamental rights are violated, starting with the right to humane and dignified treatment because living conditions in overcrowded facilities are often deplorable, with lack of personal space, inadequate hygiene, insufficient medical services and food, spread of diseases, both physical and mental, and increased violence among inmates. Hence the fundamental topic of this article where the current situation of overcrowding in prisons in Peru will be analyzed, why this situation is generated, what are the consequences, what rights are being violated and how this problem can be mitigated [2].

2. OVERCROWDING

The root of "huddle" is found in the Latin word "acervare," which means to pile up or accumulate in a heap. It means the excessive accumulation of people, animals or objects in the same limited or reduced space, this leads to conditions of discomfort, unhealthiness and lack of adequate resources for all occupants. In prisons, overcrowding is considered when the shelter capacity exceeds the capacity by 20% of the maximum capacity [3].

In our continent it is considered one of the largest where this

serious problem that our government is fighting exists and persists. Our country is surviving this reality and tragic situation that is the excess prison population [4].

According to the Ombudsman's Office, being an institution that ensures the fundamental rights of the members of our society, mentions that there is overcrowding in prisons, therefore, it is the main factor that harms the fundamental rights of prisoners [5].

Since pre-Columbian times, the populations of our country had a structured system for social organization to maintain rudimentary prisons predestined to punish only minor crimes. At this time conditions were primitive. Subsequently, a more structured prison system was developed, better able to face future situations [6].

In the following centuries, the population increased, which resulted in an increase in crime and, together with this, the prison population. It is at this time that the penitentiary sites became overcrowded. It is considered that the conditions were very poor and insufficient just by observing the lack of basic services that each person has. Within the decade of the 20th century, attempts were made to implement new reforms to improve the penitentiary system, therefore, the execution of the creation of different penitentiary facilities was considered where plans were implemented to integrate, rehabilitate and reintegrate prisoners [7].

3. SITUATION IN PERU

Prisons in Peru face an alarming overcrowding crisis, exceeding their real capacity by 130%, according to recent data from the National Penitentiary Institute (INPE). Despite having 68 penitentiary establishments (Table 1) designed to house 41,019 inmates, the current prison population amounts

to 93,985 people, leaving 52,966 prisoners without the necessary space for dignified and adequate confinement [8].

This level of overcrowding not only violates human rights, but also contravenes international agreements signed by the country to ensure respect and the integrity of prisoners. There are 49 establishments with critical levels of overcrowding, in many cases exceeding 100% of their capacity, and alarmingly, some exceed 200%, 300%, 400% and even 500% [9].

The first factor that harms the lack of infrastructure and the insufficiency of appropriate facilities to meet demand, in addition to a phenomenon called punitive populism. This term describes a trend that emphasizes the application of severe sentences without the support of policies that promote the rehabilitation and social reintegration of those convicted [10].

The repercussions of overcrowding in Peruvian prisons are not limited to numbers, but carry significant risks to the health and safety of both inmates and prison staff. This situation requires an urgent and effective response that includes prison authorities, civil society and institutions that ensure rights are guaranteed [11-13].

The number of prisoners in the month of July 2023, nationwide, amounts to 170,794 individuals. Of this group,

93,147 are detained in penitentiary centers due to judicial arrest orders, preventive detention or sentences with effective custodial sentences. On the other hand, 77,647 people are in free-range establishments after being sentenced to sentences limiting their rights, subjected to alternative detention measures or benefited from semi-freedom or conditional release [14].

The population within the penitentiary facilities is made up of male and female inmates deprived of liberty as accused and convicted.

The initial group includes those prosecuted with provisional measures such as preventive punishment, as well as those sentenced to prison with an effective sentence [15].

On the other hand, the population outside penitentiary (Table 2) facilities includes those who have been released after obtaining prison benefits such as semi-freedom or parole, as well as those sentenced to sanctions restricting rights such as providing services to citizens or some days off, and those sentenced to alternative measures such as serving the sentence, sentence substitution mechanism or electronic monitoring [16].

Table 1. Intramural and extramural

Total Population: 170 794				
Penitentiary Establishments 93,147		Free medium Establishments 77,647		
Processed 34,824	Sentenced 58,323	Released for semi-release, conditional release and conditional remission of sentence 5,756	Sentenced to penalties restricting rights 69,392	Sentenced to alternative measures 2,499

Table 2. Current situation of shelter capacity, overcrowding and overcrowding of penitentiary establishments according to regional offices

Total	Shelter Capacity	Prison Population	Overpopulation	% Overpopulation	Overcrowding
68 penitentiary establishments	41 019	93 147	52 128	127%	107%

Source: General Infrastructure Office- INPE/Statistics Unit

4. CAUSES OF OVERCROWDING

Prison overcrowding, beyond being a result of the increase in the classification of crimes, more severe penalties and the reduction of benefits for inmates, represents a serious problem that flagrantly violates the human rights and constitutional guarantees of people deprived of liberty. This situation, which is configured as humanitarian crisis in itself, requires not only a review of criminal and penitentiary policies, but also the implementation of alternative measures to incarceration that promote social reintegration and guarantee respect for the human dignity of prisoners [12].

The causes of this problem are usually directly related to the lack of legislation. Prison overcrowding, by generating inhuman conditions that are distant from social reality, becomes a powerful obstacle to the social reintegration of people deprived of liberty. This dissocializing situation distances prisoners from the dynamics and environments of a normal life in freedom, making their process of adaptation and reintegration into society difficult once their sentence has been completed [13].

The idea of going to a penitentiary establishment to rehabilitate yourself and leave that place ready for resocialization is the ideal that is furthest from the Peruvian reality.

The presence of inmates in the country's prisons is not only

due to the increase in crime, but also to the deficient legal defense during the preventive detention process and the existence of media cases that generate a social clamor for imprisonment, without always considering justice and social reintegration [17].

Social relations within prisons, marked by the fight for survival and adaptation to the environment, invite us to analyze them from a perspective that delves into power dynamics. These dynamics, which emanate from both the institutional structure and the prison culture itself, are intensified by inadequate infrastructure and overcrowding, creating an environment that hinders the fulfillment of the basic needs of inmates and threatens their overall well-being [18].

In exceptional situations, judges must make decisions based on the current reality, without depending on other institutions. The reality is that the penitentiary system, like the State in general, has flaws that prevent its optimal functioning in all areas. Therefore, judges must act with autonomy and responsibility to guarantee justice, even in a context of institutional limitations [19].

The inefficiency of our judicial system is truly corrupt, which causes people to remain in those establishments, even if they have not been convicted of a crime [20].

Prison overcrowding is not an isolated phenomenon, but the result of various interrelated factors, among which a deficient

criminal and penitentiary policy stands out. This situation, characterized by an excessive increase in the prison population, hinders the possibilities of implementing effective social reintegration programs, perpetuating a cycle of exclusion and vulnerability of the human rights of people deprived of liberty. "This is aggravated by the problem of COVID-19, which on January 30, 2020 was classified as a pandemic-level global emergency by the World Health Organization (WHO), due to the increase in confirmed cases and deaths due to the virus" [21].

The excess of preventive detention, together with the unjustified increase in sentences, is one of the main causes of this problem, as well as the lack of alternatives for people who do not need to be imprisoned. It is important to address prison overcrowding from a comprehensive perspective, which considers not only the construction of more prisons, but also reforms to the penal system, investment in prevention programs and strengthening the penitentiary system. Only in this way can we guarantee respect for the human rights of inmates and build a more just and safe society [22].

5. CONSEQUENCES OF PRISON OVERCROWDING

"Overcrowding results in serious health problems, violence, indiscipline, lack of provision of services (work, education, social assistance, sports, education, conjugal visits, medical services, among others.) which triggers a clear violation of the physical and mental integrity of the inmates, their self-esteem and human dignity" [23].

Resocialization becomes a little difficult after a stay in a penitentiary establishment.

The Peruvian prison system is collapsed due to overcrowding and overpopulation, which generates deplorable conditions that prevent the resocialization and reintegration of inmates into society. This situation is aggravated by the lack of distinction between preventive prisoners and convicted prisoners, who are forced to live together in inadequate spaces, flagrantly violating their fundamental rights [24].

Likewise, discrimination against former inmates is not a consequence that is left out of the picture. "The deprivation of liberty is a triggering event for depression, while factors such as religious practices could be acting as a protective factor, as it strengthens the resilience of inmates" [25].

"The data show persistence of infectious problems, chronic non-communicable diseases that are still unresolved, such as mental health and nutritional problems, in addition to important health problems and needs experienced by special populations" [25].

6. THE VIOLATED RIGHTS

Fundamental rights are born from the value of the human being and his dignity, that is, they are intrinsic to people due to their quality. They protect the most basic needs and cannot be negotiated or altered; they are also universal in an egalitarian manner [17].

Likewise, they are individual or collective rights, enforceable against all people and as they have the characteristic of being regulated in the legal system, they arise from there, indirectly from the will of the State through the competent authority, therefore, the same institution will also have to guarantee them. This protection also implies a limit for

any action by individuals and even the State. Along the same lines, they are also subject to limits on their exercise when the law provides for it, commonly freedom rights.

The limitation of any fundamental right that the legislator establishes must be for the purpose of protecting other rights or other assets that are also constitutionalized. However, this limitation is not synonymous with suppressing the right or reducing it, but the essential content of the right must be respected and thus, its exercise will be developed under certain conditions. The penalty involved in committing a crime, resulting from a custodial sentence, constitutes a justification for limiting the right to freedom of movement when public order and, for example, the right to life must be protected [4].

In Peru, the custodial sentence is regulated in article 28 of the Penal Code, this implies that the subject sentenced as guilty of a crime, after undoubtedly having followed a judicial process, must enter a penitentiary establishment and this in itself will imply that the right to individual freedom, privacy, assembly, work and education is restricted [10].

What is inconceivable is that other inherent rights of the person are violated; On the one hand, for their right to dignity (recognized in the first and second articles of our Constitution) they must be guaranteed to live in conditions suitable for their needs and on the other hand, not to be treated inhumanely, that the restriction of freedom is not practiced in inhumane conditions such as overcrowding where the environments are so small that the minimum conditions for living such as hygiene are lacking. In this sense, the authorities must guarantee that the fundamental rights of life, physical integrity, and health are not harmed and other rights such as dignified treatment and living without degrading and humiliating conditions of confinement that only degrade and are incompatible with people, which in turn is indicated in article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights [4].

In this sense, it is now necessary to analyze the rights that are violated in the overcrowding conditions previously studied.

The Inter-American Commission on Human Rights highlights that overcrowding for those deprived of their liberty constitutes situations that involve forms of brutal, degrading and inhuman treatment that violate the right to integrity of prisoners and other recognized rights [4].

First, when there is not a minimum essential space for each inhabitant, there is not enough personal space or access to air. In that sense, the health of the inmates is put at risk because they are more susceptible to contracting diseases that are transmitted through contact such as TB, fungi or lice [5].

In fact, in 2020, the Ombudsman's Office issued a Special Report that pointed out the following, that because the spaces of 68 penitentiary centers throughout Peru (including youth centers and prisons) were collapsing due to exceeding the maximum capacity of inmates, the health of the inmates and the personnel who provide services was also in a very high state of vulnerability, since the full rise of the spread of COVID-19 turned these small spaces into the perfect scenario for spread of coronavirus. On the other hand, for the imprisoned adolescents it meant an attack on their life project [18].

Thirdly, in 2014 Mr. C.C.B. He filed a habeas corpus lawsuit because the Tacna Penitentiary Establishment was not providing him with health spaces for his bronchitis. In addition to this, it could not be improved either because the same

establishment had been declared in a state of emergency due to structural deficiency, a lack that did not allow the inhabitants to have individual beds and as a consequence, as much as the plaintiff and other inmates had been sleeping on the floor for two years; Furthermore, the right to personal integrity was being violated: in the psyche, physical and moral, mental health and dignity because this situation constitutes humiliating treatment and, as a consequence of the above, free development and well-being was also diminished [18].

Along the same lines of mental health, this overpopulation triggers a series of negative emotions and, as a consequence, problems in the psyche of the inmates, since it will be impossible to enjoy a private space and ideal social relationships will not be maintained since disputes will arise over "territory" [19].

Fourthly, in the case of García Asto and Ramírez Rojas against Peru, the Inter-American Court concluded that because prison overcrowding was without ventilation, natural light, beds, conditions of solitary confinement and inadequate hygiene due to the restriction of visits, a form of cruel treatment was being constituted that harmed the integrity of the psyche, physically and morally and, this in turn goes against the essential purpose of a custodial sentence: effective reintegration into society [16].

Finally, it is highlighted that the Ombudsman's Office indicates that the capacity in the existing educational and work areas is not sufficient to satisfy the level of demand [15].

Now it is worth taking a look at cases in other countries where the State did not guarantee the inherent dignity of the imprisoned subjects and, consequently, it was greatly diminished [16].

In the case of López Álvarez against Honduras, being in a very small cell with many inhabitants, this person had to sleep on the floor, was not fed adequately, nor did he have the essential hygienic conditions [17].

In the case of Montero Aranguren and others against Venezuela, the overcrowded prison was unhygienic and there was no privacy to carry out basic needs such as sanitation [16].

7. MEASURES TO COMBAT PRISON OVERCROWDING

We have always thought that before fighting the problem itself, we must touch the root of it. In that sense, the State would have to invest in the education of its population, so that everyone or at least the vast majority has access to it, especially in places where there is a "need" to commit crimes to live, education will provide knowledge and skills that will increase the possibility of getting jobs, as a result, there will be no economic need. Likewise, legal and civic education influences people to be aware of their actions and their legality, for this reason, critical thinking will also be developed and criminal behavior will be avoided [16].

Adding to the above, aggressive behaviors and violent crimes can also be prevented, the reason being that education also promotes the development of different social and emotional skills, which encourages people to be more empathetic and respect the rights of others; On the other hand, in the same way, the values of tolerance and respect can be enhanced to reduce hatred and discrimination towards others [16].

The possibility of combating the problem itself will now be evaluated [10].

The State should evaluate the feasibility of granting alternative sanctions such as house arrest or conditional release for people who have committed minor crimes and who are not repeat offenders or have previously committed other crimes, especially for people in a special situation of risk or special care such as the elderly, people with chronic illnesses and pregnant women or those with children in their care. The fundamental principle of this proposal is that prisons are necessary for subjects who represent a danger to society. Likewise, for those who are about to complete their sentence, grant them penitentiary benefits [12].

Regarding already overcrowded penitentiary centers, the entry of new inmates should not be allowed and they should begin in order of greatest need, that is, from the most populated centers to the least populated. Since the establishment is already closed, the largest number of inmates should be transferred to other centers that are not overcrowded, likewise, if there are no centers that have enough space to receive new inhabitants, those that are already established must be expanded or new ones built [14].

8. NACIONAL AND INTERNATIONAL INSTITUTIONS

The Peruvian government has implemented national policies to address the effects of overcrowding through various institutions. The National Penitentiary Policy Plan establishes four strategic actions to reduce the use of preventive detention, involving the Judiciary, Congress of the Republic, Public Ministry, Ministry of Justice and Human Rights, among other entities [16]:

- Legislators are presented with legislative proposals related to alternatives to incarceration.
- Judges receive guidance on how preventive detention and sentences should be applied or decided.
- Judges are instructed about options for personal coercive measures that do not involve imprisonment, as well as penalties that do not deprive of liberty.
- Prosecutors are instructed on alternatives to preventive detention and custodial sentences.

Furthermore, it emphasizes the importance of the "Minimum Rules for the Treatment of Prisoners" as a fundamental international instrument that promotes what is correct and is unrestricted, adapting to the current reality [5].

In line with international standards, the Ombudsman's Office carried out a nationwide supervision of penitentiary establishments in 2017, the report of which serves as a basis for improvement in the condition of inmates. Since 1996, the Ombudsman's Office has had a Criminal and Penitentiary Affairs Program that continuously supervises penitentiary centers in coordination with the ombudsman's offices, allowing them to directly address jurisdictional and penitentiary enforcement challenges [8].

The Inter-American Commission on Human Rights established references between concepts of provisional detention. For this reason, it considers preventive detention without a punitive nature, and that it should be the exception and not the rule. Therefore, it should be applied in situations where there is reasonable suspicion where the accused could flee from justice, it should only be applied in situations where there is a well-founded suspicion that the accused could avoid justice [4].

9. CONCLUSIONS

Prison overcrowding in Peru represents a serious infringement of the fundamental rights of prisoners. This violation is of multiple fundamental rights, they must safeguard respect for human dignity, as well as health and ensure humanitarian treatment of individuals deprived of liberty. These inhumane and degrading conditions make it difficult for people to resocialize, preventing them from reintegrating into society once their sentence has been served.

In prisons there is a great excess of capacity, overcrowding and the bad habits of people who are not really human in which prisoners are found are a reflection that we have a deficient penitentiary system. It is imperative that the authorities take urgent measures to address this problem, guaranteeing dignified and respectful conditions for all prisoners.

It is essential that it has been implemented to ensure rehabilitation and social reintegration for prisoners, instead of prioritizing only the imposition of severe sentences. Resocialization is key to breaking the cycle of exclusion and vulnerability. On the other hand, the supervision of penitentiary establishments must necessarily be strengthened and transparency in the judicial system must be promoted to guarantee a fair and equitable process in this case for prisoners.

Finally, respect for the dignity and integrity of individuals in custody must be a priority in any penitentiary system. Only through a humane and respectful approach can true rehabilitation and readaptation to society be achieved by people deprived of their liberty, in order to build our fair and partial society for society.

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