

# Prison overcrowding and over-occupation: what we are talking about and the situation in Spanish prisons

Marco A<sup>1,2</sup>, García-Guerrero J<sup>3</sup>.

<sup>1</sup>Prison Health Programme. Catalanian Health Institute.

<sup>2</sup>CIBER of Epidemiology and Public Health (CIBERESP).

<sup>3</sup>Assistant editor of the Spanish Journal of Prison Health.

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This journal published an article on prison over-occupation and its impact on individual and collective health in 2012<sup>1</sup>, and we have been asked to reflect on this issue eight years later. In 2012, there were 10.2 million inmates/day worldwide<sup>2</sup>. This figure now stands at 11 million, although the growth in the number of inmates has been very similar to the increase of the world population (3.7% vs. 3.0%, respectively in the last 3 years)<sup>3</sup> and so it can reasonably be assumed that the prison population has remained stable over this period.

The fact that prison over-occupation is unacceptable and negatively impacts health is undeniable. One the one hand it is a breach of international prison standards<sup>4-7</sup> and is also: a) a hazard to inmates' psychological and physical health; b) a public health risk; c) an underlying cause of danger for prisoners and prison professionals; and d) a breach of human rights, in which cruel and degrading treatment may be involved. The number of references in the literature on how this phenomenon affects the psychological and physical domains at individual, collective and environmental levels is immense.

The term "overcrowding" has been and continues to be widely used to refer to large numbers of inmates in penitentiary spaces that do not have the space to house them. However, this term is open-ended and lacks any clear consensus as to what it is exactly and how it can be measured<sup>8</sup>. There is an increasing tendency therefore to use the term over-occupation, which is more specific and measurable. In any case, there continues to be a certain degree of conceptual confusion, and it is not uncommon to find that the incarceration rate is used to indicate excess occupancy, which is really the rate of persons incarcerated per 100,000 inhabitants, without making

any reference to the space or its characteristics. The level of prison occupation and the incarceration rate, or the crime rate, which is another concept that is often used, are not similar concepts, although they are sometimes indiscriminately and erroneously used. Spain for example has a crime rate (rate of crimes and misdemeanours per 1,000 inhabitants) of 45.6<sup>9</sup>, which is considered to be a low one, and as a country it does not occupy a high place in the European classifications for the main types of crime (homicide, rape or robbery), and so it is regarded as one of the safest countries in Europe. However, the rate of incarceration or imprisonment, which in 2019 was 111 in Catalonia and 128.5 in the rest of Spain<sup>10</sup>, is one of the highest in Europe and almost double that of other countries in northern Europe, where the lowest rates are to be found. To measure prison occupation, the Council of Europe recommends using the "density"; or rather, the ratio between the number of inmates and the number of available places, expressed as the number of inmates per 100 places available. When this yardstick is used, there are about one hundred countries with prisons whose capacity is exceeded by more than 10%. There are more than 20 countries with over-occupation that exceeds 200%, a few countries whose over-occupation exceeds 400% or 500% and there is even one in the Republic of the Congo, which exceeds 600%<sup>3</sup>. Spain has an occupancy rate of 80%. It is important to point out that over-occupation is not only a patrimony of poor countries. According to the SPACE report of 2020<sup>11</sup>, 15 European countries acknowledged that they had over-occupied prisons and 10 (8 of 10 member states of the European Union) defined the levels of over-occupation as "severe".

The increasingly common use of "density" as a unit of measurement of occupation enables rates

of occupation to be compared according to countries, geographical areas, socio-economic levels, etc., although there are still debates about this issue or on particular features that have yet to be agreed on. An example of this is the term “social density”, which measures the number of persons per given area, per wing, and even per dormitory or cell, and which may not positively or negatively coincide with the evaluation of global density.

As regards the occupation of the cells, the Mandela Rules or the United Nations Standard Minimum Rules for the Treatment of Prisoners<sup>12</sup> recommend individual cells, although a Spanish study<sup>13</sup> showed that 85% of inmates considered that sharing a cell with a fellow inmate could have some positive aspects (company, makes imprisonment more bearable, less anxiety, etc.), as well as the classic negative aspects (insecurity, lack of privacy, etc.). There may also be other permanent or temporary reasons to justify exceptions to the individual use of compartments, such as family reunification or a recommendation by medical staff.

Neither is there a definitive consensus on the minimum space that a cell should have. The European Prison Rules of the Council of Europe<sup>5</sup> give no specific requirements for minimum space, but there are other recommendations that state that cells should have at least 5.4 square metres if they are individual ones<sup>6</sup>, others that consider that they should not be less than seven square metres<sup>14</sup> while some that recommend that modern facilities should provide cells of at least 9-10 square metres<sup>14,15</sup>. In Spain, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment recently published a report on visits made to prisons in Catalonia between 6 and 13 September 2018, which comments on the “*good overall conditions of detention, with cells of 10 m<sup>2</sup> that are usually occupied by just one prisoner*”<sup>7</sup>. The CPT had planned to extend its periodic visits to other Spanish closed prisons in 2020, where the inmates’ living conditions are likely to be similar to those in Catalonia.

The space and the number of inmates housed per cell is important, but there are also other relevant factors that might have an influence on inmates’ level of health and which have not been studied to any great extent. The general recommendation is that inmates should spend at least 10 hours a day outside their dormitories or cells and participate in activities (exercise, work, training, religious activities, library, games, etc.), although other factors should also be taken into consideration, such as the quality of life, provision

of staff and the range of activities on offer<sup>4</sup>. Many of these factors may be limited by the socio-economic level of the prisons’ location.

A prison has rehabilitative functions, but alongside those it also serves the purpose of detaining and holding in custody persons incarcerated as a result of legal rulings. Inmates depend on the Administration, which should guarantee: a) adequate environmental conditions, to the extent that imprisonment does not become hazardous for the inmate’s life or health; and b) suitable structural conditions and human and material provisions. Some of these, such as medical personnel, are clearly lacking at present; at least in prisons managed by the Spanish Ministry of the Interior. The Administration has the obligation to improve environmental conditions so as to prevent the loss of freedom from also becoming a loss of health. To do so, it is essential to assign specific economic resources that ensure that structural deficits are eliminated and that also improve healthcare conditions for the prison population.

## CORRESPONDENCE

Andrés Marco  
Enfermedades Infecciosas  
Programa de Salud Penitenciaria  
Gran Vía de les Corts Catalanes, 587-589  
Barcelona 08007  
E-Mail: amarco@gencat.cat  
andres.marco.m@gmail.com

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