



# The penitentiary system in Ecuador in relation to the right to personal integrity

**El sistema penitenciario en el ecuador frente al derecho de integridad personal**

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## ABSTRACT

The Ecuadorian prison system aims to generate the space and means for people who have committed an unlawful act to comply with the sanctions imposed by the judicial authority, where their fundamental and specific rights must be respected for this group of priority attention, with emphasis on the right to personal integrity, which is composed of the physical, psychological, moral and sexual aspects, which, ultimately, make up human dignity and well-being. This article was carried out using the hermeneutic method through a documentary analysis, therefore, it worked from a qualitative approach. The purpose is to analyze and evaluate the effectiveness of the protection of the rights of persons deprived of liberty, with emphasis on the right to personal integrity, in the light of the penitentiary system, which presents a series of challenges, as well as its international regulation. It is clear that the constitution recognizes specific rights for inmates,

which are complemented by principles for their application, institutions for their protection, disciplinary regulations in the centers and jurisdictional guarantees such as Habeas Corpus for their protection, including a corrective approach to the execution of the sentence.

## RESUMEN

El sistema penitenciario ecuatoriano pretende generar el espacio y medios para que las personas que han cometido un acto antijurídico cumplan las sanciones interpuestas por la autoridad judicial, donde se deben respetar sus derechos fundamentales y específicos para este grupo de atención prioritaria, con énfasis en el derecho a la integridad personal mismo que está compuesto por el aspecto físico, psicológico, moral y sexual, que, en definitiva, configuran la dignidad y bienestar humana. El presente artículo se realizó empleando el método hermenéutico a través de un análisis documental, por ello, se trabajó desde un enfoque cualitativo. El objeto es analizar y evaluar la efectividad de la protección de los derechos de los privados de libertad con énfasis en el derecho a la integridad personal, bajo la mira del sistema penitenciario, mismo que presenta una serie de desafíos y retos, así como su regulación internacional. Ante lo cual se desprende que la constitución reconoce derechos en específico para los reclusos, lo que se complementa con principios para su aplicación, instituciones para su resguardo, normativa disciplinaria en los centros y garantías jurisdiccionales como el Hábeas Corpus para su protección, incluso con un enfoque correctivo para la ejecución de la pena.

## Keywords / Palabras clave

rights, habeas corpus, personal integrity, prison system, prisoners

Derechos, habeas corpus, integridad personal, privados de libertad, Sistema penitenciario

## Introduction

The penitentiary system is defined within the social sphere as that mechanism for the fulfillment of sentences, fixed to an individual through a sentence, in support of the punitive power of a State in criminal matters, which has elements to promote and rehabilitate those subjects who have caused an alteration in society due to an

unlawful behavior, in order to prevent the commission of future infractions, whether or not of the same nature. This system must have sufficient resources and trained personnel to administer and control the centers of deprivation of liberty, and to implement prison policy aimed at achieving the two elements described above, such as rehabilitation and reintegration of individuals, in addition to the prevention of recidivism.

Persons deprived of liberty (hereinafter PPL) are those subjects who have been imposed as a punitive measure by a final conviction, the prohibition of freedom of movement, upon determining their responsibility in the commission of a criminal offense, as well as those on whom a precautionary measure of preventive detention has been applied, to ensure the immediacy of the defendant in the criminal case. It should be noted that the Constitution of the Republic of Ecuador recognizes them as a group of priority attention, since they are restricted a fundamental right such as freedom, which makes the State responsible for ensuring their human dignity and integrity, through the competent agencies and authorities, through which it will establish the necessary measures to ensure this particular.

The right to personal integrity, the subject of this study, covers the physical, psychological, moral and sexual aspects of a person, which are conducive to the dignity of the human being, therefore, Ecuadorian law prohibits under any aspect that actions or omissions are committed that generate harm or affectation to the individual, as a result of cruel, degrading or inhuman treatment, especially when there is a hierarchy of power, a situation that can be seen contemplated in prisoners who are under the provisions and mandates of the prison authorities.

This right, from the context of physical integrity, constitutes the care for the health and physical well-being of people, which is why the State must promote it through adequate and timely medical care, including for the prevention of diseases, as well as access to a nutritious diet and physical activity through sports, among others. Psychic integrity is the emotional and mental aspect of the person, which, due to these circumstances of vulnerability, can be affected by pathologies such as anxiety or depression. Sexual integrity refers to this sexual freedom, to be able to discern and decide on their sexuality, and includes protection from sexual violence during their imprisonment. Finally, moral integrity refers to convictions, in which the customs and beliefs of each individual must be respected; therefore, this broad dimension,

whose focus is the case of PLW, is intended to be guaranteed by the State.

The right to integrity, in the Ecuadorian context and its prison system, seeks to verify its effectiveness, highlighting that the prison system and policy "(...)has been widely criticized for its overcrowding, inadequate facilities, violence, corruption and poor conditions in general" (Wilmer Francisco Ortiz-Criollo, 2023). (Wilmer Francisco Ortiz-Criollo, 2023) This is in addition to the provision contained in the Comprehensive Organic Penal Code (hereinafter COIP), which states that with respect to inmates in state custody "The State shall be liable for the actions or omissions of its servants that violate the rights" (COIP, 2014, art. 676) of the prison population.

4

Therefore, the scope of the jurisdictional guarantee of habeas corpus, which in relation to persons deprived of liberty protects three fundamental rights, such as life, liberty, and personal integrity. This tool, which essentially seeks that the person deprived of liberty in an illegal, arbitrary and illegitimate manner may recover it, is extended and may be activated in the event that the person is the victim of cruel or inhuman acts.

The objective of this research is to investigate in the Ecuadorian prison system, the protection of the rights of persons deprived of liberty with a special focus on the right to integrity, in order to verify, if necessary, mechanisms to ensure its guarantee and effectiveness. To this end, topics will be addressed to identify the functionality of the prison system in Ecuador and the situation and regulation of those deprived of their liberty.

## **Materials and Methods**

The present work called "The penitentiary system in Ecuador facing the right to personal integrity", by its nature, was developed using the hermeneutic method, since a deductive analysis of the selected topic was carried out, starting from the description of general conceptions to more specific notions. A legal analysis of the corresponding regulations was also carried out in order to obtain a better understanding of the subject of study. The approach used is qualitative since neither a population study nor a numerical-statistical analysis was required, but rather, the relevant characteristics and elements were observed.

## Results

### Persons deprived of liberty as a priority group of attention

The Ecuadorian constitutional text (2008) Article 35 recognizes persons deprived of their liberty among the groups receiving priority attention, stating that they "shall receive priority and specialized attention in the public and private spheres" (Constitutional Assembly, 2008, p. 16). (Constituent Assembly, 2008, p. 16).regulating specific rights for them. Although all individuals are equal in terms of formal equality, it must be considered that those who are part of these groups present some distinction or characteristic that places them in a situation of vulnerability and, in order to balance this inequality, actions and measures supported by constitutional and infra-constitutional regulations are established, guiding and promoting actions by the relevant authorities.

Their inclusion in this group is due to the restriction of one of the fundamental rights for human development and existence, freedom, where regardless of the reason for their deprivation, the PPL have been removed from their usual environment, and are subordinated to the penitentiary system. As noted in this case, these individuals "also enjoy fundamental rights, however, because of their condition, the right to liberty is exempted and as a consequence they are considered as vulnerable groups" (Lascano Sinchiri & C. C., 2007). (Lascano Sinchiri & Cárdenas Paredes, 2022, p. 218).In short, they are persons who have been deprived of one of their fundamental subsistence rights, and therefore merit the assignment of certain rights specific to this group in order to protect their dignity in the generic context.

Article 51 *ibidem* establishes a series of rights assigned to this human group, among which it is established that under no condition may prison officials take isolation measures as a form of correction, they have the right not to lose contact with their family and the professionals handling their case, and the right to indicate to the authorities the treatment they receive during their stay in prison, under the consideration that the State must ensure their welfare, with special emphasis on the absence of cruel or degrading treatment.

The State, therefore, being the guarantor of their rights, must have the necessary resources to ensure the right to health, with medical supplies and care by professionals in the area, as well as access to care for their needs for their professional, academic and cultural

development, which will allow their reintegration into society. On the other hand, there will be preferential treatment for pregnant or breastfeeding women, the elderly, adolescents, and those with disabilities, since they are doubly vulnerable. Finally, protective measures must be taken for individuals who are dependent on the PPL. (Constituent Assembly, 2008). These are the main rights addressed in the state political charter.

This is why, from the perspective of priority attention, there is a need to develop specific policies, programs and strategies to guarantee the effective protection of the rights of these people, such as improving their living conditions, including their housing, food, medical care and hygiene services, promoting their access to educational and cultural, sports, vocational and labor activities, in order to enable their rehabilitation and facilitate their social reintegration.

These include establishing specific measures for the protection of the rights of women and persons belonging to ethnic or cultural minority groups, as well as differentiating in the case of adolescent offenders; and developing training plans for personnel in charge of the custody and surveillance of persons deprived of liberty, aimed at guaranteeing human rights and the social reintegration of inmates.

#### Right to personal integrity of persons deprived of liberty

The right to personal integrity is a fundamental and intrinsic human right of individuals, in short, it corresponds to the compendium of individual attributes that cover the characteristics of invariable, indivisible and unbreakable, where it is composed of physical, psychological, moral and sexual integrity, which constitute the set of elements to ensure their welfare.

This right is recognized in the Ecuadorian national political charter, which makes it one of constitutional rank, so that Article 66 numeral 3, in its various paragraphs to achieve the objective of protecting the safety and welfare of persons, in addition to the integrity in the dimensions detailed above, extends by referring to the access to a life free of violence, the prohibition of forced disappearances, the use of treatment that causes pain or suffering to the individual and is cruel, inhuman or degrading, and the use of genetic material or scientific experimentation contrary to human rights. (Constituent Assembly, 2008).

The State must take into account situations of double vulnerability, where among the prison population there are the elderly, pregnant women, people with disabilities, catastrophic illnesses, where additional assessments for their physical integrity (health) are imperative; and on the other hand, that of adolescent offenders raises considerations such as confidentiality and protection of their identities because "This prerogative constitutes a legal guarantee for adolescents, avoids dishonoring them morally" (Bermúdez Santana, 2021, p. 34). (Bermúdez Santana, 2021, p. 34).which is another dimension of the right to integrity.

With regard to the right under study, the COIP typifies crimes against personal integrity, among which the crime of torture is established, especially in relation to PPL, which implies that pain or suffering is inflicted on a person, for which the deprivation of liberty of whoever commits it is proposed as a sanction, to which it is extended that if a public servant with competence to prevent this fact does not act, he will also be subject to be punished with deprivation of liberty. It should be noted that as torture is typified, it states that it is not limited to the physical, being that it textually states "(...) of a physical or psychological nature or submits it to conditions or methods that annul its personality or diminish its physical or mental capacity." (National Assembly of Ecuador, 2014)which reiterates different dimensions of the right.

Physical integrity is made up of different aspects, which aim to protect the individual's physical body as well as his or her physical health, and to prevent acts of torture. In the area of health, the law recognizes that the prison population must have the resources to ensure their comprehensive health, so that the various rehabilitation centers must have a doctor and a psychologist to cover basic and general aspects; however, if specialized care is needed, it will be coordinated with the Ministry of Public Health for the care of more complex diseases or catastrophic or other diseases. In addition, preventive medical care such as vaccination campaigns, etc., should be included.

Activities that contribute to the health of inmates integrate the attention to their nutritional and recreational needs. Therefore, they must have adequate food, meeting the needs and particularities in the face of facts such as double vulnerability, because some individuals may have specific medical conditions that require a nutritional plan, which is known as special diets assigned to pregnant women or people

with catastrophic diseases, while the recreational area consists of physical activity through sports practices.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information, confession or punishment" (United Nations, 1984, p. 01). (United Nations, 1984, p. 01). (United Nations, 1984, p. 01), so it is appropriate in the case of persons deprived of liberty to receive the aforementioned humane treatment, which adheres to their right to be protected against any type of violence, mistreatment, abuse or injury, whether by the State or by private individuals. This fact gives room to the next dimension, the psychic one.

The psychic aspect, formerly understood as the essence of a human being, the way they have to understand reality, because no individual responds to an action in the same way, each one will have different opinions or considerations, in conclusion, this right is the sum of behaviors, feelings, thoughts that govern the life of an individual and that shape his personality.

Therefore, psychological integrity is indispensable because it provides well-being in all senses, allows the development of capacities and skills that make an individual confident and balanced. Such integrity must also be granted to persons who are deprived of their liberty in order to preserve their psychological stability, so that respect for this right prevents cruel practices such as torture, which not only affects a person physically but also causes alterations in their mental and emotional state, from being carried out by the authorities and personnel in charge of their custody.

It is necessary to mention that, in the past in the Ecuadorian State coercive practices were used to obtain confessions, since the person was subjected to manipulate his mind, which caused problems in his emotional state, however, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is subscribed, which in its Art. 11 provides as an obligation of States to keep "(...)systematically under review interrogation rules and instructions, methods and practices, as well as arrangements for custody and treatment..." (United Nations, 1984, p. 04) (United Nations, 1984, p.



04) in relation to inmates in order to avoid any case of torture, including psychological torture.

It can be established that penitentiary type centers merit an adequate distribution, in order to satisfy the needs of the inmates, and among these needs is psychological care, since people who are deprived of their freedom, due to their very condition of isolation from the rest of society and subjection to a preset penitentiary regime with a fixed standard, where they lose their intimacy; This can put their mental stability at risk, which, if not taken care of, will have negative repercussions, causing pathologies such as anxiety and depression or an alteration of the personality caused by the rupture of the social connection when they are cut off from family and social ties, therefore, the State must provide security and consider their emotional state; this is another argument for the development of multidimensional public policies.

It is necessary to take into account that, the COIP, "guarantees the rehabilitation of PPL and their needs, capacities and abilities must be taken into account." (National Assembly of Ecuador, 2014, p. 31). Therefore, in the framework of the Regulations of the National Social Rehabilitation System, it defines the treatment of PPL as a "(...) therapeutic and psychosocial process, which stimulates the proactive participation of the person deprived of liberty, within the framework of a progressive and regressive system that makes their rehabilitation and social reintegration viable". (Ministry of Justice, Human Rights and Cults, 2016).. However, without a clear prison policy for their rehabilitation and sufficient resources, it is unenforceable and instead, inmates become unproductive and dependent on the system, with little chance of being reintegrated into Ecuadorian society.

Another aspect of the right to integrity is morality, which, from a reflective point of view, leads the individual to consider what is good or bad, therefore, to differentiate what is just (legal) from what is unjust (contrary to the rules), which in turn safeguards the foundations to act at a social level within the framework of convictions, beliefs, recognition of their own identity and autonomy, and honor; where respect for their dignity and the value of each person as a human being is added.

The persons deprived of liberty, being part of the priority attention group, are susceptible to situations that violate their rights, so the State should consider within the prison policies an intercultural approach to

facilitate their stay in the prison taking into account the traditions and customs, especially of the indigenous communities where each individual plays a fundamental and vital role in their way of life, being that in the cultural field will be carried out jointly between the State portfolios, which are assigned in issues of culture and heritage, justice and human rights. From this position, "moral integrity is the right of every person to develop his life in accordance with his beliefs." (Alba, 2021, p. 1) (Alba, 2021, p. 1), in which the human being must be able to live in accordance with his convictions, since these represent his values and traditions, which are the norms that the subject respects at the moment of executing his daily actions.

The main focus in relation to persons deprived of liberty in relation to moral integrity is being subjected to cruel, inhuman or degrading treatment, where it is the State, through its officials or persons who are in the exercise of any public function, who may perform acts directly or give their consent or acquiescence to perform them, and that these are intended to produce in the prisoner feelings of fear, anguish, inferiority, humiliation, or the breaking of his moral resistance. Moral integrity is violated when the person is the victim of denigrating treatment that undermines his or her faculty to decide and simultaneously his or her dignity and honor, discarding his or her own convictions; these affectations may be more evident in Rehabilitation Centers, since the PPL are subordinated to the penitentiary system.

In view of such precepts, we reiterate the statements of the Inter-American Court which refers that it is the duty of the States "to deploy immediate actions that guarantee the physical, psychological and moral integrity of the inmates, as well as their right to life and the right to enjoy the minimum conditions of a dignified life" (Inter-American Court of Human Rights, 2020, p. 29). (Inter-American Court of Human Rights, 2020, p. 29). The objective of the penitentiary system is rehabilitation and reinsertion.

Finally, in the context of sexual integrity, it can be established that "it is a person's sexual freedom, dignity and capacity for discernment" (Ortiz, 2020, p. 2220). (Ortiz, 2020, p. 2220) which implies protecting the faculty that an individual has to voluntarily consent to a sexual act, this guarantees the choice of those who are legally capable (18 years old), avoiding being victims of any act that transgresses this dimension.

The COIP criminalizes behaviors that violate sexual and reproductive integrity, where the governing verb is the word obligate, which describes actions where using a superior position or authority a person is intimidated or forced to comply with a certain activity, preventing him/her from self-determination, i.e., he/she lacks the ability to choose, therefore, this type of behavior is performed against the will of the subject, since he/she did not give his/her consent.

The violation of sexual integrity occurs when the person cannot resist and is forced to perform certain actions against their will, these situations are aggravated in the case of PPL, such as "women are often asked to submit to searches that degrade their integrity, as well as the sexual favors they perform to protect themselves from other inmates or to communicate with family members." (Antony, 2022, p. 4). Due to the situation, parameters have even been defined to separate the prison population, between adults categorized according to male or female sex and adolescent offenders, in addition to having staff of both sexes, so that female inmates are supervised exclusively by women, avoiding body searches by male staff, as well as prioritizing their medical care to protect their personal privacy.

Social rehabilitation centers "are places where individuals serve sanctions imposed by criminal law, through the different Courts or Tribunals" (Caro, 2019, p. 40), so it is the responsibility of the State to be the custodians of both the enforcement of penalties, but also the safeguarding of the rights of inmates, this implies that prison officials must avoid situations that may violate the dignity of inmates, especially actions that attempt against their personal integrity in its various dimensions.

#### The Right to Integrity of Persons Deprived of Liberty in the International Context

Mandela's rules are based on respect for the standards for the treatment of inmates, which promotes treatment with dignity, without there being a violation of their human value, therefore, the prohibition of cruel and degrading practices such as torture in prisons is established as the axis, In particular, under no circumstances may painful measures such as the restriction of food and water or the use of chains, the existence of medical services, the individualization of inmates, among others, be applied as disciplinary measures, guidelines that have been defined by the General Assembly of the United Nations.

The Convention against Torture is based on the ideals established in the Charter of the United Nations, which states that all human beings are equal in freedom and rights, therefore, these fundamental freedoms represent something intrinsic to the inherent dignity of persons, Therefore, it is prohibited to establish cruel and degrading punishments or to apply disciplinary measures based on torture in penitentiary centers, since these are painful and degrading, that is, they are inhumane practices.

Also, the Inter-American Convention to Prevent and Punish Torture is an international instrument, signed by Ecuador on May 30, 1986 and ratified on September 30, 1999. The States that signed this instrument have the obligation to take measures to prevent and punish torture and other cruel, inhuman or degrading treatment, as well as to guarantee that persons deprived of their liberty are treated with humanity and respect for their dignity. (Inter-American Commission on Human Rights, n.d.).

Thus, these various international instruments seek to safeguard the dignity and personal integrity of persons deprived of their liberty, with a special focus on preventing acts of torture.

#### Prison system in Ecuador

With the passage of time, new ways of applying the punitive power of the State have been sought, in which the deprivation of liberty seeks to

correcting behaviors that went against the system and social harmony, in such a way that by the 19th century the ideas of mistreatment, torture and physical punishment were left aside and replaced by imprisonment as a sanction mechanism" (Sailema, 2022, p. 10). (Sailema, 2022, p. 10)..

This system in the Ecuadorian case is called <<National System of Social Rehabilitation>>, which inserts centers of deprivation of liberty, which as noted by Goffman (1991) are institutions in which people have been contained with the obligation to remain there for a certain period of time, which will be under the supervision of a competent authority (as cited in Galvani, 2022, p. 13).

These deprivation centers, therefore, are classified between those of deprivation of liberty (CPPL) and those of social rehabilitation (CRS) and are under the responsibility of the Ministry of Justice, Human Rights and Cults, to whom the persons deprived of liberty will be under

the custody and surveillance. Ultimately, it aims to generate coordination between the various actors responsible for the context of justice, rehabilitation and reintegration of those deprived of liberty, both adults and adolescent offenders, to ensure their safety and well-being, including technical, educational and job training, as well as medical and psychological assistance.

Although in Ecuador deprivation of liberty has been applied as a sanction, it was not until 2007 that a modernization of the regulation system in prisons took place, since these were in crisis due to the lack of efficient management, in such virtue, additional institutions with competence in the matter were formed, for example, through "executive decree 784/2007 the Ministry of Justice and Human Rights was established, or the Transitory Unit of Management of the public and free criminal defense through decree 441/2007". (Aguirre Salas, León, & Ribadeneira, 2020, p. 97)..

A possible decline of the system may be due to "(...) prison overcrowding, militarization of social deprivation centers, torture, degrading and inhuman treatment, several directors and public servants imprisoned for corruption, criminal gang rivalry and mass murder" (Wilmer Francisco Ortiz-Criollo, 2023). (Wilmer Francisco Ortiz-Criollo, 2023)This exposes the prison reality, making it imperative to provide not only recognition of rights, but also guarantees and mechanisms to make them effective.

In Latin American countries it has been evidenced that there is a lack of control of the centers of deprivation of liberty, which are derived from the lack of an efficient government, which has led to these facilities witnessing scenarios such as overcrowding of the population, unhealthiness, violence, among others. (Jordán Naranjo, Caicedo Banderas, Huera Castro, & BucaramCaicedo, 2019, p. 1)..

A latent problem in the penitentiary system is identified by the overcrowding of these centers, since most of them exceed the limits or the capacity for which they were built, in many cases this aspect responds to the abuse of pretrial detention, which "deprives of liberty an individual who does not have a conviction, but who is in a judicial process" (Solar, 2021, p. 127). (Solar, 2021, p. 127).This statement is supported by the study conducted by Melo Vélez and Arteaga on "The militarization of prisons and the prison crisis in Ecuador, where in 2022 out of 34,821 persons deprived of their liberty, at least 60% of them do not have a conviction" (Melo Vélez & Vélez, 2021, p. 127).

(Melo Velez & Velez Arteaga, 2023, p. 13).. In view of these considerations, it is necessary to identify the reality of the rights of persons deprived of liberty with emphasis on the right to life and integrity during their stay in one of these centers.

This system, which faces a series of multifaceted challenges, with limited human, physical and economic resources, and a possible lack of offers for an adequate reinsertion and a scarce control of the execution of sentences, must promote action axes oriented to penitentiary security, rationalize the use of the deprivation of liberty, strengthen the institutionalism of post-penitentiary social reinsertion, among others, highlighting that the system has as its "(...) purpose around the deprived of liberty, the caution and protection of their rights, the development of capacities, comprehensive rehabilitation and socioeconomic reinsertion".) "the purpose of the system is to safeguard and protect the rights of inmates, develop their capacities, comprehensive rehabilitation and socio-economic reintegration" (Villamarín Rodríguez & López M. M.). (Villamarín Rodríguez & López Moya, 2023, p. 6684)..

Habeas corpus as a protection mechanism for persons deprived of liberty

Ecuador, being a constitutional country, enshrines a broad category of rights, which can be claimed through actions in the ordinary jurisdictional venue, but at the same time it has defined principles for their application and guarantees in this norm, which "are means available to the inhabitants to uphold their rights before the authorities" (Jorge Mateo Villacres-López, 2021, p. 1, p. 1). (Jorge Mateo Villacres-López, 2021, p. 1).that is to say, they are mechanisms to promote their effectiveness.

These constitutional guarantees are classified in two, the primary ones where the normative and public policies are found (at doctrinal level are added those of institutionalism of the State), and the secondary ones that are applicable when the first ones are not sufficient to solve the problem, being the jurisdictional ones that have as purpose to allow the citizen to use an action, in the seat of the constitutional justice, so that the effective protection of the rights is fulfilled. Within this classification there is a subdivision with seven types of actions, each one for the protection of a specific right, and among them is the Habeas Corpus, which is activated when a person is deprived of his

freedom illegitimately, illegally or arbitrarily, from its original conception.

Habeas Corpus is currently contained in Article 89 of the 2008 Constitution, which states that "its purpose is to recover the liberty of anyone who is illegally, arbitrarily or illegitimately deprived of it, by order of an authority or any person, as well as to protect the life and physical integrity of persons deprived of liberty" (Constituent Assembly, 2008, p. 40). (Asamblea Constituyente, 2008, p. 40). In other words, it expressly emphasizes the physical integrity of the inmates.

In the words of the Inter-American Court of Human Rights (hereinafter IACHR), "prisoners are overcrowded and subjected to violence by their co-prisoners or their guards" (IACHR, 2021, p. 2021, p. 207). (IACHR, 2021, p. 247). For this reason, the jurisdictional guarantee of Habeas Corpus protects three fundamental rights: liberty, life, and personal integrity. This tool can be activated individually or collectively when the detention is abusively executed, or when the deprivation of liberty generates affectations to related rights such as physical integrity.

In this sense, it is understood that "prison security guarantees security and social defense" (García, 2022, p. 520). (García, 2022, p. 520). Therefore, the fact of being deprived of liberty temporarily or permanently, due to a sanction imposed by the judges on a certain person for committing a conduct contrary to the law, does not imply that he deserves a degrading treatment or space for his rehabilitation, which is why the State has established mechanisms to ensure that in case of a violation of these essential rights, they can access jurisdictional mechanisms.

Verifying decisions of the IACHR. "A relevant case corresponds to the one filed by the "Instituto de Reeducación del Menor" v. Paraguay" (Inter-American Court of Human Rights, 2020). (Inter-American Court of Human Rights, 2020). In its judgment of September 2, 2004, the Court stated that it is the obligation of the State to be the guarantor of the rights to life and personal integrity of the PPL, generating minimum conditions of human dignity in detention centers and "that the manner and method of exercising the measure does not subject him to anguish or difficulty that exceeds the inevitable level of suffering intrinsic to the detention", however, the "inhuman and degrading conditions, exposing them to a climate of violence,

insecurity, abuse, corruption, distrust and promiscuity" evidenced the accreditation of physical, psychological or moral violence that aggravates the conditions of detention, which was the subject of a generic habeas corpus.

Within the framework of the Organic Law of Jurisdictional Guarantees and Constitutional Control (hereinafter LOGJCC), it states that Habeas Corpus has several fields to extend its scope of protection of ppl, thus reflecting its protection of related rights either against public authorities or in relation to any person, Therefore, it guarantees deprivation of liberty after a written and reasoned order by the competent judge, except in cases of flagrante delicto, avoiding forced exile, torture, cruel, inhuman or degrading treatment, immediate release after the pertinent judicial disposition, or if the preventive detention has expired, the impediment of incommunicado detention or being subjected to treatment that violates their human dignity.

Therefore, in addition to the generic habeas corpus, there is the corrective habeas corpus whose "claim is aimed at ceasing acts of an injurious nature, in addition to seeking reparation for omissions made by prison officials" (Velasategui Ruiz & López Moya, 2023, p. 6105). (Velasategui Ruiz & López Moya, 2023, p. 6105). The purpose of this action is not the freedom of the individual, but the protection of rights while serving the sentence, noting that these guarantees always seek reparation, i.e., this action in addition to protecting freedom, seeks to safeguard related rights such as life and integrity, ensuring that human dignity is respected and acts that violate fundamental rights are not carried out.

Effectiveness of the mechanisms of legal protection of the right to integrity in the ppl (Discussion of results).

In Ecuador, detention centers do not have sufficient physical, human and economic resources to guarantee the constitutionally recognized rights of persons deprived of their liberty, since it has been shown that most of these centers have a population in excess of their capacity and population limit, This generates precarious conditions that violate the right to personal integrity of these individuals in its different dimensions (physical, psychological, moral and sexual), as well as other related rights such as life, health, food, security, among others.

A key point is that the State must focus on human dignity and with it the right to a dignified life, being that despite the sanction that weighs on them, they still maintain their quality of human beings, thus



emphasizing once again the aspiration of the prison system of treatment, reintegration and prevention of recidivism, which is achieved by generating skills and a post-penitentiary control.

One of the issues addressed in this context has been the facts of torture, cruel or inhuman treatment, highlighting the right of the PPL to declare before the competent authority the treatment received while serving the sentence, so that the right to effective judicial protection is maintained, being that the case is being executed. Under this same scenario, the actions of institutions such as the Ombudsman's Office have among their competencies to make on-site visits to these spaces to determine possible violations of rights, mainly against their personal integrity, since the conditions they present are not optimal for the protection and safety of these.

In addition, the Ombudsman's Office must supervise that no acts that violate human rights are carried out, bearing in mind that acts of torture, cruel, inhuman or degrading treatment are prohibited, since this puts at risk the guarantee of the right to personal integrity, and finally, it must ensure that due process is respected, given that several inmates are under preventive detention measures and criminal cases are currently being substantiated. This degree of protection in turn in the international context is exercised by consulates, in favor of human rights and due process of Ecuadorians who are deprived of their liberty.

In case of violation of rights, the Ombudsman's Office can also activate international protection mechanisms, an example of which is the Inter-American Commission on Human Rights, which has adopted the principles and good practices concerning persons deprived of liberty, additionally there is the subcommittee for the Prevention of Torture or the Committee against Torture of the UN who issue recommendations to Ecuador for internal adjustments, which became evident against a series of violent events that occurred in prisons. On the other hand, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights guarantee the protection of the rights of PPL, however, despite the existence of these international mechanisms, violence and insecurity in prisons is a latent problem.

It is worth mentioning that the COIP establishes a disciplinary regime, detailing minor, serious and very serious offenses by inmates, which can be perpetrated in prisons and are punishable by the authorities, including participating in fights or quarrels, deliberately endangering

their personal safety and that of the rest of the individuals in the prison, as well as failure to comply with the orders of those in charge of the prison, being their substantiation the competence of the authority determined in the center, however, the PPL will have the right to challenge the sanction before the judge of penitentiary guarantees. This regime also safeguards security in the different centers of deprivation of liberty, where, as detailed, it provides for the actions of administrative and jurisdictional authorities.

Finally, with a jurisdictional approach for the protection of the right to physical integrity and related rights, there is the guarantee of Habeas Corpus, where there is not only this action in a generic way, but also the corrective type that, although it does not seek to restore the right to liberty, it does protect the PPL from violations in the centers while they are serving their sentence. By using the jurisdictional guarantee of Habeas corpus, reparation is sought for the damage caused, so that, in this guarantee with a corrective approach, the specific case must be analyzed in order for the judge to define the compensation.

In addition, these violations can be committed not only among inmates, but also by public servants, officials and employees, in accordance with Article 11 of the Constitution of the Republic of Ecuador "and all persons acting in the exercise of public authority shall be obliged to redress violations of rights" (Constitutional Assembly, 2008). (Constituent Assembly, 2008)(Constituent Assembly, 2008), generating on the one hand the civil, criminal and administrative liability and on the other hand the patrimonial liability of the State.

## Conclusions

The penitentiary system in Ecuador has been established as a means of punitive application for those individuals who have committed a criminal act typified in the criminal law, which will be under the administration of the competent authorities who must ensure the effective functioning of the detention centers. Although this mechanism has been established as a sanctioning method, there are different aspects that must be taken into account regarding the treatment to be given to the PPL, which must comply with the constitutional provisions and other regulations of the legal system, including international instruments, with emphasis on the axes of the system which are the execution of the sentence, and in turn rehabilitation, reintegration and non-repetition.

The Ecuadorian Constitution recognizes persons deprived of their liberty as a group of priority attention due to the fact that they are confined in a center, understanding that they do not have access to their right to freedom of movement, in this sense, this may result in the violation of other constitutionally recognized rights, therefore, affirmative actions or special measures should be applied to balance their situation, since this limitation does not lead to a normative or social abandonment. At the international level, various treaties and conventions have been signed with the aim of guaranteeing the protection of inmates in order to maintain their human dignity and personal integrity and to establish minimum conditions for their treatment, including the prohibition of cruel and inhuman treatment, such as the Mandela Rules, which establish the treatment that inmates must receive and prohibit the application of degrading disciplinary measures; the Convention against Torture, which is based on the ideal that all human beings are equal and is against treatment involving mistreatment and humiliation; the Inter-American Convention to Prevent and Punish Torture seeks to establish preventive measures against the violation of personal integrity by preventing actions that violate dignity.

Habeas corpus is a constitutional and jurisdictional guarantee that defends the right to individual liberty of any person who is deprived of it illegally, arbitrarily and illegitimately, this guarantee plays an important role in the protection of the fundamental rights of prisoners, This guarantee plays an important role in the protection of the fundamental rights of prisoners, since it ensures that arrests are made in compliance with all legal requirements, which extends its protection to the right to physical integrity of the individual, in addition to related rights, several of which are linked to the execution of sentences, where the corrective Habeas corpus is activated. Another tool that can be activated is to resort to the Ombudsman's Office, which is empowered to supervise that inhuman or degrading acts that violate human rights are not carried out in the centers of deprivation of liberty, that is to say, it must ensure that cruel treatment or torture is not applied, which is a violation of personal integrity, it is also responsible for ensuring respect for due process, and in the international context it will be the competence of the consulates. On the other hand, at the international level there are protection mechanisms such as the Inter-American Commission on Human Rights, the Subcommittee for the Prevention of Torture or the Committee against Torture of the UN, which issue recommendations to Ecuador to implement internal adjustments in its legal system, or in cases that go as far as the Inter-American Court, it

can lead to evidence of state responsibility in a process, which includes that which is of a patrimonial nature. It is also worth mentioning the compendium of other options to safeguard the management of the centers, and thus the integrity of those who remain in them, such as the disciplinary rules that govern them and finally the civil, criminal or administrative liability of the different public sector servants, officials and employees for the affectation of the normatively recognized rights.

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