



The denaturalization of pretrial detention in Bolivia: critical analysis of the structural crisis, the violation of the principle of exceptionality and the unconventionality of judicial practice (2019-2025)

La desnaturalización de la detención preventiva en Bolivia: análisis crítico de la crisis estructural, la violación del principio de excepcionalidad y la inconveniencia de la práctica judicial (2019-2025)

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ABSTRACT

Objective: to analyze the denaturalization of pretrial detention in Bolivia between 2019 and 2025 by contrasting the constitutional and Inter-American framework with the available evidence on its application. Method: a descriptive-analytical documentary study with a mixed approach, combining the review of legislation, Inter-American case law and scholarly literature with the analysis of official prison statistics and hearing-monitoring reports. Results: as of September 2025, 18,269 of 33,181 persons deprived of liberty (55.1%) had not been sentenced. The share fell from 62.7% in December 2023, yet the absolute figure remained near 18,000 while the prison population grew 81% relative to 2018. In a sample of 173 pretrial hearings monitored by Fundación Construir, 64% were suspended; in the same monitoring, 84% of flight-risk claims and 79% of obstruction-risk claims were made without supporting evidence. Conclusion: the gap between law and practice is not explained by a regulatory vacuum, since Law No. 1173 already places the burden of proof on the prosecution, but by deficits in information, case management and judicial reasoning. Pretrial services, fewer hearing suspensions and insulation of precautionary decisions from external pressure are reform lines that require empirical evaluation.

Keywords: pretrial detention; exceptionality principle; prison overcrowding; Inter-American standards; pretrial services; Bolivia.

RESUMEN

Objetivo: analizar la desnaturalización de la detención preventiva en Bolivia entre 2019 y 2025, contrastando el marco constitucional e interamericano con la evidencia disponible sobre su aplicación. Método: estudio documental descriptivo-analítico, de enfoque mixto, que combina el examen de normas, jurisprudencia interamericana y literatura especializada con el análisis de estadísticas penitenciarias oficiales y de monitoreos de audiencias. Resultados: a septiembre de 2025, 18.269 de las 33.181 personas privadas de libertad (55,1 %) carecían de sentencia. La proporción descendió desde 62,7 % en diciembre de 2023, aunque el número absoluto se mantuvo en torno a 18.000 mientras la población penitenciaria crecía 81 % respecto de 2018. En una muestra de 173 audiencias cautelares monitoreadas por la Fundación Construir, el 64 % fue suspendido; en el mismo monitoreo, el 84 % de los peligros de fuga y el 79 % de los peligros de obstaculización se alegaron sin prueba. Conclusión: la brecha entre norma y práctica no se explica por un vacío regulatorio, puesto que la Ley N.º 1173 ya atribuye la carga de la prueba a la parte acusadora, sino por déficits de información, de gestión procesal y de motivación judicial. Los servicios previos al juicio, la reducción de las suspensiones y la protección de la decisión cautelar frente a presiones externas son líneas de reforma que requieren evaluación empírica.

Palabras clave: detención preventiva; excepcionalidad; hacinamiento carcelario; estándares interamericanos; servicios previos al juicio; Bolivia.

INTRODUCTION

Deprivation of liberty prior to conviction places the criminal process before a paradox: it protects the effectiveness of the investigation at the expense of the right that the process itself must guarantee. In Bolivia, this tension is frequently resolved in favor of confinement. As of September 2025, 18,269 of the 33,181 persons deprived of liberty, that is, 55.1%, had no sentence(1). The figure is lower than that of 2016, when the Defensoría del Pueblo documented 69%(2), but it still describes an exceptional measure that operates as an ordinary form of managing criminal conflict.

Recent Bolivian literature has examined the collision between personal liberty and preventive detention from a constitutional and Inter-American approach (3) and has explored its judicial and institutional causes between 2019 and 2022(4). At the regional level, there is debate over whether criteria such as the risk of recidivism are compatible with the American Convention (5). In the reviewed sources, 00002 gaps persist: few studies compare the Inter-American standard with evidence from practice following Law No. 1173, and figures are often cited without specifying their cutoff date or sample scope, so that non-comparable indicators are mixed.

This article analyzes the denaturalization of pretrial detention in Bolivia between 2019 and 2025 through the contrast between the regulatory framework and the available data on its application. It is argued that the divergence is not due to the absence of rights-protective rules, but to implementation conditions: insufficient information on the defendants' community ties, poor scheduling of hearings, generic reasoning in the decisions, and external pressure on judges.

METHODS

One documentary study was conducted with a descriptive-analytical design and a mixed-methods approach, with a predominance of the qualitative component. The corpus comprised four types of sources: Bolivian constitutional and legal norms; judgments of the Inter-American Court of Human Rights (Corte IDH) and reports of the Inter-American Commission on Human Rights (CIDH); prison statistics from the Bolivian Observatory of Citizen Security and Fight against Drugs (OBSCD) and from the Ombudsperson's Office; and academic literature on the subject.

The analysis consisted of contrasting regulatory requirements with implementation indicators. Percentages and relative variations were calculated from absolute figures published by the sources; when a figure was obtained by derivation, this is indicated. Audience monitoring data come from 00001 study by Fundación Construir reported by Miramendy Rivera(4) and are not extrapolated to the entire country.

Three limitations constrain the interpretation. First, prison statistics measure the number of people on a given date (stock), not the proportion of accused persons on whom the measure is imposed (flow), and the stock is inflated when detentions are prolonged. Second, the temporal cutoffs of the sources differ (December, June, September), so the date is identified in each figure. Third, several data points from 2024 and 2025 are preliminary.

DEVELOPMENT

Regulatory framework and standards of conventionality

The Bolivian regime of preventive detention

The Constitution recognizes the right to personal liberty (art. 23.I) and the presumption of innocence (art. 116.I)(6). The Code of Criminal Procedure authorizes restricting liberty only when it is indispensable to ensure the ascertainment of the truth, the development of the proceedings and the application of the law, and requires that measures be executed with the least possible harm to the person and their reputation (arts. 221 and 222)(7). Preventive detention is, therefore, a personal and instrumental precautionary measure: it lacks a purpose of its own and cannot perform punitive functions.

Law No. 1173 of 2019 reinforced that logic. It introduced Article 231 bis, which obliges the judge to choose a less burdensome measure when it is sufficient to neutralize the risk; assigned the prosecuting party the burden of proving the risks of flight and obstruction; and prohibited basing those risks on subjective assertions or abstract formulas (arts. 231 bis, 234, and 235). It also reduced to 12 months without an accusation or 24 without a judgment the periods that give rise to cessation, with exclusions for certain categories of serious crimes (art. 239)(8). Previous refor-

ms had followed the opposite direction: Law No. 7 of 2010 extended those periods to 18 and 36 months(9).

Inter-American standards

The Corte IDH defines preventive detention as the most severe measure applicable to an accused, of exceptional use and of a precautionary, not punitive, nature(10). Keeping 00001 person detained for a disproportionate period is equivalent to anticipating the sentence(11). Hence, the only admissible purposes are procedural: to prevent the accused from evading the action of justice or obstructing the proceedings(12,13). The CIDH adopts the same criterion and rejects the purposes inherent in punishment(14).

From that premise it follows that the gravity of the offense, the dangerousness attributed to the accused, social alarm, and the risk of reiteration do not serve as an autonomous basis for detention(10,14,15). The risk of recidivism, in particular, responds to special prevention, the purpose of the sanction and not of the precautionary measure(5). The Inter-American Court of Human Rights (IACtHR), moreover, has characterized dangerousness as a criterion of an author-based criminal law, incompatible with the Convention(16); that ruling referred to the individualization of the penalty, and its application to precautionary measures is raised here by analogy, not as express doctrine of the court on pretrial detention.

RESULTS

Magnitude and evolution of pretrial detention

The prison population went from 18,368 people in 2018(17) to 33,181 in September 2025(18), an increase of 81%. During that period, the proportion of people without a sentence fluctuated around 55-63% in the available time points (Table 1). The recent decline is clear in relative terms: from 62.7% in December 2023 to 55.1% in September 2025.

Table 1. Population deprived of liberty and legal status in Bolivia, selected time points

Cut	Total population	Preventive detention	Sentenced
2018	18.368	—	—
Dec. 2023	28.838	62,7 %	37,3 %
Sep. 2024 (prelim.)	31.760	18.856 (59,4 %)	12.904 (40,6 %)
Dec. 2024	32.035	58,7 %	41,3 %
Sep. 2025	33.181	18.269 (55,1 %)	14.912 (44,9 %)

Note. Totals for 2018 and 2025: (17,18). Totals and percentages for December 2023 and 2024: (19). September 2024: (20). Figures for September 2025 (OBSCD Bulletin No. 4): (1). The percentages for September 2024 and 2025 were calculated from the absolute figures; those for sentenced persons in December 2023 and 2024 were obtained by difference. Own elaboration.

Reading the absolute values nuances that decrease. The December 2023 figure is equivalent, by derivation, to approximately 18,100 people; in September 2024, it was 18,856, and in September 2025, 18,269. Pretrial detention decreased by 3.1% between the last two cutoffs, while sentenced persons increased by 15.6% (from 12,904 to 14,912). The lower proportion is therefore explained by the growth of the convicted population and not by an effective reduction in the number of persons held without a sentence. An intermediate cutoff by the Ombudsman's Office (July 2025) places the proportion at 55.9% out of 33,058 inmates(21).

Overcrowding and affected groups

National overcrowding estimates differ depending on the installed capacity adopted: the World Prison Brief records an occupancy of 274.1% relative to a capacity of 10,521 places as of December 2023(22), whereas the Defensoría del Pueblo reports national overcrowding above 105%(21). The discrepancy prevents establishing a single rate, although both sources agree that capacity is exceeded.

The case of San Pablo prison, in Quillacollo, illustrates the extreme: 674 inmates for 110 places, according to data from the Dirección General de Régimen Penitenciario as of December 2024. The Defensoría describes it as overcrowding of 513%(21), a percentage that measures the excess over capacity and is equivalent to an occupancy of 613%.

The measure falls most heavily on the young population. At the end of 2024, there were 9,520 people aged 18 to 28 deprived of liberty, 29.8% of the total, and about 3 in 4 lacked a sentence(21). The available data do not disaggregate community ties by age, so the hypothesis that low-income young people face greater difficulties in proving residence or employment remains untested. There is indeed indirect evidence for the group as a whole: in a survey of 2,060 pretrial detainees, 86% were unable to attach documents at their detention hearing and 54% identified proof of residence as the main obstacle(2).

Practice in precautionary hearings

The monitoring of the Fundación Construir, reported by Miramendy Rivera, covered 173 precautionary hearings: 110 (64%) were suspended and only 63 (36%) were installed(4). Among the reasons for suspension are the absence of the prosecutor (38%) and that of the accused person (46%), percentages whose denominator the source does not specify. In the hearings in which a flight risk was alleged, 84% did not present evidence of this risk; in those in which obstruction was invoked, 79% did not provide specific elements either(4). At the national level, the 2022 Judicial Statistical Yearbook records that 49% of the cases heard were resolved and 51% were pending(4). This figure describes pending cases and not procedural delay in the strict sense, since it includes processes within the deadline. The monitoring data come from a sample whose selection method is not detailed, and were collected three years after the entry into force of Law No. 1173; even with these reservations, they show that the proof of procedural risk, required by law, was not generally verified in the hearings observed.

DISCUSSION

What the data allow us to affirm

The evidence supports a more limited thesis than that of a worsening crisis. The proportion of unsentenced persons is declining, but their absolute number stagnates at a high level, and that level coexists with a prison population that is growing rapidly. The fact that the measure is the majority within the stock does not by itself prove that it is imposed as a rule, because prolonged detentions overrepresent pretrial detainees on a given date. Denaturalization, by contrast, rests on a convergent set of indications: reasoning without evidence, frequent suspensions, and detention conditions that increase the cost of each day of waiting. Verifying whether exceptionality is inverted at the moment of deciding would require flow data (proportion of detention requests granted, median duration), which the consulted sources do not provide.

Explanatory factors

The information deficit regarding community ties appears to be the best-documented factor. When the judge has few verifiable data, detention is the lowest-risk option for the judge, although not for the defendant. The proportion of detainees who were unable to submit documents at their hearing(2) is consistent with that explanation, which Zalamea León develops by arguing that pre-trial services address 00002 problems of traditional justice: the lack of an appropriate diagnosis for selecting the precautionary measure and the absence of monitoring of the imposed regime(23).

Hearing management operates in the same direction. A suspended hearing prolongs the current situation, which is deprivation of liberty, and shifts the cost of institutional disorganization to the accused. The shorter cessation periods of Law No. 1173(8) limit that effect only if they are applied, and exceptions for serious crimes restrict their scope.

External pressure is the most difficult factor to measure. The literature documents the influence of public opinion on judicial authorities in precautionary matters(9) and media and political pressure on judges and prosecutors(4). This is documentary and qualitative evidence; in the reviewed sources, there are no studies that estimate its effect on decisions, so the causal relationship remains a plausible hypothesis rather than a finding.

Reform guidelines

Pretrial services are technical units that produce verified information on community ties and procedural risk and supervise imposed alternative measures(23). They directly address the informational problem described.

Their adoption in Bolivia should be designed as a pilot project with evaluation, so that the effect on the pretrial detention rate is measured rather than presumed.

At the procedural level, strengthening alternative dispositions (conciliation, conditional suspension of proceedings, abbreviated procedure) would relieve the workload of judicial offices(4). To reduce suspensions, a regime of accountability for the unjustified non-attendance of prosecutors and the effective summons of the accused appears more effective than mere exhortation; its design requires, however, distinguishing absences attributable to the institution from those arising from external causes.

The third line concerns judicial independence. Ruling on the basis of a proven procedural risk presupposes that the judge can bear the reputational cost of granting 00001 alternative measure in a high-visibility case. Guarantees of stability, reinforced reasoning, and accountability based on technical criteria are conditions of that autonomy(14).

CONCLUSION

Pretrial detention in Bolivia exhibits a sustained discrepancy between a regulatory framework that conceives it as a measure of last resort and a practice that keeps it at a level close to 18,000 people, regardless of the variation in its proportion. The analysis does not, however, support the image of a linear deterioration: the participation of detainees without a sentence fell from 62.7% to 55.1% between 2023 and 2025 and this decrease was due to the increase in the number of convicts rather than a reduction in the number of detainees. Quantifying denaturalization rigorously therefore requires flow and duration indicators that are not published today. The most consistent finding is that the gap does not come from a legal vacuum. Since 2019, the law requires the prosecution to prove procedural risk and excludes abstract formulas; the available monitoring records, however, resolutions without evidence and hearings that are not held. Exceptionality seems to depend less on reforming texts than on the conditions under which decisions are made: available information, hearings that are installed and judges in a position to resist the pressure of the environment. This reading, supported by a limited sample and secondary sources, guides the research agenda rather than closes the debate. There are still limits that must be made explicit, the fundamental reflection is of an institutional nature: a system that lacks data on how much and why it confines preventively can hardly guarantee that it does so in an exceptional way.

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