

TOWARDS A GOVERNANCE MODEL OF UNGOVERNABLE PRISONS: HOW RECOGNITION OF INMATE ORGANIZATIONS, DIALOGUE, AND MUTUAL RESPECT CAN TRANSFORM VIOLENT PRISONS IN LATIN AMERICA

José Luis Pérez Guadalupe, James Cavallaro and Lucía Nuño Cisneros⁺

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⁺ *José Luis Pérez Guadalupe is Professor and Researcher of the Graduate Program, Universidad del Pacífico (Lima - Perú). Pérez Guadalupe launched the Peruvian Prison Reform Process when he served as President of the Peruvian National Penitentiary Institute, INPE by its Spanish initials. He continued to oversee the process as Minister of the Interior. perez_jl@up.edu.pe

**James Cavallaro is Executive Director, University Network for Human Rights (www.humanrightsnetwork.org); Visiting Professor, UCLA School of Law, Wesleyan University, Yale Law School. cavallaro@humanrightsnetwork.org As Commissioner, country rapporteur for Peru, and Rapporteur for the Rights of Persons Deprived of Liberty of the Inter-American Commission on Human Rights, Cavallaro visited detention centers in Peru regularly.

***Lucía Nuño Cisneros is Professor in the Faculty of Law and the School of Government and Public Policy, Pontificia Universidad Católica del Perú (Perú)–lucia.nunovero@pucep.edu.pe

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Unfortunately, the most newsworthy aspect of detention centers in Latin America is their propensity to explode into horrendous violence: fires, uprisings (or riots) that claim the lives of dozens of detainees, and clashes between rival gangs or organized criminal groups, and mass escapes. Several thousand have perished in prison violence in Latin America in the past few decades—a single incident at the Comayagua Prison claimed the lives of 362 inmates in Honduras in February 2012.¹ The underlying conditions that give rise to these collective acts of violence are well known and studied. Scholars have assessed the relationship between severe overcrowding, limited resources and poor services, and self-rule by detainees.² Such self-rule is aggravated by high levels of violence and illicit markets within prisons.³ The combination is highly volatile and poses grave dangers to the lives and wellbeing of detainees, authorities, and often the larger society beyond prisons. Prison administration, and the corresponding literature on detention centers, mainly addresses the battle for control within detention centers. Study of informal organizations in prisons in Latin America focuses on the exercise of control over daily life inside detention centers, including the extreme example of “self-rule by inmates.”⁴ Unfortunately, the primary alternative to self-rule by detainees has been an authoritarian model in which prison officials control all aspects of inmates’ lives,

1. INTER-AM. COMM’N ON H. R., REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON THE SITUATION OF PERSONS DEPRIVED OF LIBERTY IN HONDURAS I (2013), <http://www.oas.org/en/iachr/pdl/docs/pdf/HONDURAS-PPL-2013ENG.pdf>.

2. LUCÍA DAMMERT & LIZA ZÚÑIGA, LA CÁRCEL: PROBLEMAS Y DESAFÍOS PARA LAS AMÉRICAS, 3 (2008); Elías Carranza, *La Política Criminal en América Latina*, in MINISTERIO DE JUSTICIA Y DERECHOS HUMANOS, POLÍTICA CRIMINAL Y REFORMA PENITENCIARIA: EN EL MARCO DE UN GOBIERNO DEMOCRÁTICO E INCLUSIVO 200–201, 205 (2012).

3. JONATHAN D. ROSEN & MARTEN W. BRIENEN, PRISONS IN THE AMERICAS IN THE TWENTY-FIRST CENTURY: A HUMAN DUMPING GROUND, IX–XI (2016); Sacha Darke & Chris Garces, *Surviving in the New Mass Carceral Zone*, PRISON SERV. J., 2, 4, 6 (2017).

4. See generally JOSÉ RICARDO RAMALHO, MUNDO DO CRIME: A ORDEM PELO AVESSO (2008); JOSÉ LUIS PÉREZ GUADALUPE, FAITES Y ATORRANTES: UNA ETNOGRAFÍA DEL PENAL DE LURIGANCHO (1994) (Perú) [hereinafter PÉREZ GUADALUPE, FAITES Y ATORRANTES]; JOSÉ LUIS PÉREZ GUADALUPE, ‘DE FLAITES A COCODRILOS.’ EL CAMBIO GENERACIONAL DE LA DELINCUENCIA CHILENA (1995) (tesis de licenciatura en sociología, ILADES, Pontificia Universidad Gregoriana de Roma) [hereinafter PÉREZ GUADALUPE, ‘DE FLAITES A COCODRILOS’]; JOSÉ LUIS PÉREZ GUADALUPE, NUEVAS DROGAS, NUEVOS DELICUENTES (1998) (tesis de master en criminología, San Sebastián: Instituto Vasco de Criminología) [hereinafter PÉREZ GUADALUPE, NUEVAS DROGAS]; JOSÉ LUIS PÉREZ GUADALUPE, LA CONSTRUCCIÓN SOCIAL DE LA REALIDAD CARCELARIA (2000) [hereinafter PÉREZ GUADALUPE, LA CONSTRUCCIÓN SOCIAL]; JUAN CARLOS PINTO QUINTANILLA, CÁRCEL DE SAN PEDRO: RADIOGRAFÍA DE LA INJUSTICIA (1995); David Skarbek, *Covenants Without the Sword? Comparing Prison Self-Governance Globally*, 110 AM. POL. SCI. REV. 845, 852 (2016); Andrés Antillano, *When Prisoners Make the Prison. Self-Rule in Venezuelan Prisons*, PRISON SERV. J., 26, 26 (2017).

often through isolation, draconian policies, and violence.⁵ Until recently, prison administration in Peru, the country that provides the main case study for this article, has alternated between these extreme and dysfunctional models.⁶ This article considers a novel approach to managing volatile detention centers applied in Peru for a decade (2011–2020) with promising results and we contend, the potential to transform prisons in Latin America.

In the 1980s, the National Penitentiary Institute of Peru—*Instituto Nacional Penitenciario del Perú*, INPE—largely abandoned its function as administrator of detention centers, leaving the National Police in charge.⁷ The National Police, of course, was an institution without specialized training in prison management. The result was informal organization by prisoners and the development of a system of entirely autonomous self-rule by inmates.⁸ The most emblematic case was the Lurigancho Penitentiary (the largest prison in the country), in which the detainees established their own fully functional internal organization, while the police limited themselves to external control of the prison.⁹ The prisoners at Lurigancho quite literally held the keys to the jail.¹⁰ They controlled entrance and exit from cells and cellblocks, decided which people and products could circulate, and imposed their own internal norms. In addition, to protect cellblocks from attacks by other detainees, prisoners maintained stocks of knives, firearms of various types, spears and even hand grenades.¹¹

Beginning in 2002, INPE began to retake control of prisons, but self-rule continued. In 2008, a report by *National Geographic* identified Lurigancho as

5. De Dardel, Julie & Söderström, Ola, *The Rise and Fall of Supermax: How the US Prison Model and Ultra-punitive Penal Policy Travelled to Colombia* 15 (Maison d'analyse des Processus Sociaux, Université de Neuchâtel, Working paper 3-2015/E, 2015).

6. Stephen Nathan, *El sistema penitenciario: Modelo de gestión privada o pública*, in MINISTERIO DE JUSTICIA Y DERECHOS HUMANOS: POLÍTICA CRIMINAL Y REFORMA PENITENCIARIA EN EL MARCO DE UN GOBIERNO DEMOCRÁTICO E INCLUSIVO 295, 309 (2012). Many of the observations about detention centers in Latin America are based on the personal observations of the three authors. Pérez Guadalupe has worked in the prison system for civil society organizations and later for the state for three decades; he has also visited and studied conditions in detention centers across Latin America. See, e.g., JOSÉ LUIS PÉREZ GUADALUPE, *LA CONSTRUCCIÓN SOCIAL DE LA REALIDAD CARCELARIA* (Fondo Editorial de la Pontificia Universidad Católica del Perú, 2000) (assessing, based on months of research in detention centers themselves, the social organization of prisons in Perú, Chile, Argentina, Brazil and Bolivia); Cavallaro has documented conditions in prisons for Human Rights Watch, Justiça Global (Brazil) and the Inter-American Commission on Human Rights for a quarter century; he has visited scores of detention centers across the Americas and has published books and articles on prison conditions and the social structures in prisons. Lucía Nuñovero Cisneros worked between 2005 and 2011 in human rights projects in the Santa Mónica, and Callao Penitentiaries. From 2012 to 2013, she advised the Ministry of Justice of Peru on Penitentiary Policy.

7. PÉREZ GUADALUPE, FAITES Y ATORRANTES, *supra* note 4, at 1.

8. PÉREZ GUADALUPE, *LA CONSTRUCCIÓN SOCIAL*, *supra* note 4, at 170–223.

9. PÉREZ GUADALUPE, FAITES Y ATORRANTES, *supra* note 4, at 3.

10. *Id.* at 3.

11. *Id.* at 109–10.

one of the most dangerous prisons in the world, emphasizing how detainees exercised control and established internal rules.¹² This same situation of self-rule, or self-rule by inmates, was primarily the norm in most of Peru's penitentiaries.¹³

In this context, the Peruvian Prison Reform Process began in 2011. At the time, Peru faced the same problems that characterize detention centers in Latin America: shortage of staff and budget, inadequate infrastructure, and high levels of overcrowding (resulting from increases in violent crime). INPE managed to achieve institutional reorganization and restored internal order in prisons, eliminating riots, shootings, hostage taking incidents and hunger strikes. The reform process also reduced the number of violent deaths and escapes. More than anything, though, the reform process served to break the grip that Peruvian criminal groups exercised inside prisons. As data collected for this article shows, while prison overcrowding has increased and street crime has become more violent and lethal, prisons in Peru remain considerably less violent than in the past.

This article seeks to present and explain this reform process and to draw lessons from its success. To do so, we begin by contextualizing the challenges of detention centers in Latin America. We summarize the major elements of the Prison Reform Process launched in Peru in 2011, which included the design and construction of maximum-security centers, efforts to attack corruption, and a restructuring of the prison guard service. That said, the most important aspect of the Reform Process was the "incorporation" of the informal organization by inmates themselves as a key element of a sustained policy of Management by Dialogue (*gestión dialogada*). We believe that this practice was central in the process of reestablishing authority and institutional administration (*Gobierno Institucional*) in detention centers across the country. The Prison Reform Process managed to eliminate i) self-rule by inmates, and ii) institutional authoritarianism, extreme but common elements of detention centers throughout the Americas.¹⁴ Finally, based on this concrete experience and the three authors' collective understanding of detention centers in Latin America, this article ends by proposing a new model of prison administration we call "Prison Governance."

I. THE CHALLENGES OF PRISON MANAGEMENT IN LATIN AMERICA

In Latin America, the principal indicators of the prison problem are the increase in prison population per capita, and the concomitant rates of overcrowding, shown in Table 1. This problem is also related to the limited

12. *World's Toughest Prisons* (National Geographic television broadcast Dec. 21, 2019).

13. PEREZ GUADALUPE, *LA CONSTRUCCIÓN SOCIAL*, *supra* note 4, at 415–17.

14. Mirte Postema, James Cavallaro & Ruhan Nagra, *Advancing Security and Human Rights by the Controlled Organisation of Inmates*, *PRISON SERV. J.*, 57, 59–62 (2017) (describing case studies in Costa Rica, Panama, and Peru).

resources afforded penitentiary institutions and the levels of violence reported in many Latin American detention centers.¹⁵

Table 1: Evolution of the Penitentiary Population in Latin America, 2000–2016¹⁶

COUNTRY	2000	2002	2004	2006	2008	2010	2012	2014–2016	VAR
El Salvador	7,754	10,907	12,073	14,771	19,814	24,662	27,033	36,235	367%
Paraguay	3,219	4,621	6,101	6,037	5,867	6,197	7,916	12,741	269%
Venezuela	14,196	19,368	19,951	19,257	24,069	40,825	45,224	49,664	250%
Ecuador	8,029	8,723	11,358	12,635	12,067	11,800	21,080	25,902	223%
Guatemala	6,974	8,077	8,698	7,477	8,158	11,148	15,013	20,697	197%
Peru	27,734	27,417	31,311	35,835	43,286	45,464	58,019	79,664	187%
Brazil	232,755	239,345	336,358	401,236	451,429	496,251	548,003	622,202	167%
Colombia	51,518	52,936	68,020	60,021	69,979	84,444	113,884	120,668	134%
Costa Rica	7,575	8,113	8,890	9,037	9,682	12,110	14,555	17,440	130%
Uruguay	4,469	5,630	6,888	6,887	7,665	8,700	9,418	9,996	124%
Panama	8,652	10,423	11,400	11,575	9,651	12,293	14,468	17,197	99%
Bolivia	8,151	6,065	6,495	7,031	7,433	9,406	14,272	14,598	79%
Nicaragua	6,539	6,885	6,233	6,103	6,803	6,500	9,800	10,569	62%
Mexico	154,765	172,888	193,889	210,140	219,754	219,027	239,089	233,469	51%
Honduras	11,500	11,502	10,931	11,178	11,390	11,846	12,095	17,017	48%
Chile	33,050	34,901	36,374	39,417	48,826	54,628	51,882	42,971	30%
Argentina*	57,632	57,632	65,351	60,621	60,611	65,095	66,484	69,060	20%
TOTAL	644,512	685,433	840,321	919,258	1,016,484	1,120,396	1,268,235	1,400,070	117%

The most severe situation in terms of soaring prison population can be seen in Central America. In El Salvador, for instance, between 2000 and 2016, the rate of incarceration increased four-fold, from 130 to 559 detainees per 100,000 inhabitants.¹⁷ In Panama, the incarceration rate rose from 280 to 426 per 100,000 inhabitants during this same period.¹⁸ South American states follow a similar pattern as in Central America. The case of Brazil is worth highlighting: its incarceration rate has nearly tripled, from 133 to 307 per 100,000 inhabitants over the past fifteen years.¹⁹ Chile, Colombia, Peru and Uruguay have all reached incarceration rates of at least 240 per 100,000.²⁰

Thus, the first prison administration challenge faced by Latin American states is the increasing rate of incarceration and overcrowding, with all that such overcrowding implies in terms of provision of services, maintenance of

15. DAMMERT & ZÚÑIGA, *supra* note 2, at 3; Carranza, *supra* note 2, at 193; ROSEN & BRIENEN, *supra* note 3, ix-xi; Darke & Garces, *supra* note 3, at 2–3, 7.

16. *World Prison Brief*, UNIV. OF BIRKBECH- LONDON, <https://www.prisonstudies.org/world-prison-brief-data> (Data compiled 2014–2016, including federal and provincial systems and in some cases, detainees held in police lockups).

17. *See id.*

18. *See id.*

19. *See id.*

20. *See id.*

infrastructure, treatment of inmates and management of internal and external security. As we see in Table 1, the highest levels of overcrowding can be found in El Salvador, Guatemala, Venezuela, Bolivia and Perú.²¹ Studies, such as those by Metaal and Youngers, demonstrate that this surge has resulted from an increase in the number of those detained while facing, or after conviction for criminal charges, often drug related offenses. Sentences for these offenses are substantial in the Americas.²² The problem is compounded by extensive periods spent by thousands of detainees in pre-trial detention throughout Latin America.²³ The Inter-American Commission on Human Rights has documented the high percentage of detainees awaiting trial in the Americas. While the figure across the region is over thirty-six percent, in some countries the percentage of those held prior to conviction or acquittal has surpassed seventy-five percent.²⁴ The combination of long sentences and pre-trial detention has led to vast overcrowding, which in turn has generated high levels of violence and conflict inside detention centers.²⁵ This is particularly the case in those prisons in which groups of detainees have developed self-governance structures that allow them to impose their will on other inmates and authorities.²⁶

21. *See id.*

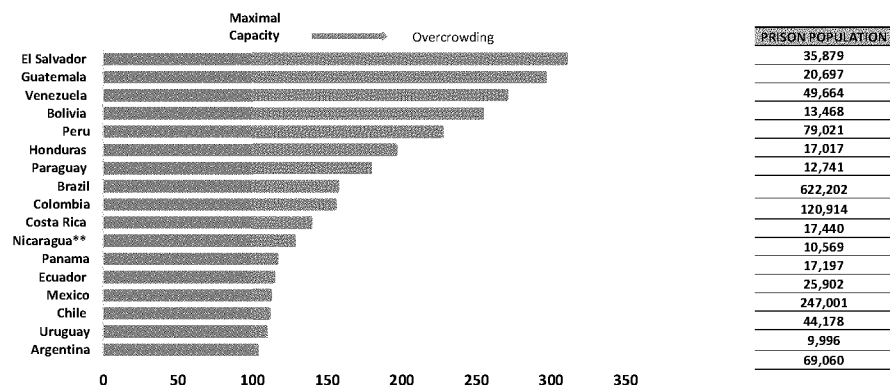
22. Metaal, Pien & Youngers Coletta, *Sistemas Sobrecargados. Leyes de Drogas y Cárceles en América Latina*, TRANSNATIONAL INSTITUTO & WASHINGTON OFFICE ON LATIN AMERICA at 5 (2010); *Irrational Punishment: Drug Laws and incarceration in Latin America*, in THE RESEARCH CONSORTIUM ON DRUGS AND THE LAW 3 (Sergio Chaparro, Catalina Pérez, & Coletta Youngers eds. 2017); Marcelo Bergman & Elena Azaola, *Cárceles de México: Cuadros de una Crisis*, 1 REVISTA LATINOAMERICANA DE SEGURIDAD CIUDADANA 74, 74 (2007); Lucía Nunovero Cisneros, *Factores de Aumento de la Población Penitenciaria en el Perú, Medidas Alternativas y Vigilancia Electrónica*, 37 ESTUDIOS PENALES Y CRIMINOLÓGICOS 349, 380 (2017).

23. INTER-AM. COMM'N ON H. R., REPORT ON MEASURES AIMED AT REDUCING THE USE OF PRETRIAL DETENTION IN THE AMERICAS 22, 22, n.12 (2017), <http://www.oas.org/en/iachr/reports/pdfs/PretrialDetention.pdf>.

24. *Id.*

25. *Id.* at 21, n.2.

26. ROSEN & BRIENEN, *supra* note 3, at ix; Darke & Garces, *supra* note 3, at 5–7.

Graph 1: Prison Overcrowding in Latin American Countries, 2017²⁷

Despite its prevalence, violence in Latin American detention centers, or more precisely the dynamics of this violence, has not been the subject of sufficient academic study. Literature from other regions indicates that the levels of violence among inmates and collective violence may be measured by looking to the number of violent incidents in detention centers.²⁸ Figures on violent deaths, riots, and disturbances suggest failures in governance and show a relationship to the excessive use of force and recidivism.²⁹

In this regard, the prisons issue in the majority of Latin American states, including Peru, has generally been understood from a perspective that foregrounds resource scarcity and the perceived need to invest in prison infrastructure.³⁰ The structural deficit, though, has been accompanied by problems of prison administration, widespread corruption, the proliferation of drug and weapons markets within detention centers, deficient provision of food and health services, as well as high levels of pretrial detention.³¹ These are

27. *World Prison Brief*, UNIV. OF BIRKBECH- LONDON, <https://www.prisonstudies.org/world-prison-brief-data> (Data compiled 2014–2016, including federal and provincial systems and in some cases, detainees held in police lockups).

28. Benjamin Steiner & John Wooldredge, *Rethinking the Link Between Institutional Crowding and Inmate Misconduct*, 89 *PRISON J.* 205, 218 (2009).

29. See Daniel P. Mears & Jamie Watson, *Towards a Fair and Balanced Assessment of Supermax Prisons*, 23 *JUST. Q.* 232, 242 (2006).

30. Stephen Nathan, *El Sistema Penitenciario: Modelo de Gestión Privada o Pública*, in MINISTERIO DE JUSTICIA Y DERECHOS HUMANOS: POLÍTICA CRIMINAL Y REFORMA PENITENCIARIA EN EL MARCO DE UN GOBIERNO DEMOCRÁTICO E INCLUSIVO 295, 296–97 (2012); Lucía Nuñovero Cisneros, *Quel Avenir Pour les Mesures Alternatives à L'Incarcération dans la Démarche Politico-Criminelle Péruvienne?*, 35 *ARCHIVES DE POLITIQUE CRIMINELLE* 243, 245, 247–48 (2013).

31. Darke & Garcés, *supra* note 3, at 2, 4, 6; IBÁN DE REMENTERÍA, *LAS DROGAS DE LOS DETENIDOS* (2016); Astrid Arrarás and Emily D. Bello-Pardo, *General Trends of Prisons in the*

fundamental aspects of prison administration that have been given insufficient attention in the existing literature. Still, studies have not only described the informal organization of detainees—and their ability to oppose institutional control—but have also demonstrated the relationship between unfair and coercive prison administration and inmate violence.³² In sum, the problems of Latin American prisons go far beyond lack of infrastructure.

II. FROM SELF-ORGANIZATION TO SELF-RULE BY INMATES

To begin, we should differentiate between informal organization and self-organization of inmates, present in the vast majority of “total institutions” such as prisons,³³ and “self-rule” or “self-government”—by inmates, which occurs when a given detention center permits or is unable to stop detainees from seizing control of the prison. What, we may ask, leads informal organization of inmates to devolve into self-rule by inmates? To respond to this question, we must first identify the principal actors in prison life—staff and detainees—and analyze the role of each in this process.

In prisons with large numbers of inmates with ties to criminal subcultures—major gangs such as the Central American *maras*, criminal syndicates such as drug trafficking cartels, etc.—one would expect that these groups would seek to impose their own rules and norms of co-existence inside the detention center. Common sense tells us that when prisons are overcrowded, with insufficient prison staff, poor infrastructure and limited resources, the consolidation of “self-rule” by inmates is more likely.³⁴

One thus finds two forces—formal authorities and organized groups of inmates—in direct conflict within the detention center, each seeking the same objective: control of the prison. Strong, efficient penitentiary institutions are more able to contain the efforts of “delinquent inmates” to control the prison.³⁵ These inmates and their prison culture can be neutralized with intelligent and adequately resourced prison administration. That is, the development of “self-rule by inmates” does not depend solely on detainees themselves, but also on the capacity and will of prison authorities. If control of detention centers is not a public security priority—as, unfortunately, is often the case—and if staff are not subject to a functioning system of incentives and disincentives, then they may

Americas, in PRISONS IN THE AMERICAS IN THE TWENTY-FIRST CENTURY 6-10 (Jonathan D. Rosen and Marten W. Brien eds., 2015).

32. See BERT USEEM & PETER KIMBALL, STATES OF SIEGE: U.S. PRISON RIOTS, 1971–1986 92–97 (1991); MARK COLVIN, THE PENITENTIARY IN CRISIS: FROM ACCOMMODATION TO RIOT IN NEW MEXICO 193205 (1992); Benjamin Steiner, H. Daniel Butler & Jared M. Ellison, *Causes and Correlates of Prison Inmate Misconduct: A Systematic Review of the Evidence*, 42 J. CRIM. JUST. 462, 464 (2014).

33. ERVING GOFFMAN, ASYLUMS: ESSAYS ON THE SOCIAL SITUATION OF MENTAL PATIENTS AND OTHER INMATES 3–5 (1961).

34. Astrid Arrarás and Emily D. Bello-Pardo, *supra* note 31, at 9.

35. PÉREZ GUADALUPE, LA CONSTRUCCIÓN SOCIAL, *supra* note 4, 168–69.

abandon their work within the prison.³⁶ That is, absent the appropriate incentives, staff will be less likely to risk their lives to enforce administration policies. Further, they may receive benefits in exchange for their complicity or assistance with the order established by prison leaders.

Later in this article, when we turn to “Prison Governance” we will consider concrete cases in which one finds all the elements that ordinarily lead to self-rule by inmates but in which the prison authorities have been able to maintain control. In these concrete cases, as we explain, seizure of control and implementation of self-rule by inmates have been avoided through dialogue and co-responsibility of the actors involved, as well as the incorporation of the self-organization mechanisms of inmates.³⁷

A. Inmate Organizations: What We Know From the Literature

In this regard, numerous American criminology studies of the informal organization of detainees and “prison subcultures,” dating back to the 1930s, provide context to understand how these subcultures affect different models of prison administration proposed by experts. One of the first studies, by Donald Clemmer, published in 1941, described the existence of a strong, informal organization of inmates in American prisons.³⁸ Clemmer observed among prisoners their own system of values and norms, as well as their ability to resist institutional objectives.³⁹ Subsequent studies have highlighted the codes and language of inmates.⁴⁰

Clemmer termed the process by which detainees adopt the customs, rules and tactics of prison life on entering detention centers as “prisonization.”⁴¹ Prison culture arises from the values and behavior in the detention context, focusing in particular on the conditions of deprivation of liberty, the structures and logic of prison, the relationships that these foster and detainees’ lack of autonomy.⁴² In the Latin American context, Pérez Guadalupe has demonstrated that

36. Astrid Arrarás and Emily D. Bello-Pardo, *supra* note 31, at 8; PÉREZ GUADALUPE, FAITES Y ATORRANTES, *supra* note 4, at 3.

37. *See infra* Sec. III.

38. DONALD CLEMMER, *THE PRISON COMMUNITY* 299 (1958).

39. *Id.* Pérez Guadalupe draws a distinction between “delinquent inmates” and “non-delinquent inmates,” based not on the legal classification of a particular detainee but rather on that individual’s belonging or not to the so-called world of criminality. PÉREZ GUADALUPE, *LA CONSTRUCCIÓN SOCIAL*, *supra* note 4, at 60–61. By this, he refers to the criminal careers and participation in criminal subcultures. Pérez Guadalupe also works with the category of “sociocultural delinquent.” *Id.* at 64–65.

40. Gresham M. Sykes & Sheldon L. Messinger, *The Inmate Social System*, in *SOCIAL SCIENCE RESEARCH COUNCIL, 15 THEORETICAL STUDIES IN SOCIAL ORGANIZATION OF THE PRISON* 5, 5 (1960).

41. Donald Clemmer, *Observations on Imprisonment as a Source of Criminality*, 41 *J. CRIM. L. & CRIMINOLOGY* 311, 315 (1950).

42. PÉREZ GUADALUPE, *LA CONSTRUCCIÓN SOCIAL*, *supra* note 4, at 419.

prisonization is not the only process that occurs within jails and penitentiaries.⁴³ Pérez Guadalupe has explained that those deprived of liberty come to prison with cultural practices and identities developed before incarceration.⁴⁴ He terms the process by which the cultures from outside the prison interact with the detention center as *presonización*, from the Spanish term *preso* or prisoner.⁴⁵ That is, without minimizing the influence of the prison on inmates, Pérez Guadalupe underscores the influence of inmates themselves on daily life in detention, a phenomenon that recurs in the majority of overcrowded detention centers in the region.⁴⁶ These two complementary visions can be synthesized in two theories of prison cultures: the autonomous theory, which asserts the existence of a particular prison culture created by conditions in a given detention center, and the cultural importation theory, which asserts that the degree of adaptation of inmates in prisons depends on the external conditions prior to incarceration.⁴⁷ Pérez Guadalupe has described a continuum of local criminality subculture that is transferred to the prison. This, in turn, foments the development of prison cultures and the subsequent influence, though the return of prisoners to society, of these cultures on the practices of criminality in each country.⁴⁸

Following Clemmer, various American authors have addressed a range of issues related to these dynamics. Scholars have considered the relationship between informal and formal organizations of detainees and the goals of prison administration, as well as the role of informal leaders and their contribution to the goal of rehabilitation.⁴⁹ These authors have demonstrated that authorizing visits, use of telephones and other items permits inmates to make daily life more tolerable while allowing them to maintain their lifestyles and social relations, including their criminal identity.⁵⁰ Other studies, such as that by Camp and Camp, emphasized the need to control the importation into the detention context of criminal subcultures.⁵¹ Irwin and Cressey posited that disorder and inefficient

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. See Sykes & Messinger, *supra* note 40, at 12–19; John Irwin & Donald R. Cressey, *Thieves, Convicts and the Inmate Culture*, 10 SOC. PROBS. 142, 142–45 (1962); H. Cline, *The Determinants of Normative Patterns in Correctional Institutions*, in 2 SCANDINAVIAN STUDIES IN CRIMINOLOGY 173–84 (Nils Christie ed., 1968); Charles W. Thomas, *Theoretical Perspectives on Prisonization. A Comparison of the Importation and Deprivation Models*, 68 J. CRIM. L. AND CRIMINOLOGY 135, 136–37 (1977).

48. PÉREZ GUADALUPE, *LA CONSTRUCCIÓN SOCIAL*, *supra* note 4, 403–06.

49. Bernard B. Berk, *Organizational Goals and Inmate Organization*, 71 AM. J. SOC. 522, 534 (1966); JAMES B. JACOBS, *STATEVILLE: THE PENITENTIARY IN MASS SOCIETY*. CHICAGO: UNIVERSITY OF CHICAGO PRESS 167–171 (1977).

50. See generally Jacobs, *supra* note 49, at 97, 99

51. GEORGE M. CAMP AND CAMILLE GRAHAM CAMP, *PRISON GANGS: THEIR EXTENT, NATURE, AND IMPACT ON PRISONS* 26–27 (1985).

administration of detention centers were the principal causes of violence between and among inmates.⁵²

John Dilulio, one of the most influential scholars in the field of prison administration, was a harsh critic of administration practices that included organizations of inmates.⁵³ Dilulio is very concerned by the risk posed by participation of inmates in prison administration through figures such as inmate advisory councils, bodies authorized to negotiate with the administration on behalf of detainees.⁵⁴ The participation of inmates' organizations, Dilulio wrote, through the election of gang leaders to positions of authority, could transform these bodies into a form of self-rule by inmates.⁵⁵

Dilulio warned that the management of the prison would be placed at risk should authorities be unable to impose their will without the participation of inmates.⁵⁶ Thus, he supported a careful selection and oversight of inmate leaders to avoid negative results.⁵⁷ Dilulio contrasted two extreme forms of prison administration: i) the *control model*, characterized by a robust role for prison administrators, which establishes and applies regulations and sanctions over virtually all aspects of the life of detainees, and ii) the *responsibility model*, which permits the administration to maintain order through controls and restrictions on the prison population, at the same that it permits some degree of self-rule.⁵⁸

In the *control model*, communication and directives from the administration to prison staff are restricted to clearly established, professional and formal channels, and lines of command in accordance with rank and authority level.⁵⁹ Quasi-military uniforms and insignia are employed; compliance with policies and procedures to ensure control involve strict routines, close monitoring, and oversight of the activities of inmates.⁶⁰ Any non-conforming behavior by detainees results in report, disciplinary procedures and sanctions imposed in visible and exemplary fashion.⁶¹ All decisions are taken exclusively by prison administrators.⁶²

By contrast, if the chain of command, protocols, directives, and communication between administrators and prison staff are rigid, hierarchical, and strict in the control model, then in the responsibility model communication

52. Irwin & Cressey, *supra* note 47, at 334.

53. JOHN DILULIO, GOVERNING PRISONS: A COMPARATIVE STUDY OF CORRECTIONAL MANAGEMENT 38 (1990).

54. *Id.* at 87.

55. *Id.* at 38–39.

56. *Id.* at 22.

57. *Id.* at 36.

58. *Id.* at 104.

59. *Id.* at 142.

60. *Id.* at 100–05, 175.

61. *Id.* at 102–03.

62. *Id.* at 175.

between administrators and staff is informal, open, and direct. Relations between detainees and prison staff are informal and casual. Inmates may initiate contact with staff, request explanations, and express opinions about perceived unfairness or injustices, etc.⁶³ Thus, inmates enjoy greater freedom to comply with the policies and procedures of the detention center.⁶⁴ Infractions and disruptive behavior are subject to sanctions at the discretion of the prison staff.⁶⁵ Means of deciding on sanctions include counsels or other groups, as well as negotiation with detainees, who may be involved in making decisions.⁶⁶

The *consensus model* is a third alternative that lies between these two extremes. This model is characterized by the application of rules and policies through a combination of control, order, and formal and informal communication between the administration and prison staff.⁶⁷ The *consensus model* also includes an emphasis on compliance with formal procedures that involve detainees themselves.⁶⁸

Darke's studies in six Brazilian prisons demonstrate how, at least in the Latin American centers he considered, life in prison is directed and controlled by inmates and not by penitentiary staff.⁶⁹ In these prisons, it is those deprived of liberty in inhumane conditions who organize to provide cleaning, other services, distribution of goods, and to ensure discipline and security.⁷⁰ The process of filling this management vacuum results in the administration of prisons by gangs like the First Command of the Capital—*Primeiro Comando da Capital, PCC*—and the Red Command—*Comando Vermelho, CV*.⁷¹ It is worth noting here that the origin of the First Command of the Capital, Brazil's most powerful and dangerous criminal organization, can be traced to the initially legitimate protests against physical abuses by guards raised by a group of detainees in a particularly brutal prison in São Paulo.⁷² The fact that a group initially focused on rights abuses suffered in detention could morph into a massive, dangerous, criminal enterprise speaks volumes on the importance of treating those detained, and all others, with a minimum degree of humanity.⁷³

63. *Id.* at 118.

64. *Id.* at 119.

65. *Id.* at 120.

66. *Id.* at 128–29.

67. *Id.*

68. *Id.* at 131.

69. See Sacha Darke, *Inmate Governance in Brazilian Prisons*, 52 HOWARD J. CRIME & JUST. 272, 275 (2013).

70. *Id.* at 276–77.

71. *Id.* at 275–80.

72. *Id.* at 279.

73. According to InSight Crime:

The PCC formed in the wake of the October 1992 massacre in São Paulo's Carandiru prison, in which Brazilian security forces killed over 100 prisoners following a riot. In August 1993, a group of eight prisoners who had been transferred to Taubaté prison

Darke, in a later work, speaks of discipline and order as a negotiated co-production of prison administrators, the general prison population and gangs. Weegels, in a similar vein, describes the “arrangements” (*arreglos*) between the detainees and authorities in Nicaragua as a form of power sharing or co-government in which inmates exert pressure through violent acts and riots.⁷⁴ Jennifer Peirce has also found these “arrangements” to exist in the old prisons of the Dominican Republic.⁷⁵ These arrangements are characterized by the informal authority of the bosses who negotiate with prison authorities, generating mechanisms of pressure on the general prison population.⁷⁶

Andrés Antillano has studied the self-rule of detainees in Venezuelan detention centers based on informal structures that confront prison administration, maintaining order, and regulation of prison life through the use of violence, displacing control from authorities.⁷⁷ One of the first ethnographies of the informal organization of detainees in Latin America was that of Pérez Guadalupe in the Lurigancho Penitentiary.⁷⁸ Author Pérez Guadalupe studied Lurigancho for five years (1987–1992), documenting the lack of policies within the prison that allowed the 5,000 inmates to impose their own laws and norms. His subsequent works compare Lurigancho to informal organization in penitentiaries in Argentina, Bolivia, Brazil and Chile.⁷⁹

The study of the informal organizations of detainees has enjoyed a resurgence in recent years in part due to the strength of these groups and the consequences of uncontrolled self-rule by detainees in some centers in Latin America.⁸⁰ As Skarbek explains, this resurgence is a result of the rise of prison gangs, groups able to provide “centralized governance,” including dispute resolution mechanisms, a means of protecting private property, and security of illicit markets within the prison.⁸¹ Thus, the self-rule of inmates arises in the context

formed the PCC to fight for justice for the massacre and to push for better prison conditions.

First Capital Command - PCC, INSIGHT CRIME, <https://www.insightcrime.org/brazil-organized-crime-news/first-capital-command-pcc-profile> (last updated Mar. 9, 2020).

74. Julienne Weegels, *Prison Riots in Nicaragua: Negotiating Co-Governance Amid Creative Violence and Public Secrecy*, 30 INT’L CRIM. JUST. REV. 61, 62 (2020).

75. Jennifer Peirce, *Contrasting Econ. and Contested Governance in Two Types of Dominican Prisons*, Remarks at Law & Society Association Panel “Power and Prisons in Latin America I” 4 (May 30, 2019) (draft paper on file with author).

76. *Id.*

77. See Antillano, *supra* note 4, at 26–28.

78. PÉREZ GUADALUPE, FAITES Y ATORRANTES, *supra* note 4, 1–9.

79. Pérez Guadalupe, ‘De Flaites a Cocodrilos,’ *supra* note 4, 22–29; Pérez Guadalupe, *Nuevas Drogas*, *supra* note 4; PÉREZ GUADALUPE, *LA CONSTRUCCIÓN SOCIAL*, *supra* note 4, at 44.

80. Sacha Darke and Cris Garces, *Surviving in the new mass carceral zone*, 229 PRISON SERVICE J. 2–3 (2017).

81. David Skarbek, *Prison Gangs, Norms, and Organizations*, 82 J. ECON. BEHAV. & ORG. 96, 97–98 (2012); David Skarbek & Danilo Freire, *Prison Gangs*, in *ROUTLEDGE HANDBOOK OF CORRECTIONS IN THE UNITED STATES* 399, 400 (O. Hayden Griffin & Vanessa H. Woodward eds.,

of detention, in which it is necessary to punish aggressive behavior, oversee internal conflicts, and control opportunism in the exchange of goods when these activities and behaviors are not controlled by the institution itself. At the same time, self-rule serves to promote cooperation between and among inmates from diverse social, cultural and criminal cultures.⁸²

In the Americas, the study of self-rule has been driven in part by some of the more fantastic consequences of the power of these organizations. The most extreme example has been uprisings in Brazilian detention centers over the past two decades.⁸³ Various studies and human rights reports (referenced in this article) have observed the frequency and violent nature of these riots.⁸⁴ At a superficial level, riots are attributed to the strength of prison gangs, as well as the dangerous and violent nature of the prison subculture, which is linked to the criminal subcultures outside prison.⁸⁵ It is often true, in practice, that organizations inside prisons bear close ties to organizations outside detention centers.

Perhaps the clearest example of the dangerous relationship between organizations within and without prison walls has been that of the “First Command of the Capital” (*Primeiro Comando da Capital*) in São Paulo, Brazil. In May 2006, in response to a proposed prisoner transfer to which they objected, the leaders of the PCC launched riots in dozens of detention centers throughout the state, as well as attacks *outside* prisons on police precincts across São Paulo.⁸⁶ The violence shut down South America’s largest city for days.⁸⁷ As two analysts have written in analyzing the intense, coordinated attacks, the PCC maintained a:

hierarchical structure of disciplined and obedient “employees” capable of executing orders without questioning them. . . . [T]hey had an able and agile communication system among leaders, followers and those who took orders, through protected channels barely permeated

2018); David Skarbek, *Covenants Without the Sword? Comparing Prison Self-Governance Globally*, 110 AM. POL. SCI. R. 852 (2016).

82. Skarbek, *supra* note 81, at 98–99.

83. Violence within detention centers in Venezuela is likely as severe as in Brazilian jails and penitentiaries. While the subject of some study, there has been more literature seeking to analyze the nature of organizations within Brazilian centers, at least in English. See Marcelo Rocha and Silva Zorovich, *The Decline of Brazilian Penitentiary System*, in PRISONS IN THE AMERICAS IN THE TWENTY-FIRST CENTURY 183–93 (Rosen Jonathan and Brien Marten eds., 2015).

84. ALTO COMISIONADO DE LAS NACIONES UNIDAS PARA LOS DERECHOS HUMANOS OFICINA EN COLOMBIA, CENTROS DE RECLUSIÓN EN COLOMBIA: UN ESTADO DE COSAS INCONSTITUCIONAL Y DE FLAGRANTE VIOLACIÓN DE DERECHOS HUMANOS 13 (2001); Carranza Elias, *Situación Penitenciaria en América Latina y el Caribe ¿Qué hacer?* ANUARIO DE DERECHOS HUMANOS 8, 31–66 (2012); Andrés Antillano, *When Prisoners Make the Prison. Self-rule in Venezuelan Prisons*, 229 PRISON J. SERV. 26, 26–30 (2017).

85. Sacha Darke, *Who is Really in Control of Brazil's Prisons*, in THE CONVERSATION (2017).

86. Sérgio Adorno & Fernando Salla, *Organized Criminality in Prisons and the Attacks of the PCC*, 21 ESTUDOS AVANÇADOS, 7, 7–8 (2007).

87. *Id.*

by external interference by means of cell phones, telephone exchanges and “carrier pigeons”. . . . [T]he organization was prepared to control the simultaneous execution of countless rebellions; to attack distinct targets without a predetermined logic and with a high level of surprise; to appear at any location and disappear immediately; to issue orders and soon after, suspend actions and negotiate with high state authorities. What was most surprising is that the base territory of the entire organization *is within the prisons of São Paulo State*, in particular maximum security facilities where the main leaders of PCC are found.⁸⁸

In effect, according to Skarbek and Freire, the organizations of detainees function much like a government, providing social order and satisfying the internal demands not fulfilled by the authorities.⁸⁹ In particular, these organizations offer security (by protecting the physical integrity of people, their property, and their spaces) and, at the same time, they promote the tranquility necessary for the exchange—or trafficking—of authorized or prohibited goods and services, through the threat of violence, to maintain order.⁹⁰ Thus, the capacity of these organizations to control daily life in prison, a capacity that is superior to that of authorities, renders them a threat to deficient prison systems in the Americas.⁹¹

Skarbek and Freire analyze the development and growth of prison gangs not so much as a matter of the logic and culture of criminal gangs being transferred from the streets into the prison, but rather as a rational response to the lacunae existing in closed centers.⁹² In other words, by tracing the history of the development of organizations within prisons, Skarbek and Freire demonstrate the economic rationality of these organizations.⁹³ Further, they show precisely how the organization of these groups responds to the needs of detainees while in detention. Thus, Skarbek and Freire’s analysis questions the core idea implicit in much prison literature—that criminal subcultures as they exist on the street are transferred into the prison space.⁹⁴ Rather, what Skarbek and Freire show is that individuals in detention come together as groups to respond to the organizational needs left unfulfilled by prison structure.⁹⁵ The importance of this, as we will see in the success of the Peruvian Prison Reform process, is that prisoners,⁹⁶ whether gang members on the streets, or unaffiliated offenders, are likely to act rationally and in response to the structures and incentives inside

88. *Id.* at 9 (emphasis added).

89. Skarbek & Freire, *supra* note 81, at 399, 404.

90. *Id.* at 400, 404.

91. *Id.* at 399–400, 404.

92. *Id.* at 400.

93. *Id.*

94. *See id.*

95. *Id.* at 399–400, 404.

96. *See infra* Sec. III.

detention centers once they find themselves in those confined spaces. As such, by changing the incentives and disincentives for different kinds of organizations within prisons, authorities can change the very nature of prisoner organizations within prisons. Thus, life within prison is not destined to be ruled by whatever principals or groups exist and “rule” on the street. No doubt, the subcultures that detainees bring with them from their lives before detention are relevant. But this is true of the relationship between the cultures within institutions and the cultures of those who come together to form those institutions. Military culture is a function of the cultures of those in the military, just as college campus culture is related to the subcultures of those who come together in the university. No serious study of either of those institutions, however, would contend that life in the military or in colleges can be explained primarily by the cultures of high school students. The same youths from high school become troops and university students, but in those settings develop very different institutional cultures.

Instead, prison organization *can* be restructured as long as that organization takes into account prisoners’ experiences, their interests, and their rationality. Common sense dictates that provided their basic needs are addressed, and as long as detainees see concrete advantage to engaging peacefully with authorities, they are likely to do so.⁹⁷ Prison life is not street life. The idea that detainees are doomed to form violent, dangerous, powerful organizations in direct and permanent conflict with authorities simply because that is what criminals do is not based in social science. The belief may be popular, but cannot withstand scrutiny, as we demonstrate with reference to the Peruvian experience. Intelligent structures and management of detention centers that engage with the organizations of detainees in ways that are respectful, but that also ensure respect for authorities and staff and common, decent standards of co-existence, can be achieved. Indeed, this was achieved in Peru.⁹⁸

III. CO-RESPONSIBLE PRISON GOVERNANCE IN THE PERUVIAN PRISON REFORM PROCESS, 2011–2019: FOUR MODELS

The urgency for reform of the penitentiary system in Peru arose as a political priority after the end of the Fujimori administration in 2000.⁹⁹ At that time, the Ministry of Justice developed prison infrastructure plans to be implemented in public-private partnerships.¹⁰⁰ The year 2002 saw the approval of the National Penitentiary Treatment Plan (*Plan Nacional de Tratamiento Penitenciario*)

97. Postema, Cavallaro & Nagra, *supra* note 14, at 57–62.

98. *See infra* Sec. III.

99. *See* Ignacio Berdugo, Carmen Gómez & Martín Nieto, *El Sistema Penal y Penitenciario Peruano: Reflexiones Político Criminales*, en 28 *América Latina Hoy* 19–47 (2001).

100. Nathan, *supra* note 30, at 295.

(“Plan”).¹⁰¹ The Plan viewed overcrowding as the most serious issue, and thus established as its first measure a penitentiary infrastructure construction plan.¹⁰² Five years later, new “Penitentiary Policies” (*Políticas Penitenciarias*) were approved, which included concrete actions to respond to overcrowding through the use of public treasury resources, as well as strategic alliances with the private sector in an ambitious program to build detention centers. However, these plans never came to fruition.¹⁰³

The prison reform process begun in 2011, on which this article is based (the Peruvian Prison Reform Process), was designed with an integral approach. The Reform Process sought to include different aspects of prison administration, expressing these in a Ministerial Resolution entitled “10 Penitentiary System Reform Measures” (*10 Medidas de Reforma del Sistema Penitenciario*, Resolución Ministerial N° 0141-2012-JUS).¹⁰⁴ Two central points of departure were prison staff corruption and detention center overcrowding.¹⁰⁵ In addition, the Resolution included measures designed to enhance infrastructure quality; to improve prison security, health care, service programs, and institutional administration; to improve the quality of personnel; to stimulate participation of the private sector; to prevent and reduce crime; and to establish a reeducation program.¹⁰⁶ In late 2016, authorities issued three additional legislative decrees on penitentiary benefits, and on restructuring and strengthening of the prison system (DL N° 1296, N°1325 y N°1328).¹⁰⁷ As we contend here, despite the change of national administration that year, the Prison Reform Process continued. The most visible result of these efforts (2013–2019) nationally was a significant reduction in internal violence. As we show, after years of repeated, massive riots, there were none for several consecutive years and then a lone rioting incident at the end of 2018. The incident took place in a cellblock in the “special closed regime,” or highest security prison in Challapalca, a center that

101. MINISTERIO DE JUSTICIA, PLAN NACIONAL DE TRATAMIENTO PENITENCIARIO (2003), <https://www4.congreso.gob.pe/comisiones/2004/ceriajus/planNacPenitenciario.pdf> (reporting on steps approved by R.M. No 343-2002-JUS).

102. *Id.*

103. Alejandro Solís, *Política Penal y Política Penitenciaria* (2008) (Pontificia Universidad Católica del Perú).

104. MINISTERIO DE JUSTICIA Y DERECHOS HUMANOS, 10 MEDIDAS DE REFORMA DEL SISTEMA PENITENCIARIO 1 (2012), [http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/810635CDF2139A7F052581300073F277/\\$FILE,10_medidas.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/810635CDF2139A7F052581300073F277/$FILE,10_medidas.pdf).

105. *Id.*

106. Mears & Watson, *supra* note 29, at 195.

107. Lucía Nunovero Cisneros, *Factores de Aumento de la Población Penitenciaria en el Perú, Medidas Alternativas y Vigilancia Electrónica*, 37 ESTUDIOS PENALES Y CRIMINOLÓGICOS 357 (2017) [hereinafter Cisneros, *Factores de Aumento*].

held fewer than 200 inmates.¹⁰⁸ We highlight the most important aspects of the Reform in the pages that follow.

A. *The Battle Against Corruption*

The first urgent, cross-cutting measure was the fight against corruption.¹⁰⁹ The Reform Process began with a “risk map” of corruption that identified five critical moments: a) intake at the “little jail” (*carceleta*) and classification; b) entrance into the prison and placement in a cellblock and cell; c) remaining or relocation (in a given prison, cellblock or cell) while in detention, receipt of food, entry of items or visits, access to public phone, and processing of requests by inmates and their families; d) procedures for detainees’ records and emission of forms by prison staff; e) procedures involving detainees’ permanent files, completion of conviction and release of the detainee.¹¹⁰ On this last point, it should be noted that the Peruvian Penal Code, like the law in much of Latin America, contemplates progression of persons deprived of liberty from “closed regime,” or full-time incarceration, through day release, to parole, based on technical examinations applied by prison staff.¹¹¹ Given the discretion involved in these decisions, progressing, or not progressing at any stage, involves the risk of corruption.

The Reform Process identified the main corruption risks according to area (administration, treatment and security) and according to the level of corruption: a) macro-corruption, involving the highest level authorities, such as the illicit award of contracts for construction or prison maintenance or the hiring of unqualified consultants; b) medium level corruption, involving the directors and administrators of prisons, such as authorizing suppliers who failed to comply with legal requirements or the purchase at inflated prices of goods or furniture; and c) micro-corruption, involving prison staff seeking bribes from inmates or visitors, such as charging to transfer from one cellblock to another, or for favorable technical (day leave or parole) reports, or to allow irregular visits by relatives.¹¹² This classification allowed for greater oversight and control of staff, and a significant increase in sanctions (the overwhelming majority for acts of corruption), as can be seen in Table 2, below.

108. *Acaba sin Víctimas el Motín en el Penal de Challapalca en el Sur del Perú*, EL ECONOMISTA (Nov. 14, 2012), <https://www.economista.es/legislacion/noticias/4398182/11/12/Acaba-sin-victimas-el-motin-en-el-penal-de-Challapalca-en-el-sur-de-Peru.html>.

109. MINISTERIO DE JUSTICIA Y DERECHOS HUMANOS, 10 MEDIDAS DE REFORMA DEL SISTEMA PENITENCIARIO 1, 3 (2012), [http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/810635CDF2139A7F052581300073F277/\\$FILE,10_medidas.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/810635CDF2139A7F052581300073F277/$FILE,10_medidas.pdf).

110. Consejo Nacional Penitenciario INPE, *Tres Años de Gestión*, 66 (2014) (presentation).

111. See Nunovero Cisneros, *Factores de Aumento*, *supra* note 107.

112. Consejo Nacional Penitenciario INPE, *Tres años de Gestión*, Presentation (2014), 68.

Table 2: Decisions of the Disciplinary Tribunal, INPE 2006–2018¹¹³

YEAR	TERMINATION	PLACED ON LEAVE	SUSPENSION	ADMONITION	TOTAL
2006 to 2010	7	10	15	6	38
2011	36	140	85	33	294
2012	31	75	11	8	125
2013	25	113	55	8	201
2014	26	73	52	3	154
2015	1	2	12	1	16
2016	1	20	30	10	61
2017	3	22	19	9	53
2018	0	31	79	24	125

Until 2014, disciplinary procedures were carried out under a disciplinary regime that was modified in 2015.¹¹⁴ In 2015, disciplinary sanctions fell drastically. As shown in the table, in subsequent years, the number of sanctions issued increased again, although the number of terminations fell considerably.

In addition, Presidential Decree N°232-2012-INPE/P created the Special Anticorruption Group (*Grupo Especial Anticorrupción, GEA*).¹¹⁵ A toll-free, anti-corruption telephone hotline was established to receive anonymous complaints regarding acts of corruption committed by prison staff.¹¹⁶ This type of intervention, in turn, contributed to the increase in the number of reports recommending disciplinary processes against INPE staff, as is seen in Graph 2.

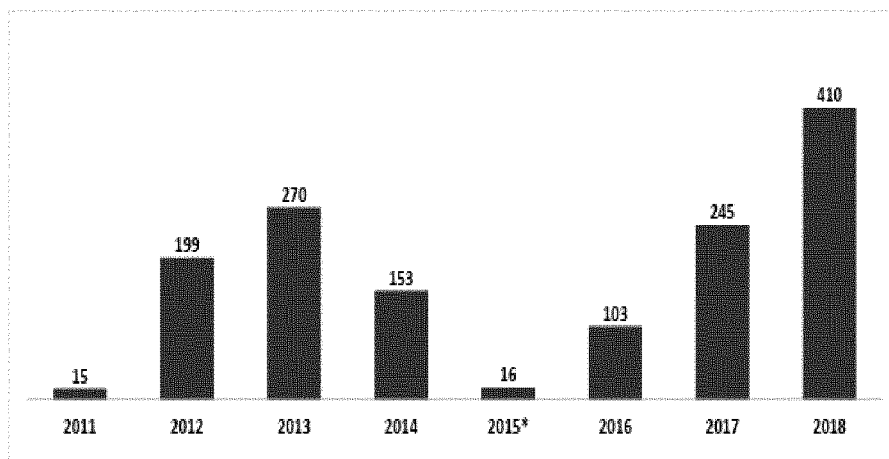
113. *Statistics*, INSTITUTO NACIONAL PENITENCIARIO-PERU (2019), <https://www.inpe.gob.pe/estad%C3%ADstica1.html>. Data for the chart compiled by the authors from the Instituto Nacional Penitenciario-Peru.

114. Resolución de Presidencia Ejecutiva No. 02-2015-SERVIR-PE, Normas Legales 549237 (Mar. 24, 2015), <https://busquedas.elperuano.pe/normaslegales/aprueban-la-directiva-regimen-disciplinario-y-procedimiento-resolucion-n-101-2015-servir-pe-1215676-1/>.

115. Resolución Presidencial Instituto Nacional Penitenciario N°232-2012-INPE/P (May 17, 2012) (Peru).

116. Consejo Nacional Penitenciario INPE, *supra* note 112, at 71.

Graph 2. Reports Recommending Opening of Disciplinary Processes, INPE 2011–2018



Based on data provided by INPE (Instituto Nacional Penitenciario, 2019) * See Note, Table 2.

B. Investment in Infrastructure

As may be seen in Graph 3, between 2011 and 2016, capacity increased by 6,600 nationally. An additional 3,500 spaces in detention centers were under construction.¹¹⁷ This increase in capacity was a central element of the Prison Reform Plan's goal of increasing space in existing detention centers and adding new prisons.¹¹⁸ Despite the fact that this increase was far greater than any growth in capacity in the two previous decades, it was insufficient to respond to the rapid growth in the prison population (30,000 additional inmates between 2011 and 2016).¹¹⁹ During this period, the following new prisons were built or entirely remodeled: Virgen de Fátima, Satipo, Yurimaguas, Tarapoto, Juanjuí, Chíncha, Puno, Trujillo (women), and Cerro de Pasco. Capacity was added in the following detention centers: Cajamarca, Puerto Maldonado, Jauja, Ancón I, Trujillo (men), and Chimbote.¹²⁰ Within this infrastructure plan, emphasis should be placed on the construction of the new Cerro de Pasco jail (at an altitude of more than 4,000 meters, or some 13,000 feet above sea level), including 600

117. MINISTERIO DE JUSTICIA Y DERECHOS HUMANOS, 10 MEDIDAS DE REFORMA DEL SISTEMA PENITENCIARIO 1, 4 (2012), [http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/810635CDF2139A7F052581300073F277/\\$FILE,10_medidas.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/810635CDF2139A7F052581300073F277/$FILE,10_medidas.pdf).

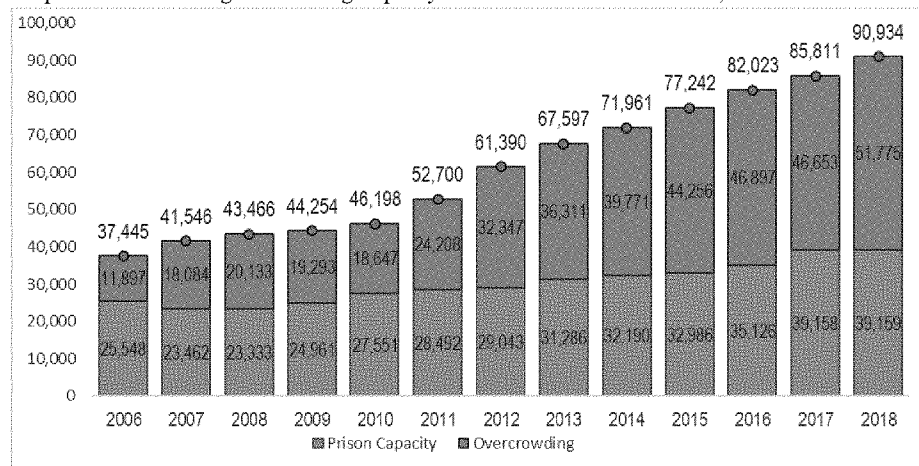
118. MINISTERIO DE JUSTICIA Y DERECHOS HUMANOS, 10 MEDIDAS DE REFORMA DEL SISTEMA PENITENCIARIO 1, 2 (2012), [http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/810635CDF2139A7F052581300073F277/\\$FILE,10_medidas.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/810635CDF2139A7F052581300073F277/$FILE,10_medidas.pdf).

119. Nunovero Cisneros, *Factores de Aumento*, *supra* note 107, at 358.

120. MINISTERIO DE JUSTICIA Y DERECHOS HUMANOS, 10 MEDIDAS DE REFORMA DEL SISTEMA PENITENCIARIO 1, 5 (2012), [http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/810635CDF2139A7F052581300073F277/\\$FILE,10_medidas.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/810635CDF2139A7F052581300073F277/$FILE,10_medidas.pdf).

places in “special closed regime” (the most restrictive, high security regime in the Peruvian prison system).¹²¹

Graph 3. Overcrowding and Housing Capacity in Peruvian Detention Centers, 2006-2018.¹²²



Despite the significant growth in prison population in recent years, there has not been a parallel increase in the amounts budgeted for the National Prison Service, INPE, as can be seen in Graph 4.¹²³ The amount of capital investments averaged 130 million Peruvian Soles, or around US\$30 million, employed in the construction of new prisons and the overhaul of others. What did increase were current expenses (which doubled from 302 million soles in 2011 to 654 million soles in 2018).¹²⁴ That is, INPE was faced with a significant increase in inmates each year without a corresponding increase in capacity for those additional inmates.¹²⁵

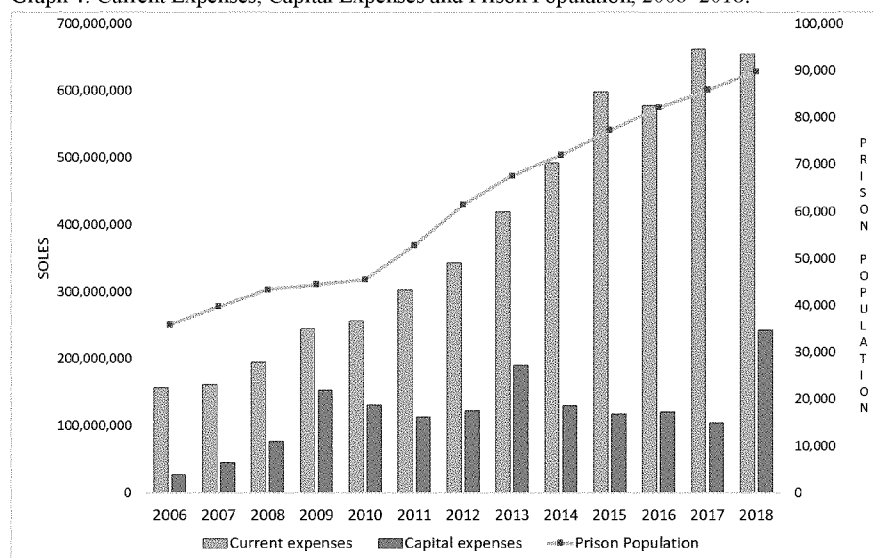
121. Consejo Nacional Penitenciario INPE, *supra* note 112, at 96.

122. *Statistics*, *supra* note 113.

123. TRANSPARENCIA ECONÓMICA PERU, CONSULTA AMIGABLE (MENSUALS): CONSULTA DE EJECUCIÓN DEL GASTO, <https://apps5.mineco.gob.pe/transparencia/mensual/>.

124. *Id.*

125. Lucía Nunovero Cisneros, *Cárceles en América Latina 2000-2018: Tendencias y desafíos* (Pontifical Catholic U. of Peru, Working paper No. 50, 2019).

Graph 4. Current Expenses, Capital Expenses and Prison Population, 2006–2018.¹²⁶

C. Prison Staff

In 2011, the Peruvian Legislature approved the Law on the Special Public Penitentiary Career, (*Ley de la Carrera Especial Pública Penitenciaria, Ley N° 29709*).¹²⁷ The application of this law led to better working conditions and wage increases for prison security and non-security staff, as well as to the incorporation of new hires.¹²⁸ In addition, the law allowed for the creation of differentiation of levels of employment, thus rendering work in the penitentiary system a career.¹²⁹ The law also developed disciplinary procedures and strengthened the system for punishing irregularities and infractions committed by prison staff. INPE hired “public administrators” (*gerentes públicos*),¹³⁰ in

126. *Statistics, supra* note 113. For the purposes of this graph “POP” means “Prison Population” and “SOLES” are Peruvian currency.

127. *Ley de la Carrera Especial Pública Penitenciaria, Ley N° 29709*, EL PERUANO 444765 (2011), <https://leyes.congreso.gob.pe/Documentos/Leyes/29709.pdf>.

128. *Id.*

129. *Id.* at 444768.

130. The term “public administrators” refers to high level staff, duly trained and selected by the National Civil Service Authority (*Autoridad Nacional del Servicio Civil, SERVIR*), subject to norms established by Law No. 30057 (*Ley N°30057, Ley de Servicio Civil*), with administrative or management responsibilities and a higher salary (funds from which were drawn from a special fund) than prison staff.

key administrative positions, valuing penitentiary staff through recognition of their work.¹³¹

In November 2012, the last strike of prison staff took place, lasting 19 days and involving negotiation with staff of the Ministry of the Economy.¹³² Improvement in relations with prison staff contributed to the stability of management, given that one of the principal causes of the removal of the directors of INPE were the frequent occurrence of strikes or acts of violence within detention centers.¹³³ From the early 1990s until 2011, the average period of service for the president of INPE was just eight months. With the Penitentiary Reform Process, from 2011 until 2019, there have been only four presidents of the institution. Further, no one has left the presidency as the result of problems with prison management.¹³⁴

D. Improvements in the Management of Information

Until 2011, statistical reports of INPE were limited to registering prison population, level of overcrowding, and the sex and legal status of detainees.¹³⁵ Beginning in 2011, INPE implemented integrated prison registry policies, leading to concrete improvements in statistical methodologies, permitting the production of monthly reports with a broad range of indicators such as period of detention, particular crimes committed, place of origin, reason for incarceration and release, rate of recidivism, etc.¹³⁶ These data, in turn, allowed for a more thorough criminological analysis of detainees and enabled informed decision making.¹³⁷ It became possible to develop a map of criminogenic exposure

131. Resolución de Presidencia Ejecutiva No. 163-2012-SERVIR-PE, Normas Legales 549237 (Nov. 28, 2012), <https://busquedas.elperuano.pe/normaslegales/asignan-profesionales-del-cuerpo-de-gerentes-publicos-en-div-resolucion-n-163-2012-servir-pe-872790-3/>.

132. MINISTERIO DE JUSTICIA Y DERECHOS HUMANOS, COMUNICADO NO. 29 – 2012 INPE, ANTE HUELGA INDEFINIDA INPE INFORMA SOBRE GESTIONES REALIZADAS E INSTA A LA REANUDACIÓN DE LABORES (2012).

133. *El Sistema Penitenciario: Componente Clave de la Seguridad y la Política Criminal. Problemas, Retos y Perspectivas*, Informe Defensorial N° 154-2011/DP DEFENSORIA DEL PUEBLO 51–52 (2011); See Berdugo, *supra* note 99, at 45.

134. The President of INPE who initiated the reform (after three and a half years in office) left the position when he was designated Minister of the Interior. The second INPE president (after a year and a half) left the position due to a change in the national government. The third (after a year and a half in the position) left due to allegations of improprieties prior to his service with INPE.

135. *Statistical Reports 2010- Statistics*, INSTITUTO NACIONAL PENITENCIARIO-PERU (2019), <https://www.inpe.gob.pe/estad%C3%ADstica1.html>.

136. *Statistical Reports 2012- Statistics*, INSTITUTO NACIONAL PENITENCIARIO-PERU (2019), <https://www.inpe.gob.pe/estad%C3%ADstica1.html>.

137. See INSTITUTO NACIONAL PENITENCIARIO- INPE, INFORME ESTADÍSTICO DICIEMBRE 3 (2012); see also Lucía Nunovero Cisneros, *Quel Avenir pour les Mesures Alternatives à L'incarcération dans la Démarche Politico-criminelle Péruvienne?*, 35 ARCHIVES DE POLITIQUE CRIMINELLE 249 (2013).

(“*exposición criminógena*”).¹³⁸ This map showed the specific areas with the greatest concentration of prison population in the country, serving as the basis for social prevention measures.¹³⁹

E. Maintenance of Physical Plant

INPE promoted greater participation of inmates in the management of the physical plant of detention centers as a central element of the Prison Reform Process. This policy began with improvements in the core spaces (cells, bathrooms, corridor lighting, patios used for visits, etc.), in the preparation of food, and in the cleaning and maintenance of discipline in cellblocks. This was the first step in building confidence between inmates and staff, a means of making them co-responsible partners for order and peaceful coexistence, without ceding functional authority of the institution.

The improvement in the physical plants began in Lurigancho, the largest and historically most problematic detention center, with committees and resources pooled by the inmates themselves.¹⁴⁰ It extended to the majority of detention centers throughout the country, with the exception of the highest security centers operating in “special closed regime,” which limits inmate organization and their representation.¹⁴¹ Prior to this process, destruction of cellblocks and other structures in detention centers was common, particularly during disturbances and riots.¹⁴² Through this process, detainees not only ceased destruction of prison spaces, but also began to feel ownership in their own environment, developing a sense of belonging.¹⁴³

138. See P. Wikström, *Crime Propensity, Criminogenic Exposure and Crimen Involvement in Early to Mid-adolescence*, MONATSSCHRIFT FÜR KRIMINOLOGIE AND STRAFRECHTSREFORM, 92, 253–266 (2009) (discussing the concept of criminogenic exposure); *Prevención del Delito con Políticas Públicas Enfocadas en las Personas*, CAF (Sept. 29, 2014), <https://www.caf.com/es/actualidad/noticias/2014/09/prevencion-del-delito-con-politicas-enfocadas-en-las-personas/> (applying policies to Latin America).

139. INSTITUTO NACIONAL PENITENCIARIO- INPE, INFORME ESTADÍSTICO DICIEMBRE 53 (2016), <https://www.inpe.gob.pe/normatividad/documentos/4295-informe-estadistico-diciembre-2019/file.html> (presenting data on Criminogenic exposure analysis for peruvian case in Lima neighborhoods).

140. PÉREZ GUADALUPE, FAITES Y ATORRANTES, *supra* note 4, at 3.

141. Camille Boutron, *El Uso Estratégico del Espacio Carcelario como Elemento Referencial de la Construcción de Identidades en Conflicto en el Perú*, BULLETIN D'INSTITUTE FRANCAIS T'ETUDES ANDINES, 43, 47 (2014).

142. See *Muere un Tercer Preso Tras Incendio y Motín en Cárcel de Perú*, Última Hora (Oct. 12, 2015), <https://www.ultimahora.com/muere-un-tercer-presos-incendio-y-motin-carcel-peru-n938208.html>.

143. An important factor that facilitated this new vision of the prisons as “their” daily space was the interest of those deprived of liberty in receiving visits from family members in decent and hygienic spaces, despite the overcrowding, which at times reaches three times capacity. In light of this, faced with the limited institutional budget to maintain detention centers, INPE authorized inmates to repair and improve their cellblocks. This served not only to enhance the physical plant in which they lived but also fostered organization among inmates to maintain and care for living space in the detention center. See also Postema, Cavallaro & Nagra, *supra* note 14, at 61.

F. Image of INPE

An important commitment undertaken by the authorities and detainees through their representatives was the maintenance of order and peaceful coexistence within detention centers.¹⁴⁴ This order and calm served not only to improve the quality of life within prisons but also to enhance the image of prison authorities and detainees in public opinion.¹⁴⁵ That is, INPE worked to release information about the successes of the Prison Reform Process,¹⁴⁶ with the understanding that this, in turn, would improve the chances of detainees seeking early release and other benefits from judicial authorities.¹⁴⁷

INPE promoted a transparent model of prison management, allowing journalists to enter detention centers and almost all parts of any given center.¹⁴⁸ This openness to media oversight served to convey the achievements of the Reform Process to the general public.¹⁴⁹ The highest profile activities were those conducted at Lurigancho, the most emblematic prison in the country and also the largest, with some 10,000 detainees.¹⁵⁰ What was most remarkable about the activities in Lurigancho is that they were taking place in a center which

144. As the Ombudsman reports show: *Derechos Humanos y Sistema Penitenciario, Supervisión de Derechos Humanos de Personas Privadas de Libertad 1998-1999*, Informe N° 29 DEFENSORÍA DEL PUEBLO 7 (2000), https://www.defensoria.gob.pe/wp-content/uploads/2018/05/informe_29.pdf; *Supervisión del Sistema Penitenciario 2006*, Informe N° 113 DEFENSORÍA DEL PUEBLO 84 (2006), [https://www2.congreso.gob.pe/Sicr/ApoyComisiones/comision2011.nsf/021documentos/5115F08BFE6D1A3605258154005B2DCA/\\$FILE/Informe_N_113.pdf](https://www2.congreso.gob.pe/Sicr/ApoyComisiones/comision2011.nsf/021documentos/5115F08BFE6D1A3605258154005B2DCA/$FILE/Informe_N_113.pdf).

145. See Nota de Prensa No. 368-2019-INPE, Internos del Penal de Lurigancho Participaron en Desfile Junto con Empresarios (2019), <https://www.inpe.gob.pe/prensa/noticias/item/3083-internos-del-penal-de-lurigancho-participaron-en-desfile-junto-con-empresarios.html>; see also Nota de Prensa No. 271 -2018-INPE, Internos del Penal de Cañete Participan en Desfile Cívico Patriótico (2018), <https://www.inpe.gob.pe/noticias-region-lima/item/1949-internos-del-ep-ca%C3%B1ete-participan-de-desfile-c%C3%ADvico-patri%C3%B3tico.html>

146. Nota de Prensa No. 04-2012-INPE, INPE Inicia Acciones de Rehabilitación con Internos de Alto Riesgo (2012), https://www.peru.gob.pe/docs/PLANES/182/PLAN_182_Nota_de_Prensa_N%C2%BA04-2012-INPE_2012.pdf

147. *Informe Penitenciario, Una Mirada al Mundo Carcelario Peruano*, COMISIÓN EPISCOPAL DE ACCIÓN SOCIAL 71 (2006), <https://www.corteidh.or.cr/tablas/23775.pdf>.

148. See Instituto Nacional Penitenciario, Notas de Prensa/Noticias, <https://www.inpe.gob.pe/prensa/noticias.html>.

149. *Id.*

150. See generally FwichyGM, *RELL PENAL DE LURIGANCHO + 1000 RECORD GUINNESS HD Cortito*, YOUTUBE (Oct. 3, 2013), <https://www.youtube.com/watch?v=8JvskSE2zhY> (showing the Guinness record of 1,000 inmates engaged in a Full-Body Fitness Program); Victor Candia, *Internos de los penales de Lurigancho y Mujeres de Chorrillos participan en VIII Festival del Cajón*, YOUTUBE (Apr. 30, 2015), <https://www.youtube.com/watch?v=B9LWd6aaJbU> (showing a performance by 1,000 inmates playing the Peruvian cajón, a percussion instrument, made by inmates in the detention center); Latina Noticias, *Reos del penal Lurigancho escenifican el 'Padre Nuestro' para el papa Francisco*, YOUTUBE (Oct. 25, 2017), <https://www.youtube.com/watch?v=-C241Z1rVP8> (showing a video of some 2,000 inmates playing for Pope Francis in 2018).

only a few years earlier was generally considered to be an uncontrollable, violent haven for hardened criminals. It is worth highlighting that during the eight years of “Management by Dialogue”¹⁵¹ with inmates and of an open-door policy with media sources, not a single incident of violation of security was recorded. By 2020, detention centers in Peru had ceased to be a topic of sensationalist reporting, even by media sources known primarily for sensationalism.

G. Reduction of Violence

In Latin America, there are no clear, universally accepted measures of violence in detention centers. Still, the number of escapes, violent deaths, disturbances and riots are good indicators of violence within prisons. In this regard, as we have noted, the Penitentiary Reform Process brought riots nearly completely to an end. From 2011 until early 2020, there was a lone riot, in a small detention center (Challapalca, with 180 inmates) in late 2018.¹⁵²

In Peru, a riot (*motín*) may be defined as an instance of generalized indiscipline in a detention center. This can be distinguished from a disturbance (*reyerta*), which is an instance of indiscipline or clashes involving inmates—both between the authorities and inmates or between and among inmates—limited to a single wing or cellblock.¹⁵³ Disturbances, then, are events of lesser magnitude that are limited in scope and that do not spread to other areas of a detention center nor undermine the general internal security of the prison.¹⁵⁴ In a riot, detainees generally seize control of the entire detention center to challenge authorities.¹⁵⁵ This may occur when an uprising beginning in a particular cellblock gains the support of other inmates or when all cellblocks organize to revolt together.¹⁵⁶ Further, riots generally prompt the intervention of other authorities and institutions, such as the Peruvian National Police (PNP), the Red

151. See *Informe Sobre la Situación del Establecimiento Penitenciario de Régimen Cerrado Ordinario Lurigancho*, Defensoría del Pueblo 8–11 (1997), https://www.defensoria.gob.pe/wp-content/uploads/2018/05/informe_5.pdf (discussing violence during the 90s); *Política Nacional Penitenciaria y Plan Nacional de la Política Penitenciaria 2016–2020*, GOB.PE 51 [https://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/3853016153F24A150525812900746BB1/\\$FILE/D.S.005-2016-JUS.pdf](https://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/3853016153F24A150525812900746BB1/$FILE/D.S.005-2016-JUS.pdf) (regarding reduction of violence after 2011 as part of the assessment for the recent Decreto Supremo 005-2016-JUS).

152. It should be noted that in the riot in Challapalca in 2018, the inmates never seized control of the entire detention center; they were able to take over one wing of a cellblock and to take hostages. The Office of the Human Rights Ombudsperson (*Defensoría del Pueblo*) and the Catholic Church intervened to resolve the crisis. See *Acaba sin Víctimas*, *supra* note 108.

153. COMISION INTERAMERICANA DE DERECHOS HUMANOS, INFORME SOBRE LOS DERECHOS HUMANOS DE LAS PERSONAS PRIVADAS DE LIBERTAD EN LAS AMÉRICAS, OEA 36–39 (2011).

154. *Id.*

155. *Id.*

156. This is described in a 2011 report by the Inter-American Commission on Human Rights. The “*motín*” at Centro el Pavoncito in Guatemala in 2007 and “*motín*” en El Penal Frontón en Perú in 1986. See Berdugo, *supra* note 99, at 34, 77.

Cross, the Ombudsperson, the Catholic Church, etc.¹⁵⁷ They also generally involve the taking of hostages, deaths, serious injuries, the use of weapons and the setting of fires.¹⁵⁸ That is, in a riot, the prison authorities lose control of the detention center.¹⁵⁹

In sum, in operational terms, we can say that a riot is a rupture of the established order in a detention center by inmates, frequently followed by the seizure of spaces, destruction of buildings and the taking of hostages. There may be disorder, disputes and fights within particular areas or cellblocks (which we define as disturbances (*reyertas*), but these do not rise to the level of a riot, given their localized nature, the fact that they do not prompt the solidarity of other detainees, and the fact that they do not place at risk the internal security of the entire prison.

Table 3. Riots and Disturbances in Detention Centers in Peru, 2005–2018.¹⁶⁰

YEAR	DISTURBANCES	RIOTS	Total
2005	6	3	9
2006	6	6	12
2007	8	2	10
2008	5	8	13
2009	7	3	10
2010	8	1	9
2011	9	3	12
2012	3	3	6
2013	5	0	5
2014	3	0	3
2015	3	0	3
2016	8	0	8
2017	5	0	5
2018	6	1	7

157. See *El Papel Mediador de la Defensoría del Pueblo de Colombia en Los Casos de Alteración del Orden Interno en Loas Centros de Reclusión*, DEFENSORIA DEL PUEBLO DE COLOMBIA- INSTITUTO INTERAMERICANO DE DERECHOS HUMANOS 5, 81–82, (2005), <https://www.corteidh.or.cr/tablas/24209.pdf>

158. *Medidas Privativas y no Privativas de la Libertad, El sistema penitenciario. Manual de instrucciones para la evaluación de la Justicia Penal*, UNODC 25 (2010); *El Papel Mediador*, *supra* note 157, 81–82 (describing relevant cases).

159. The operational definition “prison riot occurs when prison authorities lose control of a significant number of prisoners in a significant area of the prison for a significant amount of time” is provided by Bert Useem and Anne M. Piehl, *Prison Buildup and Disorder*, 8 PUNISHMENT & SOCIETY 95 (2006).

160. Compiled by authors. Based on Data from INPE (2019).

To determine the number of riots and disturbances, we employed the definitions in the text of this article.

The new institutional culture and rapid resolution of conflicts brought the reduction of riots to historically low levels in Peruvian prisons. As can be seen in Table 3, in some years, there were no riots in the country, despite historically unprecedented, high levels of overcrowding.

Table 4. Deaths in Penitentiaries in Peru, 2012–2018.¹⁶¹

YEAR	BY DISEASE	VIOLENT DEATHS	OTHER CAUSES	TOTAL DEATHS	As percentage N° of VIOLENT DEATHS /TOTAL DEATHS	DEATHS PER PRISON POPULATION 1/Total pop.
2012	163	18	12	193	9.3%	3411
2013	179	22	3	204	10.8%	3073
2014	220	10	12	242	4.1%	7196
2015	151	6	39	196	3.1%	12874
2016	212	9	17	238	3.8%	9114
2017	245	14	10	269	5.2%	6099
2018	214	8	34	256	3.1%	11367

Another of the facts frequently considered by the international literature as an indicator of prison insecurity is the occurrence of violent deaths inside prisons.¹⁶² As shown in Table 4, between 2012 and 2018, deaths from violent acts were reduced from 18 to 8.¹⁶³ This latter figure is fairly low, particularly in light of the consistent growth in the prison population over that six-year period.¹⁶⁴ Moreover, for many years prior to the Prison Reform Process, it was common for guards to find firearms (pistols, machine guns, war grenades, etc.) during searches. In this period, “security” of the pavilions meant having their own weapons to protect themselves from the attacks of other pavilions.¹⁶⁵ It should be noted that between 2013 and 2019 there were no incidents of shots fired inside Peruvian prisons.¹⁶⁶ Lurigancho, for example, as Postema, Cavallaro and Nagra observed, “has been transformed from an institution

161. Based on data of INPE (Instituto Nacional Penitenciario, 2019). Figures prior to 2012 are not reliable due to the narrow scope of data collected. See, *supra* Section IV.D.

162. Daniel P. Mears & Jamie Watson, *Towards a Fair and Balanced Assessment of Supermax Prisons*, 23 JUST. Q. 232, 242 (2006).

163. See Table 4.

164. Nunovero Cisneros, *Factores de Aumento*, *supra* note 107, at 13.

165. PÉREZ GUADALUPE, FAITES Y ATORRANTES, *supra* note 4, n.10.

166. See Table 4.

characterized by rampant violence in a setting of unhygienic anarchy, to a controlled system in which authorities and inmates communicate and foster non-violent coexistence within the prison.”¹⁶⁷

167. Postema, Cavallaro & Nagra, *supra* note 14, at 61.

Table 5: Escapes from the Peruvian Penitentiary System, 2005–2018

YEAR	FROM A PRISON	FROM OUTSIDE PRISON	TOTAL	PRISON POPULATION	RATIO— N° OF ESCAPES /PRISON POPULATION
2005	19	18	37	33,594	1,768
2006	38	10	48	37,445	985
2007*	33	14	47	41,546	1,259
2008	33	8	41	43,466	1,317
2009	58	8	66	44,254	763
2010	9	5	14	46,198	5,133
2011	19	8	27	52,700	2,774
2012	38	3	41	61,390	1,616
2013	0	9	9	67,597	0 Fugas
2014	3	3	6	71,961	23,987
2015	1	3	4	77,242	77,242
2016	9	4	13	82,023	9,114
2017	5	4	9	85,811	17,162
2018	7	0	7	90,934	12,991

*Based on data from INPE (Instituto Nacional Penitenciario, 2019)

On August 15, 2007, there was an earthquake in Lima that destroyed most of the Chincha prison (686 inmates), including the perimeter wall, facilitating the escape of inmates from the prison. Many remained in the detention center; others were recaptured shortly thereafter in the immediate vicinity of the prison.¹⁶⁸

Finally, between 2013 and 2018, there was a significant decrease in escapes, both from inside detention centers and from outside the walls of a prison (for instance, from a penitentiary hospital, from a judicial proceeding, or during transport to a hospital or court). In 2013, not a single escape from a prison was registered, the first time a year transpired without an escape in the history or the records of Peruvian prisons.¹⁶⁹ As shown in Table 5, this decrease generated an increasingly favorable ratio of escapes per prison population, since the prison population continued to increase rapidly, and the escapes remained at low levels.¹⁷⁰ In 2015, for example, a single inmate escaped from a prison. In 2018, no escapes were recorded from outside the prison (again, during judicial proceedings, transfer, from a hospital, etc.).¹⁷¹

168. *Regresan a la Cárcel 242 Presos Peruanos que se Fugaron Tras el Terremoto*, EL PAÍS, Aug. 24, 2007, https://elpais.com/internacional/2007/08/25/actualidad/1187992801_850215.html

169. Consejo Nacional Penitenciario INPE, *supra* note 112, at 62.

170. *Id.*

171. *See* Table 5.

H. *The Four Models of Penitentiary Management in Peru*

The consolidation of a new approach to prison management in Peru, which led to the reduction of intra-prison violence, contrasts sharply with the self-rule of inmates, which was, unfortunately, the previous norm in Peruvian detention centers. The Prison Reform Process of 2011 was based on an appreciation of the history and nature of inmate self-rule, a system of control shaped by the consolidated organization of inmates and a prison culture that arose from the criminal culture of the “*faites*” (traditional leaders in Peruvian criminality).¹⁷² Based on an understanding of this history, and with a humanistic vision that respected the citizenship of inmates, the Reform Process emphasized dialogue with detainees, recognizing them as actors and protagonists in prison management.¹⁷³ The team that led the INPE in those years understood not only central aspects of prison management but also prison culture. As a result, they fostered a tripartite model of dialogue that formed the basis of the new management: from a) the INPE presidency (or its regional representatives) towards b) the directors of each penitentiary establishment, and c) the representatives of the inmates.¹⁷⁴ In the past, communication with the organization of inmates was limited to agreements with the directors of individual detention centers (often in extra-legal agreements).¹⁷⁵ With the Reform Process, communication would involve the participation of the INPE management team, who visited the system’s detention centers regularly to talk with the representatives of the inmates.¹⁷⁶ After interventions and dialogue by the INPE leadership, the detention center directors would be responsible for monitoring and overseeing the peaceful coexistence agreements reached and establishing mechanisms for accountability, surveillance, and transmission of information.¹⁷⁷

172. PÉREZ GUADALUPE, FAITES Y ATORRANTES, *supra* note 4, at 174–85.

173. Postema, Cavallaro & Nagra, *supra* note 14, at 62.

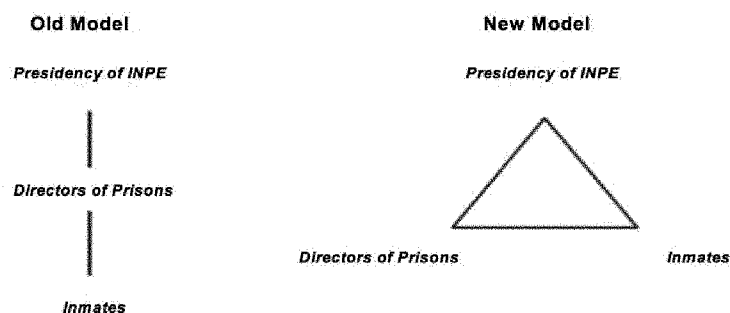
174. See *El Sistema Penitenciario*, *supra* note 133, at 223.

175. PÉREZ GUADALUPE, LA CONSTRUCCIÓN SOCIAL, *supra* note 4, at 187–88.

176. Consejo Nacional Penitenciario INPE, *supra* note 112, at 124.

177. As pointed by Postema, Cavallaro & Nagra, *supra* note 14, at 61–62.

Graph 5: Types of Relationships Between and Among Prison Actors



In effect, a different vision of prison management was adopted when engaging the various actors involved, all of whom agreed to cooperate with the Reform Process, according to their function. For many years, prison officials had worked in an autonomous manner, viewing inmates as their opponents, with predictably poor results.¹⁷⁸ In 2011, INPE undertook a new approach, in a context of limited resources (rendering expansion of security, treatment programs and infrastructure improvement impossible).¹⁷⁹ The Prison Reform Process acted to strengthen the links between INPE management and prison staff, generating greater commitment from all and fostering a sense of belonging to the institution. INPE provided visibility to the representatives of the existing internal organizations, which had existed for many years. This visibility and recognition given to the inmates' representatives launched a process by which these leaders seized the protagonist role from the clandestine leadership centered on the *Taitas* (leaders of the largest criminal groups in the prison who, until then, had exercised unchallenged control over the inmates in their cellblocks). The new leaders would be the delegates (*delegados*), elected by all inmates. In this way, the delegate became the person with representative force before other inmates and prison authorities. It is worth emphasizing here that the importance and power of delegates varied significantly from prison to prison: in Lurigancho, delegates became managers of coexistence, while in Ancón II, the delegate was a mere spokesman.¹⁸⁰

178. A handbook addressing this problem was published in 2008. MINISTERIO DE JUSTICIA-INSTITUTO NACIONAL PENITENCIARIO, *MANUAL DE DERECHOS HUMANOS APLICADOS A LA FUNCIÓN PENITENCIARIA* 10 (2008).

179. MINISTERIO DE JUSTICIA Y DERECHOS HUMANOS, *10 MEDIDAS DE REFORMA DEL SISTEMA PENITENCIARIO* 1 (2012), [http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/810635CDF2139A7F052581300073F277/\\$FILE,10_medidas.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/810635CDF2139A7F052581300073F277/$FILE,10_medidas.pdf).

180. PÉREZ GUADALUPE, *LA CONSTRUCCIÓN SOCIAL*, *supra* note 4, at 185-93; López Noam y Espinoza Gelin, *Democracia Entre Rejas: Representación y Elecciones en el Penal de Lurigancho*, en *PERÚELECCIONES* 18 (19), 135-37 (2019).

The Reform Process prioritized the Institutional Government model, eliminating entirely so-called “liberated areas” (*tierras liberadas*).¹⁸¹ Our baseline point of departure (both for employees and inmates), posits that the management of detention centers should be within the exclusive power of the penitentiary authorities. What remained to be determined was how best to exercise that authority in light of the population and criminological reality of each detention center. We contend that one of the fundamental elements for reestablishing legitimate authority was the exercise of “Management by Dialogue” in those detention centers in which this approach was viable, without placing the security of any given center at risk.¹⁸² Below, we present the four management models as ideal types.

Likewise, we explain that the INPE presidency established a style of differentiated management based on the security level of each detention center, the danger presented by the inmates, the criminological prognosis, and the center’s institutional capacity, which resulted in four ideal management models. One model was eliminated entirely from the prison system and serves as a negative reference.¹⁸³ This is a “model” of a poorly managed detention center.¹⁸⁴ The other three models continue in the Peruvian prison system. As shown in Graph 6, beyond the “ordinary” and “special” prison regimes provided for in the Code of Sentence Enforcement (*Código de Ejecución Penal*), the reality of each detention center required the application of a particular model of prison management. In maximum security centers such as Challapalca, a centralized prison authority was imposed, while in other centers, INPE leadership applied a protective model (in minimum security centers) and a co-responsibility model (in the densely populated centers where exercising complete control would have been virtually impossible). Thus, we can identify four models of prison management in Peru, based on two criteria: “Institutional Government” and “Management by Dialogue,” as we explain below.

“Institutional Government” (IG) is the exercise of authority over all aspects of life in detention, as is ordinarily required by the relevant legal norms. The extreme opposite of “Institutional Government” is the total lack of official authority, or “self-government” by the inmates, which almost inevitably devolves into self-rule by inmates. In this sense, in terms of maximums and minimums, the maximum form of Institutional Government occurs when penitentiary authorities have all spaces and areas of prison life under their control (whether by means of authority or dialogue); the minimum degree of

181. *El Sistema Penitenciario*, *supra* note 133, at 34–35 (describing “Tierras libeadas”).

182. See PÉREZ GUADALUPE, *LA CONSTRUCCIÓN SOCIAL*, *supra* note 4, at 45 (describing prison operations from 1987–1992 in San Juan de Lurigancho Prison in Lima while there were no guards in that prison).

183. PÉREZ GUADALUPE, *LA CONSTRUCCIÓN SOCIAL*, *supra* note 4, at 3 (recognizing described in this work operated from 1987–1992 in San Juan de Lurigancho Prison in Lima while there were no guards in that prison).

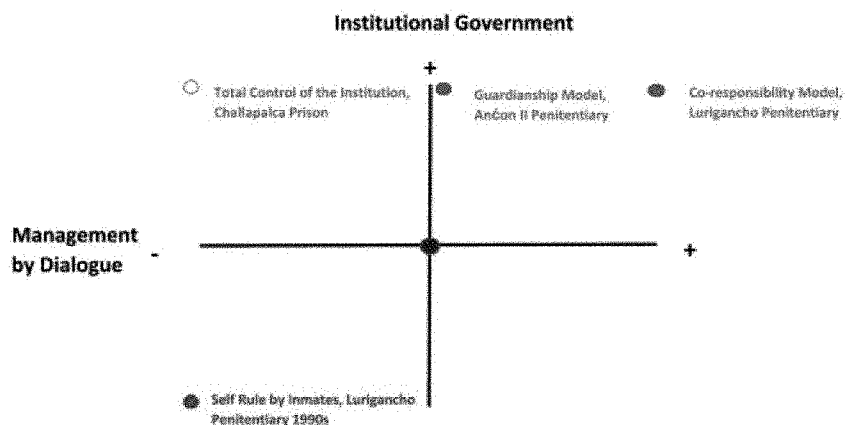
184. PÉREZ GUADALUPE, *FAITES Y ATORRANTES*, *supra* note 4, at 3.

Institutional Government occurs when penitentiary authorities practically abandon the prison or control nothing inside its walls, allowing inmates to assume the control function.

“Management by Dialogue” is the regular practice by prison authorities of conversing and communicating with inmates (or their representatives) about the most important aspects of prison management, seeking their regular opinion and participation. The maximum of “Management by Dialogue” occurs in detention centers in which dialogue is fluid and activities that involve inmates are coordinated with them (whether for institutional or illegal purposes). The minimum level of Management by Dialogue exists in prisons in which there is no dialogue or coordination with inmates, either because the inmates, in fact, control the prison and have no interest in dialogue, or because the prison authority has total control and feels no need to coordinate anything with the inmates.

It should be noted that to establish the new management models, it was first necessary to achieve comprehensive control of all areas of the country’s prisons and to reestablish legitimate authority.

Graph 6: Degrees of Institutional Government



1. Total Control of the Institution

The Challapalca Penitentiary is the best example of this type of center. Challapalca is located at some 13,000 feet or 4,000 meters above sea level and is operated as a “special closed regime” center.¹⁸⁵ Challapalca holds a relatively

185. *Informe Especial Sobre la Situación de los Derechos Humanos en la Cárcel de Challapalca, Departamento de Tarma*, OEA/Ser.L/V/II.118 COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS Doc. 3, no. 4 (2003).

small population (150–180 detainees) and has no overcrowding.¹⁸⁶ However, those deprived of liberty in this center had all been sentenced to long prison terms and were considered to be dangerous and uncooperative by Peruvian prison authorities.¹⁸⁷ This regime focused on security, rather than treatment programs (which, though lower in priority, continued). The representation or organization of the inmates was prohibited, as was transit between cellblocks.¹⁸⁸ Visits and time for recreation (“patio”) were also highly regulated.¹⁸⁹ The staff was adequate, with emphasis on prison security. Prison guards at Challapalca received a special bonus for working there.¹⁹⁰ In addition, the center had recently remodeled infrastructure that was maintained in good condition.¹⁹¹ This model of total institutional control was also applied in a large part of Ancón I (*Piedras Gordas*), and in a substantial part of the Cochamarca Penitentiary, as well as in areas housing detainees in the “special closed regime” in other prisons in the country.¹⁹²

2. Guardianship Model

This model is found at the minimum security Ancón II Penitentiary whose population (about 1,500 inmates) was made up mainly of young offenders detained for non-violent crimes.¹⁹³ Ancón II was a new center without overcrowding and with excellent infrastructure and adequate resources for prison treatment programs and security.¹⁹⁴ The center maintained a strict division between cellblocks and segregated areas for particular groups, such as foreign nationals (generally held for drug trafficking), elderly inmates,

186. INSTITUTO NACIONAL PENITENCIARIO- INPE, INFORME ESTADÍSTICO DICIEMBRE 12 (2016).

187. *Informe Especial*, *supra* note 185, at 27.

188. Art.63 Reglamento: Aprobado Mediante Decreto Supremo N15-2003-JUS, CONDIGO DE EJECUCIÓN PENAL (September 11, 2003), [https://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/D04A8DAD08FE381A05257BF8008222BA/\\$FILE/18.pdf](https://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/D04A8DAD08FE381A05257BF8008222BA/$FILE/18.pdf).

189. *Id.*

190. *Id.*

191. *Inversión en las mejoras de los centros penitenciarios demandaron una inversión superior a los S/. 53 millones*, Ministerio de Justicia y Derechos Humanos (April 9, 2015), <https://www.minjus.gob.pe/ultimas-noticias/noticias-destacadas/ministro-gustavo-adrianzen-entrega-obras-de-mejoramiento-en-penales-de-puno-y-tacna-inversion-en-las-mejoras-de-los-centros-penitenciarios-demandaron-una-inversion-superior-a-los-s-53-millones-el/>.

192. Art.62 Reglamento: Aprobado Mediante Decreto Supremo N15-2003-JUS, CONDIGO DE EJECUCIÓN PENAL (September 11, 2003), [https://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/D04A8DAD08FE381A05257BF8008222BA/\\$FILE/18.pdf](https://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/D04A8DAD08FE381A05257BF8008222BA/$FILE/18.pdf).

193. INSTITUTO NACIONAL PENITENCIARIO- INPE, INFORME ESTADÍSTICO DICIEMBRE 11, 34 (2016).

194. UNIVERSIDAD DE CHILE- BID-OPEN SOCIETY, PROGRAMA DE TRATAMIENTO C.R.E.O. Y F.O.CO.S.-PERU, http://cesc.uchile.cl/buenaspracticasenprevencion/bbp_docs/29_programa_de_tratamiento_CREO_y_FOCOS.pdf.

evangelical groups, and women charged with terrorist offenses.¹⁹⁵ In this model, with relatively sophisticated separation based on criminological classification and limited movement within the center by inmates, it was possible to implement differentiated treatment programs. As a result, most of the activities and schedules were determined by prison authorities.¹⁹⁶ This management model, which focused on robust treatment programs (education and work), was applied in most of the minimum-security pavilions in the prison system, which had populations amenable to rehabilitation and sufficient personnel and infrastructure to accommodate rehabilitative programming.

3. Co-responsibility Model

This model is found most clearly at the Lurigancho Penitentiary (ordinary, closed regime), which held over 10,000 detainees—more than three times capacity—with outdated infrastructure and insufficient staff.¹⁹⁷ Although Lurigancho was a detention center considered to be operating in the “ordinary regime” classification, a significant part of the population had long criminal histories and had been sentenced to many years in prison.¹⁹⁸ In this type of detention center, inmate organizations remained active.¹⁹⁹ As a result, it was not possible for the institution to regulate all aspects of daily life (as in Challapalca or Ancón II).²⁰⁰ Thus, it was necessary to work with the inmates and well-structured intra-prison organizations to achieve a model of management that “incorporated” in a regulated fashion the inmates’ delegates in the management of the prison. This was particularly the case with the norms of cohabitation and coexistence in the cellblocks. This is, therefore, a model focused on the co-responsibility and dialogue between and among the actors involved. The model was applied in other centers, especially those with high levels of overcrowding, limited staff, and representative organizations of those deprived of liberty. Detention centers with these conditions constituted the majority of the Peruvian Prison System.²⁰¹ In these circumstances, the Prison Reform Process focused on eliminating entirely the trafficking of drugs and prohibited items, low-level

195. *Retos del Sistema Penitenciario Peruano: Un diagnóstico de la realidad carcelaria de las mujeres y varones. Resumen ejecutivo*, Informe de Adjuntía N° 006-2018-DP/ADHPD 39 (2018).

196. See Art.44 Reglamento: Aprobado Mediante Decreto Supremo N15-2003-JUS, CONDIGO DE EJECUCIÓN PENAL (September 11, 2003), [https://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/D04A8DAD08FE381A05257BF8008222BA/\\$FILE/18.pdf](https://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/D04A8DAD08FE381A05257BF8008222BA/$FILE/18.pdf).

197. INSTITUTO NACIONAL PENITENCIARIO- INPE, INFORME ESTADÍSTICO DICIEMBRE 13 (2016).

198. *Id.* at 38.

199. López Noam & Espinoza Gelin, *Democracia Entre Rejas: Representación y Elecciones en el Penal de Lurigancho en Perú*, ELECCIONES 18 (19), 135–37 (2019) (recognizing the organizations discussed in PÉREZ GUADALUPE, FAITES Y ATORRANTES, *supra* note 4, at 3).

200. *Defensoria del Pueblo*, *supra* note 157, at 5–7.

201. INSTITUTO NACIONAL PENITENCIARIO- INPE, INFORME ESTADÍSTICO DICIEMBRE 12–13 (2016) (detailing the list of overcrowded peruvian prisons).

and mid-level corruption, physical abuse between inmates, etc.²⁰² Implementation of the co-responsibility model led to significant reductions in the levels of violence within detention centers, incidents of collective violence, escape attempts, violent deaths and riots, use of firearms, and the taking of hostages.²⁰³ In 2017, INPE assumed responsibility for Lurigancho, after 30 years under the control of the National Police.²⁰⁴ This model was applied in most detention centers in Peru.²⁰⁵

4. *Self-Rule by Inmates*

Self-rule by inmates was perhaps the defining characteristic of the Lurigancho Penitentiary in the 1990s.²⁰⁶ This model no longer exists in the Peruvian prison system in practice. We include it here as a model type because it is one that existed for years in Peru but which should never return. This model involved the complete control by inmates faced with a prison institution that was practically non-existent.²⁰⁷ The National Police, given the responsibility for Lurigancho, limited their role to the external control of the prison, ceding to the inmates full authority over the cellblocks.²⁰⁸ “Liberated zones” existed within the center in which authorities would not enter and where the inmates themselves oversaw all aspects of daily life, including control of food, alcohol, drugs, prohibited items, and the weapons and munitions in each cellblock.²⁰⁹

Detainees in Lurigancho were overwhelmingly repeat offenders who brought to the prison their long criminal histories and cultures developed on the street.²¹⁰ Most faced long sentences, including life terms.²¹¹ At this time, the three centers in “special closed regime” had not yet been built. Inmates were assigned to Lurigancho based on their place or neighborhood of origin because there was no penitentiary institution to classify those deprived of liberty according to accepted criminological methodology.²¹² Exceptions to the place of origin basis for grouping of inmates were made for areas occupied by those detained for drug trafficking and terrorism, ex-police and military officers, religious groups, and

202. Consejo Nacional Penitenciario INPE, *supra* note 112, at 66–71.

203. *Política Nacional Penitenciaria*, *supra* note 151 (regarding reduction of violence after 2011 as part of the assessment for the recent Decreto Supremo 005-2016-JUS).

204. Nota de Prensa No. 173-2017-INPE, INPE Recobra Administración del Penal de Lurigancho y Entrega Llaves a Servidores, (2017). <https://www.inpe.gob.pe/prensa/noticias/item/460-inpe-recobra-administraci%C3%B3n-del-penal-de-lurigancho-y-entrega-llaves-a-servidores.html>

205. PÉREZ GUADALUPE, FAITES Y ATORRANTES, *supra* note 4, at 3.

206. *Id.* at 35–37.

207. *Id.* at 3.

208. *Id.*

209. *Id.* at 57–62.

210. *Id.* at 83–86.

211. *Id.* at 138–39.

212. *Id.* at 46–54.

other particular groups.²¹³ This method of spatial organization facilitated the continuation of urban criminal subcultures, which were transferred from the streets to the prison, reproducing their customs, values and norms of coexistence.²¹⁴ The self-rule of the prison was delimited by three criteria: territorial (according to the cellblock one belonged); group (according to the neighborhood of origin); and prestige (based on a hierarchy of crimes and criminality).²¹⁵ This delimitation allowed for a degree of order and co-existence (i.e., ordered anarchy). Internal conflicts were also managed based on these three criteria, with group and individual fragmentation, and tensions between consensus and conflict.²¹⁶ Pérez Guadalupe has referred to these tensions as fusion and fission.²¹⁷ This model of self-rule by inmates existed in the majority of detention centers in Peru in the 1990s as in previous decades, albeit in differing degrees.²¹⁸

As may be inferred, incorporating “Institutional Governance” with more “Management by Dialogue” in a significant number of detention centers required direct communication with the representatives of inmates, as well as their participation, in a controlled fashion, in certain aspects of prison administration.²¹⁹ Internal organizations and their representatives (the delegates), once afforded tangible and formal representative roles, assumed responsibility for much of what happened in their cellblocks, both vis-à-vis the inmates who had elected them as well as in relation to the prison authorities to whom they were required to account for their actions.²²⁰ This responsibility did not exempt delegates from the rules of the detention center. Some still committed violations.²²¹ Indeed, a good number were transferred to other prisons for disciplinary infractions.²²²

A central element in this long process of prison pacification and governance has been respect for the basic human rights of those deprived of liberty. We consider this to be a *sine qua non* condition, necessary to establish and rebuild mutual confidence between staff and detainees. As such, it constituted the basis on which further relationships could be built. It was thus necessary to convince prison staff that respect for human rights had to be the point of departure for

213. *Id.* at 36.

214. *Id.* at 2.

215. *Id.* at 36.

216. *Id.* at 89–90.

217. *Id.* at 90

218. JOSÉ MARÍA RICO, *CRIMEN Y JUSTICIA EN AMÉRICA LATINA* 355 (1977); see Berdugo, *supra* note 99, at 46.

219. See Postema, Cavallaro & Nagra, *supra* note 14, at 62.

220. PÉREZ GUADALUPE, FAITES Y ATORRANTES, *supra* note 4, at 57–62.

221. *Id.* at 57.

222. *Id.* at 5.

coexistence-grounded dialogue.²²³ To do so, prison guards and staff had to accept that dialogue and mutual respect could be promoted without sacrificing the authority of staff and administrators. Respect for human rights and dialogue allowed for the construction of an institutional climate in which the support of detainees for peaceful coexistence became possible, a climate in which inmates became agents co-responsible for the good governance of prisons. As a result, a new institutional culture blossomed, one with a different type of relationship between staff and inmates.²²⁴ This relationship has continued to the present with the new prison authorities. It is important to note that the new form of management did not involve hostility directed against inmate organizations but rather opposed “self-rule” by inmates. The process served to challenge and eliminate inmate self-rule while incorporating the organization of inmates.²²⁵ Nor did this process imply an abandonment of the institutional duties of INPE; instead, prison staff and management continued to act as authorities within detention centers.²²⁶

It is worth noting that the “co-responsibility model” was not applied across the board, but rather only in those prisons in which staff and administrators were not able to effectively control all aspects of the daily life of detainees.²²⁷ In some prisons, this model was applied partially, or other models were applied. That is, the Prison Reform Process distinguished four models in Peru (three of which have been employed, the fourth of which has been prohibited). The Process assessed the context in each detention center and applied the most effective model, as is shown in Graph 6. In addition, the fact that prison administration was in the hands of civilians (and not military or police) generated an understanding of management of detention centers quite different from the typical police or military approach, one that had been the norm within INPE until mid-2011.²²⁸ Prior INPE leaders (police and military officers) had recognized the existence of organizations of inmates but had viewed them as exclusively dangerous and threatening.²²⁹ The Prison Reform Process also involved a return to a *civilian* prison administration body (INPE) and a shift away from police/military orientation. Since 2011, INPE has been led exclusively by civilians.²³⁰

223. *El Sistema Penitenciario*, *supra* note 133, at 223 (recognizing the recommendations of the Ombudsman in 2011).

224. *See* Postema, Cavallaro & Nagra, *supra* note 14, at 62.

225. *Id.*

226. *Id.*

227. *See Defensoria del Pueblo*, *supra* note 157, at 5–7.

228. Prior to 2011, the usual practice was to select the leadership of INPE from among high-ranking, retired military or police officers. From 2011 to 2019, the four Presidents of INPE have been civilians with experience in prisons.

229. PÉREZ GUADALUPE, FAITES Y ATORRANTES, *supra* note 4, at 37.

230. *See Política Nacional Penitenciaria*, *supra* note 151.

We should emphasize that institutional control—the fundamental pillar of the Prison Reform Process—has continued to the present throughout the Peruvian prison system. All detention spaces in the country are controlled (in varying degrees) by prison authorities. There are no longer spaces ruled by inmates (“liberated spaces” or *tierra liberada*) as before, or as exist currently in prisons in Brazil, Venezuela, and other countries in the region.²³¹ On the contrary, directors of detention centers are able to (and must) enter into any space within the prison they direct to assess conditions and respond as needed or to supervise activities.²³² So, too, are other authorities—such as prosecutors and police—able to enter as needed.²³³ Regular searches became a routine occurrence in detention centers throughout the country without significant resistance from detainees, who generally accept the necessity and legitimacy of this form of control by authorities.²³⁴ Opposition to searches is thus generally limited to those that involve abusive behavior by the Police Special Operations Group (*Grupo de Operaciones Especiales, GOES*).²³⁵

One fundamental aspect of the Prison Reform Process is that the directors of INPE established and maintained positive relations not only within the system (with staff and inmates) but also with other societal actors.²³⁶ These included Chambers of Commerce, sporting associations, businesses, politicians, and others. In this way, although detention centers were not a priority for the Ministry of Justice (to whom the INPE responds hierarchically), institutional confidence was successfully developed by the Prison Reform Process. Evidence of this confidence can be found in the decision to place all prisons in Peru under the control of INPE (rather than the police)—a clear vote of confidence in the institution.²³⁷ That is, INPE went from being a problem for the justice sector (or a “thorn in its side” as one Minister would say about prison administration) to

231. Sacha Darke, *Inmate Governance in Brazilian Prisons*, *supra* note 69, at 275; Antillano Andrés, *Cuando los Presos Mandan: Control Informal Dentro de la Cárcel Venezolana*, 24 SPACIO ABIERTO CUADERNO VENEZOLANO DE SOCIOLOGÍA 24-25 (2015).

232. *Retos del Sistema Penitenciario Peruano: Un diagnóstico de la realidad carcelaria de las mujeres y varones*, Informe de Adjuntía N° 006-2018-DP/ADHPD DEFENSORÍA DEL PUEBLO, 8-9 (2018).

233. *Id.*

234. See Consejo Nacional Penitenciario INPE, *supra* note 112, at 60.

235. *Mujer es designada jefa de seguridad de grupo de élite del INPE*, ANDINA September 19, 2015, <https://andina.pe/agencia/noticia-mujer-es-designada-jefa-grupo-elite-seguridad-el-inpe-575963.aspx> (explaining well established specialized unit, interventions accompanied with prosecutors ensure legal standards); Nota de Prensa No. 05 -2012-INPE, Enero (2012), https://www.peru.gob.pe/docs/PLANES/182/PLAN_182_Nota_de_Prensa_N%C2%BA05-2012-INPE_2012.pdf.

236. Consejo Nacional Penitenciario INPE, *supra* note 112, at 127.

237. Nota de Prensa No. 152-2018-INPE, INPE Receives the Administration of Last Prison that Remained in Charge of Peruvian National Police (2018), <https://www.inpe.gob.pe/prensa/noticias/item/1618-inpe-asume-direcci%C3%B3n-del-%C3%BAltimo-penal-a-cargo-de-la-pnp.html>.

being recognized for successful management of potential conflicts, despite inadequate budgets and overcrowding.²³⁸

While the Peruvian prison system is still in the process of maintaining the gains achieved, it is fair to recognize not only the continuity of the changes but also their sustainability. One key element of the desired sustainability is the reduction of violence within detention centers, which allowed for improvements in social reinsertion policies and partnerships with civil society actors and institutions.²³⁹ One important project that has been consolidated in recent years is the “Productive Jails” (*Cárceles Productivas*), which promotes, jointly with industry, the installation of workshops in detention centers.²⁴⁰ This program has been important for detainees. Now, rather than drawing resources from their families, those deprived of liberty have been able to contribute through income received from these workshops. This has been possible due to the reduction in riots and disturbances. Before the Prison Reform Process, detainees would often destroy workshops and machinery in protest against the institution.²⁴¹ Now, those deprived of liberty see these workshops and machinery as their own and as a source of income that can help support their families, generating positive externalities.²⁴²

Finally, almost a decade after the beginning of the Prison Reform Process in Peru, we should note some deficiencies that have yet to be overcome. These deficiencies and abuses are more frequent in the most overcrowded centers with the fewest prison staff: *Corruption*: Despite the new policy of sanctions and disciplinary measures to oversee staff, INPE has not been able to end low-level and mid-level corruption in detention centers. There continue to be a high number of legitimate complaints by family members that cite inappropriate demands for payment of “fees” by prison staff. Nor has it been possible to end the trafficking of drugs, alcohol, and prohibited objects within cellblocks. While true that family members have been caught on occasion trying to sneak contraband, such as mobile phones and drugs, into detention centers, in most cases of entry of prohibited goods, prison staff themselves are the primary suspects. *Informal real estate market*: Due to the high level of overcrowding in some prisons, cell space is sold or rented. While the detention center determines the cellblock to which a given inmate is admitted, it is often unable to guarantee that inmate a place within a given cell. In the case of threats to the physical

238. Consejo Nacional Penitenciario INPE, *supra* note 112, at 128–132.

239. *See id.* at 127.

240. The initiative was the basis for the *Decreto Legislativo para la Promoción e Implementación de Cárceles Productivas*, Decreto Legislativo 1343 (Jan. 6, 2017), <https://busquedas.elperuano.pe/normaslegales/decreto-legislativo-para-la-promocion-e-implementacion-de-ca-decreto-legislativo-n-1343-1471548-3/>.

241. MINISTERIO DE JUSTICIA, PLAN NACIONAL DE TRATAMIENTO PENITENCIARIO 20 (2003). <https://www4.congreso.gob.pe/comisiones/2004/ceriajus/planNacPenitenciario.pdf> (reporting on steps approved by R.M. No 343-2002-JUS).

242. Carranza Elias, *supra* note 84, at 32.

integrity of particularly vulnerable inmates, generally each detention center will have designated areas outside the ordinary cellblocks. Often, inmates must pay illegal charges to access these areas.

Aggressions: While the frequency of sexual abuse and killings has fallen considerably and means of reporting abuse have been improved, severe overcrowding has increased levels of tension within detention centers, creating dangerous conditions. One means of controlling intra-cellblock and intra-cell violence has been to establish “discipline delegates,” responsible for ensuring order and ending disputes between and among detainees.

As may be seen, overcrowding, which has intensified in recent years, is the underlying cause of a series of related problems that generate a loss of institutional authority. As a result, in some cellblocks, the risk that co-responsibility will degenerate into “apparent management” or to self-rule by inmates exists, as we shall see below.

IV. PRISON GOVERNANCE IN LATIN AMERICA: BETWEEN ABUSE BY PRISON AUTHORITIES AND SELF-RULE BY INMATES

We propose “Prison Governance” as a potentially transformative concept to reorient prison management in Latin America, based on the Peruvian Prison Reform Process of 2011, as well as our understanding of detention centers in the region. We understand Prison Governance to be the ability to manage problematic detention centers in an integral manner through the commitment of all actors—prison staff, administrators, and inmates—involved. As François Vallaëys writes, “Governance begins when government is no longer possible; that is, when actors must together regulate their actions Governance produces agreements based on co-responsibility.”²⁴³ In this regard, the need for this type of prison management becomes apparent when authorities recognize that, in practice, they are unable to maintain control of those detained, either due to excessive population or to some other institutional shortcoming. Faced with this challenge, we argue, governance models should incorporate into prison management the organic association of inmates but not their self-rule.²⁴⁴ Herein lies the secret and the inflection point of this model, given that the line between self-organization and self-rule is quite delicate.

Because we assert that the only legitimate authority should be the legally constituted authority—provided it is rights-respecting and acts in accordance with the rule of law and human rights—we avoid the terms “co-government” or “co-management” to define the role of persons deprived of liberty in the Prison Governance Model. That said, we support the co-responsible inclusion of the organization of inmates as valid actors in the development of daily life in the

243. François Vallaëys, *Virtud, Justicia, Sostenibilidad: Una Ética en 3 Dimensiones para la Responsabilidad Social de las Organizaciones*, in MEMORIA IER. CONGRESO INTERNACIONAL DE RESPONSABILIDAD SOCIAL: ÉTICA PARA EL CAMBIO 704, 709 (2013).

244. See Postema, Cavallaro & Nagra, *supra* note 14, at 59.

detention center. In this regard, inmates participate and dialogue with prison authorities in an exercise of “detention center citizenship.” After conversing with the representatives of the inmates and discussing different possible options to improve management of the detention center, prison authorities decide which measures are most viable. Together, prison authorities, staff, delegates, and inmates, apply the agreed upon measures. Central in this process of dialogue is the determination, by consensus, as to which actions will improve and which will undermine the quality of life of those deprived of liberty in the detention center. Our goal here is to suggest a new model of prison management based on consensus, rather than conflict, between and among the principal actors in the detention center—prison staff and detainees. Once their shared interests are recognized (peaceful co-existence, better services, transfers, elimination of abuses, etc.), joint actions to achieve these goals may be defined. Observers from civil society, the Red Cross, and religious groups may participate in this process as guarantors of the good faith of all involved, provided they are seen as credible actors by prison staff and detainees. In this regard, “prison governance” was developed based primarily on the experience at the Lurigancho Penitentiary, in which the Peruvian Prison Reform Process was applied through regular dialogue with the president of INPE and his closest advisors, on the one hand, and the delegates, who collectively represented some 10,000 inmates, on the other.²⁴⁵

As the Peruvian case study demonstrates, institutional objectives can be achieved by incorporating the views of inmates regarding the management of the detention center.²⁴⁶ The governance model constitutes an alternative to the typical models—authoritarian administration at one extreme and the absence of official authority on the other—that have been dominant in Latin America.²⁴⁷ The Prison Governance model identifies the administrative, logistical, and security capacity of each detention center. As such, this model is consistent with what Bryans refers to as the creation of a secure and protected detention center by means of a positive, ethical contribution from staff and detainees to the joint objectives of the community.²⁴⁸

On the other hand, it is important to distinguish “Prison Governance” from what Darke has described in Brazilian prisons (and Peirce in Dominican ones)

245. See López Noam & Espinoza Gelin, *Democracia Entre Rejas: Representación y Elecciones en el Penal de Lurigancho en Perú*, *ELECCIONES* 18, 135–37 (2019).

246. See *supra* Sec. III.

247. See Astrid Arrarás and Emily Bello-Pardo, *supra* note 31, at 9 (discussing self governance of inmates model which characterize Latin American prisons); De Dardel, Julie & Söderström, Ola, *supra* note 5, at 15 (discussing the authoritarian model imported to Latin America); Stephen Nathan, *El Sistema Penitenciario: Modelo de Gestión Privada o Pública*, en *POLÍTICA CRIMINAL Y REFORMA PENITENCIARIA*, MINISTERIO DE JUSTICIA Y DERECHOS HUMANOS 309 (2012).

248. See SHANE BRYANS, *PRISON GOVERNORS: MANAGING PRISONS IN A TIME OF CHANGE* 128–46 (2007).

as “prison co-government.”²⁴⁹ “Co-government” in these prisons is the result of negotiation of order and convenience between prison administrators and de facto prison leaders, generally gang and organized crime figures.²⁵⁰

The differences between and among detention centers, the level of organization that inmates achieve, as well as the modes of interaction with prison administrators may be seen in the four historic types of prison administration in Latin America proposed in Graph 7 below. These are ideal types of prison management or administration, applying the same axis as in the Peruvian case (greater or lesser degrees of “Institutional Government” and “Management by Dialogue”) to classify detention centers in the Americas. These four ideal models may be used to assess detention centers that are extremely difficult to control, the focus of this article. Obviously, one cannot generalize any one of these models to particular countries in light of the fact that, within a given country, one finds varied realities across detention centers. That said, we believe that one can apply “Prison Governance” in those detention centers that suffer from extreme overcrowding (generally macro-prisons) and have become ungovernable by ordinary prison administration. Further, given the need for short-term solutions to the many challenges posed by overcrowded, ungovernable prisons, the “Prison Governance” model offers the possibility of reducing levels of violence through the gradual, rational incorporation of inmate organizations into management as an intermediate goal on the path to recovery of legitimate, rights-based, rehabilitation-focused management.

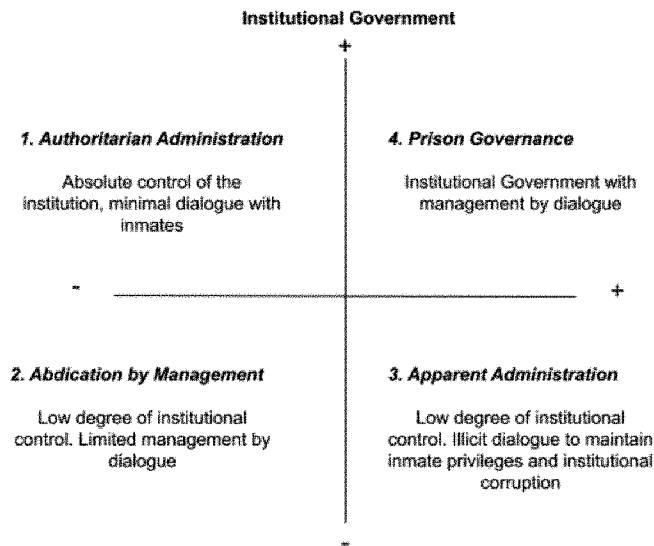
It is worth noting that these four proposed types correspond to “extraordinary” detention centers (even though they may constitute the majority in some countries), in which ordinary prison administration that complies with legal norms is not possible. In light of the failures of prison authorities in Latin America to manage detention centers in accordance with legal standards and human rights,²⁵¹ we observe, in practice, four identifiable forms of prison administration:

249. SACHA DARKE, CONVIVIALITY AND SURVIVAL: CO-PRODUCING BRAZILIAN PRISON ORDER (2018); Weegels, *supra* note 74; Peirce, *supra* note 75, at 6.

250. SACHA DARKE, CONVIVIALITY AND SURVIVAL: CO-PRODUCING BRAZILIAN PRISON ORDER (2018); Julienne Weegels, *Prison Riots in Nicaragua: Negotiating Co-Governance Amid Creative Violence and Public Secrecy*, INT’L CRIM JUSTICE REV. 62 (2020); Peirce, *supra* note 75, at 6.

251. Astrid Arrarás and Emily D. Bello-Pardo, *supra* note 31, at 6-9.

Graph 7: Models of Prison Management in Latin America



A. Authoritarian Administration (Absolute Control)

We find this model in centers where the institutional authorities exercise their authority, but with dehumanizing excesses and/or violence. Prison staff control all the space and time of detainees who lose the ability to decide over basic aspects of their own daily life. The institution produces and enforces rigid rules and guidelines. Generally, this model is applied in prisons with inmates held for serious crimes. There are generally a large number of staff, most of whom are focused on security. Those deprived of liberty are frequently dehumanized, sometimes through illegal violence; the prison is understood as a space of punishment and not rehabilitation.

The main rationale driving this type of administration is the search for security when faced with a prison population considered dangerous. Whether due to logic based on prevention, fear, or repression, staff exercise maximalist measures of control to avoid any possible violation of internal rules. While there is an effective “Institutional Government,” the risk of a violent reaction by inmates is great. If staffing is not adequate in number or capacity, detention centers in this model may be time bombs that can result in enormous death and damage if detonated.

B. Abdication of Management (Self-Rule by Inmates)

This model is found in those prisons where the institutional authorities, in practice, have renounced or abdicated their responsibility to manage all or part of a given detention center. The institution limits its role to external security

(control of the perimeter of the prison or of cellblocks) and undertakes only limited actions within the walls of the center. A clear indication of this type of model are the so-called “liberated zones” or inmates’ zones in which staff are not able to enter or may only enter with the permission of the inmates. That is, staff have lost authority vis-à-vis inmates. Ordinarily, criminal gangs, drug cartels, or other criminal organizations dispute leadership of the prison; for as long as a group has seized leadership, it exercises control over the self-government or self-rule. Generally speaking, it is not the case that authorities do not wish to control the detention center; they are not able to do so. One example of this interest in recovering authority, coupled with failure to exercise control successfully, is the practice of extraordinary raids carried out by special quasi-military police forces. While momentarily successful in establishing the control of authorities, once these forces have left the prison, self-rule continues as before.

There are many explanations of how centers reach this extreme situation: lack of adequate staffing; the high level of danger of inmates; long sentences; fear of reprisals from affiliates of inmates outside the detention center; etc. All these factors add up to the inability of prison authorities and staff to control the detention center. The security risks in this model are high, given that detainees are allowed to continue criminal activity from within the detention center. At any moment, these centers may experience escape attempts, violent deaths, vendettas, riots or the taking of hostages.

C. Apparent Administration (Co-Government)

This model is found in detention centers in which the institution opts not to exercise its functions, preferring to feign compliance with prison system norms. Authorities do not completely lose control of detention centers but allow inmates to govern cellblocks provided that they do not cause problems. It may be that the institution has adequate budget and personnel to run the prison, but the staff decide not to exercise authority out of fear or convenience or because they receive payoffs to look the other way. That is, it is not that the staff are unable to take control of the detention center; rather, they prefer not to do so. In this case, one may speak of co-government, given that this model involves coordination between staff and detainees, which is interrupted when there is an uprising or riot. The arrangement between staff and inmates may also be suspended temporarily when a high-ranking authority comes to the center.

The principal force behind this model is corruption, in the broadest sense, not only in the form of payments that staff receive from inmates, but also because these public servants fail to do the work that society has entrusted to them. The risk of violence, escapes, and riots is severe in this model because, as in the case of the “Abdication of Management (self-rule)” model, inmates are able to continue to engage in criminal behavior from inside the prison, generating illegality and violence outside the detention center.

D. Prison Governance (Dialogue and Citizenship)

We find this model in those detention centers in which prison authorities recognize that the conditions in the prison are such that traditional means of administration will not be possible. The conditions that lead authorities to this conclusion include poor infrastructure, overcrowding, deficient services, limited personnel, and limited resources. Rather than applying one of the other three models listed above, authorities seek to incorporate inmates' organizations—but not their self-rule—into prison management in concrete areas related to daily life in the detention center as a means of achieving peaceful coexistence. This model has proven to be viable not only in centers with first-time offenders but also in prisons with repeat and violent offenders. The principal motivating factor prompting the application of this model is the inability to control all aspects of the institution. Instead of relying on repression (“Authoritarian Administration”) or abandoning detainees to their own fate (“Abdication of Management” or “Self-rule by Inmates”), authorities may opt for “Management by Dialogue,” engaging with the organic inmate organizations and recognizing prison citizenship. If this type of model is well implemented, the risks of violence may be reduced significantly but are not entirely eliminated. Even if it is not possible to eradicate abusive conduct among detainees, traffic in contraband, and micro-corruption by staff, if levels of violence are reduced and living conditions for inmates are improved, “Institutional Government” becomes more likely.

Crossing the two axes and variables, “Institutional Government” and “Management by Dialogue,” we find different models of prison governance, depending on the exact point of the maximums and minimums in each quadrant. In this regard, it is important to appreciate where in this continuum we should locate a given detention center, as well as where that center seeks to locate itself in a given period of time and with given resources. This framework also allows us to understand various arrangements that exist between authorities and detainees, as well as between authorities and gangs and other organized criminal groups in detention centers throughout Latin America, such as in Brazil, Nicaragua or the Dominican Republic.²⁵²

In addition, it should be noted that one may find more than one management model within a single detention center, particularly larger centers in which detainees of various security levels are separated into different cellblocks or sections of a prison. Separation within detention centers may also occur based on affiliation with gangs or other organized criminal groups, leading to the development or adoption of different models according to the nature of the particular population.

As we have indicated earlier, the classification we outline above is based on an analysis of the administration of extreme and problematic detention centers

252. Darke & Garces, *supra* note 3, at 6–7; Weegels, *supra* note 250, at 76–77; Peirce, *supra* note 75, at 6.

in Latin America, in which, due to a range of factors, ordinary management practices have failed.²⁵³ Unfortunately, this type of extreme and problematic center is not an exception in the Americas. As a result, the “Prison Governance” model, which builds on the “co-responsibility” model in the Peruvian Prison Reform Process, goes beyond the ordinary management in which institutional objectives and prison rules provide the basis for administration. In this model, there have been reductions in levels of violence and improvements in the quality of life within detention centers, facilitating rehabilitation and control of these problematic detention centers.

Graph 8: Prison Governance and Prison Management Models in Latin America



Finally, as may be seen in Graph 8, “Prison Governance” is an alternative to the adoption of the “Authoritarian Administration” model, frequently the source of grave abuses of fundamental rights through its ultra-punitive approach, as described by De Dardel in Colombia,²⁵⁴ or the “Abdication of Management or Self-Rule of Inmates” model, which is nothing more than an abandonment of the responsibilities and functions on the part of the detention center.

V CONCLUSION

In this article, we have outlined the most urgent problems facing prison systems in Latin America, focusing on the challenges presented by the most difficult detention centers—ones with violent offenders, gangs and criminal organizations, and limited staff and resources. We have also detailed the experience of the Peruvian Prison Reform Process, which began in 2011 and continues to develop.²⁵⁵ This Reform Process led to the reduction of violence in detention centers, as well as the eradication of inmate self-rule, riots, gun battles, strikes by staff, and the taking of hostages. It also led to a significant reduction in escape attempts and violent deaths. As a result of this experience, we have proposed four models of prison management in Peru, focusing most attention on the “Co-responsibility Model.”²⁵⁶ Finally, using the same analytical categories—more or less “Institutional Government” and “Management by

253. See Astrid Arrarás and Emily D. Bello-Pardo, *supra* note 31, at 6–9; see also Sacha Darke & Chris Garces, *Surviving in the New Mass Carceral Zone*, PRISON SERV. J. 2, 4, 6 (2017).

254. JULIE DE DARDEL, EXPORTER LA PRISON AMÉRICAINNE: LE SYSTÈME CARCÉRAL COLOMBIEN À L'ÈRE DU TOURNANT PUNITIVE (2016).

255. See *supra* Sec. III.

256. See *supra* Sec. IV.

Dialogue” —we identify four types of administration of unmanageable prisons found in Latin America.²⁵⁷

While the advances achieved in the Peruvian Prison Reform Process should be the baseline in any penitentiary anywhere in the world, the truth is that these advances are not the norm in much of Latin America. To appreciate how remarkable this achievement is, one need only consider the extraordinarily high rates of overcrowding in the majority of detention centers in the region and the levels of violence (attacks, deaths, suicides) in Latin American jails, prisons and penitentiaries.²⁵⁸ Further proof is found in the number or percentage of detention centers whose de facto control rests in the hands of inmates, and often, in hands of the most violent criminal organizations.²⁵⁹ While the four proposed models, both in the case of Peru and more generally in Latin America, are based on the concrete reality of penal institutions in the region, we have sought to emphasize a new management model, “Prison Governance,” based on the incorporation of the representation of inmates in the operation of detention centers.

One may see that “Institutional Government” in prisons need not be in tension with “Management by Dialogue.” Nor must one accept a false dichotomy between security and treatment programs. Penitentiary officials need not choose one or the other; instead, they should think of maximums and minimums, based on the conditions present in any particular center. As we have underscored, these models are not applicable to all penal institutions. The model of “Prison Governance” may be applied to detention centers, which, from the general perspective of prison administration, are ungovernable.²⁶⁰ In certain conditions, the “Prison Governance” approach can constitute a reasonable alternative that may allow for the management of previously ungovernable centers. We note here, that while there have been marked reductions in the levels of violence in centers in which the Prison Governance Model has been applied, it has not been possible to eliminate prison-on-prisoner violence entirely. Nor has it been possible to eradicate trafficking in drugs and contraband or corruption by staff.

No doubt, the “Prison Governance” model implies a change in the mentality of staff and the incorporation of inmates as actors in the peaceful management of detention centers. The model also implies development of mutual confidence and trust between and among prison staff and those deprived of liberty. It requires patience. More than elaboration of norms, rules, or structures, this governance model is based on “Management by Dialogue,” in which prison administrators do not cede authority nor responsibility but rather act so as to encourage others to assume co-responsibility for the operation of the penal institution. The first step in this process is the recognition of inmates as human beings with rights and responsibilities and the capacity to assist in achieving the

257. *Id.*

258. See Astrid Arrarás and Emily D. Bello-Pardo, *supra* note 31, at 6–9.

259. See *infra* Part B.

260. See *infra* Sec. IV.

goals of the detention center. Next, the model requires the involvement of prison staff, not only as security agents but also as agents of rehabilitation. “Prison Governance” begins with a vision of penal institutions as centers of rehabilitation and not punishment. As one of the core guiding principles of the Peruvian Prison Reform Process stated, “*if you treat inmates like prisoners, they will respond like prisoners. If you treat them like people, they will respond like people.*”²⁶¹

The Peruvian experience has been studied by Postema, Cavallaro, and Nagra, who consider the incorporation of the controlled organization of detainees and the communication between detainees and authorities as central factors in the improvement in conditions in penal institutions in Peru.²⁶² Further, those authors have noted that the application of the practices identified in Peru in other Latin American contexts (even in difficult centers) holds “the potential to transform prisons into institutions that are less violent, less abusive, and thus more rights-respecting and rehabilitative.”²⁶³ This does not mean that all problems have been resolved in centers like Lurigancho. However, the successes are evident and provide hope for meaningful change in other problematic detention centers in Latin America.

Finally, we close by observing that we do not propose “Prison Governance” as an ideal model for the operation of detention centers but instead as a provisional measure or intermediate approach. The ideal model would involve detention centers at or below capacity with adequate, well-trained, and fairly paid professional staff, as well as infrastructure designed for social reinsertion, rather than the dehumanizing conditions one finds in many prisons in the Americas. The ideal is the penal institution as a rehabilitative school, in which the institutional authorities exercise control over the center, but in which they do so with full respect for the basic rights of those deprived of liberty. As long as we have penal institutions in Latin America with the characteristics that we see today—extreme overcrowding, high levels of violence, unsanitary and deficient infrastructure, and frequent control by violent gangs—management based on the “Prison Governance” model offers the possibility of improving the daily lives of detainees and prison staff. To move in this direction, detention center administrators should incorporate rationally and progressively the voices of those detained.

261. This guiding principle is one that co-author Pérez Guadalupe recalls repeating to staff of INPE during his leadership of that body during the Reform Process.

262. Postema, Cavallaro & Nagra, *supra* note 14, at 61.

263. DE DARDEL, *supra* note 254; POSTEMA, CAVALLARO & NAGRA, *supra* note 14, at 62.

VI. EPILOGUE: COVID-19 UNDOES YEARS OF PROGRESS

In early 2020, the coronavirus (COVID-19) ravaged countries and penal systems across the globe.²⁶⁴ Peru was no exception.²⁶⁵ By early March 2020, the country had registered its first case.²⁶⁶ As with most everything else that stood in its path, the nation's prison and public health authorities, and by extension, the Peruvian Prison Reform Process, were outmatched by COVID-19. During March and April, analysts urged authorities in the penitentiary system and in public health to take measures to respond to the impending pandemic, both in general, but in particular, within closed, overcrowded detention centers, due to the special risks they posed.²⁶⁷ Little was done.²⁶⁸ Officials took timid measures, underestimating the intensity of the virus and mismanaging and misrepresenting the intensity of the crisis.²⁶⁹ It did not take long for them to lose control of detention centers as well as the response to the broader national health crisis.²⁷⁰

The unravelling began even before COVID-19 had taken its full, gruesome toll on the prison system. While authorities downplayed the severe risks facing overcrowded detention centers with poor hygienic conditions and insufficient staff, detainees took matters into their own hands, instigating a series of protests and incidents.²⁷¹ In northern Peru, on March 18, 2020, a full-blown riot took

264. Talha Burki, *Prisons are in no way Equipped to Deal with Covid 19*, THE LANCET (May 2, 2020), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30984-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30984-3/fulltext).

265. José Luis Pérez Guadalupe & Lucía Nuño Cisneros, *Condenados a una Pena Privativa de la Salud: La crisis carcelaria en tiempos del coronavirus*, in PANDEMONIO 138 (2020).

266. *Id.* at 123.

267. Lucía Nuño Cisneros, *La Pandemia de COVID-19 en las Cárceles Peruanas: Prevenir el Desgobierno y la Mortalidad de Grupos Vulnerables*, ENFOQUE, March 27, 2020, <https://www.enfoquederecho.com/2020/03/27/la-pandemia-de-covid-19-en-las-carceles-peruanas-prevenir-el-desgobierno-y-la-mortalidad-de-grupos-vulnerables/>; *Personas Detenidas y sus Familiares: (In)acciones Estatales ante el virus COVID-19 en los Países de Sudamérica, Centroamérica y el Caribe*, CLACSO, <https://www.clacso.org/personas-detenido-y-sus-familiares-inacciones-estatales-ante-el-virus-covid-19-en-los-paises-de-sudamerica-centroamerica-y-el-caribe/>; *Por Una Nueva Convivencia: La Sociedad Peruana en Tiempos del COVID-19*, GRUPO TEMÁTICO DE CIENCIAS SOCIALES, <https://www.clacso.org/wp-content/uploads/2020/05/Por-una-Nueva-Convivencia.pdf>.

268. *Serie Informes Especiales N° 03-2020-DP/Situación de las Personas Privadas de Libertad a Propósito de la Declaratoria de Emergencia Sanitaria*, DEFENSORIA DEL PUEBLO (July 25, 2020), <https://www.defensoria.gob.pe/wp-content/uploads/2020/04/Serie-de-Informes-Especiales-N%C2%BA-003-2020-DP.pdf>

269. Ten days after the quarantine began in Peru, without having tested within detention centers, Peruvian President Martín Vizcarra declared that there were no cases in prisons in the country. DE DARDEL, *supra* note 254, at 5 (citing *Revista Caretas* (Mar. 24, 2020)).

270. The situation degraded quickly between April and May to the point that on 8 May the CIDH launched a communication condemning violence in Peruvian prisons and urged the government to adopt measures on behalf of life and integrity of inmates. *CIDH Condena Hechos de Violencia en Cárceles Peruanas*, OEA, May 8, 2020 <http://www.oas.org/es/cidh/prensa/comunicados/2020/107.asp>.

271. Pérez Guadalupe & Nuño Cisneros, *supra* note 265, at 126, 131–32.

hold in the Río Seco, Piura prison.²⁷² The next day, an incident followed in the Pisci prison in Chiclayo that left two prison staff injured. On March 22, a clash of detainees and an escape attempt resulted in three deaths at the El Milagro prison in Trujillo.²⁷³

The national government responded by dismissing the three top members of the National Penitentiary Council (the President, Vice President, and a third member), the body responsible for overseeing prisons in Peru.²⁷⁴ While a visible measure with political impact, the removal of those familiar with the system, its organization, and the representation of detainees in different centers was not wise. New leadership would assume control of a volatile situation in the midst of the worst public health crisis in generations and without the benefit of accumulated experience. The new INPE president, Gerson Villar, lasted only six weeks at the helm of Peru's prisons before being forced to resign. During this brief period, over 1,000 inmates and hundreds of staff contracted COVID and riots killed nine at the Castro Castro prison in one of many violent incidents.²⁷⁵

Not surprisingly, as COVID spread across Peru and in prisons, unrest intensified within detention centers. New authorities lacked the personal relationships and knowhow that might have allowed them to dialogue with those deprived of liberty. The climate of communication and respect was gone, replaced by hostility and mutual distrust. In just over a month, the internal security and relative peace of the past decade within detention centers had disappeared. By the end of April, there had been 15 disturbances and riots in prisons in Peru, principally in the most overcrowded and thus most dangerous centers. The worst incident was at the Castro Castro penitentiary in Lima on April 27. That uprising claimed the lives of nine detainees and caused injury to scores of others, including sixty staff and five police officers. Including those killed in the Castro Castro riot, a total of thirteen people died in protests and riots in Peru's prisons by April 30. By that month's end, there were 600 COVID cases registered among those incarcerated, with fifteen deaths.²⁷⁶ While authorities took some measures to reduce overcrowding and relieve tensions,²⁷⁷ these were insufficient to stop the spread of the disease or to quell unrest among those incarcerated.

272. *Serie Informes Especiales N° 03-2020-DP/Situación de las Personas Privadas de Libertad a Propósito de la Declaratoria de Emergencia Sanitaria*, DEFENSORIA DEL PUEBLO (July 25, 2020), <https://www.defensoria.gob.pe/wp-content/uploads/2020/04/Serie-de-Informes-Especiales-N%C2%BA-003-2020-DP.pdf>.

273. See DE DARDEL, *supra* note 254.

274. *Id.* (noting the Decree (*Resolución Suprema* N° 058-2020-JUS) by which the three authorities were relieved of their duties).

275. *Id.* at 26.

276. *Id.* at 8 (citing *El País*, (Apr. 28))

277. *Id.*

By July, 300 of those incarcerated in Peru had died of COVID, as had 28 prison staff.²⁷⁸ A process that had taken years of patient work had come undone. The mutual confidence that had been established over years disintegrated in a matter of days and weeks, as thousands of detainees and guards, locked in overcrowded, diseased centers, fought for their lives using whatever means they could. The practices and patterns of behavior developed over a decade could not withstand the onslaught.

Much of what went wrong can and should be attributed to the mismanagement of the authorities in power in early 2020. Unlike their predecessors, with the notable exception in Lurigancho, explained below, they failed to consult with those directly affected. They did not seek to govern collectively. Instead, they underestimated COVID-19, made poor decisions, and failed to communicate clearly what was being done.

Interestingly, Lurigancho, the center of the Peruvian Prison Reform Process, served as an exception to the mismanagement that afflicted the broader prison system.²⁷⁹ When the crisis began, Lurigancho shared the same risk factors that afflicted the system in general: overcrowding, understaffing, and resource deprivation.²⁸⁰ Indeed, on these measures, at roughly three times capacity, the prison was in a more severe state than almost all other centers. Yet by all measures, Lurigancho outperformed other prisons in managing COVID and maintaining the peace.²⁸¹ The director and delegates worked together closely from the beginning of the quarantine. They implemented isolation protocols, purchased medicine and personal protective equipment, and worked through the sanitary emergency in a coordinated fashion.²⁸² They took tests strategically (only 300 of the 10,000 detainees) and controlled the outbreak, while maintaining peace within the prison.²⁸³ The levels of COVID infection in the prison were no higher than among the non-incarcerated population.²⁸⁴

In Peru, as in much of the world, the response to COVID-19 in detention centers in 2020 was woefully deficient. In the United States—whose prisons should not be considered ideal by any means, and that has had among the highest per capita COVID rates in the world—levels of COVID infection were four

278. Pérez Guadalupe & Nuñovero Cisneros, *supra* note 265, at 152.

279. *Penal de Lurigancho Continúa Acciones Preventivas Contra el COVID-19*, GOB.PE (Feb. 7, 2021), <https://www.gob.pe/institucion/inpe/noticias/341373-penal-de-lurigancho-continua-acciones-preventivas-contra-el-covid-19>.

280. Lucía Nuñovero Cisneros, *¿Vacunar en las cárceles?*, EL COMERCIO (Feb. 12, 2021), <https://elcomercio.pe/opinion/colaboradores/vacunar-en-las-carceles-por-lucia-nunovero-vacunacion-carceles-penales-covid-19-noticia/?ref=ecr>

281. Lurigancho, *la Mayor Cárcel de Latinoamérica Donde los Presos se Unen para Vencer al Covid-19*, FRANCE 24 (June 23, 2020), <https://www.france24.com/es/20200623-carceles-covid19-peru-coronavirus-contencion-hacinamiento>.

282. Pérez Guadalupe & Nuñovero Cisneros, *supra* note 265, at 148.

283. *Id.*

284. *Id.* at 25.

times higher in prisons than among the population in general.²⁸⁵ To expect swift and effective control of the pandemic inside Peru's overcrowded and underfunded prison system would not be reasonable. But the degree of mismanagement was stark, particularly in comparison to the successes achieved in the decade prior to the outbreak.

Had there been an intelligent, cooperative response (as in Lurigancho), consistent with the animating principles of the Peruvian Prison Reform Process, disaster might well have been averted. This article and the remarkable experience in Peru in the years preceding the disaster of 2020 strongly suggest that this is the case. But, as with so much about the coronavirus, we can only imagine how the crisis might have been addressed more effectively had intelligence and compassion carried the day.

285. The figures for those incarcerated in the U.S. are roughly four times the national average for those not in detention centers. Beth Schwartzapfel, Katie Park & Andrew Demillo, *1 in 5 Prisoners in the U.S. Has Had COVID-19*, THE MARSHALL PROJECT (Dec. 18, 2020, 6:00 AM), <https://www.themarshallproject.org/2020/12/18/1-in-5-prisoners-in-the-u-s-has-had-covid-19>. As of mid-December 2020, about 20% of those incarcerated in the United States had been afflicted by COVID-19—more than 275,000 people—with 1,738 deaths reported. *See id.*; *A State-by-State Look at Coronavirus in Prisons*, THE MARSHALL PROJECT (Dec. 18, 2020, 12:35 PM), <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons> [<https://web.archive.org/web/20201218202635/https://themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>].