

Invisible girls and boys, their rights to a healthy environment and a family environment in the Establecimiento Penitenciario de Mujeres Socabaya-Arequipa-Peru

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ABSTRACT

Objectives: To analyze how the rights to a healthy environment and a family environment of invisible children are protected in the Socabaya-Arequipa-Peru Women's Prison.

Material and method: Data taken from the official documents in the following three prison records were used: the incident log, medical statistical report and the activity control book. The selection criteria were based on the availability, plausibility and official nature of the information in the documents. Qualitative analysis of the applied type and the designs of documentary analysis and grounded theory were selected for the method.

Results: The rights of invisible children to healthy conditions and a family environment are inadequately protected in the Socabaya-Arequipa-Peru Women's Prison. Lack of prison health services disrupt family relationships and negatively impact female inmates' rights.

Discussion: The lack of political will to guarantee rights to healthy conditions and a family environment is due to the fact that gender-based approaches, policies based on the protection of children's interests, greater transparency and access to public information have yet to be introduced in the prison healthcare milieu.

Key words: girls and boys' right to health; women's rights; family relations; prison health services.

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INTRODUCTION

Children are regarded as a vulnerable population^{1,2}, and so require special protection by the State to ensure the full exercise of their rights. These include an adequate health and family setting even when their mothers are serving a prison sentence³.

Unfortunately, such children are ignored by the State and by society as a whole⁴, since they are commonly regarded not only as "the children of crime" but also as "the children of sin". They are therefore

not guaranteed access to all their rights, creating a situation in which the children themselves appear to be serving the same sentence as their mothers, as if they also deserved to be punished. Minors are therefore exposed to unnecessary risks when they stay with their mothers in prison, and visits may be restricted or even prohibited when they no longer reside in prison, thus stunting effective personal development in an adequate setting. Family relationships should be strengthened to prevent a negative impact on children's physical and mental health as they grow⁵.

Minors are not even duly accounted for^{6,7} in official prison censuses, which stops immediate remedial measures from being taken. This has led to these children being called “invisible”^{6,8-10}, as the judicial and prison authorities do not take any measures to change this situation.

It should be borne in mind that punishment should only be inflicted on the offender and should not be extended to the other members of the family, and even more so when the parties involved are minors, whose resistance to and tolerance of suffering and pain are less than those of an adult. If this were the case, children who are guilty of nothing and have not committed any crime would no longer have to experience the stigmatisation, exclusion and social discrimination that is common in such cases¹¹.

The Argentine National System of Statistics on Prison Sentencing, which forms part of the Directorate of Criminal Policies on Penal Legislation and Justice of the Ministry of Justice and Human Rights (SNEEP), indicated that there was a decrease in infants with imprisoned mothers: In 2003, there were 2,294 female inmates, 8% of whom had children. However, the results for 2015 showed that there were 2,962 women inmates, but only 5% were with their offspring¹². There is a disproportionately greater negative impact on family ties when mothers are imprisoned than when fathers are incarcerated¹³ as fathers are less likely to take care of the children when the mother serves a prison sentence, and children are more likely to live in prison with their mothers for 3 years (or even less) and are then taken care of by a member of the family. Furthermore, imprisoned mothers do not often receive visits from their partners or their children, and prison systems do little to mitigate the negative effects on family ties or resolve the health issues experienced by family members¹⁴.

This article sets out to answer the following question: How are invisible children’s rights to healthy conditions and a family environment protected at the Women’s Prison of Socabaya-Arequipa-Peru (E.P. Mujeres-Arequipa)?

The aim of this study is therefore to analyse how invisible children’s rights to healthy conditions and a family environment are protected at the Women’s Prison of Socabaya-Arequipa-Peru

MATERIALS AND METHODS

The following tools were used in the design of this study: qualitative document analysis and grounded theory.

The sample used in the study consisted of the population of women and offspring at the prison of Arequipa (Peru) and the data was gathered between 17 and 19 November 2023. The population had increased to 184 female inmates, 11 of whom were imprisoned mothers, representing 6% of the total population. The total number of children living in the prison was 8.

Data was taken from the following official documents: the incident log, medical statistical report and activity control book; anonymised versions were used to safeguard the identities of the inmates and the minors. The selection criteria were based on the availability, authenticity and official nature of the information contained in the documents. We used the medical statistical report because it acts as a record of the most common healthcare and nutritional problems caused by poor hygiene and nutritional habits amongst most inmates, including mothers. We also made use of the incidents log and activity control book to find out about cases of violence caused by lack of space or for any other reason, and to determine if the amplification of infrastructures during the pandemic had any effect on violence-reduction and wellbeing amongst inmates and their offspring.

The type of research applied was selected for the method.

RESULTS

The report showed that there were 4 inmates with more than 5 children under 13 years of age, 2 inmates had between 3 and 5 children and 1 had one child. 5 inmates interrupted the period of cohabitation with their offspring (3 years in accordance with the law) and 2 had thought of interrupting it. 4 inmates interrupted cohabitation because their offspring were very frequently ill and 1 did so because she felt that the setting was not suitable for children. The 2 inmates that had thought about interrupting cohabitation stated that they did so because they felt that life would be better for their children outside prison and because they had other children to attend to. 3 inmates have 3 children under 13 years of age outside prison and 4 inmates have less than 3. Finally, 5 inmates stated that visits from their offspring were not very regular. 3 inmates gave more details by saying that the children suffered from fever, stomach cramps, diarrhoea and even depression in the days before and after the visit, while 2 said that their children had said that they did not like the atmosphere in the prison.

The medical statistical report showed that the main problem in terms of hygiene was that the

infrastructure did not help to improve personal cleanliness as the prison had once been a military fort. An example of this is the presence of men's urinals in the bathrooms when the recommendable thing would be to install more toilets and bidets.

The nutritional data showed that the main problem was not a shortage of food, but rather the almost complete absence of a culinary culture geared toward a healthy and balanced diet. The inmates prefer to eat food with excessive carbohydrates and saturated fats. Another issue is that most inmates with children do not do any kind of sport due to the lack of available space.

There is also a high incidence of psychosomatic diseases amongst inmates caused by anxiety arising from stress and emotional problems produced by their efforts to ensure their offspring's wellbeing.

The data for medical care and resources for immediate treatment showed that during the period of cohabitation (up to 3 years according to the law), health and recreational services were insufficient for the children. There are no paediatricians, specialised dentists or drugs to treat children's diseases. Neither are there any daycare or nursery services with permanent teachers or carers.

On the other hand, it was found that when childcare is externalised and family or friends take on responsibility for looking after the infant, the system did not help in ensuring that visits were frequent and prolonged, since the reception and recreational areas were not furnished and adapted for children. The medical statistical report concludes that both the imprisoned mothers and the minors find the facilities to be hostile and are not adapted to the need to strengthen family ties. This situation makes the inmates feel doubly guilty, firstly for being offenders and then for being a "bad mother".

The incidents log and the activities control book showed that the number of inmates, medical staff and security personnel had led to closer relationships being established as almost everyone in the centre interacts over the course of the day in mutually beneficial tasks. For example, THERE is evidence of collaboration and trust in the relationships established in the occupational and study workshops. Therefore, cases of violence caused by lack of space or for other reasons are few and far between. On the other hand, it was observed that while the infrastructures were amplified to reduce overcrowding and the risk of infection during the pandemic, the basic building design itself was not altered.

The findings were as follows:

- a. The present building is a military fort that was converted into a prison, with no major changes to

the architectural design, for an adult male population. This has led to a reduction in the number of infants in comparison the census of 2018, despite the increasing number of imprisoned mothers.

- b. Imprisoned mothers prefer to bring forward the externalisation period as the facilities are not adapted to children.
- c. There are no suitable reception and recreational facilities to assist in the externalisation period, which leads to a reduction in the frequency of visits, thus damaging family ties between mothers and their offspring. Such children are not even included in the official censuses.
- d. Despite the increase in infrastructure during the pandemic, health issues have become more acute, including diseases related to poor dietary habits and hygiene. This was due to the building, which was not designed for women or mothers with children. Violence caused by overcrowding is infrequent.

DISCUSSION

The situation for children and their mothers in prison cannot be easily understood without further analysis of the female inmates involved¹⁵. Like children, women belong to a vulnerable population group¹⁶. They therefore deserve special treatment in the prison setting, especially when serving a sentence; the following figures may help in this regard:

The female prison population in each continent is as follows: 308,293 in North and South America, 102,397 in Europe, 4,550 in Oceania and 35,606 in Africa, making for a total of 714,414 female inmates. The percentage of women with children in the general prison population is 8.4% in North and South America, 6.1% in Europe, 7.4% in Oceania, 6.7% in Asia and 3.4% in Africa, which in global terms is 6.9% of the world's prison population¹⁷.

The figures for countries in North and South America are as follows, Guatemala (2,369 female inmates, or 10.3% of the prison population), USA (211,870, or 9.8%) and El Salvador (3,803, or 9.8%), which are the countries with the highest percentage of women and children in prison. The figures for Peru are 4,878 female inmates, or 5.8% of the total prison population¹⁸.

The global number of women and girls in prison has increased by 53% since 2000, while the number of male inmates has increased by 20% over the same period. The number of female inmates in North and South America has increased by three times as much as

it has for the male prison population¹⁷. Female inmates in the region now represent 8% of the total prison population. This figure shows that the female prison population in the region is the largest in the world, with a proportion of 30 per 100,000 inmates¹⁹. This has created new medical, physical, emotional and social needs that have yet to be answered. They also represent a major challenge to institutions, especially prisons²⁰.

In Argentina, the female prison population almost doubled from 2002 to 2019. It increased by six times in Brazil from 2000 to 2017. It more than doubled in Colombia from 2000 to February 2021. El Salvador saw a tenfold increase from 2004 to 2019. It increased by over eight times in the USA from 1980 to 2019. Guatemala saw a fivefold increase from 2014 to 2019. Mexico saw an almost twofold increase from 2000 to 2021. The same population increased by more than four times in Paraguay from 2000 to 2021. Uruguay saw an increase of almost four times from 2000 to 2020, while Peru's female prison population increased by 200% between 2000 and 2015²¹. The Interamerican Committee of Human Rights (CIDH) stated that the increasing number of imprisoned women in the region has been caused by harsher policies for drug offenders, the excessive use of preventive custody for women and a lack of gender perspective when considering the problem¹⁹. Between 40% and 75% of female inmates in Latin America are serving sentences for drug related offences; this figure is two to three times higher than it is for male inmates²². In recent years, about half of the female inmates in Peru, Ecuador, Argentina, Bolivia and Chile have been placed under preventive custody for drug related charges²³, without taking into account the fact that many women are imprisoned for economic reasons and for non-violent crimes that are often linked to situations of poverty and violence²⁴. Prisons in Latin America have also been designed by and for men, due to a lack of gender perspective²⁰.

The percentage of incarcerated mothers in Latin America stands at between 70% and 80%, with an average of three children for each mother. A sizeable number of this percentage are single-parent families where the mother is responsible for the children and for maintaining the family unit²⁵. In this context, the CIDH notes with some concern that although most incarcerated women are mothers, there is a general lack of data about the structure of their family groups, which impedes the adoption of prison policies that respect a gender focus that includes proposals to maintain family ties¹⁹.

The most recent Peruvian Prison Statistical Report (IEP) indicates that there are 4,878 female inmates,

representing 5.8% of the total population, i.e., within the regional average. However, 178 of the women surveyed are mothers, representing 3.6% of the total number of female inmates in the country and 62% at a regional level, which is way below the average. The total number of children living inside the prison was 180, representing solely 1 child per female inmate, which is once again below the regional average. Sadly, Arequipa Women's Prison is not exception to this rule. The figures showed 8 mothers out of a total of 161 inmates, representing 5% of the total. Only 9 children lived inside the prison. It should be pointed out that the IEP does not include children who live outside the centre²⁶. In fact, only Argentina, Brazil, Bolivia, Honduras, Nicaragua and Surinam gather this type of data on an occasional basis¹⁹.

North and South America present some of the highest figures for prison overcrowding in the world. Haiti has the highest levels in the region, with 454.4%, followed by Guatemala (293.2%), Bolivia (263.6%), El Salvador (236.7%) and Peru (229.1%)²⁷. 47 of the 69 prisons in Peru are considered to be overcrowded. The Arequipa Women's Prison falls within this category, with a capacity to house 67 inmates but with an excess population of 94, representing an overcrowding level of 140%²⁶. This leads to problems of healthcare, nutrition, lack of space, recreation and externalisation, all of which have a negative impact on inmates' mental and physical health²⁸. Given these circumstances, the low presence of children is understandable, given that mothers do not want them to suffer such conditions in prison.

Arequipa Women's Prison does not have a comprehensive and individualised plan for incarcerated mothers. A tacit collaboration agreement has been informally and pragmatically implemented instead to establish mutually beneficial relationships amongst inmates, including women without offspring.

Finally, the lack of political will to safeguard to the wellbeing of inmates and their children has led to a situation where infringements of the following Peruvian legal and constitutional provisions have taken place:

- a. Article 2, paragraph 2 of the Political Constitution of 1993, which protects citizens' rights, in this case those of female inmates with children, and article 44, which recognises children's rights, since they are not guaranteed healthy conditions and a family environment of sufficient quality to strengthen family relationships when their mothers are in prison.
- b. Article 14 of the Children's and Adolescents' Code establishes the rights of minors. This provi-

sion matches article IX of the Preliminary Title of this law in stating that the principle of the child's best interests is binding and should be applied in any measures taken by the State. However, these rights are violated when the State does not include the child's best interests in its prison policies, given that the vulnerable status of this population is not taken into consideration.

- c. Article 113 of the Criminal Procedural Code, which establishes a period of cohabitation between mothers and their offspring of 3 years. However, inmates prefer to reduce this period to avoid unnecessary suffering caused by inadequate conditions. Furthermore, article 215 and 216 of the Regulation impose the requirement to provide adequate and separate facilities within the prison to enable the minors to live with their mothers. However, such spaces are rarely provided. At the same time, there is a legal vacuum regarding the obligation to provide areas for children to ensure that visiting periods are regular and prolonged.
- d. Articles 1 and 4 of Law 28983 on equal opportunities regulate the rights of men and women under equal conditions. These provisions do not mention gender equality in a context of women and mothers in prison. Article 6 paragraph l), promotes the full development of children, but it does not specify the special protection that they should have when their mothers are in prison, thus violating the principle of the child's best interest. Paragraph m) of this article implements the enhancement of the official statistical system, but makes no mention of the need to count the number of children with incarcerated mothers. This omission violates the principle of transparency and access to public information in the national prison system.
- e. Administrative directives have also been infringed. These include: the procedural manual for the admission and discharge of minors under 3 years of age whose mothers are incarcerated, the directive on complete care and treatment in prison for women undergoing trial or sentenced in prisons and in the community, and Supreme Decree 006-2016-MIMP: Intersectorial Protocol between the Ministry of Women and Vulnerable Populations and the National Prison Institute regarding due care of the offspring of women in prison. These directives contribute towards strengthening family ties and mitigating health issues amongst members of the family group. However, incarcerated mothers do not often receive visits from

their partners or their offspring, given that family members regard the environment as unpleasant and unsuitable for infants.

CONCLUSIONS

The conclusions of this study are as follows:

- a. Our first finding highlights the lack of political will in ensuring procedures in prison that respect the rights to healthy conditions and a family environment in the Women's Prison of Arequipa. This funding accords with the figures published by the Argentine National System of Statistics on Prison Sentencing, which forms part of the Directorate of Criminal Policies on Penal Legislation and Justice of the Ministry of Justice and Human Rights (SNEEP) between 2003 and 2015¹².
 - b. Our second finding coincides with the following sources: the prison infrastructure does little to safeguard the right to children's health³ as existing services are not adapted to their needs¹⁰. Therefore, we recommend the inclusion of a focus on the child's best interests, under the principle of compliance, to reverse their condition as invisible persons.
 - c. Our third finding concurs with the following sources: the negative impact on family ties when the mother is incarcerated is more disproportionate than when the father is imprisoned¹³. Prison systems do not alleviate this negative impact on family links and health issues for members of the family. Another factor is that incarcerated mothers do not usually receive visits from their partners or offspring¹⁴.
- Finally, prison censuses carried out by the State do not usually account for children when they are sent home. This makes it difficult to coordinate the participation of citizens in creating effective public policies that favour the rights of women and their offspring^{16,19,26}.

We therefore recommend a focus on transparency and access to public information in areas relating to the national penitentiary treatment system, by amplifying the Prison Statistical Report (IEP) to generate an official record that increases the visibility of inmates' offspring, and by doing so contribute towards resolving the impediments that infringe rights to healthy conditions and a family environment for children, through collaborative links between the State and society, based on honest and reliable information gathered by the prison authorities.

- d. Our fourth finding concurs with the following sources: the prisons were designed by and for men²⁰. Prison conditions for female inmates are difficult because they do not take into account their special needs as women and mothers²². We therefore recommend the inclusion of a gender-based focus based on the principle of compliance, i.e., ensure compliance with international treaties of which Peru is a signatory, to prevent, penalise and eradicate violence against women and members of the family group. At the same time, the activities designed to strengthen mutually beneficial relationships that reduce violence could also be encouraged, as is the case in the Arequipa Women's Prison.

CONFLICTS OF INTEREST

The authors declare no conflicts of interest.

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