

Legislation on drugs and the prison situation in Peru

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Introduction

Peru is a major world producer of coca leaf and its derivatives. Since the year 2000, successive Peruvian administrations have followed a drug policy focused on supply reduction through interdiction and eradication strategies.

This essay examines aspects related to drug offenses in Peru and their impacts on the prison system, as well as the conduct of the agencies in charge of law enforcement and prosecution. The study covers the period of democratic transition, 2000-2008, during which the country implemented drug control policies based on international norms. Drug-related offenses have become the third leading cause of imprisonment in Peru -- after the two crimes against property (larceny and robbery) -- constituting one of the drivers of overcrowding in the prisons. The expansion of illegal commercial activity related to drugs has considerably worsened the situation of the Peruvian criminal justice system.

Peru has a precarious institutional framework and, in addition, lacks criteria for the proportionality that should be maintained among institutions, statutes, and procedures. The problem of determining criminal conduct in drug-related offenses has generated a system of prosecution/detention that expands in a way that discriminates against certain sectors of the Peruvian population: the poor, the peasants, youths, poor mestizos, and indigenous persons. The nearly 12,000 inmates in Peru for drug offenses are often incarcerated without having been convicted, with no degree of classification based on type of offense, and with a prohibition on any benefit that would make it possible to reduce the sentence.

This document is based on information requested from the National Prison Institute (INPE: Instituto Nacional Penitenciario) and other state institutions.¹ The information provided is partial and there is no disaggregated information on the social and economic conditions of the persons detained.

Criminal legislation related to drugs

Most of the criminal legislation on drugs was initially contained in Article 296 of the Criminal Code of 1991, which refers to illicit drug trafficking. Over the years, the legislation has been amended, increasing penalties and removing and adding specific forms of criminal conduct, as illustrated in the following table.

Legislation on illicit drug trafficking – possession and selling

¹ After much evasiveness and expressions of rejection on the part of the INPE in response to requests for information, a response was finally received from the Public Ministry. Subsequently, the Office of the Public Prosecutor sent the information requested on complaints involving drug offenses.

| | Modality | Penalties |
|--|---|--|
| Legislative decree 22095 of 1978 | <p>Art. 55 – Promotion of gang-type organization</p> <p>Art. 58 – Cultivation of plants, instigation</p> | <p>Imprisonment</p> <p>Imprisonment of no less than two years</p> |
| Legislative decree 122 of June 1981 | <p>Art. 55.A – Growing, manufacture, preparation, trafficking, selling</p> <p>Art. 55-B – Cultivation of small area, manufacturing of small amount, distribution of small amount</p> | <p>Imprisonment</p> <p>Imprisonment of no less than 2 years and no more than 10 years</p> |
| Legislative decree 635, Criminal Code of 1991 | <p>Art. 296 – Illicit drug trafficking in general</p> <p>Art. 297 – Aggravated forms</p> <p>Art. 298 – Possession for illicit trafficking in small amounts.</p> <p>Distribution in small amounts to individual consumers.²</p> <p>Art. 299 - Possession for personal use exempted from penalty</p> | <p>Prison sentence of no less than 8 years and no more than 15 years</p> <p>Imprisonment for not less than 25 years.</p> <p>Imprisonment of not less than 2 years and not more than 8 years.</p> <p>Imprisonment of not less than 1 year and not more than 4 years.</p> <p>No penalty.</p> |
| Law 27817 of August 2002. Modifies | Micro-production. | Imprisonment of not less than 2 years and not more |

²Up to 100 g of PBC, 25 g of HCl, and 20 g of THC.

| | | |
|--|--|---|
| <p>Article 298 of the Criminal Code</p> | <p>Micro-commercialization to individual users.</p> <p>Aggravated form of Article 297.</p> | <p>than 8 years.</p> <p>Not less than 1 year and not more than 4 years.</p> <p>Not less than six years and not more than 12 years.</p> |
| <p>Law 28002 of 2003</p> | <p>Art. 296 – General formulation</p> <p>Promotion, abetting, through manufacture</p> <p>Possession for trafficking.</p> <p>Art. 297 – Aggravated forms</p> <p>Art. 298 – Micro-commercialization, manufacture, commercialization (up to 50 g cocaine paste, 25 g HCl, or cocaine hydrochloride, and 100 g THC)</p> <p>Art. 299 – Possession not punishable (up to 5 g PBC, 2 g HCl, 8 g THC).</p> | <p>Imprisonment for not less than 8 years and not more than 15 years.</p> <p>Imprisonment of not less than 6 years and not more than 12 years.</p> <p>Imprisonment for not less than 15 years and not more than 25 years.</p> <p>Imprisonment for not less than 3 years and not more than 7 years.</p> <p>No penalty.</p> |

Since 1978, Peru has followed a disorderly cycle of designing laws and regulations around the crime of drug trafficking. It began with a first phase that was disproportionate in its definitions and highly repressive in the determination of the penalties (Legislative decrees 22095 and 122). The adoption of the 1991 Criminal Code sought to establish some minimal criteria for the operation of the general principles of

criminal law, including some timid efforts to maintain proportionality among the forms of criminal conduct defined, but also sought to maintain a large dose of repression and stiff penalties.

Finally, in 2002 and 2003 two more statutes were enacted that placed more emphasis on the determination of three criminal law definitions: the general offense of illicit drug trafficking, the offense of micro-commercialization, and possession for personal use. Although possession for personal use has not been declared punishable by the original statutes or the subsequent reforms, the law does not establish precise criteria for police action, leaving room for police discretion, frequent cases of corruption, and abuse of persons who possess drugs merely for their own use.

Specifically, Law 28002 of June 16, 2003, reformed the structure of penalties for drug offenses, establishing 8 to 15 years imprisonment generally for drug-related offenses; from 6 to 12 years for possession for trafficking; and 15 to 25 years in the most serious cases. This new legislation also distinguishes clearly the substances (ie, between different types of drugs), the amounts of the substances, the cases of possession for personal use, micro-commercialization, and general illicit trafficking. There is also criminal legislation on money laundering and asset forfeiture.

At the same time, in the last decade 80 general criminal statutes have been passed aimed very specifically at improving the struggle against terrorism, organized crime, and the whole issue of citizen security. This process of legislative inflation has been accompanied by pronouncements in favor of restoring the death penalty, first in 2004 and then in 2006 by President Alan García himself.

The general trend under democratic governments has been to reinforce the punitive authority of the state, to reduce the scope of guarantees, and to apply the rule of progressive expansion, usually lacking any proportionality in the application of the penalties, making the problem of disproportionality all the more visible. In particular, under the current administration (García) there has been an increase in the number of items on the list of offenses subject to sanction, which in many cases has had repercussions for the actions of the police and judicial and prison authorities, with a detrimental impact, in particular, on prisoners, defendants, and persons convicted of drug offenses.

Institutional structure

The National Prison Institute (INPE: Instituto Nacional Penitenciario) is the lead entity of the national prison system. It is a decentralized public agency, part of the Ministry of Justice, subject to frequent reorganization. Although the INPE enjoys normative, economic, financial, and administrative autonomy, and manages its own budget, it is subject to political decisions and limitations. It is governed by the Code of Prison Enforcement (CEP: Código de Ejecución Penitenciaria, Legislative Decree 654), which regulates the direction, control, and administration of the Peruvian prison system. It is organized into eight regional bureaus.

The Peruvian National Police (PNP) is responsible for all areas of law enforcement and operates under the authority of the Ministry of Interior. The organizational structure of the PNP includes local police units as well as bureaus specializing in specific areas, including drug trafficking and terrorism. The PNP has a presence in each department, province, and city.

The INPE and the PNP have jurisdiction over the entire Peruvian prison system. The administrations of Valentín Paniagua (2001) and Alejandro Toledo (2002-2006) opted for a slow increase in the prison infrastructure, expanding or remodeling certain prisons, but without building new facilities; the information available indicates that in the 2000-2006 period, the 84 prisons that existed from the days of former President Alberto Fujimori (1990 to 2001) were maintained.³ Short-term measures, such as periodic transfers of prisoners among different regions of the country, some commutations of sentences, and the recent implementation of a system of releasing prisoners with electronic bracelets do not appear to have succeeded in having an impact on the prison situation. Indeed, no measure taken to date has attempted to reduce the flow of detainees or persons being tried for drug offenses.

In the context of cutbacks in public spending and enhanced fiscal discipline, which successive administrations have been carrying out since the 1990s, the budgets for the prison system and criminal justice system in general in Peru have been hit hard. Despite the clear increase in the incarcerated population from 2000 to 2008, the budget allocated to prison infrastructure diminished in several fiscal years, reaching its lowest point in the 2002-2006 period. The current administration has not addressed the problems generated by the periodic crises in the justice system and the INPE, and has preferred to administer the problem with partial solutions.

Budget and capacity

The budget issue is key to understanding the shortcomings in the Peruvian prison system and the Peruvian criminal justice system in general. The system's capacity for spending is not adequate enough to address structural problems. Although there have been slight budget increases in absolute terms, they have been insufficient. The health care, education, and job-training services provided by INPE leave much to be desired; the same can be said of the capacity and availability of trained personnel.

Title VIII of the CEP⁴, which regulates prison staff, indicates that the INPE should have the personnel necessary for performing its functions; the personnel should be duly selected, educated, and trained. In addition, it notes that job positions should be held in keeping with a career progression. Whereas under Fujimori the PNP controlled most of the prisons, in 2000 the INPE began to recover its authority, by then controlling 53, and the PNP 31, of the country's 84 prisons. By 2006, the PNP was in charge of 29 prisons,

³ "Situación Carcelaria en el Perú," document produced by CEAS and APRODEH for the Regional Conference on the Prison Situation in the Andean Region, INREDH, January 2000.

⁴ Legislative decree 654, Code of Prison Enforcement and successive decrees and regulations.

and the INPE 55, although the PNP still controls some major prisons, such as Lurigancho, the largest in the country.

Including both technical and administrative areas, the INPE has a total of 4,742 workers which, taken as a whole, means one worker for every nine prisoners. The remuneration of the prison personnel ranges from 800 to 1,137 soles per month (approximately US\$ 290 to US\$ 350), depending on the specific job. This sum is not much more than the minimum wage of 550 soles per month, which augments the risks of corruption inside and outside the prisons.

Yet among the most serious problems affecting Peru's institutional framework is the lack of a civil service regime and the existence of "parallel administrations" that are absolutely dependent on the group holding political power at the time. Specialized analysts note that the existence of mafia-type groups in the administration is an obstacle to giving absolute control of the prisons to the INPE.

The solutions to the sector's many problems tend to focus on the promise – not always carried out – of building more prisons, neglecting both the need to identify the causes of crime in order to prevent and punish it, and to rehabilitate the inmates in the prisons. This has been the response of the Toledo and García administrations. In addition to building some prison infrastructure, Alan García has proposed the privatization of the prisons and the use of electronic bracelets.

The critical situation of the Peruvian prison system has been well illustrated by recent events. The INPE had six directors from August 2006 to March 2010. A warden from the Castro Castro prison (in Lima) was assassinated due to vendettas of organized gangs. The candidate to succeed him as director of the INPE was accused of improperly molesting his children. Subsequently, there was a riot at the prison in the city of Chachapoyas (Amazonas), and an instance of drug-traffickers escaping in Abancay. Two weeks before completing his term, Minister of Justice Aurelio Pastor was virtually dismissed for having "ill-advised" President García as to whether to grant a pardon to the businessman Crousillat, an individual linked to the mafia operating under Vladimiro Montesinos who wanted to recover his ownership interest in a television station.

These elements all point to a systemic crisis in the administration of justice in Peru, which has "undesired consequences" for citizen security and internal order, particularly in rural regions and in some high-crime pockets of the cities.

In 2006, the Special Commission to Study the National Plan for Comprehensive Reform of the Administration of Justice (CERIAJUS), the latest attempt to undertake a comprehensive reform of the justice system, recognized the Peruvian prison policies, *"failure to carry out the constitutional mandate of rehabilitation, absence of a prison policy, and absence of a policy of less reliance on incarceration in the justice sector."*

Peru's criminal justice system includes, in its history, the war with the Shining Path (1980-2000), in which very heavy-handed state counterinsurgency policies were

adopted. In addition, a key objective of the actions by Montesinos/Fujimori from 1990 to 2000 was the penetration and corruption of the judiciary. Subsequently, however, during the democratic transition, an anticorruption system was temporarily kept in place that made it possible to dismantle, prosecute, and punish many members of the corrupt network of Vladimiro Montesinos.⁵

The prison situation

In December 2009, despite the infrastructure only allowing for a capacity of 24,961 persons, Peru had a prison population of 44,735 persons, 94 percent of whom were male.⁶ Prison overcrowding was clearly apparent. According to 2006 data, the overcrowding index at Lurigancho, the largest prison in Peru, was 607 percent.⁷ At present, 23 percent of the prisoners are in for drug-related offenses. The application of “criminalizing” policies has led to a demand for prison space in Peru.

The scant budgetary importance accorded the justice system – and the prisons in particular – by the Peruvian state is evident in the level of food allocation, which in 2009 was 4.50 soles daily per person (US\$ 1.59).⁸

In the last decade (2000-2010) Peru’s prison population showed a gradual increase. Whereas in 1995, during the Fujimori government, there were 84 inmates for every 100,000 persons in Peru, in 2000, at the beginning of the democratic transition period, there were 107 inmates per 100,000 population; and in 2006, when Alan García’s term began, there were 132 inmates per 100,000 population.⁹ According to the reports of the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD), Peru’s prison rate increased to 164 per 100,000 population in 2008.¹⁰

The following table and graph illustrate the prison population in Peru from a few years before and after the democratic transition:

| 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 |
|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| 20,899 | 22,638 | 24,297 | 26,059 | 27,400 | 27,734 | 26,968 | 27,417 | 28,826 | 31,311 | 33,010 | 35,835 | 39,684 | 43,286 | 44,735 |

⁵ <http://www.justiciaviva.org.pe>

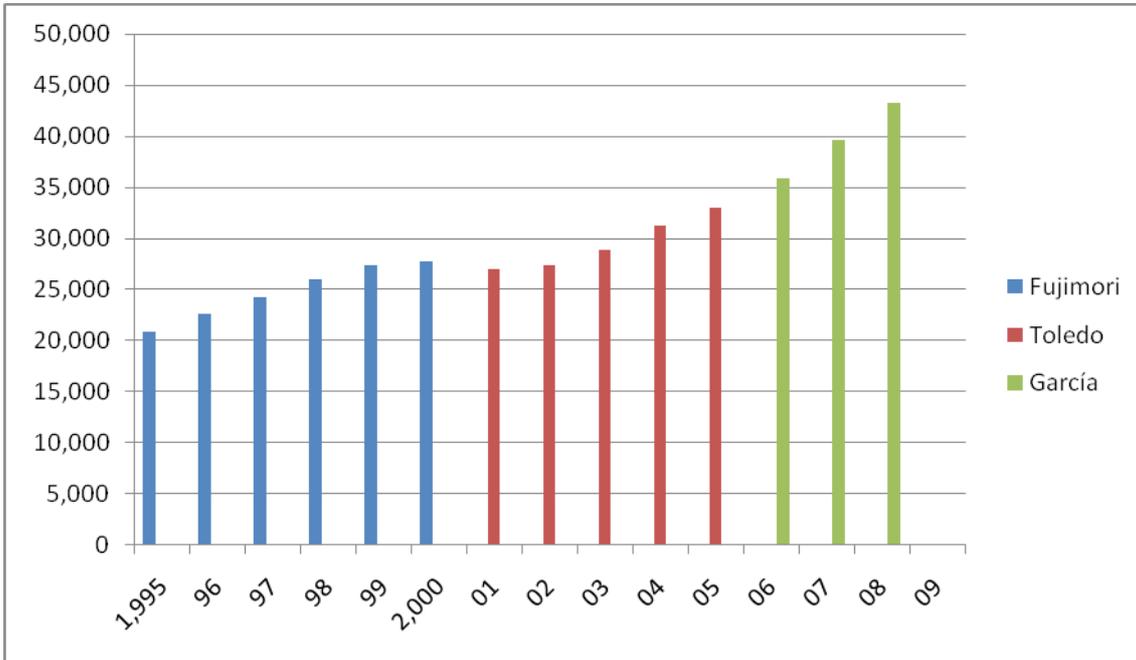
⁶ http://www2.inpe.gob.pe/portal/archivos/upload/menu/diciembre_2009.pdf General office of Statistical Planning of the INPE. According to this same source, in July 2010 Peru’s prison population was 45,012 persons.

⁷ Lecture by Rosa Mavila, President of the INPE, Overcrowding index in the main prisons, December 2006, Office of Statistics of the INPE.

⁸ Presentation of the Bishops’ Social Action Commission, CEAS, “Trabajo en Cárceles,” http://www.ceas.org.pe/recursos_publicaciones/Diptico_trabajoenlascarceles_2010.pdf

⁹ Final Report, Multisectoral Commission in charge of Evaluating the Prison System and Proposed Solution. 2006, p. 5.

¹⁰ CARRANZA Elias, Editor, Cárcel y Justicia Penal en América Latina y el Caribe,”ILANUD, 2009.



In recent years in Peru there has been a clear increase in the reliance on imprisonment in response to a complex scenario in which crime, insecurity, and social upheaval have increased, all within the framework of economic austerity measures.

The growth in the prison population since 2003 corresponds to a period in which the Toledo administration practically submitted Peru's position on the drug question to international demands in order to make it possible to continue negotiations on the free trade agreement (FTA) with the United States. This trend has continued during the administration of Alan García.

As for the condition of prisons in Peru, by way of example, we detail below the situation in one specific year, 2005.¹¹

| | |
|---|--------------------------------|
| Population | 33,010 inmates |
| Overpopulation | 62.02% |
| Expenditure per person per year | US\$ 1,300 |
| Food | US\$ 1.28 a day |
| Number of prisons | 84 prisons: 53 INPE and 31 PNP |
| Water, electricity, and drainage services | 89% in fair or poor condition |
| Medical treatment services | 71% in fair or poor condition |

¹¹ Report by CEAS, Office of the Human Rights Ombudsman, "La Realidad del Sistema Penitenciario en el Perú. Diagnóstico, Limitaciones y Retos," January 2006.

| | |
|--|-----------------------|
| Average growth of the prison population | 12% to 13% annually |
| On trial/convicted | 70.5% / 29.5% |
| Population in prison for drug-related offenses | 23.8% = 7,853 inmates |
| From 5 to 10 years in prison | 34.35% |

In terms of health, the country's prisons are potential foci for any number of infectious diseases, particularly tuberculosis. Mental health problems, particularly those related to drug addiction, are not treated as they should be. Definitive figures on drug use in the prisons could not be obtained, but all the testimony, inside and outside the prisons, confirms the existence and proliferation of the problem, in addition to an extensive corruption network that includes the police.

Persons arrested for illicit drug trafficking

Although the relationship between drugs and crime is not always very clear, it is very facile to assert that it is so. In recent years, it has been common in the media, and among public officials and some scholars, to argue that 70 percent of the crimes committed in Peru are committed under the influence of drugs. Nonetheless, there are no sources or studies that support this assertion, for no one – neither the National Institute of Statistics and Informatics (INEI) or the private centers – systematizes the information from the police reports that are used in the more than 1,000 police stations across the country. Nor is the socioeconomic status of the accused recorded; for their first statement individuals are only asked questions about their personal information: name, age, domicile, and employment.

At present, 61 percent of the prison population in Peru is on trial and 39 percent have been convicted. These figures are similar to the average for Latin America. Although it is not possible to differentiate the cases of persons detained for illicit drug trafficking, these figures reflect a structural problem related to delays in the administration of criminal justice. In cases involving drug offenses, no criteria of selectivity and legal specificity are used to adequately distinguish the various elements of the chain of drug-related crime, which represent varying degrees of criminal liability. All of this also influences the conduct of the different criminal justice subsystems: police, judges, prosecutors, and prison personnel.

Various “bottlenecks” exist in the administration of justice in cases of drug-related offenses in Peru, i.e. those points at which the process slows down and becomes difficult.

A first bottleneck has to do with the traditional confusion on the part of regional police on the possession of drugs for use and for sale. Possession for personal use accounts for a considerable share of persons incarcerated.

The following table shows the number of police detentions related to drug offenses as recorded by the police authorities, from 1995 to 2008¹²:

| | 1995 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
|----------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|-------|--------|--------|
| Operations | 10,709 | 14,319 | 17,186 | 15,577 | 17,986 | 13,343 | 13,158 | 12,234 | 10,149 | 11,260 | 7,818 | 11,776 | 12,332 |
| Large-scale trafficking | 3,620 | 3,977 | 3,287 | 2,918 | 2,829 | 2,298 | 2,048 | 2,173 | 1,991 | 1,511 | 1,076 | 2,679 | 2,372 |
| Micro-commerce | | | | | 3,006 | 2,136 | 2,212 | 1,990 | 1,196 | 1,344 | 1,133 | 1,837 | 2,494 |
| Use | 6,876 | 10,043 | 13,603 | 12,288 | 12,151 | 8,909 | 8,898 | 8,071 | 6,962 | 8,405 | 5,609 | 7,260 | 7,466 |
| Users as percentage of detainees | 55 | 71 | 79 | 79 | 67.55 | 66.76 | 67.62 | 65.97 | 68.59 | 74.64 | 71.74 | 61.65 | 60.54 |

Source: PNP

As illustrated in this table, using information from the PNP, since 1997 over 60 percent of those arrested have been users. According to Article 296 of the Criminal Code currently in force, consumption is not punishable, and since the 2003 reform nor is possession of an amount for personal use. Therefore, though the law does not criminalize possession for personal use, in practice the police treat it as a crime.

According to the Centro de Información y Educación para la Prevención del Abuso de Drogas (CEDRO: Center for Information and Education for Drug Abuse Prevention), an entity that opposes any change aimed at making the current regime more flexible: *“In Peru drug consumption is not criminalized. Nonetheless, when a person is found in possession of drugs, he is detained until there is verification as to whether he is a user or a trafficker; this evaluation is done based on the amount of drugs he had on his person, and his record.”*

As indicated above, it appears there is nothing in official prison records that would make it possible to clearly distinguish among the various types of offense associated with drugs, but an interpretation of the figures provided by the Public Ministry indicates that of the criminal complaints processed in recent years, most are made up of the less serious drug-related offenses and micro-commerce.

According to the information available in the Public Ministry’s national registry of persons incarcerated, the judicial districts where drug-related offenses are the leading crime are El Callao (50.34 percent), home to the country’s principal port and airport, followed by the department of Junín, in the central highlands, through which drugs coming from the region of the Apurímac and Ene River Valley pass, and VRAE (17 percent). Drug offenses constitute the second largest category of offenses committed in Apurímac (16.94 percent), Ica (15.62 percent), Lambayeque (19.25 percent), and Cusco

¹² Assembled by the author.

(19.39 percent), all of these being zones through which drugs pass on their way to the coast or the borders. Drug-related offenses are the third leading category of offense in the geographic area of northern Lima (18.15 percent), and in the department of Piura (19.46 percent).

The excessive number of cases of police preventative detention of potential drug users affects various fundamental principles and rights. In other words, police officials prefer to consider those who possess drugs to be potential traffickers, determining their legal situation only when they get to the police station, which can entail flagrant cases of unlawful detention. Countries such as Peru fail to meet the objectives of a prison policy that takes into account international human rights instruments, including Article 5(6) of the American Convention on Human Rights, which addresses the reform and social re-adaptation of convicts.

The problem of arbitrary detentions, and the resulting pre-trial detentions and overpopulation of the prisons, is out of control. Recently, the Congress of the Republic, the press and public opinion have rejected re-establishing use and possession for use as drug-related offenses, as called for in a legislative proposal by the Ministry of Interior and various local mayors of Lima districts in April 2009.

A second bottleneck that poses a key problem for prison policy in Peru is the position taken by the Constitutional Court (Tribunal Constitucional) in relation to maintaining the powers of police detention for up to 15 days – the normal period is 24 hours – for drug-related offenses.¹³

In addition to the lack of clear definition of the scope of police authority, the National Police have expanded authority to carry out detentions. This illustrates the frequency with which abuses and violations of rights occur as a result of the national application of the strategies of the “war on drugs” in its Latin American version.

In its recent judgments, the Constitutional Court has been very clear in rejecting *habeas corpus* for drug-trafficking cases, but without distinguishing between cases involving members of complex organizations (cartels), for whom the restrictions are understood to apply, and the cases of individuals who are in a weak position and are easily replaceable in the illicit drug chain. This reflects an abdication of the function of upholding the rule of law, replacing it with an ill-conceived notion of public security.

The third bottleneck has to do with the prohibition of concessions and rights during the prison stage, mainly referring to Article 42 of the Peruvian Code of Prison Enforcement. Prison benefits in the Peruvian system are as follows: permission to leave prison, reduction in the sentence for work and education, semi-liberty, parole, and intimate

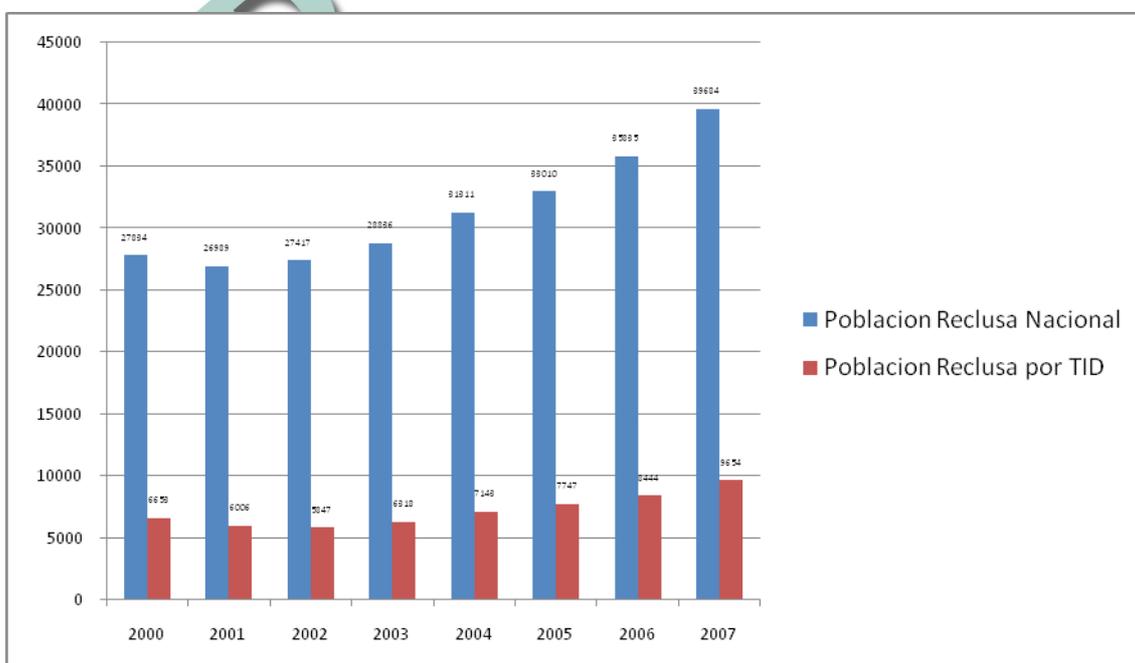
¹³ Article 2(24)(f) of the Peruvian Constitution states: “No one may be detained other than by written and reasoned order of the judge or by the police authorities in the case of flagrante delicto. The detainee must be brought before the corresponding court within 24 hours or within the required travel time. These time periods do not apply to cases of terrorism, espionage, and illicit drug trafficking. In those cases, the police authorities may effectuate the preventive detention of the persons allegedly implicated for no more than 15 calendar days. They are accountable to the Public Ministry and the judge, who may assume jurisdiction prior to the lapsing of that term.”

visits, among others. Yet Article 47 of the same code prohibits benefits in cases involving drug-related offenses¹⁴, including parole (Article 53).

The case-law of the Peruvian Constitutional Court grants the legislator a margin of discretion when establishing or failing to establish prison benefits for a given type of conviction. In addition, it denies the fundamental right to the purpose of re-education, rehabilitation, and reintegration of the convict to society in certain cases, and places greater emphasis on the result (reinsertion) than on the process (re-education) of re-socialization.

The Constitutional Court holds that while such benefits are individual rights to which one has a legitimate expectation provided for in the law, this does not mean they are constitutional rights. This generic restrictive measure, without filters or exceptions, reduces the possibility of rehabilitation and generates worse problems brought on by the lack of liberty. Moreover, the inequities experienced by prisoners behind bars for drug offenses in Peru is one of the main complaints, as reflected in the number of official notes, requests, and proposals that reach the Congress. This was also evident in the visits in 2009 and 2010 to various prisons in the city of Lima: Castro Castro, Sarita Colonia, Chorrillos, and the largest, Lurigancho.

The following graph shows the total number of prisoners overall and the total number of those locked up for drug-related offenses, both of which have clearly increased since 2003.



Female population in the prisons

¹⁴ Article 47: “The benefit of reduction of the sentence for work or education is not applicable to the agents of the offenses defined at Articles 296, 297, 301, 30, and 319 to 323 of the Criminal Code.”

In 2006, of the 35,835 prisoners in all of the country's prisons, 2,531 were women. That same year, 66.38 percent of the total population of women in Peru's prisons was behind bars for drug-related offenses.¹⁵ According to a report by the Office of the Human Rights Ombudsman, the last two decades have seen an increase in crime committed by women in general in Peru¹⁶, though it is still far less than male crime. A study by CEDRO indicates that in the Chorrillos prison, of the 178 women inmates surveyed, one-third had sold drugs from their homes, a quarter were detained while travelling with drugs to Lima, and a quarter were detained at Lima airport.¹⁷

The figures of the Office of the Public Prosecutor

As the figures of the National Police show, there has been an increased effort to detain persons for alleged drug offenses in recent years and that trend has become the most important cause of future prosecution. According to the annual statistics of the Ministry of Interior on operations and detentions for up to 15 days for possession for use and/or sale, it is at the moment of detention that the officers of the PNP commit the most violations and infringements of the rights of persons involved in one way or another in such acts.

The following table illustrates the cases of drug offenses handled by the Office of the Public Prosecutor specializing in drug-related offenses.

| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
|-----------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Drug-related macro-offenses | 745 | 857 | 1,009 | 1,114 | 1,094 | 1,204 | 1,409 | 1,725 | 1,414 |
| Drug-related micro-offenses | 3,023 | 2,547 | 2,333 | 2,561 | 2,905 | 3,761 | 4,097 | 4,227 | 4,661 |

Based on these figures, one can verify that there is a prevalence of micro-trafficking offenses over macro-trafficking, of approximately 72 percent to 28 percent respectively. Micro-trafficking is the offense that draws more of the attention and accounts for more of the excessive caseload handled by the officers of the administration of criminal justice in Peru.

Given the difficulties of obtaining sufficiently systematized information from the administration of justice and the judicial branch, we have had to limit ourselves to the information provided to us by the Office of the Public Prosecutor in its representation of the state. Everything appears to indicate that not even important measures such as the Law on the Judicial Career Service in Peru (Law 29277 of November 7, 2006), which is aimed at professionalizing and modernizing the judicial career service, have succeeded in reducing the problem of lethargy in the administration of justice.

¹⁵ Ibero-American Federation of Ombudsmen, Report on Human Rights: "Sistema Penitenciario," 2007, p. 331.

¹⁶ Report Office of the Human Rights Ombudsman, CEAS, p. 30.

¹⁷ CEDRO, "El Problema de las Drogas en el Perú," June 2006, p. 130.

Conclusions

The incidence of extended police detention and pre-trial detention throughout the criminal process for drug offenses is a specific problem that results in arbitrary acts (incarceration, delays in the administration of justice), when the various cases and corresponding responsibilities are not defined more precisely.

In addition, the process of complaint, indictment, and prosecution of drug offenses in Peru combined with the existence of a prison regime constantly operating on an emergency basis that is constantly expanding, and a system of disproportionate sentences that severely limits fundamental rights (freedom, due process, and other judicial guarantees), all generate a very close connection between drug offenses, lethargy in the administration of justice, and overcrowding in the prisons.

In recent years in Peru, on average between 20 and 24 percent of the prison population were behind bars for drug-related offenses. In only about one-third of these cases is the prisoners' legal situation defined.

In the most common cases of drug-related offenses, the Peruvian authorities do not seek to apply the principle of proportionality in sentencing nor do they pursue measures other than prison, such as early release and community work.

The police do not implement corrective measures that would much improve their involvement in drug cases in general, and particularly in cases of possession for use and even in cases of micro-trafficking without aggravating factors. The PNP does not have very clear rules for its own involvement in either of these situations.

There is a major problem of institutional management in all of the official entities related to the administration of justice that has negative repercussions for the situation of the persons tried, convicted, and imprisoned in general. This is aggravated in specific cases, such as drug-related offenses.

There is no transparent system for management of the budget or of actions and plans for the Peruvian prison system. Nor is there visible information on the socioeconomic situation of the prisoners, according to the offense committed. The information available reveals dispersion and contradictions in the statistics. The procedures on access to information are frequently violated in all of the institutions of the criminal justice system. Nonetheless, as a result of the requests made repeatedly by the Centro de Investigación 'Drogas y Derechos Humanos' (CIDDH), we have succeeded in getting the execution of the budgets from 2007 posted on the Internet (www.inpe.gob.pe).

Any structural solution to the problem of enforcing the drug laws and their impact on the prison system should include specific legal reforms, limits on police activity, and timely justice for the most numerous and least important cases in the chain of illicit conduct. The result should be a reasonable and humane prison system that fulfills its purpose of re-adaptation and that does not resort to threats to resolve the major social problems of health and poverty that beset the nation.

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