

PENAL REFORM AND PRISON OVERCROWDING IN LATIN AMERICA AND THE CARIBBEAN

- What To Do, What Not To Do. The Good Examples Of
Costa Rica And The Dominican Republic¹ -

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Status of prison overcrowding in Latin America and the Caribbean. Importance of identifying the origin of overcrowding in order to be able to reduce it effectively. Effects of income distribution inequality on crime and on prison overcrowding. Truly comprehensive policies and actions are required. What to do specifically in penitentiary systems. What not to do. Inconvenience of private prisons in middle and low income countries. The good examples of Costa Rica and the Dominican Republic. The need to persist and become renovated.

Status of prison overcrowding in Latin America and the Caribbean

This presentation is one result among others of the ILANUD/RWI Penitentiary Systems and Human Rights Programme that ILANUD has been implementing over almost four years with the generous co-operation of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, RWI, and the Swedish International Development Agency, SIDA, 2006-2009, with participation of the nineteen countries of Latin America.

Since the creation of ILANUD in 1975 the issue of prisons has constituted one of its permanent programmes. In this area special attention has been paid to prison overcrowding, the most serious problem that the countries of Latin America and the Caribbean have been facing for the past two decades, which we measure on the basis of density for every one hundred places.

The two tables below show the current density in the region's penitentiary systems. As can be observed, the prisons in 25 out of the 29 countries in both tables were overcrowded², and in most cases exceeding the critical overcrowding parameter of 120% or over, established by the European Committee for Crime Problems (Comit? Europeen 1999 : 43) which we also utilize to assess the situation in the Latin American region.

It is necessary to make clear that due to the following and other reasons the overcrowding situation is actually more serious than these tables show:

- a) the figures in the tables are averages of the total figures for all prisons in the penitentiary system of each country. In reality it occurs that there is little or no overcrowding in some facilities while very high densities even of several hundreds and in inhuman conditions are found in some cases;
- b) in an attempt to alleviate the serious situation, penitentiary officials do whatever they can within their narrow range of possibilities, making changes with the furniture and the facilities. They provide bunk beds, frequently of several tiers of berths (in one case we counted as many as eight berths per bunk bed); they also convert areas that were devoted to other uses before (for instance,

1 A previous version of this document was delivered in the workshop on Penal Reform and Prison Overcrowding held at the 18th Session of the United Nations Commission on Crime Prevention and Criminal Justice, Vienna International Centre, April 15th 2009. The translation from the Spanish original was made by Orlando García Valverde.

2 The exceptions are Costa Rica, among the countries of the Latin American group, and Belize, Dominica and Trinidad and Tobago in the Caribbean group. The table shows Argentina also without overcrowding, but the figure corresponds only to the Federal Penitentiary Service. In some of the provinces the situation is the same as at the regional level.

hallways, recreation rooms, etc.) into sleeping quarters, and build bedrooms in areas that were formerly open yards or soccer fields. The result of such transformations is an increase in sleeping quarter capacity but at the expense of the quality of life in prisons which becomes worse. Prison unit capacity becomes thus redefined: for instance, a prison with an original capacity for 500 individuals will now be described as having a capacity for 1,000. This makes it very difficult to measure the actual capacity of the systems, and it may be asserted that the figures in these tables are optimistic. In reality densities are higher and frequently very much higher.

It is obvious, we might add, that in addition to being a cruel, inhuman and degrading treatment, as expressed by the Inter-American Court of Human Rights, critical overcrowding damages all essential functions of penitentiary systems: health, nourishment, rest, visitation, work, education, security of both inmates and personnel, etc.

PRISON OVERCROWDING IN COUNTRIES OF LATIN AMERICA

COUNTRY	1999-2002		2005-2006	
	POPULATION	DENSITY X 100 PLACES	POPULATION	DENSITY X 100 PLACES
Argentina (02-05)*	52,914	118		99
Bolivia (99-06)	8,315	162	7,721	207
Brazil (02-06)	239,345	132	401,236	173
Colombia (01-06)	71,837	136	81,367	117
Costa Rica (02-05)	7,626	110	8,407	99
Chile (01)	33,620	141	42,532	
Dominican Republic (99-05)*	14,188	256	13,887	138
Ecuador (01-05)	7,859	115	14,331	161
El Salvador (02-05)	11,506	167	12,853	162
Guatemala (99-09)	8,169	113	10,962	128
Honduras (99-06)	10,869	209	11,178	141
Mexico (00-05)	151,662	126	210,140	128
Nicaragua (02-05)	6,885	104	6,103	104
Panama (02-05)	10,423	137	11,688	161
Paraguay (99-05)	4,088	151	6,290	128
Peru (02-05)	27,417	138	37,445	154
Uruguay (01-06)	4,903	151	6,584	145
Venezuela* (00-06)	20,659	113	26,047	115

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*Argentina: The 2005 figure is only for the Federal Penitentiary Service. There was overcrowding in provincial penitentiary services.

*Dominican Republic: The 2002 figures are from the Commission for the Definition, Implementation and Supervision of the Nation's Penitentiary Policy and the calculation was made taking into account only 21 prisons, 12 having been excluded, since according to the Commission «all prisons have collective cells and due to numerous remodeling and expansion works it is impossible to determine exactly the capacity of the 32 facilities there are in the country.»

PRISON OVERCROWDING IN THE CARIBBEAN 2008		
	PRISONERS	DENSITY PER 100 PLACES
Antigua & Barbuda	208	131
Bahamas	1,084	129
Belize	1,334	86
Dominica	254	85
Grenada	367	374
Jamaica	4709	111
St .Kitts & Nevis	232	155
Saint Lucia	503	101
St. Vincent & Grenadines	376	188

Suriname	1,600	135
Trinidad & Tobago	3,510	88
Source: International Centre for Prison Studies, King's College, London.		

It is important to identify the origin of overcrowding in order to be able to reduce it effectively.

Prison overcrowding in Latin America and the Caribbean cannot be solved simply by making changes inside prisons. Prison systems are the last link of «an inmate production chain» which generally starts with the police, continues at the prosecutorial agency and moves on to the courts before arriving at the penitentiary system which receives and lodges the inmates with a very little chance or with no chance at all to turn them back or to exert an influence towards correcting and reducing such «production chain.» Although a good professional performance on the part of penitentiary officials is very important to attain acceptable standards of dignity and respect for the basic rights of those in prison, the prison staff by themselves have very limited possibilities to reduce overcrowding, it being indispensable for the prosecutorial agency and the judges to apply preventive imprisonment and prison sentences more prudently.

Nor can overcrowding be solved simply by building more prisons, although in some cases it is necessary to build facilities. The countries of the region have a high vegetative population growth rate and some also in terms of immigration. This means that, even if it were possible to maintain confinement rates stable, prison populations will always show a certain growth that will generally require additional space.

But it occurs that in addition to the vegetative growth of the countries, populations confinement rates have also been growing at an accelerated pace with very few exceptions since the end of the eighties and the beginning of the nineties, whereby the absolute figures concerning individuals in prison have grown impressively having multiplied themselves by 2 and 3 between 1992 and 2008, and no country has the economic capacity to solve the problem solely by building new facilities (see tables for rates at the end of the document). The origin of such growth of prison rates lies in the operation of the entire chain of criminal justice system links and in the need to tackle crime and other social conflicts not only through prison sentences, but also with non penal responses and with penal responses other than imprisonment, and this also has to do with crime increases, the consequent alarm on the part of the population, and with structural reasons resulting from the manner in which income distribution has been managed within globalization³. Very rigorous research has been conducted with respect to the latter, which proves that income distribution inequality measured by the Gini coefficient has a significant and strong effect which results in an increase in the rates of crimes committed against both individuals and property. This has been measured for the crimes of homicide and robbery and burglary in 39 UN member countries, the co-relation having been verified within the countries and particularly among countries (Carranza, E., 2007, 2006; Fajnzilver P. et al., 2002; Bourgignon F., 2001). It couldn't be by chance that both, crime, and prison populations would grow at such an accelerated pace and simultaneously throughout the entire region.

Truly comprehensive policies and actions are required

We may conclude from the preceding that public policy concerning crime and criminal justice must be truly comprehensive, not merely of a criminal nature, and that it must be accompanied by policies that will reduce inequality in income distribution. This has been said for years in numerous criminal policy documents of United Nations where it is explained that crime is a social phenomenon and that in order to keep crime levels low and to benefit from a good criminal justice it is indispensable to attain good levels of equality in the exchange and distribution of income and development within the countries and among countries. It is indispensable to insist on this. Otherwise we shall become stuck on the search for «good technocratic practices» rather than satisfying the basic needs of prisons and

3 On globalization and how it has been managed see Joseph Stiglitz 2002.

criminal justice systems. It is the same case as with the basic needs of our societies in terms of health, food, water, education, housing, labour, etc. It has been proven that countries that meet such basic needs with justice and equality have good ratings in other areas such as culture, art, and sciences, as well as low levels of social violence and crime.

What to do specifically in penitentiary systems. What not to do. The good examples of Costa Rica and the Dominican Republic

Once the need for comprehensiveness in policies and actions has been established we must then ask ourselves what to do specifically in penitentiary systems to reduce overcrowding and related problems.

In many countries of Latin America and the Caribbean we find examples of good penitentiary staff members who perform their jobs admirably with great dedication although in very difficult conditions. We observed this again while we were implementing the ILANUD/RWI Programme. However, these experiences are generally focused on a province, a prison, or a wing of a prison, and are frequently individual efforts that normally are not afforded the necessary support or continuity and that become ultimately interrupted.

Not to preclude other examples that would also deserve to be brought to public attention, we shall refer to two notable cases characterised by the fact that they constitute country-wide national and comprehensive reforms where a model has been coherently under development for thirty years in one case and for five in the other. In other words we shall not be referring to two «proposals», or to two cases of «good practices» but to two specific realities that have been and are being shaped comprehensively in the penitentiary systems of two countries, and which have also been accompanied by considerable coherence and comprehensiveness in terms of actions in their criminal justice systems and also, to a certain extent, in terms of State policies in other social and economic areas. These are the cases of Costa Rica and the Dominican Republic. The current model of Costa Rica has been under development, with small variations, for 30 years. That of the Dominican Republic is younger but will soon enter into its sixth year of coherent development after three consecutive administrations.

Without ignoring the important differences in terms of history, culture, language, per capita income, etc., that separate these two countries from the Northern European countries and Canada, and focusing our appreciation exclusively on penitentiary systems, we feel that both, Costa Rica, and the Dominican Republic are developing a State penitentiary system that is very similar to that of cited countries in the areas indicated, although with a necessary adjustment to their situation and reality of middle income countries trying to solve not only the specific overcrowding problem, but that of the comprehensiveness of their penitentiary systems as well, as the only way to attain success in the pursuit of better dignity and basic rights standards for both the inmates and the staff, and also as the only way to do so at a reasonable cost (since prison, by its very nature, is very expensive and requires a considerable investment).

The model or strategy implemented by both countries has the following characteristics:

a) It was introduced thanks to a political decision from the highest level of government: the presidency of the republic and the respective ministry. This was an essential requirement in both countries to install the prison reform;

b) Key staff members were very carefully selected on the basis of their vocation, educational background, knowledge of the subject matter and full-time dedication to the job (head of the penitentiary system, of the staff training school or institute, and of each prison), as were other officials in related areas, such as the head of crime policy.

The prevailing situation in Latin America in general, with exceptions, is that the heads of the main prisons do not arrive at such positions with a background in penitentiary studies or experience in the field or both. Many of them who belong to the army or the police are appointed temporarily

in the penitentiary system; others are normally civilians who are appointed in such capacity by the government in power but also without a background in penitentiary studies or experience in the field or both. ILANUD has verified cases of great functional instability, with a rotation of directors general every six months on average.

In Costa Rica the directors general of the Social Adaptation Department are always staff members selected from among those already in the penitentiary career; so are the heads of prisons and of the Penitentiary Training School. The case of the Dominican Republic is very interesting: two parallel systems function in the country: the «new» one with eleven prisons already and growing with the opening of new or remodelled facilities exclusively under new «PST» officials (VTP⁴) who enter into the system after eight months of training at the Penitentiary Training School; and the «old» one which still has 24 prisons and which gradually disappears in the course of consolidation of the new system. All officials with the leadership of such change have maintained their stability since the beginning of the process.

c) Continuity has been uninterrupted in the reform programme. It is indispensable for the penitentiary reform to outlast the different administrations and for it to last from eight to ten years in order to become consolidated. In Costa Rica the process started in 1975 and it has been able to survive for eight administrations. In the Dominican Republic it started in July 2003 and it is into the third administration.⁵

d) The penitentiary career was created in both countries.

In most countries of the region there is no penitentiary professional career and penitentiary officials are not benefited by stability in their positions. Both, Costa Rica, and the Dominican Republic created professional penitentiary careers with the guarantee of stability on the job and social security and retirement benefits.⁶

e) In both countries a training school or institute that selects and trains necessarily all personnel that enters into the system and that provides continuously in-service training was created. All penitentiary personnel must be adequately trained and know the institution for which it works as well as develop an interest in it.

f) In both countries a considerable initial investment was made. The governmental decision to establish the new system must be accompanied by the necessary resources. Both, Costa Rica, and the Dominican Republic devoted considerable initial resources to the project.

It is indispensable to invest on: i) well remunerated personnel and an adequate inmate:staff ratio; ii) facilities; no overcrowded prison can function adequately, just as no hospital, school or any other institution in overcrowding conditions could; iii) an annual budget that would make it possible to make the necessary expenditures for the system to function adequately, including food, health, education, etc., as well as the monthly salary of the staff.

g) Both countries continued to make regular annual investments. Periodic investment is necessary to maintain the level and advancement of the system. If the system is neglected the cost to recover it is very high, but the most serious consequence is the loss of trust on the part of the staff and the inmates, who shall interpret that this was one more promise by the politicians in vogue and that placing your life at stake by opposing very powerful and violent interests that would be

4 Abbreviation for Penitentiary Surveillance and Treatment in Spanish.

5 The process started in July 2003; a new administration took over in August 2004 and it was re-elected for the 2008-2012 period.

6 In Costa Rica technical and professional personnel are protected by the Civil Service administration, and penitentiary police are protected under the General Police Law and the General Penitentiary Police Regulations.

affected by the reform was not worth the risk. Constant investments must be made on: i) personnel, providing in-service training periodically to all operators to maintain and raise their professional level (in the Dominican Republic all prison staff without exception benefits at least once a year from a week of training); ii) recruiting new personnel to maintain the adequate inmate:staff ratio; and iii) infrastructure, adjusting periodically the system's infrastructure capacity. Both, Costa Rica and the Dominican Republic have been complying with this requirement.

h) The penitentiary reform did not focus on the overcrowding problem in any of these countries; nor did it limit itself to the construction of one or several high security, high cost megaprisons. The purpose of the reform in both countries was to attain comprehensiveness of the penitentiary system through the adoption of dignity and quality standards for all inmates in all prisons, and through observance of the principle of equal justice for all. Both, Costa Rica and the Dominican Republic established State penitentiary systems to such effect using public resources rather prudently and intelligently.

Offers were made to both countries for construction of private prisons which would lodge only a small fraction of all inmates and at a very high cost. Initially Costa Rica signed a pre-contract for construction of a private prison with a capacity for 1,200 inmates for 73 million dollars. Later the government realised its error and did not proceed with the pre-contract; instead it built facilities at its own expense for 2,600 inmates, more than double the number of inmates, for only 10 million dollars. The government realised that if it built that prison whose management and maintenance would be undertaken by private enterprise for twenty years at a daily per capita cost of US\$37 per inmate while the cost within the State system was US\$11, the cost of operation of that prison alone would keep it from being able to make other improvements in the rest of the system which was responsible for 80% of the inmates. The government decided to improve the situation of all individuals under confinement raising the daily per capita amount for all the population to US\$16.

An offer was made also to the Dominican Republic for the building of a similar prison for 1,200 inmates, for 53 million dollars. The government, which had already built and refurbished nine prisons that were operating with good quality standards for slightly more than 10 million dollars did not accept the offer either, and continued with its State comprehensive penitentiary programme which is generating very good results.

The ILANUD/RWI Penitentiary Programme found several similar cases in other countries of the region.

The following table explains why, in addition to the inconvenience of their high costs, private prisons cannot solve the overcrowding problem in middle and low income countries⁷ while instead they worsen the situation notably throughout the system.

The introduction of a private prison into a penitentiary system with a minimum budget, several or many overcrowded prisons, and a shortage of materials and personnel, such as is the case in general of the penitentiary systems of the Latin American countries since the eighties, creates a situation of privilege for a small group, in addition to the fact that it further deteriorates the rest of the system. We explain this by means of a typical example:

Three years ago countries X and Y built their last prison. Country X built a State prison; country Y built a private prison. Both countries have 10 prisons with a total capacity for 10,000 inmates, but both have 15,000 inmates, which is to say that both work at 150% of their capacity. Country X has 10 State prisons; country Y has 9 State prisons and 1 private prison. Let us see its situation in the following tables:

7 We use the World Bank country classification. In its classification all Latin American countries, with the exception of Haiti and Nicaragua, are middle income countries. Haiti and Nicaragua are low income countries (World Bank 2005:289, 2000:335).

COUNTRY "X" WITH A CAPACITY FOR 10,000, BUT WITH 15,000 INMATES

10 PRISONS WITH A CAPACITY OF 1,000 EACH	DISTRIBUTION OF INMATES PER PRISON
0 private prisons	0
10 public prisons	1,500

COUNTRY "Y" WITH A CAPACITY FOR 10,000, BUT WITH 15,000 INMATES

10 PRISONS WITH A CAPACITY OF 1,000 EACH	DISTRIBUTION OF INMATES PER PRISON
1 private prison	1 000
9 public prisons	1 550

In country X the limited penitentiary resources can be distributed equitably with better results. However, in country Y overcrowding increases progressively in State prisons while an unfair distinction of doubtful constitutionality is established between those who are serving time in State prisons and the few who are serving time in the private prison in a situation of privilege.

And in countries where the prison population is characterised by a high growth rate, such as in those of Latin America, overcrowding becomes worse as time goes by; it accumulates inequitably suffocating those in State prisons, in contrast with the privilege of a few who remain, at a very high cost, in the private prison.

The need to persist and become renovated

We have highlighted the general features of two successful reforms in the region although each item would deserve a more extensive review. Such a review can be found in the book *"Crime, Criminal Justice and Prison in Latin America and the Caribbean: How to Implement the United Nations Rights and Obligations Model"* (Elías Carranza et alii, ILANUD/SIGLO XXI, México 2009).

The consolidation in Costa Rica of its new penitentiary system not only solved the endemic overcrowding problem but it also established a system that is recognised internationally for its lower level of violence⁸ and respect for the basic rights of both inmates and staff members. This is the same case of the new penitentiary system in the Dominican Republic. ILANUD has been able to verify it in both countries by means of successive visits; it cooperates with both countries in this and other criminal justice matters, and feels that these are two penitentiary systems that deserve a careful look on the part of third countries since with the necessary adjustments they may serve as very valuable orientation in the horizontal processes of the transfer of knowledge.

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8 Prisons, such as close systems in general, are characterised throughout the world by the generation of higher levels of violence than those that characterise life outside. It is necessary, then, to encourage the greatest transparency possible in them in order to reduce violence and to reduce the use of prison to the minimum indispensable level.

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PENITENTIARY RATES IN COUNTRIES OF LATIN AMERICA 1992-2008 IT INCLUDES FEDERAL AND PROVINCIAL/STATE PENITENTIARY SYSTEMS, AND IN SOME CASES INDIVIDUALS HELD IN POLICE PRECINCTS.																	
	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08
<i>Argentina</i>	63	64	68	74	97	96	99	106	118	126	141	157	163	164	152		
<i>Bolivia</i>						79	85	101	109	96					80	86	85
<i>Brasil</i>	74	80	81	107		119		131	133	132	133	169	182	193	211	219	226
<i>Colombia</i>	92	96	97	98	120	129	128	139	157	170	157	178	199	207	179	174	188
<i>Costa Rica</i>	104	105	109	121	133	160	162	169	168	183	187	190	196	196	191	186	189
<i>Chile</i>	154	153	148	153	161	170	179	203	215	216	221	228	226	228	259	290	318
<i>R. Dominicana</i>	145	135	151	161	129	140	165	168				189	150	143	148	164	166
<i>Ecuador</i>	74	81	81	85	95	81	79	70	65	63	69	77	87	91	107	128	118
<i>El Salvador</i>	101	103	109	124	138	157	136	112	130	158	177	180	188	186	184	226	258
<i>Guatemala</i>					62			75			101	101	96	87	84	83	88
<i>Honduras</i>	110	113	139	160	166	153	160	178			183			170	159	148	148
<i>México</i>	101	104	97	101	108	116	127	142	152	163	170	177	185	196	200	200	202
<i>Nicaragua</i>	78	78	91	98	111	106	132	143	128	124	131	112	116	117	111	121	120
<i>Panamá</i>	176	215	221	229	269	282	292	294	293	320	341	361	360	359	356	342	275
<i>Paraguay</i>					70	75	74	78	67	74	85	92	107	109	105	99	100
<i>Perú</i>	77	80	83	88	96	100	105	108	108	104	104	108	116	123	136	149	153
<i>Uruguay</i>	96	99	100	99	101	106	120	122	129	148	170	203	215	213	198	212	231
<i>Venezuela</i>					101	112	106	97	85	104	104	103	98	76	96		

E.Carranza, ILANUD. Prepared with penitentiary data provided by the governments of each country and population data from the Latin American and Caribbean Demographic Centre, CELADE.

PRISON RATES IN THE CARIBBEAN	
Antigua & Barbuda	1995 (341) 1998 (278) 2005 (269)
Bahamas	1998 (478) 2002 (410)
Barbados	1993 (238) 1998 (291) 2002 (317) 2005 (367)
Belize	1992 (310) 1995 (293) 1998 (448) 2001 (384) 2003 (420) 2006 (516)
Dominica	1992 (387) 1995 (392) 1998 (421) 2004 (418)
Grenada	1998 (352) 2002 (333) 2005 (265)
Jamaica	1992 (178) 1995 (171) 1998 (162) 2003 (176)
St .Kitts & Nevis	1995 (295) 1998 (288) 2001 (441) 2004 (559)
Saint Lucia	1992 (210) 1995 (263) 1998 (216) 2001 (296) 2004 (294)
St. Vincent & Grenadines	1992 (294) 1995 (323) 1998 (390) 2001 (270) 2005 (338)
Suriname	1992 (308) 1995 (302) 1998 (382)
Trinidad & Tobago	1992 (269) 1995 (299) 1998 (353) 2001 (370) 2004 (302)

Source: International Centre for Prison Studies; King's College, London.