

ESSAYS ON PRISON
AND JUSTICE

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This book has been published by OPA-Niños Libres – Arequipa – Peru

Peruvian National Library Register: 2023-02940

ISBN: 978-612-48748-2-6

Essays on Prison and Justice

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Primera edición

300 ejemplares

Hecho el depósito legal en la

Biblioteca Nacional del Perú

2023-02940

Editado por OPA-Niños Libres

Calle Beaterio 281-Arequipa-Perú

Impreso en:

E & M Impresores S.R.L.

Santo Domingo 306 Int 3

Arequipa – Perú

Abril 2023

ESSAYS ON PRISON AND JUSTICE

Bruno Van der Maat

OPA-Niños Libres

Arequipa – Peru

“Enfermer nuit gravement à la société”

[locking up seriously harms society]

(Graffiti spotted on the train track
between Louvain and Haren - Belgium)

To

Pauline and Charlie Sullivan

Cure-International

Roberto Cervantes Rivera

OPA-Niños Libres

For their lifelong commitment

to more Justice in Prisons

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INTRODUCTION

This booklet contains three essays on prison and justice. The first (and larger) one tackles the problem of assessing prison overcrowding. Usually, overcrowding is calculated on the basis of spatial terms. This article proposes a more accurate way of measuring this nearly worldwide and harmful phenomenon, based on the rehabilitation capacity of a prison facility. It was first presented at the 9th Peruvian Human Rights Congress (Lima - November 2020). Subsequently it was updated for this edition.

The second essay analyses the evolution over the past decade of the three juvenile justice systems that exist in Peru. It highlights the fact that the introduction of “alternative” justice systems has not reduced the number of juveniles drained into the justice systems as a whole.

The third article is a reflection on the impact of the Covid-19 pandemic in the Peruvian adult and juvenile justice system. It was first presented at the first Juvenile Justice week in Peru, organized by the Peruvian Justice and Human Rights Ministry (October 2022) and later at the 9th International Encounter of Judiciary Powers of Peru and Ibero-America (Tarapoto – Peru November 2022). Apart from emphasizing the obvious lack of preparation and resources to cope

with the pandemic, it points out to the fact that the reduction in prison population has not been so much the result of emergency laws aiming at that effect, as of the drop in incoming inmates.

The three articles differ in form and volume, due to their different origin. Some of these contents will be presented at the 9th International Cure Conference in Nairobi (May 2023), for which this compilation of essays has been prepared.

We thank OPA-Niños Libres for the publication of these essays. However, the contents and opinions presented herein are our sole responsibility. We welcome your critiques and comments. We hope the ideas published in this booklet will stimulate critical reflection on our adult and juvenile justice systems, and help to humanize them.

Bruno Van der Maat

Arequipa, March 2023

MEASURING OVERCROWDING INDICATORS AND PRISON STANDARDS, WITH AN APPLICATION TO PERUVIAN PRISONS

Abstract

Prison overcrowding has usually been measured in terms of disposable space per prisoner. This indicator is not convenient to evaluate the capacity of a facility to rehabilitate an offender. That is why this article proposes other indicators, based on staff capacity to efficiently handle the prisoners within a given facility. In order to have a meaningful standard, the available staff should be measured according to their main function (security, treatment and administration). This investigation presents the evolution of overcrowding in Peruvian prisons from 2003 to 2022.

Key Words: Overcrowding – Prison Workers – Prison Treatment – Peru - Indicators

Introduction

Prison overcrowding is a widespread and current phenomenon that has been extensively measured and analyzed. The Global Trends Report indicates that *“The latest data shows that prison systems in 121 countries and territories are operating above their official capacity, including 13 with levels higher than 250%”*(PRI 2022:8). It must be taken into account that *“overcrowding can be life-threatening (...) with major health issues arising”*¹ and that it *“prevents prisons from fulfilling their proper functions in the rehabilitation of offenders”* (PRI 2020:3).

Overcrowding can turn a prison into a human warehouse and undermine any efforts to give practical meaning to the prohibition of torture and other forms of ill-treatment. The resultant lack of personal space and privacy puts all prisoners at risk, especially the most vulnerable (...) the adverse effects of overcrowding ha(s) resulted in conditions which could be considered to be inhuman and degrading.

(CPT: 2022: par. 86-87)

According to the CPT, lower overcrowding has

1 “Prison overcrowding is a major contributor in all regions to inadequate water and sanitation facilities. Along with limited access to sanitation, clean water and healthcare, it compounds the risk of infections in prison.” (PRI 2022:45)

led to: “reduction in staff-prisoner and inter-prisoner violence, improved safety and care for vulnerable prisoners, more in-cell privacy, improved access to out-of-cell activities and, also of importance, prison staff having better working conditions” (CPT 2022:par.88).

The major global trend in prison population consists of a continuous increase, attaining record levels of over 11 million prisoners worldwide (PRI 2022:4), with a prison infrastructure that is not able to cope with this increase, causing a steadfast and dramatic increase in prison occupancy. The Covid-19 pandemic has dramatically illustrated this tendency. The causes of this increase of inmates are widely known and analyzed.² It just seems that there is a profound lack of political will to confront the problem and to put to work the well-known remedies, which mostly do not depend on prison authorities.

However, the problem is not only overcrowding and the negative implications for the rehabilitation of the prisoners. It is also the way how this overcrowding is considered. Usually overcrowding is presented as the limitation to give each inmate the physical space he should

2 E.g. (PRI 2022). The 2019 Prison Report of the Peruvian Ombudsman Office (Defensoría del Pueblo - DP) recalls that its first Report on Prisons in 1999, already mentioned overcrowding as the main source of violence in the Peruvian prisons. (DP 2019:19)

be allotted. This amounts to a simple calculus of a number of square meters missing. But this does not tell the whole story. The concept of overcrowding should be subjected to a serious analysis, because this will result in a whole new package of implications that a simply physical concept of overcrowding normally overlooks. Some authors have dedicated a certain degree of investigation to this analysis (cfr. Ariza & Torres 2019; Wildeman 2018), but some points still have to be made.

This article aims to tackle this issue through the following parts: (1) briefly describes the overcrowding figures according to its classical definition; (2) presents alternative ways to conceive overcrowding, highlighting the difference in rehabilitation conditions these other approaches offer; (3) analyzes the politics of international standards on this matter; and (4) presents a proposal for the Peruvian prison system and the consequences if it were to abide according to these standards.

1. Overcrowding in figures

According to the latest Prison Reform International (PRI) Global Trends Report, prison populations have been rising in most of the world's countries to more than 11.5 million (PRI 2022). The World Prison Brief, published by the Institute

for Crime and Justice Policy Research of the University of London, ranks China, the United States of America, Brazil, India and the Russian Federation as the five countries with the largest number of prisoners in the world, totaling more than five million prisoners, nearly half the world's total. These are of course the world's most populated countries. But if we look at the 20 countries with the highest prison population rate, we find that 5 out of these 20 are Latin American countries (El Salvador, Cuba, Panama, Uruguay and Brazil) and another 5 are Caribbean countries. This ranking does not reflect the relative importance of their populations. There seems to be a trend to imprison relatively more in Latin America and the Caribbean than in other continents.

As is widely known, the United States has led the peloton on prison population for decades. But here two remarks have to be made. The first one is that lately its prison population has been decreasing. According to the US Bureau of Justice Statistics, the prison population has been shrinking annually by more than 20,000 inmates per year (on a total of 1.675 million in 2020 - WPB 2023) (cfr. USBJS 2020), to the point that the US Labor Statistics Bureau foresees a slower growth than average in the sector of Probation Officers and Correctional Treatment Spe-

cialists³. The second remark is that these figures conceal a more critical situation, because they only highlight the population of inmates, those who are held within correctional facilities. They do not mention all the US residents under correctional control, who amount to 6,7 million people (PRI 2020:9), which makes for 2 % of the total population. So even if the US Bureau of Justice Statistics can claim in its 2020 March Press Release that: “*U.S. Imprisonment Rate (is) at its lowest since 1996*” (USBJS 2020), the number of people under Justice control is much higher than the number of inmates, which offsets, in a way, the decrease in prison population.

If figures on imprisonment rates are analyzed, the World Prison Brief again shows a high proportion of Latin American countries among the frontrunners. This reflects the “*mano dura*” policy used in many Latin American countries to counter criminality. With a ratio of 264 prisoners per 100,000 residents, Peru ranks 39 on

3 However, it states that in spite of the slower growth, recruiting will continue: “*Employment of probation officers and correctional treatment specialists is projected to grow 3 percent from 2018 to 2028, slower than the average for all occupations. Job openings should remain plentiful because many people leave the occupation each year.*” This means there is a high turnover. Reasons are not mentioned, but pay and stress may be considered important factors to explain this situation. <https://www.bls.gov/ooh/community-and-social-service/probation-officers-and-correctional-treatment-specialists.htm>

the list, behind El Salvador (which scores even higher than the USA with 605 vs 505), Cuba and Panama.

PRI states that not only there are more prisoners than ever, but also that this rising prison population is condemned to longer sentences (though capital punishment seems to be retreating, life sentences went up- PRI 2020: 6.20). In these circumstances it is to be expected that prison occupancy rates (POR) also increase, because it takes more time to build a prison than to send more people into it. According to the World Prison Brief, 121 out of 206 countries have Prison Occupancy Rates over 100%, and 13 even over 250 %. Peru is 19th on the list with a POR of 212, only surpassed in Latin America by Guatemala (5th with a POR of 357.1) and Bolivia (ranked 11th with a POR of 263.6). One has to bear in mind that many of these figures were even higher before 2020, when the Covid-19 epidemic compelled many authorities to release a fair number of prisoners.

These figures present Peru as among the countries with the highest Prison Population Rate and Prison Occupancy Rate in the world. The reasons are well known: the prison population rises because of harsher sentencing laws⁴, expanding

4 Sentences on drug offenses have increased steadily for decades, but new offenses have been made punishable by

imprisonment causes, longer sentences, reduced release benefits, reluctance of the Courts to be lenient, abuse of pretrial detention, and lack of implementation of alternative sentences. The rising Prison Occupancy Rate is due to the lack of construction of new prisons, budget restrictions, lack of public support and interest for reform, corruption, mismanagement and lack of capacity in the prison system.

In Peru, the trends are clear. First there has been a continuous reduction of prisons. In 1985, when the National Prison Authority (Instituto Nacional Penitenciario - INPE) was created, there were 111 prisons in Peru. These have been reduced to 81 (2001) before increasing again to 84 (2005), with some new prisons being built. In 2022 there are 69 facilities spread all over the country.

Another trend is the increasing size of the prisons. Gradually older and smaller prisons have been closed in small towns, and being replaced by new large sized prisons and maximum-security facilities, mainly around large cities.⁵ Thus, a concentration of the prison population and pre-

prison sentences, like not paying food to spouse and children, family violence, etc. Release benefits have been restricted. These measures have been voted in Parliament without much judicial or criminological knowledge. The main aim was to be politically correct facing public opinion.

5 For a profound study on prison geography see: Milhaud (2017)

sumable economies of scale have taken place. This had an effect on the treatment of the inmates. As they were transferred to larger prisons further from home, visits became more difficult. Not only because of the longer distance from home, but also because of the larger prison population. Visitor queues got longer, as well as waiting times to enter the prison. This is an important negative point in the rehabilitation process, as maintaining the link with families and friends is essential to improve the reduction of recidivism.

A third trend is the proportional increase in the Prison Population Rate, not only in Peru but in most countries⁶. This increased from 109 prisoners per 100,000 residents in 2003 to 141 (in 2007) reaching 293 (in 2020).⁷ In less than 20 years (2003-2020), the national population grew by 25 %, but Prison Population has more than tripled in the same period, from 28,826 to 96,145 in 2020 and 90,214 in November 2022, latest available data. Of course, nobody on the street would claim that now they feel three times safer than twenty years ago. This increase has no relation whatsoever with crime rates or rates of security.

6 The latest WPB Report presents Congo, Haiti and Uganda as the countries with the highest occupancy levels, respectively 616.9 %, 454.4 % and 371.6 %. (WPB 2023)

7 These figures are based on my own calculations and are consistent with the figures published by the World Prison Brief.

The next table illustrates the fourth trend which is increased overcrowding. The reasons have summarily been mentioned above. The capacity to host prisoners depends on the construction of prisons. As criminal and penal policies have always been “reactive” (MINJUS 2016a:17), in other words, that policies were planned after the events took place, there has always been a gap between the need and the plan to satisfy it. This is why prisons have never been built to prevent overcrowding, but always to catch up with overcrowding. Of course, this is not a new phenomenon⁸. Additionally, to build a prison is not a simple deed, it takes years to go from planning and budgeting to finishing building a prison. This explains the constant lack of prison space in the country, as the table shows.

Table 1

YEAR	PRISON POPULATION INTRAMUROS	TOTAL PRISON CAPACITY	PRISON OCCUPANCY RATE %
2002	26790	19025	140,81
2003	28826	20497	140,64
2006	35835	22548	158,93
2007	39684	23291	170,38
2011	52700	28492	184,96
2012	56070	29043	193,06

8 For data on overcrowding in the 19th century prisons in Lima and on the illusion that building more prisons would end overcrowding see AGUIRRE (2019:146.154).

MEASURING OVERCROWDING INDICATORS

2014	71961	32190	223,55
2015	77242	33497	230,59
2016	76142	35126	216,77
2019	94842	40137	236,30
2020	96145	40137	240
2021	87245	41018	212
2022(Nov)	90214	41018	220

Sources: Campos 2015, INEI 2016, INPE 2020b, INPE 2023, MINJUS 2003, MINJUS 2016a.

The Prison Occupancy Rate shown is an average that occults much worse circumstances, especially in facilities in Lima and the south of the country.⁹ The 2003 National Penitentiary Treatment Plan already rightly stated that: *“this figure is the product of sums and subtractions of the installed capacity vs the penitentiary population and this does not really reflect the overcrowding in its real dimension.”* (MINJUS 2003:12)

Calculations by INPE and the Justice Ministry showed that between 2011 and 2015 the prison population had grown by an annual average of

9 In 2015 INPE stated that Sarita Colonia prison in Callao was overcrowded by 548 % and expected it to be 722% in 2020. (MINJUS 2016a:24-25). In 2022 INPE reports that the same prison still has a 503 % overcrowding rate (INPE 2023). In comparison, the latest SPACE Report by the Council of Europe states that the maximum average overcrowding rate in a European country was 22.5 %. (CE 2020a:9); the overall average for Europe was 89.5. (CE 2020b:3).

10%, while infrastructure had increased by 4.9% on an annual average between 1995 and 2015 (MINJUS 2016a:19). Their projections estimated that the prison population would increase to 222,487 in 2035, while the infrastructure would grow to 58,187 places, leaving a deficit of 164,300, considering a 5.3 % annual increase in population and a 2.8 % annual increase in capacity (MINJUSa 2016:19.22).

Construction would clearly lag behind prison population growth.¹⁰

2. The concept of overcrowding

2.1. The classical concept of overcrowding is reflected in the Occupancy Rate, which is the ratio of the number of inmates divided by the lodging capacity of the facility¹¹. The Occupancy Rate determines the rate of overcrowding, which “(...) is defined as that part of the occupancy rate above 100 per cent.” (UNODC 2013:8)

However, like any concept, this one needs some

10 On the accuracy of projections by the Ministry, one can verify the projection for 2015, made in 2003, when prison population was “only” 26,701. It was foreseen to increase to 36,866 (MINJUS 2003:29), about half of the real figure in 2015 which was in reality 77,242. The estimation made in 2015 for 2020 was more accurate: 114,761 vs a provisional count (January 2020) of 96,145. (MINJUS 2016a:22)

11 UNODC defines it as follows: “Occupancy rate, also known as population density, is determined by calculating the ratio of the number of prisoners on a given day to the ratio of places specified by the official capacity.” (UNODC 2013:8.182).

explanatory comments.

- a. First of all, the fact that a 100 % occupancy is not reached is not necessarily a sign that there is no overcrowding. The European Committee on Crime Problems (CDPC) reminds that:

As already mentioned previously in the White Paper, the fact that the overall number of prisoners in a given country is less than the total number of prison places does not necessarily mean that this country is not facing overcrowding in some of its prisons.

(CDPC 2016: n°.19)

This refers to the fact that the Prison Occupancy Rate is an average¹², as we have seen above in the case of Peru. This logic can be applied as well within a prison complex, as can be seen in the next point.

- b. Additionally, the CDPC White Paper states that:

If a given prison is filled at more than 90% of its capacity this is an indicator of imminent prison overcrowding. This is a high-risk situation and the authorities should feel

12 “The Committee’s visits demonstrate that the phenomenon of overcrowding should be examined discerningly: a country may not have an overcrowding problem in the entire prison system, but it is not unusual for the Committee to find that particular prisons, parts of a prison or even an individual cell or dormitory are overcrowded.” (CPT 2022: par. 90)

concerned and should take measures to avoid further congestion. This is due to the fact that a prison has usually several different sections and even if the overall number of prisoners is less than the capacity of places, some of its sections like disciplinary cells, medical unit cells or section for women or juveniles might be half empty while other sections might experience situations of overcrowding.” (CDPC 2015:4).

Hence the 100 % rule must be taken with certain precaution, and when the rate jumps over 100%, there is cause for serious concern.

- c. There can also be some arguing around the “lodging capacity” of a facility. According to UNODC and CICR it refers to the official “*designed capacity*” of a facility, although some authorities take a more pragmatic approach, using the “*operational capacity*”, “*which refers to the number of inmates that a penal institution can actually house while remaining functional.*” (CE 2020:9) This measure obviously reduces the overcrowding rate, as it permits (at least temporarily) an occupancy rate superior to the 100 % lodging capacity.

As will be seen further when regarding standards, it is difficult to impose standards for every situation and country: prisons differ extensively

(from pre-trial facilities to supermax prisons¹³), as do climate and prisoner conditions. This makes comparisons very difficult and sometimes nearly useless.¹⁴ Not only do standards differ (when they even exist), but also the way of calculating the capacity in itself.

What space is taken into account to determine the lodging capacity, in order to calculate the Occupancy Rate? Usually, it is the space that an inmate disposes of in his cell. In that case, the minimum space differs according to each prison, but a raw minimum of 4 m² is usually taken as a basic requirement.¹⁵ But even this standard should be taken with caution. There may be important differences according to the way inmates are locked up: from personal cells to multiple occupation cells to dormitories.

13 The ECDP reminds that “*prison capacity should be evaluated against the real space/square meters available to each prisoner as well as against time spent daily in the cells*”. In supermax facilities the effective cell time runs very high, requiring larger cells.

14 E.g. We usually think of sleeping space in terms of a bed. But not all prisons have foreseen this infrastructure to sleep. I visited a women’s prison in Bangkok where more than 40 inmates slept together on the floor in one single room. Of course, this system permitted much more inmates to sleep per square meter than if there had been cots instead of common mattresses.

15 The European Committee of Prevention against Torture takes this minimum. The CICR takes a minimum of 1.6m² for the bed and 1.2 m² for the shower and water closet, recommending 5,4m² per individual inmate without sanitary facilities (CICR 2013:33).

The Covid-19 pandemic has also created a discussion on the standards used to gauge prison density, as Zeveleva e.a. (2021) discuss.

Lastly, in terms of what constitutes overcrowding it is important to bear in mind that more research is needed to assess whether current standards to determine prison capacity, for example the European Prison Rules or the Nelson Mandela Rules (United Nations, 2016), should be revisited in light of concerns about contagion of highly infectious disease that emerged over the course of the coronavirus pandemic. Other analyses should thus consider the extent to which thresholds of prison population density may not have been adequate to prevent COVID-19 outbreaks within these facilities. (Zeveleva e.a. 2021:16)

The multiple interpretations and manipulations than can be given to the classical occupancy rate, make it unsuitable as a reference to efficiently gauge prison conditions.

2.2. Ariza and Torres (2019) mention a second reference, that includes other space, necessary in the confinement-rehabilitation process¹⁶,

16 “To consider a prison space as a bed and a minimum space in a dorm is very problematic, in the understanding that other aspects of life in prison going beyond the conception of a prison cell should be taken into account.” (Ariza & Torres 2019:233) [our translation]

namely common space, open space, hydro-sanitary space, space to eat and entertain, etc. They reproduce some standards by different organizations: CICR, CPT, ACA, and the UK certified accommodation (Ariza & Torres (2019:240), which we will analyze in the next paragraph on standards. They call this measure of overcrowding type “*population density of disposable space*”.

This “density of disposable space” rate is a more accurate rate than the simple occupancy rate, because, as the latter only calculates the ratio between the number of prisoners and the officially designed capacity; the former indicates how much average space is formally available to each prisoner taking into account the whole facility. However, both indicators are still average calculations, which implies the need to disaggregate them according to the different types of prisoners in the facility (e.g. their judicial status, security level, etc., which may influence their mobility within the prison and freedom to use certain facilities and spaces).

2.3. Considering these different space needs, added to the minimum space required to sleep, it is also necessary to think of the time the inmates spend in their cell. The longer the time spent in the cell, the larger this must be.¹⁷

17 The Constitutional Court of Colombia even set certain

Mostly standards are termed in square meters. However, I consider it is essential to express these standards in cubic meters. It is not sufficient to say that the space for a bed should be 0.8 m by 2.0 m (CICR standard), but also to indicate the height and establish a three-dimensional space as minimum requirement. This would prevent certain facilities of piling up two, three or even four level beds, with very limited height on each level, as I have too often seen in adult prisons and youth facilities, especially when cells for one inmate are used for two, three or four prisoners (the last one even lying on the ground under the bed).

2.4. However, there is still a conceptual limitation to these rates. Their use implies that one considers that the quality of the prison conditions expressed in available average square (or even cubic) meters is the most important characteristic to measure the possibility of the intended rehabilitation process.

In other words, the reasoning behind these ratios is that one can estimate the prison conditions favorable to rehabilitation by the available space. Rehabilitation would depend mainly on infrastructure. I beg to differ. It is true that the

standards for minimum space requirements according to the time a prisoner was allowed out of his cell. See Ariza & Torres (2019:252).

rehabilitation of a prisoner needs minimum living conditions, but these are by far not sufficient. One can have a facility with all the space needed, but if there is no qualified and sufficiently available staff to help the prisoner to get his way back to society in better conditions, the available infrastructure will be of no avail.

The question to be asked regarding the rehabilitation process (which is the aim of the prison) is to be formulated in terms of staff availability, more than in terms of space availability. I have seen hypermodern prisons where space was available, but staff was insufficient, in terms of numbers and of qualifications. The results offered by these prisons in terms of rehabilitation were practically nihil, and recidivism was high. On the other side, I have visited prisons in poor infrastructural conditions, but with an excellent and motivated staff. Their results were remarkable, in spite of not working in optimum infrastructural conditions.

This is the reason why overcrowding should not be measured primarily in terms of occupancy or density rates, but rather in terms of available qualified staff and their working conditions.

Of course, these kinds of rates are much more demanding to calculate, and even less easy to use in comparisons. However, they should be prioritized when assessing prison conditions.

2.5. One last question on occupancy rates. In Peru the National Prison Infrastructure Plan states there is no standard regarding the optimum capacity of a prison (MINJUS 2016a:34). It illustrates this lack of standards with the different calculations made by the Prison Institute (INPE), which takes as reference 2204 prisoners, while the Justice Ministry uses a 3168 capacity standard for its mega-prisons. But in the end, the latest prison (then) built has a planned capacity of 1200. The document then goes on stating that *“there is no comparative or international standard that determines the optimum number of lodging unities for a prison”* (MINJUS 2016a:35). That is why they based all their plans on their own *“optimum capacity”* option of 2204 inmates, distributed in three security categories: low (70%), medium (23 %) and high (4%) and 3 % for women in the same proportions. Apparently, they are not acquainted with the 1955 UN Standard Minimum Rules for the Treatment of Prisoners, which indicates that:

It is desirable that the number of prisoners in closed institutions should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such institutions should not exceed five hundred. In open institutions the population should be as small as possible. (UNHR 2020:68.3).

This is obviously not a compulsory standard that every country should respect, but it constitutes nevertheless a useful indicator.

Facilities with a prison population exceeding 500 inmates are not apt for an adequate treatment, as every professional who has visited or worked in a prison shall confirm. Therefore, it is not only a question of how many square or cubic meters are allowed to each prisoner, it also matters how big the facility is. The bigger it is, the more space is required. Unfortunately, prisons are built with economies of scale in mind, instead of rehabilitation conditions. Another factor also to take into account, according to French geographer Olivier Milhaud, is the possibilities of contacts with the outside (Milhaud 2017). A prison with excellent and sufficient staff, but without contact with the outside world (families, acquaintances, news, etc.) is bound to see its rehabilitation efforts severely diminished.

3. International Standards

We will briefly present some international prison standards to evaluate their effectiveness in measuring the quality of prison conditions. The reason why it is important to know the conditions of confinement, is that they can moderate (or worsen) the effects of incarceration, as Wildeman (2018) states. Using the Survey of

Inmates in the United States (USBJS 2020) he determined the factors that most affected inmates as being: overcrowding, programming and solitary confinement (Wildeman 2018:43sq). The relational effect between these factors though, has not yet been investigated. Patterson (2010) has been studying the overall impact of imprisonment on health conditions and even on life expectancy. She calculated that

each year in prison increased the odds of death by 15.6 % in this 1989-1993 parole cohort. This translates into an increased odds of death of 78 % for somebody who spent 5 years in prison and a loss of approximately 10 years in the expected life expectancy at age 30 years (Patterson 2013:526).

The influence of overcrowding on health conditions, for example, has been widely investigated, both for prisoners as for workers (Frois 2021, Glorney 2020, Ismael 2019, Magan 2016, Reinert 2019, Vasseur 2000, Who 2019, Wildeman 2018, Xiaojun 2016), and subsequently the influence of these health conditions on employment, financial stability, family relationships and recidivism (Link 2019).¹⁸

18 The implication of overcrowding on suicide is more difficult to determine. A meta-study on suicide in prison applied on 10 Latin American countries shows that "*Research on a possible relationship between overcrowding and suicide has been*

However, one should keep in mind that the problem is not overcrowding in itself, but the resulting shortage in adequate health care because of the lack of infrastructure and personnel. The same could be said about educational possibilities, legal aid, psychological assistance, social help, etc.¹⁹ The problem of overcrowding usually is that more prisoners are sent to a prison, saturating not only its physical capacity, but its operational capacity (measured by the capacity its staff has to attend the increased number of prisoners). Rarely does an increase in prison occupancy or density in a prison move the authorities to increase the personnel and the corresponding budget. It just increases the work pressure, and so deteriorates the rehabilitation service given to prisoners. That is the main problem of overcrowding.

When reviewing some of the existing standards, we will not refer explicitly to the UN Minimum Rules (Mandela Rules) because these rules

inconclusive (...) The current investigation showed a negative association between overcrowding and suicide of prisoners. A possible explanation proposed in previous literature for a negative association has been that overcrowding prevents the placement of prisoners in single cells, which has been repeatedly described as risk factor, while also acting as a form of forced peer supervision among prisoners. However, the measure of association found in this study does not allow for the inference of a causal relationship between the two variables". (Fritz e.a. 2021: 320-321)

19 Cfr. ARANDIA e.a. (2021)

present only general principles that have to be respected, but do not constitute technical standards. However, they are indispensable as a general reference to which all other rules must be measured.

3.1. CICR: the International Committee of the Red Cross states that it does not establish minimum standards, but proposes recommended specifications, on the basis of its experience as an international organization. The application of these specifications depends on the real situation in a specific context (CICR 2013:32). As basis for its “*specifications*” the CICR uses the proposals of an older set of minimum standards, namely those of the National Association for the Care and Resettlement of Offenders – NACRO in the UK. It points out the minimum specifications regarding space, water supply and other habitat conditions in prisons. (CICR 2011, CICR 2013). It does not take into account any references to the necessary personnel to operate a prison.

3.2. ACA: The American Correctional Association establishes standards in infrastructure and proceedings in order to become eligible for accreditation by the ACA. Its manuals regulate most of prison life, as well as that of other similar institutions (ACA 2017) with guidelines on minimum requirements (including mandatory state or federal standards) on services and

proceedings.

3.3. CE: The Council of Europe “*Prison Rules*” provide a list of principles that was first established in 1973 and has been revised twice since then. These principles have to be translated in technical standards by the member States. Some specific requirements (as regarding cell conditions e.g.) even have to be set in national law (CE 2006: 10, par. 18.3). The principles and recommendations are not technically standardized.²⁰ However, the “*Commentary on Recommendation Rec (2006)2 of the Committee of Ministers to member states on the European Prison Rules*” refers to other organizations which have set certain minimum standards, like the CPT, which indicates a minimum of 4 square meters for prisoners in shared accommodation and 6 square meters per prisoner in an individual prison cell (CE 2006: 46–par.18). Although this is a desirable standard, it should not be regarded as a norm imposed by CPT. The Rules and Commentary also state that overcrowding should be avoided. This requires “*at least the establishment of clear maximum capacity levels for all prisons*” (CE 2006: 47–rule 18.4), promoting single cells for all prisoners (save in

20 Although for some items, some details are provided, which should be respected. E.g. in the case of bedding, it is stipulated that “bedding” includes a bed-frame, a mattress and bed linen for each prisoner. (CE 2006:50 rule 21)

the case when prisoners would benefit from not being in a single, individual cell). However, regarding the theme of our concern, no technical minimum requirements are made as to the number of professionals that should be available in a prison.

3.4. IACHR: The Inter-American Commission on Human Rights' *"Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas"* was approved in 2008. It presents 25 basic principles in defense of prisoners on the American continent, recalling basic rights to humane treatment, dignity, health, etc. It also states that overcrowding should be avoided; even that *"(t)he competent authority shall determine the maximum capacity of each place of deprivation of liberty according to international standards related to living conditions. Such information, as well as the actual ratio of occupation of each institution or center shall be public, accessible and regularly updated. (...) The occupation of an institution over its maximum capacity shall be prohibited by law.²¹ In cases where such overcrowding results in human rights violations, it shall be considered cruel, inhuman or degrading*

21 The recognition that overcrowding prevents an efficient rehabilitation work had already been described by the Belgian criminologist Édouard Ducpétiaux in 1865! (Daems 2022: 37) But to no avail.

treatment or punishment.” (Principle 17). It has to be remembered that these Principles came into being, among other reasons, because of the concern caused by violence, overcrowding and inhumane living conditions in the prisons of the continent (see the Preamble of the document).

3.5. CPT: The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment repeatedly publishes guidelines and reports on prison conditions. In 2015 it presented a Report on the living space in prisons, recalling its previous “rule of thumb” of minimum 6 square meters per prisoner in individual cells and 4 square meters per prisoner in multiple occupancy cells, exclusive of space for sanitary facilities (desirably an additional 4 square meters), ruling out the existence of large dormitories (CPT 2015: 3-4). This document is interesting because it provides a technical norm, albeit only as a reference minimum standard, but only on infrastructural parameters.

3.6. RCP: The Royal College of Psychiatrists (UK) has an interesting proposal regarding living conditions. It sets forth the concept of “*Enabling Environments*” (RCP 2019), which are defined as “*a place where people can develop, grow and flourish*”. The Enabling Environment is a process that leads to a space that responds to the standards the RCP set. It can apply to any

public space (schools, colleges, hospital wards, prisons, etc.). The RCP awards a certificate of compliance to the standards. The 10 standards are Belonging, Boundaries, Communication, Development, Empowerment, Involvement, Leadership, Openness, Safety (encompassing support and supervision) and Structure. This is a type of certification that goes beyond mere technical physical standards, as it includes processes as well. A couple of penitentiary facilities in the UK have applied to be awarded the certificate. Up till 2018, only one had obtained the certificate (Davies 2018). The interesting feature of this proposal is the wide range covering the certification, which does not only account for physical space. This differs from the official UK Prison Cell Certificate, in accordance with the 1952 Prison Act (art. 14.2). Unfortunately, we have not been able to find the technical specifications permitting this cell certification.

These examples are a representative sample of how Rules and Principles focus on certain infrastructure and service items, and not mainly on the rehabilitation process. The explanation why this occurs probably has many answers that are still up to verification. One answer would be that it is easier to foresee, build and report infrastructure according to certain standards

than to guarantee other indicators. A second answer could be that it is easier to propose a range of some physical minimum standards, on which everybody can more easily agree (at least in theory), than on rates of personnel that should be available. It is easier to provide a fixed once-in-a-time budget for the construction of a prison, than to foresee and guarantee an annual budget to pay for personnel. It should not be forgotten that these rules are mostly referential. Thirdly, in the 21st century, with all the international existing Human Rights instruments, it is increasingly difficult to defend a system where human dignity is openly violated. Overcrowding is often associated with inhumane and cruel treatment²², and there are multilateral authorities

22 Cfr. Supra IAHR (2008: Principle XVII). *“Conditions of accommodation collectively, and overcrowding in particular, can constitute inhuman or degrading treatment or punishment and thus contravene Article 3 of the ECHR. This has now been fully recognised by the European Court of Human Rights in a number of decisions (see, for example, Kalashnikov v. Russia, No. 47095/99, judgment of 15/07/2002). Moreover, the authorities have to consider the special needs of prisoners: to accommodate a severely disabled person in prison without providing additional facilities may amount to inhuman or degrading treatment (Price v. the United Kingdom, No. 33394/96, judgment of 10/07/2001).”* (CE 2006: 46).

to intervene in those cases. But it is easier to denounce the violation of a technical parameter in a construction, than a lack of personnel. This also has to do with the fact that public opinion (and politicians) think of prisons as storehouses where “delinquents” are kept so that they do not continue to harm society. With the widespread acknowledgment of human rights, it is easier to build a prison according to certain minimum architectural standards that allow prisoners to survive inside without too much risk for escape, than bother what exactly these prisoners are supposed to be doing inside. The first focus in prisons is always security, to prevent escapes. Other aims of prison sentences (as reducing recidivism or rehabilitating offenders) are only secondary or even non-existent in these minds. This hypothesis will be confirmed in the next paragraph.

4. Alternative Overcrowding Indicators:

A Proposal

Overcrowding is harmful not only for prisoners, but also for their families, for prison workers and officers and for their families, because - in the end - it undermines offender programmes and thus prevents the prison from functioning and attaining the goal it has been built for.²³

23 According to Magán (2016: 854), ex-president of INPE in Peru,

Offenders leave the prison without having received the necessary care and rehabilitation. And while they are confined in prison, as stated above, overcrowding can lead to inhuman or cruel treatment.

Recently three Constitutional Courts have condemned their respective State on the issue of prison overcrowding: Colombia (CCC - Corte Constitucional de Colombia (2015) Sentencia T-762/15), Perú (Tribunal Constitucional (2020) EXP. N.º 05436-2014-PHC/TC) and France (Conseil Constitutionnel 2020 - Décision n° 2020-858/859 QPC October 2nd 2020, after the sentence by the European Court of Human Rights on January 30 2020.²⁴

The Colombian Constitutional Court sentenced the Colombian State to reformulate its Criminal Policy, because it led to overcrowding. The Colombian criminal policy was considered: *“reactive, populist, making decisions without*

overcrowding reduces areas for workshops, classrooms, space for healthcare, it increments fights, limits visits, increases security measures and constitutes an incentive for prison staff to make a profit. Arianda et al. (2021: 487) argue that *“One of the principal characteristics of prison overcrowding is the increase in violence, with a large number of inmates that make the labor of guards more difficult. There cannot be dignity nor restoration in places where overcrowding limits the conditions for individual growth.”*

24 For a review of the Colombian origin of the “Unconstitutional State of Affairs” and its sequence in other Latin-American countries, see: Gutiérrez Vanegas et al. (2021).

empirical foundation, based on harsher punishments, subordinated to a national security policy, instable, incoherent and inconsistent, leading to an unconstitutional state of affairs of prison overcrowding." This harsh sentence imposes certain actions and presents some criteria, amongst others, a minimum standard of cell dimensions (based on the CICR recommendations) according to the time the prisoner stays in the cell each day (CCC 2015:129-133). But it also tackles the problem of staff. It does not impose standards, but asks for sufficient prison workers so as to comply with the respect of prisoners needs. It also criticizes the lack of prison security officers, interestingly, for the sake of the protection of the inmates (CCC 2015:170). Consequently, it asks the State to constitute a Commission (indicating who should participate) to elaborate technical standards, like the number of inmates per security officer in each type of prison. The Constitutional Court also created a special Court to do the follow up on prison conditions in Colombia (Ariza & Torres 2019:252). A similar proceeding occurred in the USA with the Brown vs Plata Sentence of the Supreme Court (2011) based on the violation of the 8th Amendment that bans cruel and unusual punishments (Cfr. Ariza & Torres 2019: 248).

The Peruvian sentence by the Constitutional Court is based on a request by a prisoner who

claims he has been treated inhumanely by the prison authorities. The sentence declares that the permanent and critical situation of overcrowding in the Peruvian prisons is unconstitutional.²⁵ It compels the Justice Ministry to present – within three months - a new 2021-2023 plan on criminal policy, to cope with the overcrowding issue and that, if by 2025 the overcrowding problem persists, it may lead to the closure of the prisons concerned. It even indicates the six prisons with the highest overcrowding ratios that could be closed to that effect. It also states that prison should only be used for citizens who have committed serious crimes, and that other criminals could be sentenced to alternatives measures. A follow-up of the measures will be executed every 6 months by the Constitutional Court through public audiences.

The French case refers to the situation of remand prisoners who are kept in conditions that are considered inhuman due to overcrowding and other circumstances in the French prison system. The French State had been condemned by the European Court of Human Rights, and subsequently, the Constitutional Council oversaw the case and declared part of art. 144 of the procedural criminal code unconstitutional.

25 For previous sentences of the Peruvian Constitutional Court on the effects of overcrowding see: Siles (2021).

Thus, overcrowding is considered not only a matter exclusively proper to prison authorities, but a matter that concerns society as a whole. A society that condemns an offender cannot just lock him up and throw away the key. However, that is what mostly happens when the State does not provide the necessary means for the prison system to work efficiently.

Standards are always needed to provide a measure of efficiency. In prison environments, standards are mostly expressed in two terms: prison capacity and recidivism. Both are intensively linked. When prison capacity is exceeded, it is more than probable that the prisoner is not treated as he should be, because of lack of space, health provision, education and labor capacity, and even adequate food, psychological help and sustained family relationship. It should be remembered that offenders are sent to prison to learn how to become law-abiding citizens again. Prison is not supposed to be a mere punishment in retribution for the damage done. This is a point that seems quite difficult to be perceived by public opinion and most politicians. Imprisonment is a measure taken in the name of the whole of society in order to improve social well-being. That is why everybody pays for the prison system through state taxes.²⁶ However, most ci-

²⁶ In Peru, the annual cost per inmate has not changed

tizens seem to ask nothing more of prisons than that they keep society safe from offenders and does not let them escape. As we will see, that is exactly what the system is tending to do, if we look at the expenditure categories, where security gobbles up most of the funds.

As seen above, prison standards are mostly set in terms of space. However, sufficient prison space in itself does not guarantee success in the rehabilitation process. Infrastructure is an important, but not a sufficient, condition for success. Nevertheless, it is easier to find money to build prisons than to provide a budget for its maintenance and functioning. In many countries, infrastructure budgets are easier to defend than personnel costs. The former is seen as investment, the latter as cost. The former is more prone to be influenced by corruption, the latter less.

If the rehabilitation function of prisons is taken seriously, the necessary staff is to be taken into account and provided with the necessary means.

The following tables present the situation in the Peruvian prison system. The data has - sometimes painstakingly and with difficulty - been retrieved from various sources, which do not

significantly. According to our calculations, it went from 4406 Soles per prisoner in 2003, to 5945 Soles in 2020 (in constant 2003 soles), roughly 1700 US\$ or 6 months minimum wage. Compared to roughly 35K GBP in the UK (The secret Barrister 2019:300).

always coincide or permit medium term comparisons (see the last paragraph on Limitations). However, in this particular case, the aim is more to define trends than to analyze exact, comparable figures.

Table 2

Year	Prison Population (A)	Prison personnel (B)	Prisoners / worker (A/B)
2003	28826	4665	6.2
2006	35835	4374	8.2
2007	39684	4959	8.0
2011	52700	5485	9.6
2012	56070	6153	9.1
2014	71961	8278	8.7
2015	77242	8836	8.7
2019	94842	9919	9.6
2020	96145	10389	9.3
2022	90214	11215	8.0

Sources: Campos 2015, CEAS 2003, CEAS 2013, INPE 2020a, INPE 2023, MEF 2013a, MINJUS 2003, Van der Maat 2008.

As in the case of the Peruvian prison infrastructure, prison population has risen more rapidly than the staff taking care. In twenty years, prison population increased from 2003 to 2022 by 313 %, while infrastructure grew by only 196 % and prison workers augmented by 240 %, leaving a similar gap in terms of accommodation and of personnel. Understandably, the work pressure has increased by 33 %, adding 2 prisoners to

the average workload of each prison worker.²⁷ It should be noted that these figures in 2022 are far better than two years earlier, thanks to the decreased prison population due to Covid-19 since 2020.

Comparing these figures with other countries, in 2020 (before the Covid-19 pandemic) the Peruvian prison system sat somewhere in the lower middle range, apparently, with Thailand having 32 prisoners per staff, while Morocco and Laos had similar rates as Peru (PRI 2020:40). The US had 4,1 inmates per staff (USBJ 2020, with 2018 rates), Costa Rica had 4 prisoners per staff, while Sweden, Denmark and Norway had a ratio of less than one to one (PRI 2020: 40). For the moment it is not possible to compare more up to date figures. What is generally accepted, however, is that the Covid-19 pandemic of 2020-2021 has severely reduced prison staff. This staff shortage is slowly being countered in 2022, as can be seen from the Peruvian figures above.

When we disaggregate the type of prison worker, the results get even worse.

27 This lack of staff and budget is nothing new in the Peruvian penitentiary system; it is rather a structural characteristic that dates from the very birth of the Peruvian prison system in the 19th century. See Aguirre (2019:134-135.)

Table 3

Year	Prison Population (A)	SECURITY PERSONNEL	TREATMENT STAFF	ADMINISTRATIVE STAFF
2003	28826	2345	1002	1318
2006	35835	2625	936	813
2007	39684	3082	849	1028
2011	52700	3156	1073	1256
2012	56070	3811	983	1359
2014	71961	5356	1404	1518
2015	77242	5952	1445	1439
1019	94842	7389	1388	1142
2020	96145	8342	1192	855
2022	90214	7964	1533	1754

Sources: Campo 2015, CEAS 2003, CEAS 2013, INPE 2020a, INPE 2023, MEF 2013a, MINJUS 2003, Van der Maat 2008.

Once the prison workers are separated according to their main function (Security, Treatment or Administration²⁸), the average figures become

28 The prison workers mentioned on the INPE web-site have been distributed in these three categories according to the following list (maintaining the denomination in Spanish because of its specificity). **Security:** Agente (I – II), especialista, profesional y técnico de seguridad, agente penitenciario, chofer de resguardo asignado a seguridad, supervisor de grupo, alcaide de grupo, analista en inteligencia, especialista en inteligencia; **Treatment:** abogado, docente, enfermero, especialista en educación, psicología, relaciones laborales (I-II), salud, trabajo, trabajo social, tratamiento extramuros, legal, médico cirujano, profesional de salud, tratamiento, psicólogo, técnico en tratamiento extramuros, técnico laboral, trabajador social; and **Administration:** asistente, asistente administrativo, auxiliar, chofer, (sub)director, especialista, profesional y técnico en

more specific. From 2003 to 2022 Prison Security Officers increased by 340 %, even exceeding the increase in prisoners (313 %); staff in charge of treatment nearly maintained their 2003 level and grew to 153 %, while administrative workers increased to 132 %.

A few clarifications are required to understand these figures before analyzing them.

The security personnel figures do not show the real increase in workload. In effect, in 2003, the security of 39 prisons was performed by a specialized police force, the Guardia Republicana. They did not only control the external security but often also the security within the prison, controlling the direction of the prison (usually a higher official: major, colonel) They secured the largest and most difficult prisons, like Lurigancho prison in Lima. The 2003 National Prison Plan mentions that INPE required an additional 6775 (sic ²⁹) security guards (2416 for internal security and 4361 for external security) to replace the police forces (MINJUS 2003: 74). Since 2003 the prison security forces have only increased by 5997 officers, over 1200 short of the replacement required, without accounting for

administración, especialista en personal y en registro, gestor de base de datos, gestor de identidad o de registro, jefe, secretaria/secretario técnico, técnico en almacén y técnico en mantenimiento. (INPE 2020)

29 This figure does not sum up with the following detail.

the triplefold increase in prisoners in the same period. In 2015, five prisons were still under control of the police forces (Campos 2015:9), now, only Challapalca high security prison has security control by the Peruvian Army, because of its setting within an army compound near the Bolivian border at more than 4000m altitude. The increase shown in the table has henceforth to be relativised.

The increase of the treatment staff has not followed the trend of infrastructure, let alone the increase in prisoners. After the Covid-19 pandemic, the number of administrative personnel has recovered, as all other staff categories. This increase came, even with a growing computerization of the administrative tasks and the reduction of prisons over the years.

Table 4

Year	Prison Population (A)	PRISONERS PER SECURITY OFFICER	PRISONERS PER TREATMENT WORKER	PRISONERS PER ADMINISTRATIVE WORKER
2003	28826	12.3	28.8	21.9
2006	35835	13.7	38.3	44.1
2007	39684	12.9	46.7	38.6
2011	52700	16.7	49.1	42.0
2012	56070	14.7	57.0	41.3
2014	71961	13.4	51.3	47.4
2015	77242	13.0	53.5	53.7
1019	94842	12.8	68.3	83.0

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2020	96145	11.5	80.7	112.5
2022	90214	11.3	58.9	51.4

Sources: Campos 2015, CEAS 2003, CEAS 2013, INPE 2020a, INPE 2023, MEF 2013a, MINJUS 2003, Van der Maat 2008.

Table 4 presents the number of prisoners each worker is supposed to handle. It is clear that there has been a steady increase over the years. The details are not to be considered too close, as these are average numbers, provided by different sources. The real situation in any determined prison can be quite different. What interests us here is the trend. The workload per security officer has remained relatively stable or even improved (minding the above remarks on the reduction of police personnel). But the increase in workload for treatment and administrative workers has been dramatic, double for treatment staff, and more than double for administrative workers. For one person to treat an average of 59 prisoners or to do the administrative work for 51 prisoners on average is hopelessly complicated and surreal. There certainly is a lack of personnel in these two areas. It may be concluded that stress levels among these workers must have gone up. Many investigations have pointed out that prison workers are more likely to be stressed than the average national worker (Xiaojun 2016, Burton 2018: 27 indicate a fourfold increased stress

level, USBLS 2020 states the high turnover, etc.). The increase in workload intensifies this trend. Hence, less than usual results can be expected regarding the efficiency of their work.

But it is not only the increased pressure on the workers that is an obvious trend in Peruvian prisons. One also has to look to the priorities given in the distribution of workers.

Table 5

Year	% SECURITY PERSONNEL	% TREATMENT PERSONNEL	% ADMINISTRATIVE PERSONNEL	TOTAL %
2003	50.27	21.48	28.25	100
2006	60.01	21.40	18.59	100
2007	62.18	18.11	19.71	100
2011	57.54	19.56	22.90	100
2012	61.94	15.98	22.09	100
2014	64.70	16.96	18.34	100
2015	67.36	16.35	16.29	100
2019	74.49	13.99	11.51	100
2020	80.30	11.47	8.23	100
2022	70.99	13.44	15.57	100

Sources: Campos 2015, CEAS 2003, CEAS 2013, INPE 2020a, INPE 2023, MEF 2013a, MINJUS 2003, Van der Maat 2008.

From Table 5 it is evident that the proportion in security personnel in regard to the total staff has increased dramatically. They made up 80

% of total staff in 2020, and 71 % in 2022; while the proportion of treatment workers has declined from approximately one fifth (21.48 %) to a bit less than an eighth (13.44 %), while administrative workers have fared worst, getting halved from nearly a third (28.25 %) to a bit more than a sixth (15.57 %). It is obvious that the focus in the distribution of staff is put on security.³⁰ Keeping inmates from breaking out is the top priority, for the reasons already mentioned earlier. If a sixth of the total workforce of an entity is dedicated to its main function, it is obvious that the results will be negative. If offenders are put into prison to rehabilitate (as the law goes), there should be an emphasis on that function in the workout of the prison.

Another point is the lack of standards and resources. Several official reports state that resources are insufficient. The 2016 National Prison Plan states explicitly that *“There is no sufficient budget to implement primary health services in the prisons”* (MINJUS 2016b:51). The problem with this statement is that, however evident its claim is, there does not seem to exist a standard budget to cover the existing needs. The

30 The Brazilian sociologist Analía Soria rightly states that: “Internal security constitutes a fundamental aspect of prison management, and practices as the ones referred to re-socialisation and psychological treatment of the inmates, are incorporated in the logic of prison security.” (Soria 116:124)

same seems true for staff. In the international documents there is no reference to technical minimum staff rates. Evidently, requirements may vary widely according to the context and to the budget at disposal. However, a minimum standard could be brought up, as it exists for certain functions in society (e.g. minimum number of doctors per 100,000 inhabitants by WHO). It is not enough to declare that “(P) eople in prison share the same right to health and wellbeing as everyone else. When a state deprives people of their liberty it has a special duty to care for their health” (WHO 2019:1).³¹ There should be minimum standards that would help plan and offer the necessary budgets.

These standards do not seem to exist. However, we have found a reference in an indirect source. The 2016 Prison Infrastructure Plan (MINJUS 2016a) contains some indications on the number of professionals that are supposed to work in the facilities. The Justice Ministry in a way had to plan the number of workers, in order to plan the required space for their activities. That is where one can find some figures that could stand as standards. They are presented in Table 6.

31 Even in Europe, where standards are set on a higher level “(Because of) overcrowding and poor nutrition tuberculosis rates are up to 84 times higher than in the general population.” (WHO 2019:1). The Covid-19 pandemic has confirmed the same dangerous trend worldwide.

It has not been possible to calculate the number of teachers according to this document, as it lacks some data on how they are supposed to work. The same must be said regarding staff in workshops. The purpose of these indicators was to plan the space needed for these professionals to work in a prison. As this document is only concerned with the planning of infrastructure and the necessary space, it presents the square meters necessary for the number of prisoners who are supposed to attend classes or workshops, but it does not indicate the number of staff working with them. Some rates should be subject to change. For example, it is necessary to have more nurses than doctors, as they do the follow-up of the doctor's visit. It is not necessary to have as many staff in the laboratory as doctors, etc. With these limitations in mind, one can calculate the planned staff that is supposed to work in the new prison buildings. The planned needs widely exceed the present-day staff numbers.

Table 6

Staff type	Planned prisoners/ staff (A)	Total staff need* (B)	2012 prisoners/ staff rates (C)	2012 projected rates (D)
Medical doctor	500	192	890	603
Dentist	500	192	n.a.	n.a.
Nurse	500	192	n.a.	n.a.
Laboratory technician	500	192	n.a.	n.a.
Nutritionist	500	192	n.a.	n.a.
Aux. nurse	500	192	n.a.	n.a.
Pharmacist	500	192	n.a.	n.a.
Obstetrician	1000+	4	n.a.	n.a.
Psychologist	100	961	389	250
Social Worker	150	640	445	245
Lawyer	169	568	529	292

*according to 2020 prisoners figures

+Only for women prisoners (total number 4450)

Source: (A) Based on MINJUS 2016a (C) and (D) CEAS 2013.

In 2012 there was an Urgency Decree (DU 007-2012) that (once more) declared the National Penitentiary System in Emergency. New plans were made, and, amongst others Emergency Reforms, it was thought necessary to increase

the number of prison workers. This does not mean there were any standards as to which the harsh reality was compared. It was just an exercise based on feasibility (mainly budget projections) that supported the planned increase in staff. However, even with the increased rates (column D) the figures still fall widely short of the 2016 infrastructure oriented standard reference.

Some other comments on the prison staff are necessary. It is not enough to set minimum quantity standards to be met per prison population. The qualitative aspect should also be considered. First there is the professional quality of the staff. This implies not only that the staff are academically recognized and capable professionals, but also that the pay they are offered is market-competitive. Often prison workers do not earn as much as their peers in other sectors. Moreover, they suffer from stigmatization for the type of work they do. Secondly there is the recruiting process, where high standards should be maintained. The European Committee on Crime Problems has published new Guidelines for the recruitment of prison personnel (CDPC 2019), stating minimum education levels (based on the European Qualification Framework). It also requires staff to be educated and trained, apart from their profession, to work specifically in prison environment. Training is essential, but

very different from country to country. It can go from between 100 and 300 hours in the USA (Burton 2018:30), to 10 weeks in the UK (The secret Barrister 2019:302) to two years in Chile and Norway (PRI 2020: 40). All indicators need an increase: higher volume of prison workers, better qualifications and training, higher pay.

The lack of service standards and often also of realistic qualification requirements for prison staff entail an excessive workload and stress levels for them. This limits the efficiency of their work with prisoners, reducing the effectiveness of the inmates' rehabilitation during their prison time, and probably increasing the recidivism rate. Although recidivism rates are difficult to establish, it is clear that no other official entity of the State has such a bad efficiency rate. If a health or education system would constantly show the same results as the prison system, it would have been thoroughly changed in order to improve the results and the return on investment made. However, the prison system does not seem to be measured by the same standards.

Limitations

As already noted, this article suffers from some lack of consistent and continuous data. The web pages of many actors in the universe of criminal justice and prisons are not happy

providers of information. Most consider that the less data they provide to the outside, the better they are protected from criticism. Even global, authoritative and very respectful organizations from civil society like Prison Reform International, lament that *“limited publicly available data remain a challenge”* as is the *“common lack of transparency”* (PRI 2020:3).

Data on Peruvian prisons are no exception. It takes some time for the authorities to publish some basic data on their web pages, and they keep them available only for a limited time (usually around two years), which makes it very difficult to establish medium term trends. A change at the top of the institution can also result in a profound change in the information policy, in spite of legal regulations of transparency. Most data seem to be nearly considered state secrets. The same criteria are not respected from one year to the other. For example, the categories on prison workers have been reduced from 111 in 2019 to 52 in 2020, which makes it quite difficult to compare data.³²

32 If one looks at other (official) documents, one finds that within the same document, figures are not consistent (e.g. Campos 2015 presents occupancy figures with data for the whole penal population, including the ones who are extra-muros; Plan Nacional 2003 shows different prison populations for the same year according to the area it describes. The amount switches from 26.701 to 27.493 inmates p. 42.47). In the documents it is not always clear from which month the figure has been taken, which makes comparisons difficult.

In a way there is a contradiction in the way the prison systems function. Their work continues to be based on a panopticon principle: to supervise and control every aspect of the prisoners (through cameras, searches, registers and reports, etc.). But the reverse is true when it comes to supervising the system itself from the outside. No panopticon is tolerated to assess the system. Ombudsmen and other supervision organisms, as well as civil society, keep on having lots of difficulties to penetrate independently in the system to gauge what is exactly happening at every facility and every level. The prison system continues to consider itself exempt of external control (Albuquerque 2019, Cliquennois 2018, DP 2019, Godoi 2019). This reinforces the necessity to monitor the prison system.³³

Notwithstanding these data problems may make comparisons inaccurate in the details, but what this study wants to highlight are the broad trends, which is a task that still is attainable even with the opaque data counts.

33 *“Routine monitoring in prisons can play a crucial role in making correctional governance both more legitimate and more effective at promoting human rights of prisoners”* Cliquennois (2017:16).

Conclusions

- a. The overcrowding of prisons is not a new phenomenon, it seems embedded in the prison system itself (save a few meritorious exceptions).³⁴ Chronic lack of resources also seems a structural characteristic of the prison system. This lack of funding has political roots, as providing budgets to improve prison conditions, is not politically profitable. The current austerity measures, taken by so many governments these recent years, are met by a “culture of acceptance” (Ismael 2019:5) that takes for granted the necessity to cut the purse in social programs. The prison system is viewed as a cost to society, not as an investment, like the education system.
- b. The usual standard to measure overcrowding is the occupancy rate. If the number of inmates exceeds the designed (or even the operating) capacity of a penitentiary facility, it is considered as overcrowded. However, this factor is a mere average, which is the reason why the European standard reference views a prison as overcrowded when the occupancy rate is over 90%.
- c. The occupancy rate only takes into account

34 The UNODC Handbook recalls an old adagio for prisons: “As has been emphasized by many commentators: ‘where there are prisons, they will be filled’”. UNODC (2013: 162).

the disposable cell space for the prisoner. It should be better to consider cubic space instead of square space per prisoner, as well as to consider the total disposable space (including workshops, patios, etc.) per prisoner category and according to the time she/he spends in her/his cell. This density rate should also take into account the size of the facility.

- d. Following the European Prison Rules, it would be useful to establish and set in law the maximum capacity of a facility and to foresee protocols to be followed when a prisoner is presented at a prison which has reached its full capacity.
- e. However, if one considers that the aim of imprisonment is not only to lock up an offender in order that he cannot do any harm to society, but also to try to rehabilitate him so as to be a law-abiding citizen who can (re)integrate the community when he leaves the prison, then it is necessary to gauge the prison conditions (and hence overcrowding) in terms of the rehabilitation capacity it offers. This measure will not only look at the disposable space per prisoner, but also at the resources the facility puts at the disposal of this process. This entails the offer of sufficient and qualified prison workers to take care of

the health and social abilities of the prisoner. No standards seem to exist. It would be necessary to establish realistic minimum standard rates for professionals, in order to guarantee the necessary corresponding resources (space, funds, supplies). To be meaningful, the staff indicators should differentiate between security, treatment and administration staff. The rehabilitation aim of prisons implies that staff preference should not exclusively be given to security forces, but preferentially to treatment officers.

- f. The prison system tends to cut itself off from civil society using the excuse that it has to prevent security breaches. The risk this phenomenon entails is that prisons become independent islands without external control or interference. For that very same reason it is necessary to guarantee routine monitoring in prisons by independent inspection bodies, both from the State as from civil society. This monitoring is necessary to ensure the respect of minimum standards and to avoid overcrowding.
- g. To uphold the best possible prison standards would improve the working conditions of the prison workers and hence the effectiveness of their work; it would also improve the usefulness and the social legitimation of the

prison system, it would lower the social and economic cost of crime, and it would reduce the recidivism rate.

- h. In the end, the construction of new and larger prison facilities will never reduce overcrowding. The reduction of overcrowding will depend on the way society and politicians cease to perceive and judge the criminal system as a necessary and harsh retribution to offenders that should only guarantee zero evasion at the lowest cost. It should be remembered what the criminal system stands for, namely to protect society by rehabilitating the inmates as law-abiding and useful members of society.

Declaration of interests

The author declares to be member of the Observatorio de Prisiones Arequipa and of the International Criminological Society. This investigation has received no funding whatsoever.

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TENDENCIES IN THE DIFFERENT JUVENILE JUSTICE SYSTEMS IN PERU 2010-2022

1. Introduction

According to public opinion, influenced by the mass media, Peru seems to be at the mercy of a horde of increasingly violent juvenile delinquents. The proposed remedy to this plague is to increase the punishment and to reduce the age of criminal responsibility. Politicians are more than eager to comply to this vox populi, as this solution is politically profitable.

However, other answers to this phenomenon are not only possible, but even desirable. Some are being implemented, although with some difficulty. Peru has actually implemented three different systems to respond to juvenile misbehaviour and offences. One is the iron fist (“mano dura”) that sends Juveniles in Conflict with Criminal Law (JCCL) to closed facilities that are run mostly like prisons for juveniles, called Juvenile Centres for Diagnosis and Rehabilitation (JCDR). A second system works in open facilities, where JCCL – mainly with minor offences – periodically come to receive a treatment or follow-up. These centres

are called Orientational Service for Adolescents – OSA (in Spanish: “Servicio de Orientación al Adolescente – SOA). A third system follows the guidelines of Restorative Justice, which uses diversion, so as to prevent the juvenile to go to court. This system is managed by the Public Prosecutor’s Office.

This article presents an investigation that highlights the tendencies of these three Juvenile Justice systems in a bit more than the last decade, from 2010 to 2022. However, it is clear that the two years that saw the Covid-19 pandemic (2020 and 2021) somehow show an exceptional situation because of the impact of the pandemic, as life in Peru changed considerably: lock-downs, restrictions on travel, limitations on social gatherings, etc. This profoundly altered social relations, which makes that the statistics on Juvenile Justice cannot be compared with the previous years.

We will present the evolution of the three systems of juvenile justice, with a brief analysis of their respective characteristics. The interrelations between the three systems will also be investigated, in order to present a general hypothesis that will try to present the reasons of the evolution that has been described.

But before we start this analysis, we will briefly

tackle the methodological problems encountered to obtain the statistical data on the situation of juvenile justice in Peru.

2. Some problems with the statistics on juvenile justice in Peru

2.1. Preamble

Before presenting some of the results in this investigation, it is necessary to warn about its limitations, due to a serious problem in the data collection. Peru does not have a unified system to collect statistical data on juvenile justice issues. This seriously limits the possibility to investigate and analyse the problem of JCCL. We briefly present some of the most serious data issues.

2.2. Availability

Many data are not available. Many figures we use in this investigation have only been obtained through a process of soliciting them to certain authorities, because they were not publicly available. It is not that they did not exist, but the format used by some institutions is not always the most useful. For example, some statistic bulletins periodically present the stock on a given moment, but the annual flow is not available. The institutions have the date to elaborate the flow, of course, but they do not calculate it or publish it. Another problem is when the responsibility of

an institution is passed to another entity. Then the new entity just starts from zero, and the previous data are not available anymore. This makes it very hard to analyse medium or long-range trends.

2.3. Accessibility

Many data are not (easily) accessible. Some institutions cease to publish data after a certain period of time. If one has not accessed them in time, they simply disappear from the institutional web-page.

2.4. Changing definitions

Sometimes, an institution modifies the definition of a concept within its own publications, without indicating the change, which makes it impossible to use the data in a time flow. For example, one source indicates that during three consecutive years the number of arrested juveniles has decreased by more than 50 %. This surprising data probably responds to a change in the definition of “arrested juvenile”. Otherwise, it would be incoherent. The problem is that the change in the definition of the concept is nowhere to be found¹.

1 This difficulty is not new. Ten years ago, the National Youth Secretariat already remarked that: “(t)he data of the National Police that register the cases of adolescent offenders show an evolution that is not consistent. By times the numbers fall drastically and in other moments they increase again. These tendencies can only be understood when one knows the

On top of that, the many institutions collecting data on juvenile justice use different categories to register their data². For example, INEI (the statistical body of the Peruvian State) uses different age groups than the Police or the Judiciary. This makes the data of the different government bodies unfit for comparisons. Of course, simulations can be made (as we have been bound to do sometimes) but they rest efficiency to the results one can obtain.

2.5. Incoherent data

The published data do not always mention the date to which they refer. The year may be mentioned, but not necessarily the month. That is why sometimes for the same year different data are published. Another problem is that sometimes it is not clear whether the data refer to a stock or a flow. Sometimes a number of juveniles is mentioned as having been attended

limitations of the data registered by the Police.” (Secretaría Nacional de la Juventud 2013: 138)

- 2 This problem was already mentioned by the Peruvian Ombudsman more than a decade ago. “In relation with the statistics that the Judiciary uses referred to the juridical characteristics of the juveniles in conflict with criminal law (sentenced, processed, recidivist, type of offence, etc.) are not to be trusted, as there is no ‘National Register of Juvenile Offender’ ”. Defensoría del Pueblo (2011:96). See also: Defensoría del Pueblo (2007:156).

during a year. But comparing this data, it turns out to be the same as the stock of juveniles attended in December of that same year. In other cases, the supposed annual flow is inferior to the stock of a given month in the same year, which is impossible. Sometimes the sums of the different sub-groups do not add up.

2.6. Coordination efforts

Some efforts have been made to try to coordinate data collection among the different institutions that tackle criminality in Peru: the National Statistics Institute (INEI), the National Prison Institute (INPE), the Justice Ministry, the Judiciary, the Prosecutors' Office, the Police (PNP), etc. Some UN agencies like UNODC and even some countries have tried to give a hand. That was the case when an Interinstitutional Statistics Committee on Crime (Comité Estadístico Interinstitucional de la Criminalidad - CEIC) was established in 2013, and the subsequent 'Data crim' publications.

But sadly, these efforts do not seem to have persisted. Any researcher trying to investigate, has to take arms against a sea of incompatible data that make it quite hard to establish medium term flows. If the State really wants to tackle crime – committed either by adults or by juveniles – the unification of data collection criteria is a real *conditio sine qua non*.

2.7. Implications

When one has to fight all these problems, it is understandable that it is difficult to elaborate an exact calculation that reflects the situation or even the evolution of the phenomenon of juvenile justice in Peru. Medium term historical flows are impossible to establish when the data of (some) year(s) are lacking. It is also impossible to establish some ratios with data from different institutions, when these are based on different concepts.

Neither is it a surprise that the Committee on the Rights of the Child has summoned the Peruvian State to solve this matter. *“The Committee recommends that the State party continue reviewing and updating its data-collection system, with a view to including all areas covered by the Convention.”* (Comité de los Derechos del Niño 2000:14).

We have tried to find solutions for many of the problems making use of simulations and estimations, but it is clear that the results are approximates. However, in this case, the aim was not so much to obtain exact figures, as to show trends, even using approximative data.

One last remark: it is not clear how an institution can plan and act without reliable and comparable data. How can the State plan, monitor and

evaluate its policies with such an opaque data base? How can it elaborate a National Action Plan in these conditions? It seems urgent to work on this issue on an interinstitutional level.

3. Some remarks on demography

To counter the Peruvian mass media with their representation of a country seems to be invaded by juvenile delinquents that daily attack lives and property, it is necessary to take a close look at demographic figures and analyse what they tell us about the juvenile segment of society.

In the former paragraph it has already been explained how difficult it is to obtain coherent figures on JJCL in Peru. INEI groups young people in a segment that encompasses the 15 to 29 years old, while the Police groups them in a 0 to 17 years segment. On the other hand, Pronacej (the programme charged with the custody of JJCL) publishes figures of the segment from 14 to 21 years or more (sic).

The only way we have to calculate a relevant age-segment for our investigation (that is 14 to 18 years old, the group that falls under juvenile justice laws) is to start from the INEI population pyramids, that presents groups of 5 years. The INEI segment that interests us is the one from 15 to 19 years. However, this segment does not exactly represent the age group we need, as it

does not include the 14 years old, and it includes the 19 years old. Notwithstanding this limitation, we will use the figures anyway, as the 14 years old group is the least represented in the JCCL. Their exclusion from our figures should not alter dramatically our final results. The fact that the same limits will be maintained throughout the whole investigation period gives a certain stability to the tendencies that will be highlighted³.

During the last decade, the population in Peru has grown by around 1.5 % per annum (INEI-UNFPA 2020:11).

If we look at the part of the age group of 15-19 years in the total population, INEI estimated that between 1950 and 1960 this group increased by more than 200,000, while between 2010 and 2020 it decreased by 400,000. Between 2060 and 2070, INEI projects a decrease of

3 To estimate the 15-19 years group in the period we are investigating, we have started with the percentage that this group represented as part of the total population, according to the population pyramids of INEI (2020). Then we have applied this percentage to the evolution of the total population on a year-by-year basis, according to the yearly total population figures published by the World Bank. To verify the solidity of our estimates, we have compared our results with the intermediate figures published by INEI in a MINSa Report (MINSa is the Health Ministry). Our estimate was a population of 2'551,791, while MINSa's estimate was 2'548,344, a close difference of 3447 (just 1.3 percentual points), which makes our population estimate quite acceptable.

nearly 200,000. This age-group also reduces its relative presence, representing 10 % in 1950 and representing only 7.6 % in 2020.

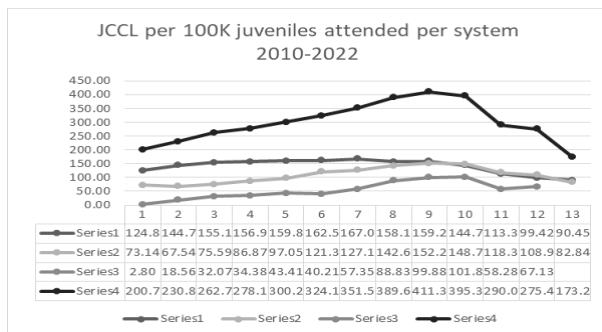
This phenomenon reflects a constant ageing of the population. INEI states that, consequently, the medium age increases over time from 1990 on. In 1950 the national medium age was 19.2 years, in 1970 it was 17.6 years, but in 1990 it climbed to 20 years, attaining 25.4 years in 2010, and 30.6 years in 2020. The estimation for 2030 is 33.8 years. (INEI-UNFPA 2020:14). We are going to live with much less juveniles every year.

When we calculate the ratio of JCCL as part of the total juvenile population, there has been a slight increase from 201 per 100,000 juveniles in 2010 to 395 per 100,000 juveniles in 2019 (the last useful year of comparison). That is to say that we went from 2 to 4 juveniles per mille who are in contact or conflict with criminal law. In absolute terms we are talking about an increase from 4,453 JCCL in 2010 to a maximum of 10,053 JCCL in 2018, reducing afterwards to 7,021 in 2021 (the last available useful figure), on a juvenile population that shifted from 2'217,715 to 2'548,689 in 12 years. Adults in conflict with criminal law added up to 126,064 in 2019 (INPE 2019:8), roughly 18 times more than the juveniles. Thus, the figure of JCCL, that

is below 10,000 in total should not justify a panic reaction in the more than 33 million Peruvians.

When we look at the ratio of JCCL per justice system, we have the following view:

Graphic 01: JCCL per justice system 2010-2022



Source: different statistics. Series 1: Closed facilities, Series 2: Open facilities, Series 3: Restorative Juvenile Justice, Series 4: total

In conclusion we can say that the tendency of the population of the 15–19-year-old JCCL Peru marks a process of an aging population. In this context, juveniles represent a decreasing portion of the total population. Regarding the JCCL, they show a slight decrease from 2019 on, after a continuous increase since 2010.

4. Tendencies per system

4.1. Complaint reports

It is rather common to hear that delinquency in the country is rising. This conclusion is also applied – without any criteria – to juvenile delinquency. This leads to a situation where the juveniles are represented as dangerous delinquents who are increasingly becoming more daring. However, as always, it is necessary to differentiate the perception from the registered figures.

- a. The problem is – as always – that statistics are very difficult to find or that the figures don't round up. For example, the complaints on juvenile offenders registered by the national police during the period 2010-2021 don't represent even 25 % of the complaints registered by the Prosecutor's Office, notwithstanding that to register a complaint at the Prosecutor's Office, a Police certificate of complaint is required.

Another problem is that the criteria to collect the data seems to have changed. Surprisingly, the data collected by the Police registered a significant decrease in the complaints on juveniles: from 12,464 in 2015 to 4,924 in 2018, maintaining the same tendency in the following years (PNP 2015-2021). The only reasonable explanation is that the criteria to collect the data has

changed. However, the statistics that are published do not contain a note on the methodology used. Due to this incongruency of the Police data, we will turn to the data published by the Prosecutor's Office.

- b. But, even with an historical flow of coherent data, surges an interpretation issue. Much depends on the base year used. Let's see the following example.

Table 01: Total complaints regarding juvenile offenders according to the Prosecutor's Office 2010-2021

2010	19,264
2011	13,465
2012	15,707
2013	14,052
2014	14,733
2015	13,557
2016	15,303
2017	17,305
2018	19,896
2019	22,997
2020	13,020
2021	17,751

Source: Ministerio Público – Línea de Acción Justicia Juvenil Restaurativa (2022)

If the reference taken is the year 2011, we can see an increase between 2011 and 2021 from 13,465 to 17,751 cases, i.e. equivalent to 32 %. The year with the major number of complaints was 2019, reaching 22,997 (71 % more than in 2011).

But, if we take as reference 2010, with 19,264 complaints, and compare that with 2019, the number of complaints only increased by 19 %, just a bit more than the population growth. And if we compare the year 2010 with 2021, we even perceive a decrease by 8 %, probably due to the impact of the Covid-19 pandemic that limited social contact.

So even with objective data, the described tendencies can vary significantly by carefully choosing the years one wants to compare. It is not the same to argue that juvenile delinquency has increased by 19 % or even 71 % in the last few years, or to state that it has decreased by 8 %! Given that all these figures are objective, it is easy to understand that public opinion can be directed towards very different reactions by using totally objective data but with different ideological purposes.

In this investigation, this bias cannot be prevented. Working with approximative data, we will try to spot certain tendencies, with the intention of explaining them in a context where

three different juvenile justice systems co-exist.

4.2. The three systems

- a. Before 1902 Peru did not count with a specialised institution that received juvenile offenders. These were either sent back home or to adult prisons.⁴ The creation of the “Escuela Correccional de Surco” (Correctional School in Surco – Lima) was the first centre to take in juveniles. The following decades nine more centres were inaugurated, all but one for young males. The only facility for young women was Santa Margarita, even till now, which is in Lima. All these facilities received JCCL condemned to deprivation of liberty. Although it must be said that some of these centres started to work on an open system for JCCL who were close to liberation. Today, Pronacej (the entity responsible for these centres) has 9 “Juvenile Diagnostic and Rehabilitation Centres”.
- b. With the aim to decongest these closed centres that suffered highly from overcrowding, the open system was promoted. In 1965 the “Centre for Supervised Liberty” was opened in Lima. As already indicated, the closed centres also managed a certain amount of JCCL that did not remain in the facility. In

4 For a brief history of the institutions charged with the treatment of JCCL I refer to a Van der Maat (2007:148-190).

1992 came the next step in the non-privative system, with the creation of the first SOA (Servicio de Orientación al Adolescente, Orientation Service for Adolescents) in the Rimac district of Lima ⁵.

- c. In 2013 two more SOA's were created (in Tumbes and Huaura), followed by Cañete, Iquitos and Ica the following year. In 2015 seven more were inaugurated. This trend continued till the 25 SOA's that are now in place in the whole country. The original idea behind these facilities, was not only to reduce the number of JCCL in the closed overcrowded centres, but also to offer a type of treatment to JCCL that did not need to be interned in a closed facility, and to propose a treatment to JCCL close to home, which could also integrate their family in the reintegration process.

Additionally, these SOA's offer the advantage of attending not only boys but also girls, who otherwise would have to be sent to Lima. We can synthesize the arguments in favor of the SOA's as: decongestion, desinstitutionalisation, and decentralization.

5 https://scc.pj.gob.pe/wps/wcm/connect/Centros+Juveniles/s_centros_juveniles_nuevo/as_centros_juveniles/as_medio_abierto/as_soa_rimac/as_historia/

- d. Around the beginning of this century, the Swiss NGO “Terre des Hommes – Lausanne”, with the help of the Association “Encuentros” started with the promotion of a different juvenile justice system, based on restoration. This Restorative Juvenile Justice model prevents the judicialization of juvenile criminal cases mainly through the use of diversion, which is a procedure that the Public Ministry can use to suspend the whole case on the condition that the juvenile offender admits his fault and engages into repairing the damage done. The Public Prosecutor then maintains the case without transferring it to the judge. A special multi-disciplinary team, under the supervision of the Prosecutor, then manages the follow up of the final agreement reached between offender and victim.

This new system was promoted through the Public Ministry, that officially assumed it in 2010. Today 15 Restorative Juvenile Justice centres exist throughout the whole country, with the aim of having at least one centre in every Public Ministry district. This system avoids the opening of a judicial case for the JCCL concerned. In this way the JCCL will not have a criminal record, and it will prevent the trauma and stigmatization of the experience of being deprived of his liberty.⁶

6 On the negative impact of early contact with the law for

Thus, Peru has three different types of response to juvenile offender behaviour: a closed system that deprives of liberty, an open system where the JJCL is invited to present himself regularly for treatment and follow-up, and a system which could be called “alternative”, that seeks to accompany the JJCL who is willing to repair the damage done, so as to avoid a judiciary process.

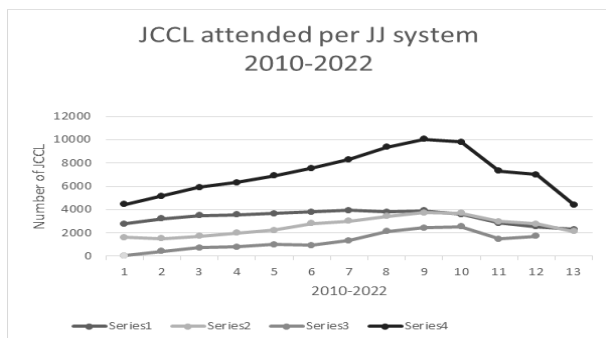
Each one of the three systems has its own logic and supervising institutions: the open and closed systems depend of Pronacej (the National Programme of Juvenile Facilities, which now depends on the Justice Ministry, after having circulated through seven other authorities since its creation in 1902). On the other hand, the restorative system depends on the Public Ministry, through a specialized programme.

4.3. Evolution of each system

The following table presents the number of JJCL attended by each system since 2010.

juveniles, see e.g.: Bick, Johanna; Nelson, Charles A. (2016); Boyce, Niall; Motz, Ryan T.; Barnes, J.C.; Caspi, Avshalom; Arseneault, Louise; Cullen, Francis T.; Houts, Renate; Wertz, Jasmin & Moffitt, Terrie E. (2019); y Godsland, Jane; Sonuga-Barke, Edmund (2020) and the study of The Lancet.

Graphic 01: Number of JCCL attended by each system 2010-2022



Sources: different documents from JJ Authorities

Series 1: Closed facilities, Series 2: Open facilities, Series 3: Restorative Juvenile Justice, Series 4: total

Putting aside the figures of 2020 and 2021 that are conditioned by the Covid-19 pandemic circumstances, and consequently lack representativity, one can see a clear tendency of increased number of JCCL in the three systems from the 2010 starting year on, with a peak in 2018. Considering the increase from 2010 to 2018, the total number of JCCL attended by the three systems more than doubled to 226 %. The closed system incremented by 41 %, the open system by 129 % and the restorative justice system increased to 3937 %. If numbers are compared with 2022, these increments are less important.

However, it is necessary to analyse these figures

and explain their tendency, in order not to fall into a certain catastrophic view that juvenile delinquency has more than doubled in roughly 12 years.

The increase in the open system, as well as in the restorative system are simply due to the growing number of facilities that have opened. More SOA's mean that more JCCL can be attended, and more Restorative Juvenile Justice venues have had the same effect.

The increase in attended JCCL in the three systems has no relation whatsoever with the number of complaints registered by the Public Ministry (Table 01). Just a few examples: in the years 2013 and 2015 there is a clear decrease in the number of complaints, but during these same years, the number of JCCL increases in both the closed and the open systems.

This proves that the number of complaints registered by the Public Ministry is not a good indicator of the gravity of juvenile offences. In the period under investigation, there is no correlation between the number of complaints and the number of JCCL attended in the three juvenile justice systems.

4.4. Characteristics per system

Table 02: JCCL attended per year and per system 2010-2022

Year	Closed system	Open system (SOA)	Total Pronacej	Restorative Juvenile Justice system	TOTAL
2010	2769	1622	4391	62	4453
2011	3236	1510	4746	415	5161
2012	3497	1704	5201	723	5924
2013	3569	1976	5545	782	6327
2014	3674	2231	5905	998	6903
2015	3785	2826	6611	936	7547
2016	3947	3003	6950	1355	8305
2017	3799	3427	7226	2134	9360
2018	3891	3721	7612	2441	10053
2019	3594	3695	7289	2530	9819
2020	2856	2982	5838	1468	7306
2021	2534	2776	5310	1711	7021
2022	2308	2114	4422	n.a.	(4422)

Sources: different documents from JJ Authorities

a. Age and sex

Referring to the specific characteristics of each system, based on the available data, the average age of the JCCL slightly increases from 18.10 to 18.76 in the open system, while the average

age in the closed system barely varies in the investigation period and stays just below 18 years.

There are no significant changes in the distribution by sex, as the proportion of girls in the closed system remains around 5 %. However, in the open system, the proportion of girls increases from 0.95 % in 2010 to 9 % at the end of the period under investigation. The explanation for this increase is the increase in the number of SOAs. It is important to bear in mind this explanation, as shall be demonstrated afterwards. In the Restorative Juvenile Justice system, the proportion of girls increases constantly, from 18 % (in 2016) to 24 % (in 2019), also probably due to the increase of RJJ centres.

b. Types of offences

Regarding the type of offences, we only have figures from the last 5 years. The proportion of most offences is stable, but there are some exceptions. In the open system the proportion of rape (against minors and adults) increases from 9.9 % (2018) to 15.2 % (2022), while theft rises from 0.6 % to 3.2 % in the same period. Meanwhile, homicides halve their number, as do practically aggravated theft and heist, although they practically keep being the most occurring offences (respectively 14.8 % and 20.8 %).

In the same period, in the closed system, the same aggravated theft and heist decrease (the former one even by 40 %), but the cases of rape of minors doubles (from 7.5 % to 14.5 %), as do homicides that increase from 6 % to 8.7 %. Thus, in both systems (open and closed) the proportion of rape increases, while theft and heist increases in the open system, and homicides in the closed system.

However, these are proportions. When analysing the absolute figures, the total of JCCL in both systems accused of aggravated theft has decreased. This is easily explained by the context of social restrictions imposed by the Covid-19 pandemic. This also explains the relative and absolute increase of rape in the open system. In the closed system, where the gravest cases arrive, the number of rapes decreased in absolute terms between 2018 and 2021.

In synthesis, again we have the recurrent problem to differentiate tendencies, due to the short period under investigation (2018-2022) and, on the other hand, because of the changing context imposed by social pandemic measures.

Unfortunately, the Restorative Juvenile Justice system does not use the same offence typology, which makes comparisons quite complicated. However, investigating the period for which there are data available, there is a considerable

decrease in offences against property (from 73 % to 57 %, although the absolute number of cases increases from 804 to 1366). The proportion of offences against public security increases (from 87 to 119, showing a peak of 159 in 2017). The offences that increase significantly between 2016 and 2019 are offences against life, body and health (rising fivefold from 109 to 504), as well as offences against public administration (rising threefold from 18 to 61) and offences against the criminal code, increasing from 31 to 211 cases (rising in relative terms from 3% to 9 %). However, in this Restorative Juvenile Justice system, it has to be remembered that the increase in absolute numbers is due in large part to the increase of centres that have opened in the same period.

In synthesis, the most common offence in the closed and open systems is aggravated heist, (respectively 45 % and 21 %), although the open system has a much more scattered distribution of diverse offences. The restorative Juvenile Justice system boasts a major proportion of offences against property (57 %). Consequently, one can state that the most common offences of JCCL are against property. However, based on the available figures from before the pandemic, the number of these offences has not increased in absolute terms.

4.5. Evolution between the three systems

We have already mentioned the increase of JCCL attended in each system during the last decade (see Table 02). We can now turn to the comparison between the three systems. Within the so-called “traditional” system, i.e. the one that depends on Pronacej (Justice Ministry) and manages the closed and open centres, there is a significant transfer from the closed system to the open system, probably due to the substantial increase of SOA's in these years.

Tabla 03: Proportion of attended JCCL in both the closed and open system within Pronacej. 2010-2022

	% closed	% open
2010	63.06	36.94
2011	68.18	31.82
2012	67.24	32.76
2013	64.36	35.64
2014	62.22	37.78
2015	57.25	42.75
2016	56.79	43.21
2017	52.57	47.43
2018	51.12	48.88
2019	49.31	50.69

2020	48.92	51.08
2021	47.72	52.28
2022	52.19	47.81

Source: personal calculation

In 2010 the majority of JCCL (63 %) in the “traditional” system of closed and open centres was attended in the closed system, a decade later, in 2019, the majority (51 %) was attended in the open system. The transfer (in relative terms) from the closed to the open system was maintained, probably thanks to the increase in open centres.

When looking at the total number of JCCL in the closed system, as part of the total number of JCCL (closed, open and restorative systems) the evolution is even more remarkable. The proportion of JCCL in the closed system as part of the total of the three system came down from 62 % in 2010 to 37 % in 2019. In other words, when in 2010 nearly two thirds of all JCCL were being attended in the closed system, ten years later this was only one third anymore. An impressive evolution.

However, the measure of deprivation of liberty still is not the ultima ratio, the last resource, as the international conventions and rules require. In 2010 the Report of the Judiciary already sta-

ted that: *"In spite of the tendency to increasingly apply alternative measures instead of the privation of liberty, this is still insufficient, because internment still is the socio-educational measure that is most widely applied. In Peru there is a lack of major support for the application of open measures, the offer is insufficient."* (Poder Judicial 2010: 48)

Calculating the proportion of JCCL attended by the Restorative Juvenile Justice system in the grand total of all JCCL, the result is that it rose from 1 % in 2010 to 26 % in 2019.

Most probably this increase in both open systems (SOA and restorative justice system) is due to the gradual and constant increase of centres of those two systems in the country.

However, even if the proportion of JCCL attended in open systems rose, one must also recognize the fact that in absolute terms the number of JCCL sent to the closed system has constantly gone up in the period of this investigation. The lodging capacity of closed centres has increased from 1,473 (in 2015) to 1,665 (in 2020), but the monthly attendance in closed centres has never fallen under 2000 JCCL (with exception of the pandemic months). This indicates that the phenomenon of overcrowding is constant. The issue of overcrowding is not the main theme here. To explore this issue, I refer to another con-

tribution I have written some years ago⁷.

This leaves us with another poignant question, namely the implications of these tendencies of a constant use of socio-educational measures that sentence JCCCL to deprivation of liberty, in spite of the increasing number of possibilities of alternative measures in open systems.

5. Some explanatory hypothesis

According to the available data, there has been a constant increase in the number of JCCCL sent to the three juvenile justice systems during the last decade. There is a favourable tendency towards the open systems (SOA and Restorative Juvenile Justice system), but, in absolute terms the closed system has not decreased in numbers (save due to Covid-19 measures). A rapid interpretation of these trends would explain this increment as an effect of an increase in juvenile delinquency. According to the number of JCCCL that were accused and sentenced or diverted in the three juvenile justice systems, one could conclude that juvenile delinquency has more than doubled since 2010. That is mostly what public opinion and the mass media think. However, this easy answer is not at all satisfying.

7 See: Van der Maat, Bruno (2020) "Indicadores de Hacinamiento Carcelario y Estándares nuevos para el Perú", presented at the 9th Peruvian Human Rights Congress – Lima - nov 2020.

As we have seen, the rate of JCCL attended has no relation whatsoever with the number of registered complaints. That is why another explanation has to be found. A different hypothesis would be that the increase in the number of registered JCCL in this last decade responds to a rather more institutional cause. We will explain this hypothesis in the next few paragraphs.

It is strange that the inauguration of “alternative” systems to the deprivation of liberty, like the open system (initially begun as a system of supervised liberty, that was transformed later into the SOAs) under the auspices of the Judiciary, and later the creation of the Restorative Juvenile Justice programme (under the authority of the Public Ministry) have never led to a decrease in the closed system.

In effect, even when these two “open” systems were created – among other objectives – to decongest the chronically and structurally overcrowded closed centres, this latter system has maintained, and even increased its attention of JCCL. Paradoxically, the implementation of two open systems has never led to a decrease in the number of JCCL attended by the closed system. On the contrary, the closed system has incremented its attention of JCCL. The creation of an “alternative” restorative system has had the same negative effect on the number of JCCL in

the closed system, and even in the open system.

This situation makes one think of a comment by Michel Foucault when he was giving a conference at Montreal University on March 15th 1976 on “alternative measures to incarceration”. When asked what he thought about the “alternative measures to incarceration” he answered that it was no use talking about alternative measures to the deprivation of liberty. These measures (like the limitation of certain rights, supervised liberty, house arrest, etc.) were by no means alternatives, but rather merely extensions of incarceration measures. They were like a repetition, a diffusion an extension of the prison, and no replacement of it. (Foucault 2021: 20-21)

In the same way, the creation of alternative systems in our juvenile justice are nothing but extensions of the closed system. Neither of the two installed “alternatives” has achieved the purpose of reducing the number of JCCL sentenced to the deprivation of liberty in a closed centre. The well-known adagio “a newly built prison is automatically filled” has come true once again.

Every time more and more JCCL are absorbed by the juvenile justice system, be this one closed, open or restorative. Every time more juveniles are drawn into the criminal justice system.⁸

8 A decade ago, the French law-sociologist Laurent Mucchielli indicated that juvenile delinquency in France could be

Maybe, to be honest, one should recognize that the restorative system does not introduce the JCCL into the jurisdictional sphere, but keeps them, in a certain way, set aside from the Judiciary, but not from the justice system.

Knowing the disastrous influence that an early contact of juveniles with the justice system has in their further life⁹, it is highly recommended to reduce this first contact for the largest majority of juveniles.

Thus, it is not so much a question of promoting alternative sanctions, but alternatives to the resolution of conflicts. That is why the initiative of Restorative Juvenile Justice is to be preferred, although other alternatives may be possible.¹⁰

Of course, the quest for conflict resolution alternatives by all means implies a revolution in our traditional way of thinking about justice. The judicialization of conflict resolution has medieval roots, as Foucault has demonstrated a long time ago (Foucault 1978). To change this tradition does not mean, however, that something new

summed up in three words: criminalization, judicialization and ghettoization, referring to the increase in sanctionable offences, the growing judicial recuperation of issues and the delinquency of exclusion. The instauration of alternative sanctions did not result in the decrease of the other sanctions, but in the archiving of cases. (Mucchielli 2014:53-61)

9 Cfr. E.g. Bick & Nelson (2016); Boyce e.a. (2020); Motz e.a. (2019); Nowak (2019).

10 Cfr. Lima e.a. (2020).

must be created. It would rather reach back to millenary subsidiary justice traditions, like the ones used in Babylonian or Hittite areas, from the second millennium before our era.¹¹

6. CONCLUSIONS

By way of conclusion, we would like to highlight some points on this matter of juvenile justice systems in Peru.

First of all, it seems urgent and indispensable to create a unified data collection system across all concerned entities in a coherent and interinstitutional way. We cannot continue with isolated statistic systems based on peculiar and incompatible concept definitions. It is necessary to coordinate efforts to get a unique and global view if we want a coherent national policy on civil security regarding juvenile justice. More than a decade ago some steps were taken. It is time now to resume these efforts.

It is necessary to remember the relative decrease of the juvenile population as part of the total population in Peru that is going through an inexorable aging process. Every year the 14-18 years group diminishes its portion of total population.

In these last decades, the closed juvenile justice

11 Cfr. Van der Maat (2015b).

system has been supplemented with the creation of two “open” systems: the SOA’s (open venues depending of the Judiciary) and the Restorative Juvenile Justice Programme, that is led by the Public Ministry. These three systems have experienced a continuous increase in JCCL assigned to them, at least till 2018.

However, the creation of the two open systems has not led to a decrease in the closed system, on the contrary. It seems that every year more juveniles are drained into the juvenile justice system. A critical appraisal of this tendency is needed. We are experiencing an increase in JCCL, a trend that does not seem to correspond with the number of offences. There seems to be a trend of over-sanctioning and harsher judicialization of juveniles, in spite of the open juvenile justice systems. The closed system is not used as a last resource, as international regulations require. Taking into account the harmful impact of liberty deprivation on juveniles, it seems necessary to critically evaluate the results it has produced until now, among others in economic, psychological, criminological and social terms. At the same time, it is necessary to promote ways of conflict resolution that do not lead to deprivation of liberty nor involvement of the Judiciary.

The mode of restorative justice practices appears as the best path to be followed, although there

may be others as well, to decrease the number of JCCL in the Judiciary. To achieve this aim, a common effort among the different actors in this field is needed. At the same time, a radical change of paradigm is required, shifting from a punitive to a restorative option. A timid start has already taken place. Let us make vows for this march to continue in favour of all the juveniles and of the whole community

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LESSONS FROM COVID-19 IN PERUVIAN PRISON CONTEXT

1. Health issues and deprivation of liberty

It is widely known that deprivation of liberty may bring about physical and mental health problems for the prisoners. This is not only due to the lack of infrastructure, adequate food and medicines or qualified medical personnel, but also to the fact that imprisoning lots of people in a very limited space, is just a perfect context for contagion. Imprisonment can highly reduce life expectancy. Evelyn Patterson (2010; 2013) calculated that imprisonment has a negative impact on life expectancy. Her results were confirmed by Sebastian Daza and his team from the University of Madison-Wisconsin: *“we estimate that incarceration’s adult mortality excess translates into a loss of between 4 and 5 years of life expectancy at age 40”* (Daza et al. 2020:12). This is just one more reason to emphasize the necessity of using deprivation of liberty only as ultima ratio, as international Regulations require.

2. Covid-19 pandemic and prisons

Most prisons being overcrowded - compelling inmates to live in a very limited space - it is understandable that contagion is rampant. The risk of a virus spreading through the prison population is much higher than in the open community

around the prison.¹ But the risk that a released inmate could cause a spread of the virus in the community is also high.²

Usually in pandemics, the authorities apply two types of policies: the restriction of visits and the use of early release. These two measures were widely put into practice during the Covid-19 pandemic, although not with the same weight. The 47 European countries, studied by Zeveleva e.a. (2021), have universally applied the restriction of visits. However, only 16 countries have resorted to early release. In other countries, early release programmes have been interpreted by public opinion with a certain measure of discrimination, favouring white inmates against black inmates (Miranda 2021).

The interpretation given to early release is complex. For some this is a measure of goodwill towards inmates, as it liberates them from a

1 “Cramped and overpopulated, correctional facilities are ideal environments for viruses to spread. This was made clear with the ongoing rapid spread of the coronavirus disease 2019 (COVID-19) in U.S. jails and prisons. As jails and prisons are structurally designed for communal living to efficiently confine people, the rate of infection is 5.5 times higher in U.S. state and federal prisons than in the broader community.” (Greenhalgh & Provencher 2022: 1)

2 “Correctional facilities offer a reservoir of susceptible people that constantly changes given their short duration of incarceration. Indeed, an increasing number of empirical studies find a strong correlation between carceral institutions and community spread.” (Greenhalgh & Provencher 2022: 7)

facility where contagion is more likely, and, at the same time, opens up more space for the remaining prisoners. But others may think it is a problem for community, as the released inmates may be a danger for society, as they may be carrying the virus.

On the other hand, the restriction of visits and the implementation of social distancing are measures that seriously affect the lives of the inmates. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) reminded in its *“Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic”* (issued on 20 March 2020) that: *“Protective measures must never result in inhuman or degrading treatment of persons deprived of their liberty”* (CPT 2020: Introduction) and that *“Any restrictive measure taken vis-à-vis persons deprived of their liberty to prevent the spread of Covid-19 should have a legal basis and be necessary, proportionate, respectful of human dignity and restricted in time”*. (CPT 2020: Principle 4)

3. The Peruvian case: adult prisoners

The Covid-19 pandemic struck in all countries, and especially harmed people living in prisons,

inmates and personnel alike³. In Peru by October 2020, 445 inmates had died (Sindeev & Martínez-Álvarez 2022). During the pandemic 40 prison personnel also passed away.⁴ As Sindeev & Martínez-Álvarez (2022) indicate: “It should be noted that current prison conditions in Peru do not allow the international recommendations on isolation of cases with COVID-19 to be complied with.”⁵

It should be noted as well that there was a severe lack of personal protection equipment during the first outbreaks of the virus. The prison institution was not at all prepared for this pandemic. The measures taken included the suspension of visits

3 The Marshall Project tracked the number of cases in US prisons in the 15 first months of the pandemic. See Park K, Meagher T. (2020).

4 <https://www.gob.pe/institucion/inpe/noticias/583131-region-lima-conmemora-dia-del-servidor-penitenciario>. Accessed 2nd of March 2023.

5 *“The living conditions in Peruvian prisons in terms of housing, nutrition, etc. do not meet international standards or constitutional guarantees that protect inmates’ rights. Reduced, overcrowded spaces where prisoners are forced to live and sleep, limited access to water and drainage, precarious living conditions, the social problems caused by cohabitation, a greater load of chronic diseases and lack of healthcare result in a very high risk of infection for the Peruvian prison population from COVID-19, and a more severe evolution of the disease when compared to the general public. The outbreak of COVID-19 in the prison population also represents a public health problem, since the inmates evacuated to external health centres and prison staff represent a vector of transmission to the community at large.”* (Sindeev & Martínez-Álvarez 2022)

to the inmates, testing for infection, isolation of infected inmates (space and circumstances permitting), and some measures of social distancing, taking into account the high degree of overcrowding in the prisons. Personnel was reduced to security guards and some officers to guarantee nutrition. All other personnel (social workers, psychologists, teachers, etc.) were withdrawn from the facilities.

Of course, these measures had a very negative impact on the life of the inmates. Violence in the prisons increased. In many prisons there were mutinies (13 in total), which caused 16 deaths among the inmates (CEAS 2020: ii).

In Peru, the authorities decided to suspend all visits to the inmates, to prevent the Covid-19 virus to enter the prison. However, it got in and made havoc among inmates and personnel, as indicated above.

In April and June 2020, several laws were passed to reduce overcrowding, decarcerating a number of prisoners.⁶ They were based on some existing laws that were applied to the new sanitary circumstances: inmates who were in prison because they had not paid alimentation to

6 These are the 4 Legislative and Supreme Decrees D. LEG. N° 1459 (13/04/2020), D. S. N° 004-2020-JUS (23/04/2020), D. LEG. N° 1513 (04/06/2020), D. LEG. N° 1514 (04/06/2020).

their (divorced) spouse and children, presidential graces and pardons for humanitarian reasons, diversion, and the use of electronic ankle bracelets for some inmates, were the changes introduced in the system of deprivation of liberty, in order to reduce overcrowding and facilitate social distancing in the prison facilities.

The impact of these measures was really very limited. As CEAS (2021) indicates, the prisoners liberated through these decrees were just in the number of 4,082 between March and December 2020 (CEAS 2021: 27-35). The total number of prisoners decarcerated in the same period was 17,080. So just one in four prisoners left prison thanks to these laws. The rest left through the normal, regular release process.

In total, from 2020 to November 2022 (the last available official number, accessed in March 2023), 7,938 inmates have been liberated by the mentioned special laws, a good fifth of the total 53,535 released in the same period. According to our calculations, the effect on the overcrowding rate has been marginal, as it has dropped from 240 % (January 2020) to 212 % (November 2022), before rising again to 220 % in November 2022.

However, what is noteworthy, and what has not been highlighted in CEAS' document or other analysis, is that the drop in the overcrowding

rate is not only due to the release of prisoners (by regular way or through the sanitary laws) but especially through the reduction of prisoners entering the system. From 2012 to 2019, an average of 23,701 entered the prison system yearly. In 2022, this number dropped to 13,254 (more than 10,000 less), and in 2021 it raised again to 17,318 (still 6,000 less than the average yearly entrance). In the same period (2012-2019) an average of 18,711 inmates left the prisons yearly, while in 2020 that number increased to 21,587, and dropped afterwards to 16,635 in 2021. The drop in the number of incoming inmates was much larger than the increase in the number of released inmates during the Covid-19 years. Consequently, if the overcrowding rate dropped, it was due more to the fall in the number of inmates getting into the prison system, than to the release of inmates.

This means that during the 2020-2021 period of the Covid-19 pandemic, the entrance of inmates was reduced by 7,650 inmates, which is nearly the same figure as the inmates that were released through the extraordinary sanitary laws (7,709). It would be interesting to investigate the reason of this drop: was it caused by a drop in crime or was it due to a judicial decision, i.e. by prosecutors and/or judges who preferred not to send to prison a person accused of a crime,

because of the risk he/she would endure of getting infected in an overcrowded venue? That study is still open to interested investigators.

What causes preoccupation now is that the number of prisoners is steadily growing again, after the pandemic has ended. The truce in prison entrance is clearly over.

4. The Peruvian case: juveniles

During the Covid-19 pandemic, juvenile facilities used the same policies as the adult prison authorities: restriction of visits and some early release. However, the suspension of visits has impacted much more in the case of the juveniles than of the adults, as the former depend much more on their relation with their family, especially their mothers.

The Law Decree that was passed on the 04th of June 2020 permitted to change certain socio-educative measures of deprivation of liberty into a lighter, non-privative measure. This enabled the early (conditional) release of a number of juveniles. Consequently, the occupancy rate in the closed juvenile facilities dropped, from 126 % in December 2019 to 91 % in December 2020. By December 2021 it went up again to 98% and in December 2022 it was already back over the 100%, at 107 %.

However, just as in the case of adult justice,

there was a sharp drop in the number of juveniles that were drawn into the Judiciary. Comparing the figures on a one and two year flux some remarkable features show up. From January 2020 to December 2020, the number of juveniles in the closed system dropped to 72 %, and between January 2020 and December 2021 there was a drop of 77 %. The open system experienced a similar evolution: in December 2020 there were just 83 % of juveniles in the open system, compared with the beginning of that same year. And in December 2021 there were only 61 % of juveniles in the open system, compared with January 2020.

If we compare the month with the highest figure of juveniles in the system with the month with the lowest attention within the 2020-2021 pandemic-period, the drop is even more significant: minus 30 % in the closed system, and minus 45 % in the open system. That means that within the two years of the Covid-19 pandemic, the closed juvenile justice system attended up till 30 % less juveniles, and the open system attended even up to 45 % less juveniles. This is probably not only due to a lesser number of juvenile offences, or to the impact of the new Decree (which is calculated to have released around 550 juveniles), but also to a different approach of the Prosecutors and

Judges involved. They seem to have preferred not to pursue charges on these juveniles, motivated by the dramatic sanitary situation in the closed and even in the open centres.

5. Some lessons?

The Covid-19 pandemic dramatically highlighted some of the big structural problems that the adult and juvenile justice systems have, namely a dangerously overcrowded institution, with a lack of resources to fend off a major common health issue: failing infrastructure, qualified personnel, medicines and protective equipment, and even the lack of an emergency programme to be applied. The number of deceased victims and of sick inmates and personnel could have been less dramatic, if the institution had been better prepared.

Another point is that the emergency laws passed through, due to the sanitary emergency, have had a very limited impact, while the reduction in the number of incoming inmates has had a major impact in the reduction of overcrowding rates. This poses the question whether it would not be useful to revisit the criteria of imprisonment. Is putting citizens in jail really used as a last resort? The figures seem to contradict that statement.

On both accounts, it is essential to think again about the relation between society, crime,

security and imprisonment. It is necessary to discuss again why we are incarcerating people who might have had a problem in the community. What kind of Justice are we promoting in our society? Isn't it time "*to extirpate prison from the limited technical domain of criminology and criminal policy to place it at the heart of political sociology and civic action*"? (Waquant 2015:101)

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Esta publicación fue Impresa
en los Talleres Gráficos de
E & M Impresores S.R.L.
Santo Domingo 306 Int. 3
Arequipa - Perú