

GLOBAL PRISON TRENDS 2017



SPECIAL FOCUS

Pull-out section

**The Sustainable
Development
Goals and
criminal justice**



Global Prison Trends 2017

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Malawian and migrant Muslim men pray in Chichiri Prison's courtyard. Blantyre, Malawi, 2015.

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Penal Reform International (PRI) is an independent non-governmental organisation that develops and promotes fair, effective and proportionate responses to criminal justice problems worldwide.

We promote alternatives to prison which support the rehabilitation of offenders, and promote the right of detainees to fair and humane treatment. We campaign for the prevention of torture and the abolition of the death penalty, and we work to ensure just and appropriate responses to children and women who come into contact with the law.

We currently have programmes in the Middle East and North Africa, Sub-Saharan Africa, Eastern Europe, Central Asia and the South Caucasus, and work with partners in South Asia.

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One of the primary objectives of the TIJ is to promote and support the implementation of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules).

In addition, the TIJ strives to serve as a bridge that transports global ideas to local practices with an emphasis on fundamental issues including interconnections between the rule of law and sustainable development, human rights, peace and security.

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Contents

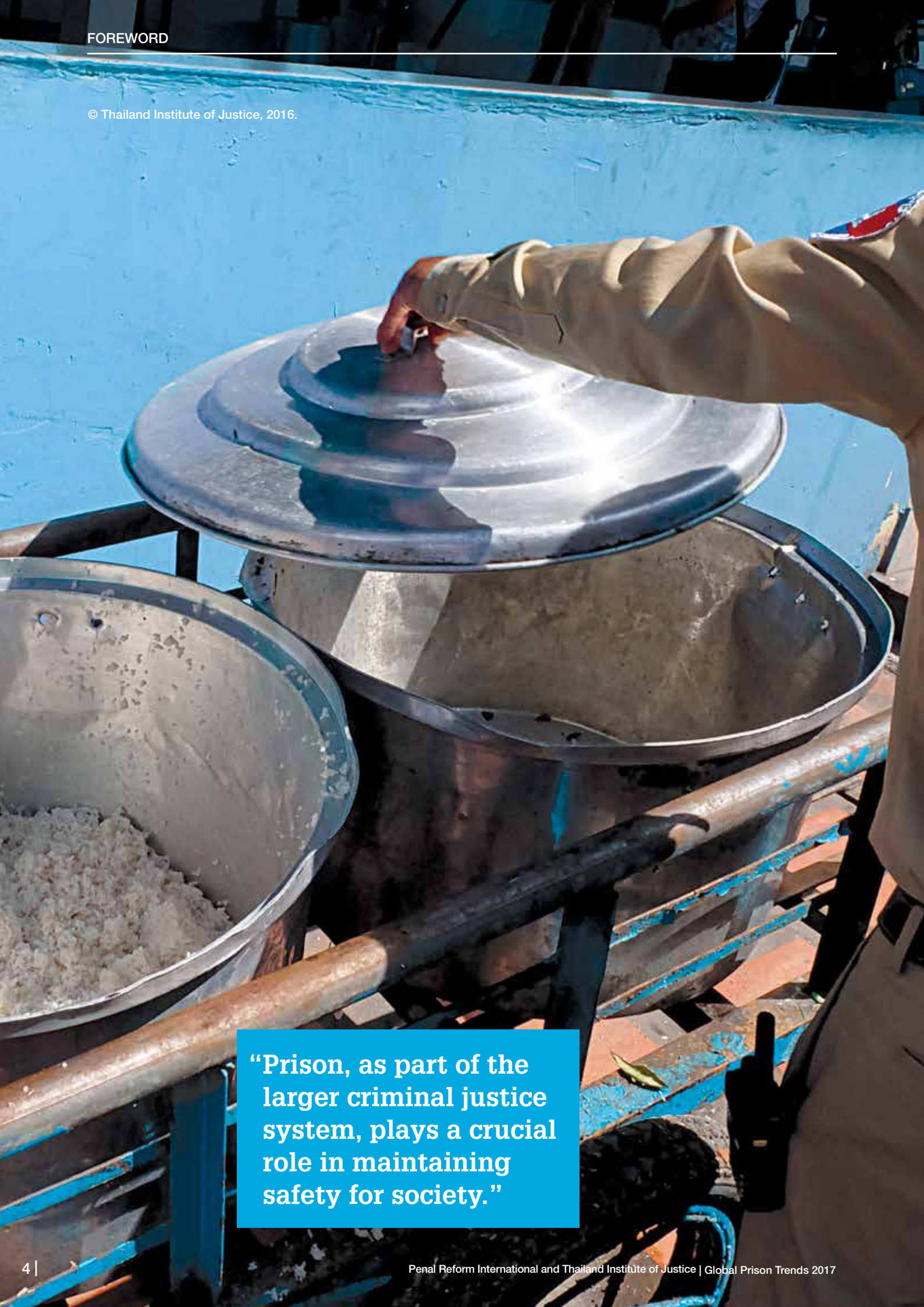
Foreword	5
Introduction	6
1. Crime, prison and politics	7
Crime and imprisonment	7
Prison overcrowding	8
2. Trends in the use of imprisonment	10
Pre-trial detention	11
Death penalty	12
Life imprisonment	13
Drug-related offences	14
3. Prison populations	16
Women prisoners	16
Children and young persons	18
Foreign national prisoners, minorities and Indigenous peoples	19
Drug users in prison	20
Lesbian, gay, bisexual, transgender and intersex (LGBTI) prisoners	21
Elderly prisoners	22
4. Prison management	23
Prison health	23
Prison labour	23
Security issues and violence	25
Prison staff	26
Solitary confinement	27
Violent extremism and prison	27
Fragile and conflict-affected states	30
Privatisation	31
Rehabilitation and reintegration	33
5. Role and use of technologies	34
6. Alternatives to prison	37
Pre-trial non-custodial measures	37
Non-custodial sanctions	38
25 key recommendations	41
Endnotes	43

CENTREFOLD

Special focus 2017 (pull-out section)

**The Sustainable Development
Goals and criminal justice**

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“Prison, as part of the larger criminal justice system, plays a crucial role in maintaining safety for society.”

Foreword

The *Global Prison Trends 2017* report by Penal Reform International, in collaboration with the Thailand Institute of Justice, provides a window to one of the least visible and least accessible government sectors, while highlighting some of the most intractable correctional issues for policy makers across the world. Prison overcrowding, inhumane treatment and the rising number of vulnerable groups of prisoners are problems that have long been listed as primary challenges when it comes to prison management. Yet the problems still persist in many parts of the world today, necessitating a new perspective and approach for criminal justice reforms.

Despite the drop in global crime rates, global prison populations continue to rise. It was estimated that one third of the global prison population are on remand and 18 per cent of convicted prisoners are in prison for drug-related offences. The number of women in prisons across the world has also risen by 50 per cent since 2000.

The disproportionate use of imprisonment for minor or non-violent offences, and against pre-trial detainees, has been the main cause of prison overcrowding and failures to meet basic needs of prisoners in many countries. It has also been proved ineffective in decreasing recidivism and overburdens criminal justice systems.

In recent years, the international community has seen some optimistic changes which indicate that improving

correctional systems should be a much greater priority in the coming years. Firstly, the adoption of the revised Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) in 2015 is not only vital for improving living conditions and treatment of inmates; it also ensures the protection of basic human rights for persons deprived of liberty. Secondly, the Sustainable Development Goals (SDGs) adopted by the UN in 2015 outline what institutions the world over are tasked to achieve by 2030, but also stress that we shall “leave no one behind”. Those who come into contact with the criminal justice system are more likely to be the poorest and most marginalized individuals. More often than not, their basic needs are overlooked.

The key elements for prison reform are highlighted in several goals and targets of the SDGs, such as the need to provide basic healthcare and sanitation (Goals 3 and 6), to meet the needs of specific groups of prisoners including women and girls (Goals 5 and 10), and to undertake effective education and rehabilitation programmes (Goals 4 and 8).

Prison, as part of the larger criminal justice system, plays a crucial role in maintaining safety for society. More importantly it can contribute to creating a peaceful and inclusive society by upholding the rule of law through ensuring appropriate and rights-based

treatment of prisoners and offering them opportunities for rehabilitation (Goal 16).

With 2017 marking the second year since the adoption of the SDGs, in addition to the global overview of current prison situations, the Special Focus section of this report focuses on the links between the SDGs and effective criminal justice systems and discusses the ways forward. By reforming prison through the lens of sustainable development and inclusive society, prisons should be able to function at their optimum and bring about positive outcomes for the larger community.

HRH Princess Bajrakitiyabha Mahidol

UNODC Regional Goodwill Ambassador on the Rule of Law in Southeast Asia and the Pacific, and President of the Thailand Institute of Justice

Introduction

The *Global Prison Trends 2017* report is the third in our annual series, and provides an overview of key developments in criminal justice and prison policy and practice over the past 12 months. It shows that the overall trend of a reduction in crime rates has continued over the past year. However, despite this, the world does not feel a safer place.

The rising number and new forms of terrorist incidents have made some countries look closely at their criminal justice and penal policies, often adopting a more punitive response to these threats. However, terrorism and other violent crimes are not the only offences for which the law imposes punitive sanctions. The ‘war on drugs’ continues, despite evidence that it cannot be ‘won’ by harsh criminal justice responses. In April 2016, the UN General Assembly Special Session (UNGASS) discussed the world drug problem, reviewing the policies adopted for drug offences. But while the UNGASS Outcome Document encouraged the development and implementation of alternative measures, there was no global consensus to move away from the current punitive position.

Such hard-line policies contribute towards the ongoing overcrowding of prisons worldwide. Overcrowding poses sometimes insuperable challenges for prison managers and officers in providing rehabilitation and reintegration programmes. Too many prisoners are locked up without meaningful activities or relationships to give them hope of living a better life after release, although there are some notable exceptions where countries have made strenuous efforts to reduce their prison populations.

The Sustainable Development Goals (SDGs) recognise the importance of ‘leaving no one behind’ in the effort to move people out of poverty, improve the health, education and economic empowerment of all people and build peaceful and inclusive societies. The foreword to this report and its Special Feature section stress the role of prison reform in meeting a number of the targets and goals of the SDGs, as prisoners form one of the most marginalised and poverty-affected populations.

In most countries, civil society organisations have an important role to play in contributing towards the SDGs, including where they relate to prisoners. They do this in many different ways – sometimes acting as a watchdog to hold governments to account for the way in which prisons are run and prisoners’ rights respected. Sometimes, they provide valuable services directly to prisoners, through education and counselling, vocational training and pre- and post-release support. Participating in this way helps towards the normalisation process, whereby prisoners retain contact with the outside world while serving their sentences, improving their life chances through successful reintegration.

However, civil society needs to operate in an enabling environment to provide these creative and collaborative activities, which are of benefit to prisons and society, as well as directly assisting the prisoners. It is therefore of concern that some governments are actively seeking to reduce the role of civil society in public life and shrink the space in which they can operate. While not directly a subject for this report, this trend is one that directly

impacts on prisoners’ lives. It restricts the implementation of Rule 4 of the Nelson Mandela Rules, which states that a prison sentence is primarily to protect society and reduce recidivism. Rule 4 goes on to say that this can only be achieved ‘if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life’.

We see *Global Prison Trends* as one way to assess the progress being made towards fair and effective criminal justice systems, and to inform policy makers generally of current issues and trends in penal policy and practice worldwide.

Alison Hannah

*Executive Director,
Penal Reform International*

PART ONE

Crime, prison and politics

Crime and imprisonment

Overall trends in crime rates around the world have continued downwards. Between 2003 and 2013 there was a continuing decline in rates of homicide and other violent offences, but especially in property crimes such as burglary and motor vehicle theft. Drug trafficking offences have remained stable, while police-recorded drug possession offences increased by 13 per cent between 2003 and 2013.¹ The Global Status Report on Violence Prevention 2014 estimates that from 2000–2012, rates of homicide declined by 16 per cent, although the decline is more marked in some regions than others (less so in Latin America for example).²

One form of violence – intimate violence against women and girls – remains stubbornly persistent across all regions.³ Data from the UN Office on Drugs and Crime (UNODC) indicates that for female victims the rate of homicide by intimate partners and family members is very similar from region to region and relatively stable over time. It concludes that ‘the global and persistent killing of women by their intimate partners and close relatives requires renewed efforts to be fully understood in order to establish more effective prevention policies and criminal justice responses’.⁴

Explanations for the overall downward trend in traditional crime (i.e. non-cyber) and violence are varied and include improved governance and effective crime prevention and justice systems. At the same time, cybercrime such as internet-based theft, fraud and exploitation is increasingly recognised at international and national levels

as a major concern, along with corruption, transnational organised crime and terrorism.

Despite the downward trend in crime rates, however, there has not been a corresponding decrease in the use of imprisonment globally. Figures from February 2016⁵ show that more than 10.35 million people are held in penal institutions worldwide, although the full total is higher as data is unavailable from several countries and pre-trial detainees in police facilities are not always counted in prison totals. This represents an increase of almost 20 per cent since the year 2000, more than the estimated 18 per cent increase in the general population. Close to three million people are estimated to be held in pre-trial detention and other forms of remand imprisonment, an increase of 20 per cent since the year 2000.⁶

While women prisoners continue to be a minority in all regions (less than 10 per cent), the female prison population has increased faster than the male prison population on every continent.⁷

Regionally, patterns of imprisonment are mixed. Large increases in prison populations over the past decade have been seen in South America, South-East Asia and West Asia (64 per cent, 40 per cent and 33 per cent respectively).⁸

Between 2000 and 2015, Oceania saw an increase in its total prison population of 59 per cent, by far exceeding the growth in the general population (25 per cent). The pattern was similar in the Americas, where

the prison population grew by 41 per cent compared to a rise of 17 per cent in the general population. North America remains the subregion with the highest rates of incarceration.⁹

In Asia, while there has been an increase in prison populations, it is less significant than in other regions, with a 29 per cent increase between 2000 and 2015, compared to an 18 per cent rise in the general population. In Central Asia, however, there has been a decline in the number of prisoners.¹⁰

In Africa, the total prison population grew at a slower rate of 15 per cent between 2000 and 2015, while the general population increased by 44 per cent.¹¹

Europe is the only continent where the total number of prisoners has fallen – by 21 per cent, compared to an increase of the general population of three per cent. The overall decline is attributed to Russia, where the prison population declined from around one million people in 2000 to around 640,000 in 2015,¹² as well as significant decreases in Eastern Europe.¹³

A common reason for high prison populations is that the public are thought or perceived to favour a tough approach to sentencing, and in a number of countries political leaders have encouraged this through policies of so-called ‘penal populism’. In the Philippines, the newly elected President Duterte has waged a ‘war on drug users’, with police operations and killings that sparked outrage internationally.¹⁴ In the US, the newly elected President Donald Trump

campaigns on a 'tough on crime' platform and has extolled the use of torture, reviving concerns that such signals may undermine the absolute prohibition of torture.¹⁵

The reasons behind penal populism are complex but are in part fuelled by fears of terrorist activity and continued high levels of migration, much of it driven by conflict, trafficking and transnational organised crime. Terrorism is not of course a new phenomenon but its scale and the

character of new communication tools create new challenges. There has been an increase in recorded deaths as a result of terrorism since 1970, but there are also wide variations between regions, with South Asia, the Middle East and North Africa experiencing the greatest incidence and increases.¹⁶

Prison overcrowding

Prison overcrowding continues to be labelled the 'priority challenge for prison administrations around the world'¹⁷ and 'one of the major challenges in the administration of justice'.¹⁸ It has prompted the UN General Assembly to reiterate the importance of measures to reduce overcrowding and pre-trial detention in its 2016 resolution on human rights in the administration of justice.¹⁹

Prison occupancy levels in 79 countries (40 per cent of the world's states) were above 120 per cent capacity and as many as 51 countries (26 per cent) had a problem of extreme overcrowding, with occupancy levels above 150 per cent.²⁰ Globally, of the 198 countries for which data was available, as many as 115 states (58 per cent) were operating at over 100 per cent capacity. This data may not reveal the full scale as country-based statistics may obscure more localised prison overcrowding.²¹

Prison overcrowding in East, Central and West Africa, Central America and South Asia is particularly severe.²² In India, for instance, delays in the criminal justice system have caused some prisons to run at more than two or three times their capacity.²³ In Ghana, media reported in mid-2016 that 28 of the country's 43 prison facilities were overcrowded by as much as 358 per cent.²⁴ In El Salvador, the occupancy rate continued to be the highest in the world, recorded as 310 per cent in 2015.²⁵

A direct correlation between pre-trial detention rates, overcrowding and a country's level of income was established by UNODC, which noted that poorer countries have smaller prison populations, but a much higher share of unsentenced prisoners. At the same time, on average, despite lower rates of imprisonment, poorer countries have higher rates of overcrowding, reflecting a lack of capacity in criminal justice systems.²⁶

It has been pointed out that the overuse of imprisonment 'limits the capacity of prison systems to deal effectively with the small minority of prisoners who pose serious risks to public safety, and indeed increases the risks posed by prisoners'. Furthermore, it imposes enormous costs on public funds and can impede economic development.²⁷

RECOMMENDATION 01

States should review their penal systems with a view to reducing the use of imprisonment. They should increase alternative strategies to crime, shifting resources to crime prevention and social interventions, and adopt measures to reduce overcrowding in line with the UN Tokyo and Bangkok Rules.

© Thomas Martin, 2010.



Prison overcrowding continues to be the 'priority challenge for prison administrations around the world'.

PART TWO

Trends in the use of imprisonment

According to the UNODC's 2016 report on world crime trends, the largest share of sentenced persons in prison globally have been convicted for property offences (44 persons per 100,000 population). About as many have been sentenced for violent offences, including intentional homicide, manslaughter, robbery and sexual violence. Prisoners convicted for drug-related offences account for 18 per cent of all prisoners, while financial crimes and corruption make up only two per cent.²⁸

UNODC has also identified regional patterns in the prevalence of certain types of offences. In the Americas – while as many as 65 per cent are imprisoned for non-violent offences²⁹ – the rate of prisoners sentenced for violent crime is more than double the rate in Europe. At the same time, statistics indicate that despite a higher homicide rate in the Americas, the rate of prisoners sentenced for intentional homicide is lower, suggesting that there may also be a higher rate of impunity in these countries.³⁰

The share of people in prison for drug-related offences is also higher in the Americas, compared to in Europe and Asia. However, the proportions of sentenced prisoners for these offences (out of all convicted prisoners) are roughly equal: 20, 17 and 18 per cent in the Americas, Asia and Europe respectively.³¹

In a few countries, reform drives have borne fruit and resulted in a decrease in prison populations, although the general trend of mass incarceration seems to persist.

In the US, 46 states have enacted at least 201 bills, executive orders and ballot initiatives to reform at least one aspect of their sentencing and corrections systems in the last three years,³² including reforms to reduce the number of non-violent drug

offenders in prison, as well as policies aimed to reduce sentences. This has resulted in the prison population being the smallest it has been for a decade.³³

In the Netherlands too, the prison population has fallen by over a quarter in the past five years. With a population of almost 17 million, only 11,000 people were in prison in 2015, with particularly steep falls in the imprisonment of children and young adults. The reoffending rate was also down over the same period.³⁴ This has led to the closure of 19 prisons, with plans to shut five more.³⁵

The number of prisoners has also decreased in Kazakhstan by 30 per cent in five years.³⁶ This has been achieved in part by reducing the length of prison terms, with the average coming down from 9.5 years to 8.5 years, and the increased use of non-custodial sanctions for minor offences. As a consequence, the prison population was reduced from 80,000 in 1993 to 40,000 in 2016.³⁷

In Georgia, the prison population has also decreased significantly since 2012, down to a stable number of 9,000–10,000 prisoners, mainly because there has been an increase in the use of non-custodial sanctions for minor offences.³⁸ Latvia also recently cut sentences for non-violent offenders and decriminalised several other offences, resulting in a drop in the number of prisoners from 7,646 in 2004 to 4,409 in 2015.³⁹

While the reduction of the number of people in prison is a positive development, the danger of alternative sanctions widening the overall net of the criminal justice system has been widely noted. The need to approach criminal justice reform in a comprehensive way was emphasised in the 2016 Report of the UN Secretary-General on human rights in the administration of justice,

which noted the contribution to overincarceration and overcrowding of policies including 'severe penalties for drug-related offences, mandatory sentences for minor, non-violent offences, excessively lengthy prison sentences, especially life sentences, contrary to the principle of proportionality (...), the failure to include time served on remand in sentence calculation (...) and great limitations to the remission of sentences'.⁴⁰

The report further noted that the lack of discretion for judges when sentencing, including for example through minimum sentencing policies, is contrary to the principle of independence of the judiciary. This is because such policies prevent them from taking into consideration the individual circumstances of the defendant and the case.⁴¹

RECOMMENDATION 02

States should assess the proportionality of criminal sanctions and bear in mind the danger of net-widening when applying alternatives to imprisonment. Mandatory minimum sentences should be discontinued as they impede the independence of judges and the consideration of individual circumstances in sentencing.

Pre-trial detention

High rates and excessive lengths of pre-trial detention continued to prompt concern in 2016. In Senegal, for example, people were held in pre-trial detention for far longer than the statutory maximum of six months, with harsh anti-drug laws that criminalise possession a major factor in increasing overcrowding.⁴²

In early 2017, 70 per cent of the prisoners in Nigeria were unsentenced detainees (a total of 47,229 people). In Lagos, the proportion of untried prisoners was even higher at 85 per cent of the prison population.⁴³ In Brazil, almost 40 per cent of the prison population is made up of remand prisoners. In Western Europe, aside from Monaco where 82 per cent of prisoners are on remand (a total of 24 people), the Netherlands and Switzerland had the highest pre-trial detention rates at 39 per cent.⁴⁴

The impact of long periods in pre-trial detention on both detainees and state budgets are profound, while doing little to increase the safety of the public. Malawi's Prison Inspectorate found that prisoners developed mental health problems as a result of periods in pre-trial detention that usually lasted for over a year.⁴⁵ In the US, it was calculated that USD \$14 billion is spent annually on detaining people on remand who are mostly low risk, including many whose charges are ultimately dropped.⁴⁶

In a number of European Union countries, pre-trial detention for suspects in criminal cases has become routine, with more than one in five people in prison (120,000 people) being held on remand. The non-governmental organisation Fair Trials found that prosecutorial requests for pre-trial detention were granted in the majority of cases in 10 EU countries analysed. For example, 100 per cent of requests were granted in Lithuania and over 80 per cent in Hungary, Spain and the Netherlands. Ireland was the only jurisdiction where less than 50 per cent of such requests were granted (44 per cent).⁴⁸

The Inter-American Commission on Human Rights (IACHR) has drawn attention to the fact that in Argentina, judges opt for pre-trial detention 'in order to demonstrate efficiency and avoid complaints from society, the news media, and the political sector itself'.⁴⁹

The continued excessive use and length of pre-trial detention was highlighted as one of the major causes of prison overcrowding in the 2016 Report of the UN Secretary-General on human rights in the administration of justice. It reiterated that suspects should be released if the period of pre-trial detention reaches the length of the longest sentence that could have been imposed for the alleged offence.⁵⁰

The UN Secretary-General's report also noted shortcomings in criminal justice procedures as dominant causes of high rates and disproportionately long periods of pre-trial detention. The lack of legal aid was highlighted as one factor,⁵¹ alongside a shortage of judges, inadequate investigations, the loss of case files,⁵² and pressure from the media and public opinion to tackle insecurity by imprisoning offenders.⁵³

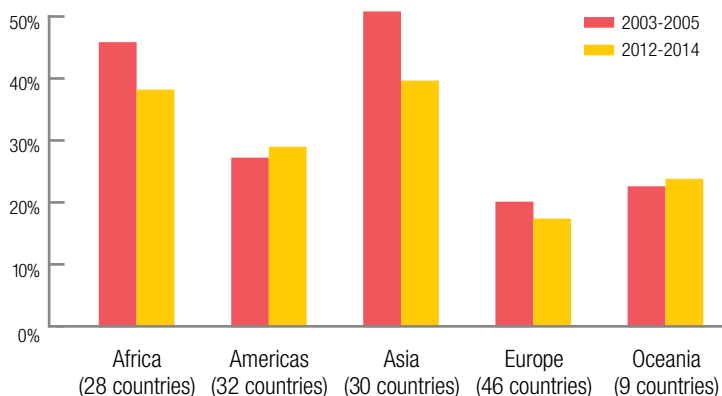
PRI's 10-point plan on reducing pre-trial detention

Based on comparative research on the use of bail as an alternative to pre-trial detention in 45 jurisdictions, PRI's *10-point plan on reducing pre-trial detention* summarises key ways in which countries can reduce pre-trial detention through reforms to legislation, policy and practice:

1. Review the scope of criminal law to limit its use to where it is necessary
2. Enshrine international standards in national law including the presumption of innocence
3. Divert cases away from the court system wherever possible
4. Offer courts a wide range of release options when defendants appear in courts
5. Set amounts of monetary bail according to the individual circumstances
6. Introduce and enforce time limits for remands in custody
7. Provide legal aid and assistance
8. Establish effective file management
9. Innovate court practice to reduce delay and detention
10. Make special efforts to keep women and children out of detention.

The briefing highlights country examples of good practice in pre-trial justice.

Unsentenced prisoners as percentage of total prisoners



Source: United Nations Survey of Crime Trends and Operations of Criminal Justice Systems and International Centre for Prison Studies.⁴⁷

Implementing legal aid systems

The first comprehensive overview on this issue, the *Global State on Legal Aid* report, was published by the UN Development Programme (UNDP) and UN Office on Drugs and Crime (UNODC) in 2016.⁵⁴ The study found that:

- Roughly a third of the 106 countries that participated in the study have not yet enacted specific legislation on legal aid.
- Although many countries recognise the right to legal aid for criminal defendants who cannot afford a lawyer, the availability and quality of legal aid provided is limited. This increases the risk of additional abuse

for many vulnerable populations, including through torture, coerced confessions, arbitrary or prolonged pre-trial detention.

- Where specialised services exist, such as those for children and women, they have helped to tailor legal aid to their specific needs.
- Public awareness of the existence of legal aid schemes, in particular among marginalised populations, is crucial to ensure take-up of services.
- Civil society and other non-state actors can and do play a considerable role in complementing the state delivery of legal aid services, but also in monitoring existing services and in the development of criteria for quality control.

- To ensure sustainability of legal aid services, it is essential that states allocate adequate budget.

The *Global Study* provides findings and recommendations to assist states in implementing appropriate legal aid systems for people in conflict with the law, in line with the 2013 UN Principles and Guidelines on Legal Aid in Criminal Justice Systems.⁵⁵

Another resource on legal aid recently developed is the *Model Law on Legal Aid in Criminal Justice Systems*. It recognises that legal assistance includes the provision of legal advice and information, and may be offered by a wide variety of legal aid providers. It also includes provisions to enhance the reach of legal aid to marginalised populations, as its main beneficiaries.

In India, for example, where 68 per cent of the prison population were on remand in 2016, around 22 million cases were pending in the country's district courts, six million of them having lasted longer than five years, and another 4.5 million were waiting to be heard in the high courts. India reportedly has one of the world's lowest ratios of judges to population in the world (13 judges for every million people, compared to 50 in other nations), and one of the lowest proportions of allocated governmental budget to the law ministry.⁵⁶

In Malawi, underfunding of the criminal justice and court system has also been blamed for the long delays in criminal procedures.⁵⁷ In Nigeria, the Ministry of Justice acknowledged that delays in the administration of justice caused defendants to spend an average of three years in custody awaiting trial.⁵⁸ A backlog of a million cases

has resulted in rushed procedures in Thailand, inadvertently resulting in convictions of innocent individuals and damaging trust in the criminal justice system.⁵⁹

In light of the alarming high rates of pre-trial detention, a number of states have taken measures to curb the numbers.

In India, legal aid services were extended for pre-trial detainees and guidance was developed on standard operating procedures for representing detainees, including by requiring twice-weekly visits.⁶⁰ Ghana's Supreme Court struck down a law preventing bail for cases involving some crimes, such as murder, rape and drug-related offences.⁶¹

At the international level, the concern about excessive use of pre-trial detention is reflected in the development of the *UN Principles*

and Guidelines on the right of anyone deprived of their liberty to challenge the lawfulness of detention.⁶² However, even where review mechanisms exist to challenge detention, they may not constitute an effective safeguard. In practice, decisions to detain are rarely overturned, as Fair Trials' research on 10 EU countries revealed, for example.⁶³

RECOMMENDATION 03

Any decision on pre-trial detention should be guided by international standards: the presumption of innocence, the principle that pre-trial detention be used as a means of last resort, and with regard to the principles of necessity and proportionality. States should enshrine these standards in their national criminal laws.⁶⁴

Death penalty

The death penalty has been subject to competing trends in recent years. An ever greater number of countries have now abandoned capital punishment in law and practice, but there was also a dramatic increase in executions in 2015 compared to 2014 carried out by a small number of retentionist countries.

Out of 193 UN member states, approximately 160 have abolished the death penalty or introduced a moratorium, in law or practice.⁶⁵ Four countries abolished the death penalty for all crimes in 2015 (Democratic Republic of Congo, Fiji, Madagascar⁶⁶ and Suriname).⁶⁷ Mongolia removed the death penalty from its statutes in a parliamentary vote in December 2016.⁶⁸ On 10 January 2017, Sao Tomé and Príncipe acceded

to the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), thereby committing to abolishing the death penalty. Developments in the US are in line with this trend, with 18 federal states now having abolished capital punishment and another 12 not carrying out executions in the last 10 years.⁶⁹

At the international level, progression towards abolition was reflected in the adoption of the sixth biennial General Assembly resolution on a global death penalty moratorium in December 2016, which was supported by 117 of the 193 member states. Thirty-one states abstained from the vote and only 40 states voted against it, showing growing support for a moratorium.⁷⁰ Although the death penalty was not addressed explicitly in the Outcome Document of the UN Special Session on drugs (UNGASS) in April 2016, the requirement of proportionality of sanctions is emphasised.⁷¹ Furthermore, at the Special Session more than 60 countries voiced their opposition to the death penalty for drug-related offences as a contravention of international law, which limits its use to the 'most serious offences' even in countries where capital punishment is retained.⁷²

In response to concerns about deplorable conditions for death row prisoners,⁷³ a number of states emptied their death rows through commutation. In Kenya, for example, President Uhuru Kenyatta commuted the sentences of all 2,747 death row prisoners to life imprisonment in October 2016. Antigua removed the final seven prisoners from its death row in 2016,⁷⁴ and the US state of Connecticut cleared its death row following two rulings by the state Supreme Court.⁷⁵ As of 1 January 2016, there were 2,943 people awaiting execution in the US.⁷⁶

In a competing trend, global figures showed that the number of confirmed executions increased by 54 per cent in 2015 compared to 2014,⁷⁷ with at least 1,634 individuals executed in 25 countries (the actual figure is believed to be higher still).⁷⁸ Eighty-nine per cent of all recorded executions are

attributable to three countries resisting the trend towards progressive abolition of the death penalty – Iran, Pakistan and Saudi Arabia.⁷⁹

The alleged threat of terrorism or harsh drug policies has led some countries to consider reintroducing capital punishment. At least six countries resumed executions in 2015: Bangladesh, Chad, India, Indonesia, Oman and South Sudan.⁸⁰ During 2016, reintroduction of capital punishment was also considered in Turkey (for terrorism)⁸¹ and the Philippines (for many offences including drugs and terrorism).⁸² In both cases, this would be in contravention of international law as both countries are parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights.⁸³

Methods of execution continued to spark controversy with execution drugs becoming increasingly unavailable over the past couple of years because of manufacturers barring the sale of their products to corrections agencies. More than 20 American and European drug companies have already adopted such restrictions, citing moral or business reasons. A European Union directive came into force in November 2016 further limiting the export of products used in executions abroad.⁸⁴ In reaction to this trend, countries have limited disclosure of information on lethal injection protocols, 'including the identity of the drug manufacturers, and the types, dosages, and expiration dates of the drugs'.⁸⁵ Other jurisdictions have allowed new chemicals to be used, including experimental execution protocols or untested drugs.⁸⁶

Increasing concern over capital punishment being imposed on citizens abroad, including from countries

which themselves apply it vigorously, has been seen at a global level. For example, in 2016, 10 participating states of the Organization for Security and Co-operation in Europe (OSCE) reported that at least 16 of their nationals were facing death sentences or were on trial for death sentence applicable offences in Iran, Pakistan, the US and China.⁸⁷ Indonesia's government has actively sought to prevent death sentences and executions of its citizens abroad, including by reportedly paying compensation to families of murder victims.⁸⁸

Possibly prompted by the adoption of the Sustainable Development Goals, the link between poverty and the death penalty was another issue attracting increased attention at the international level. In India, for example, 75 per cent of the people on death row were found to belong to the economically vulnerable section of the population and 60 per cent had not completed secondary education.⁸⁹ In Saudi Arabia, poor migrant workers from the Middle East, Asia and Africa are most likely to receive a death sentence, according to Amnesty International.⁹⁰

RECOMMENDATION 04

Countries that retain the death penalty should progressively move towards abolition, by establishing a moratorium, by reducing the number of crimes attracting the death penalty and by improving conditions on death row. At a minimum, death sentences must only be employed for the 'most serious offences' and adhere to procedural safeguards as laid out in international law.

Life imprisonment

The actual time served for a 'life sentence' varies widely between countries, ranging from what are effectively long fixed-terms to life imprisonment without any possibility of parole. There has been a trend towards increasing the use and

length of life imprisonment in many countries for several reasons. These include harsher sentences (including mandatory life sentences) being imposed as part of populist 'tough on crime' measures, a reduction in the granting of parole and early release,

and, where countries have abolished the death penalty, an increase in offences that carry life imprisonment.⁹¹ The increase in life imprisonment is contributing to prison overcrowding; however, the needs of long-term prisoners also often go unaddressed,

including the healthcare needs of ageing prisoners and the provision of rehabilitation after long periods in prison. For example, in former Soviet Union countries, many 'lifers' are coming to the end of their sentences as reforms in the 1990s abolishing the death penalty replaced their sentences with minimum terms of 25 years. These prisoners have generally received inadequate (or no) support in preparing for release.⁹²

In some countries, authorities concerned about releasing prisoners they believe still pose a risk to the public have developed forms of post-release detention which, while nominally therapeutic or non-punitive, are in practice very similar to imprisonment. Such systems, which have recently been instituted in Poland⁹³ and New Zealand,⁹⁴ can be physically located in prisons and may not provide detainees with the same rehabilitation opportunities as ordinary prisoners.

More positive trends can be seen in the rulings and jurisprudence of courts in Europe and Africa. The European Court of Human Rights (ECtHR) has ruled in a series of cases since 2013 that having no possibility of release is incompatible with human rights standards. Life sentences without parole (LWOP) have been found, in cases including *Vinter* (2013)⁹⁵ and *László Magyar* (2014),⁹⁶ to be inhuman and degrading, if they give no hope or possibility of release regardless of how much the prisoner has changed and reformed. This 'right to hope' means that European countries are now required to review life sentences after a maximum of 25 years to see whether there are still 'legitimate penological grounds', such as punishment, deterrence, public protection and rehabilitation, for further detention.

In 2016, drawing on human rights arguments, Zimbabwe's Constitutional Court found that life without the possibility of parole constituted

cruel and inhuman punishment and is a violation of human dignity. In a unanimous decision, eight judges stated that "the "unavoidable cruelty of incarceration", without a prisoner being able to believe in the realistic possibility of his eventual liberation, would "unnecessarily aggravate and dehumanise the delivery of corrective justice".⁹⁷

RECOMMENDATION 05

States should abolish life sentences without any possibility of parole and reduce the number of life-sentence applicable offences in line with the principle of proportionality. Prisoners on life sentences are entitled to the same minimum standards as other prisoners and conditions must not be punitive by virtue of the sentence.

Drug-related offences

At the international level, the need for an interagency approach in addressing drug issues is increasingly recognised, not least due to the engagement of UN agencies in the run-up to the UN General Assembly Special Session on drugs in April 2016. There was wider acknowledgment of the impact of drug policies on human rights⁹⁸ and also the links with the HIV/AIDS⁹⁹ epidemic.

At the national level, states continued to be heavily split in their approaches to drug policies between those that pursue a prohibitionist line, with harsh criminal sanctions for all drug-related offences including use and possession, and those that wish to reform drug policies to promote a greater health-based approach minimising the harm of drugs.

In China, new judicial interpretations of drug laws meant that more types and smaller amounts of drugs were criminalised, and penalties for online activities related to drugs and for abetting children to commit drug-related offences were also

increased.¹⁰⁰ In Belarus, drug offenders were sent to special prisons with harsher conditions where they were forced to wear green badges identifying them as drug offenders.¹⁰¹

The Filipino President has been the subject of international condemnation for waging a war on drugs. Over 7,000 people have been killed since 30 June 2016 when the President assumed office and called for enforcement agencies and the public to kill both people who use drugs and people suspected of trafficking drugs who do not surrender.¹⁰² In Cambodia, a crackdown on drug users commenced in early 2017 with authorities reporting the arrest of more than 1,000 dealers and drug users in the first two weeks of the year.¹⁰³

In at least 33 countries and territories, the death penalty is still applicable for drug-related offences, including 10 where the death penalty was mandatory.¹⁰⁴

In contrast, other countries reformed their drug policies, introducing differentiated sentences, pursuing proportionality of sanctions and abandoning mandatory minimum sentences. A number of states decriminalised or legalised the possession and personal use of cannabis.¹⁰⁵ Cannabis-related offences are responsible for mass imprisonment in countries, including Tunisia for example, where 70 per cent of drug-sentenced prisoners are convicted for its possession.¹⁰⁶

Cannabis was de-penalised following supreme court rulings in Canada,¹⁰⁷ Mexico¹⁰⁸ and Georgia. In Georgia, the Constitutional Court considered a prison sentence too harsh for cannabis use.¹⁰⁹ Jamaica also decriminalised possession and use of up to two ounces of cannabis, imposing instead a civil penalty in the form of a monetary fine that carries no criminal record.¹¹⁰

UN General Assembly Special Session on the world drug problem (UNGASS)

A growing sense of urgency about the direction of global drug policies prompted the UN General Assembly to bring forward its Special Session on drugs to April 2016 although it had initially been planned for 2019.¹¹¹ The 2016 session followed Special Sessions in 1990 and 1998. The Outcome Document includes commitments on demand reduction; access to controlled substances; supply reduction; human rights, youth, children and women; as well as cross-cutting issues on new challenges and substances; international cooperation; and alternative development.¹¹²

In the area of criminal justice and penal reform, it reiterates a commitment to respecting, protecting and promoting human rights and the rule of law in drug policies. This includes 'proportionate and effective policies and responses to drugs, as well as legal guarantees and safeguards in criminal justice proceedings and the justice sector'.

The Outcome Document encourages:

- the development and implementation of alternative measures to conviction or punishment for drug-related offences, taking into account relevant standards, such as the UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) (Operative Paragraph ('OP') 4j)
- the promotion of proportionate national sentencing policies, practices and guidelines for drug-related offences, where the severity of penalties is proportionate to the gravity of offences and both mitigating and aggravating factors, as well as the UN Bangkok Rules for women offenders, are taken into account (OP 4i)
- criminal justice responses to drugs that ensure legal guarantees and due process safeguards, including the right to a fair trial and timely access to legal aid, as well as practical measures to uphold the prohibition of torture and other ill-treatment and of arbitrary arrest and detention (OP 4o, see also OP 4c)
- enhancement of access to treatment for prisoners, taking into consideration UN standards, including the Nelson Mandela Rules (OP 1k and OP 4m), the requirement of informed consent (OP 1j), and including prevention of drug overdose (OP 1m)
- measures aimed at minimising adverse public health impacts of drug abuse, including in prisons, and promoting universal access to HIV prevention, treatment and care for injecting drug users (OP 4m)
- non-discriminatory access to healthcare and social services, including in prison or pre-trial detention (OP 4b) and taking into account the specific needs and vulnerabilities of women drug offenders when imprisoned (OP 4n, see also OP 4d).

In its preamble, the Outcome Document reiterates the implementation of international drug control treaties in accordance with human rights obligations and protection of and respect for human rights. It also points to the importance of enhanced coherence within the UN system in addressing the world drug problem.

A new Bill proposed in Ghana in 2016 reduces sanctions for possession of drugs and funds harm reduction services.¹¹³

The Seychelles abolished mandatory drug sentences and allowed for remission of drug sentences, alongside measures for harm reduction.¹¹⁴ Tunisia also planned to introduce non-custodial sentences for certain first-time drug offenders,¹¹⁵ and in the United Arab Emirates, judicial officials recommended an overhaul of mandatory prison terms for low-level drug offences in favour of judicial discretion in such cases.¹¹⁶

RECOMMENDATION 06

States should review their drug policies with regard to proportionality of sanctions, treat drug use as a public health rather than criminal justice problem, and provide drug dependency treatment and harm reduction programmes in prison settings.

PART THREE

Prison populations

While adult men constitute the majority of prison populations globally, mostly coming from poor and marginalised communities, a range of groups are minorities amongst the prison

population and have specific needs and vulnerabilities. Statistics also indicate that some minority groups are over-represented in prison populations.

Women prisoners

Since the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) were adopted in December 2010, there has been greater understanding of the pathways of women offenders, the impact of their imprisonment, and the need for gender-specific approaches.

Yet the female prison population continues to rise on all continents. Globally, there has been a rise of 50 per cent since 2000, compared to an estimated 20 per cent for the total world prison population.¹¹⁷ Data from 2015 estimates that there are more than 700,000 women and girls held in 219 national prison systems and that the population is increasing at a faster rate than for the male population.

A growing body of research over the past couple of years confirms that in most countries, there are a high number of women being charged with or convicted of non-violent, minor offences relating to poverty and familial roles, including property and drug-related offences.

Findings from a 2016 study in Kenya, for instance, showed that of 97 female offenders interviewed who were serving non-custodial sanctions, 36 per cent had been convicted of illegally brewing and selling alcohol. In Ireland, the prison service reported that 80 per cent of female committals to prison in 2014 were for non-payment of fines¹¹⁸ and in England and Wales failure to pay a mandatory 'television

licence', which can lead to prison if they continue to default on payments, accounted for 36 per cent of all prosecutions of women.¹¹⁹

In Sierra Leone, a rise in arrests and conviction of women for breaches of by-laws imposed during the Ebola epidemic was observed. Women were arrested for activities such as selling goods and food items during curfew hours and gathering in crowds (which was prohibited) when a family member had died, both of which can attract a prison term.¹²⁰

Women continued to be imprisoned disproportionately for minor drug-related offences, particularly in the Americas and Asia. This trend has been attributed to the greater ease with which low-level crimes can be prosecuted.¹²¹ In 2016, over 90 per cent of women in prison in Indonesia and the Philippines were charged with or convicted of drug-related offences, and in Thailand such offences accounted for 83 per cent of sentenced female prisoners in 2013.¹²² In Argentina, Brazil, Costa Rica and Peru, over 60 per cent of each country's female prison population was in prison for drug-related offences.¹²³ A study in Cambodia found that many foreign national women imprisoned for drug trafficking are coerced by their male partners, and in some cases used as drug mules unknowingly.¹²⁴

The Outcome Document of the UN General Assembly Special Session on drugs (UNGASS) recognised the specific vulnerabilities of women in detention for drug-related offences, and their role in drug-related crime. It called on states to address protective and risk factors, as well as the underlying reasons for their involvement in drug crimes.¹²⁵ (See UNGASS on drugs on page 15).

There were moves to integrate the UN Bangkok Rules into national prison regulations and implement specific Rules in a number of regions. For example, Western Australia developed its first set of gender-specific guidelines, with a focus on Indigenous women.¹²⁶ Peru approved a new protocol on women prisoners in April 2016, including guidance on specific categories.¹²⁷ In Kenya, efforts are underway to implement gender-sensitive probation and community service orders, based on research in 2016.¹²⁸ (See 'Pilot project on community service and probation for women' on page 38). In Thailand, scans have replaced body searches in women's facilities, prompted by reports of abuse. Furthermore, a ruling by the Chief Judge of the Appeal Court now requires the background and personal circumstances of women offenders to be a factor in sentencing.¹²⁹

At the international level, the situation of women prisoners is increasingly recognised by human rights bodies. The UN Special Rapporteur on torture dedicated his 2016 thematic report

Studies confirm that a high number of women are being imprisoned for minor offences relating to poverty and familial roles.



to gender perspectives on torture, highlighting a range of specific concerns for women in detention vis-à-vis torture and ill-treatment.¹³⁰

The UN Working Group on discrimination against women in law and practice, in a thematic report on health and safety, also highlighted the lack of adequate access to hygiene facilities and products for women prisoners around the world, as well as their exposure to violence from other prisoners and staff.¹³¹

Children and young persons

The total number of children – those under 18 years old – in various forms of detention was estimated to be about a million in 2010.¹³² UNODC suggested that the number of children in prison may be slowly declining, with the rate falling from 12 to 10 per 100,000 children between the period 2004–2006 and the period 2011–2013.¹³³

There were some regressive moves, with several countries lowering the minimum age of criminal responsibility (MACR) in 2016, despite the unequivocal recommendation of the UN Committee on the Rights of the Child that this should be no lower than 12 years and the recommendation in 2016 that it be raised progressively to 18.¹³⁴ A 2017 study published by UNICEF on diversion and other alternative measures for children in conflict with the law in East Asia and the Pacific found that in 13 of the 26 countries reviewed, the MACR was set below the internationally accepted minimum age of 12 years.¹³⁵

A number of countries reduced their MACR, claiming to react to the threat of radicalisation of children and young persons. Russia, for example, lowered the age of criminal responsibility to 14 for a number of offences related to terrorism, on the grounds that children are vulnerable to recruitment by terrorist groups and at 14 years old have the capacity to understand their actions.¹³⁶ Australia, too, reduced the age at which control orders can be applied to terrorism suspects from 16 to 14, allowing detention

RECOMMENDATION 07

States should examine the offences women are convicted of and the reasons for their offending, with a view to ensuring laws are not disproportionately impacting women. Prison policy and practice should be adapted for women, in line with the UN Bangkok Rules.

or extreme limitations on suspects' movements, communications and livelihoods. Australia's National Children's Commissioner expressed concern that 'imposing control orders on an already disaffected young person could have the reverse effect, effectively shutting down communication avenues'.¹³⁷

In the Philippines, a highly controversial proposal to lower the age of criminal responsibility from 15 to nine was justified by authorities who stated that adults use children under 15 to commit crimes, notably drug trafficking.¹³⁸

Children continued to be tried in adult or even military courts in contravention of international law.¹³⁹ In New Zealand, certain offences such as murder, rape and aggravated assault will still be heard before an adult court despite the increase of the youth justice age to 17.¹⁴⁰ In India, following changes to the law in 2015, the first cases of children aged between 16 and 18 were heard in adult courts because the offence was deemed serious enough to warrant it.¹⁴¹ A constitutional amendment was examined by the Senate in Brazil which would allow 16 and 17-year-olds accused of serious crimes to be tried and punished as adults.¹⁴² Elsewhere children continue to be prosecuted in military courts, for example in Egypt¹⁴³ and in Israel.¹⁴⁴

There continued to be reports of authorities' failures to protect children in detention. Human Rights Watch highlighted serious overcrowding in

UN report on girls in the criminal justice system

In late 2015, the Special Representative of the UN Secretary-General on violence against children published the first comprehensive report on girls in the criminal justice system.¹⁴⁵

The report sets out the factors which contribute to the vulnerability of girls in the criminal justice system: unstable family environments, histories of violence and abuse, poverty, failure of school systems, physical and psychological health issues, the use of criminal justice systems as substitutes for weak or non-existent child protection systems, and discrimination.

Instead of providing support and protection, criminal justice systems are often the setting for violence and stigmatisation. In some countries, girls are arrested more often than boys for running away from home, immoral conduct, or association with prostitution. Furthermore, in countries where criminal codes are based on religious or customary law, the legal age of maturity for girls and boys may differ, and girls are held criminally responsible for their actions at a much younger age.

When deprived of liberty, girls are at high risk of violence and abuse. In many countries girls are held far from home, often with adult women or in isolation, to segregate them from men and boys. Incidents of violence carried out by those in authority are rarely investigated or prosecuted.

Restorative justice approaches, which would largely avoid girls' deprivation of liberty and afford them protection, are still rare, and in many countries, there is a lack of community-based programmes for girls.

The Special Representative sets out recommendations, drawing on international standards, including the consideration of girls' vulnerability in decision-making, avoidance of institutionalisation of girls to the greatest extent possible, and the provision of age- and gender-specific programmes and services.

Brazil's detention facilities for children and in October 2016, 11 children were killed during riots in two juvenile detention centres. Abuse and significant issues in the treatment of children in detention in Australia were exposed in footage released by a news channel.¹⁴⁶

At the same time, several countries moved to establish separate justice systems for children. Georgia announced plans to build a new prison for young offenders aged 14 to 21 years, which would be focused on rehabilitation and prevent children from being immediately sent to an adult prison as soon as they turn 18.¹⁴⁷ Vietnam has recently set up its first child court for all victims and suspects under the age of 18 years.¹⁴⁸

The rate of convicted girls has increased at a faster rate than for convicted female adults, according to UNODC.¹⁴⁹ The unique challenges faced by girls who come into contact with the criminal justice system (see UN report on girls in the criminal justice system on page 18),¹⁵⁰ and the importance of gender-sensitive programming is becoming increasingly recognised. For example, the *Oregon Guidelines for Effective Gender-Responsive Programming for Girls* have been influential in both the US and abroad.¹⁵¹ However,

progress in improving the treatment of girls in conflict with the law has been limited.

In 2016, an Independent Expert was appointed to undertake a global study on children deprived of their liberty to address the lack of information and data on children in detention and to provide good practices and recommendations.¹⁵²

A small number of countries – 13 according to the Child Rights Information Network (CRIN) – still retain the death penalty for those who were children at the time of committing an offence. Iran is estimated to have executed more than 60 people for offences committed as children over the past 10 years. The US is the only country which continues to sentence children to life imprisonment without parole in practice, although 17 states have banned this kind of sentencing. In early 2016, the US Supreme Court issued a landmark judgment in *Montgomery v Louisiana*, ruling that people currently serving life sentences for offences they committed as juveniles must either be considered for parole or re-sentenced. In the European Union, the UK remains the only country that continues to sentence children to life imprisonment.¹⁵³

However, progress was made in Eritrea, France and Madagascar, where bans on life imprisonment for children were introduced in 2016.

Furthermore, in the UK and US there were some positive developments relating to the growing recognition that the different needs of adolescence continue well beyond a person's 18th birthday. In the US, it has been suggested that those under 25 should not be sent to adult prisons because of 'irrefutable evidence' that the typical adult male brain is not fully formed until at least the mid-20s.¹⁵⁴ In the US, legislation has been proposed that would see 18 to 20-year-old offenders being dealt with in the juvenile system.¹⁵⁵

RECOMMENDATION 08

The age of criminal responsibility must be no lower than 12 years and should be progressively raised to 18. Justice systems need to be child-friendly and gender-sensitive, using detention only as a very last resort for children, and prohibiting the death penalty and life imprisonment.

Foreign national prisoners, minorities and Indigenous peoples

The number of foreign national prisoners (FNPs) continued to rise in most regions. In the European Union, nearly one in five prisoners on average is a non-national. For example, in the Netherlands the number of prisoners born elsewhere had risen to as many as 62 per cent in 2015.¹⁵⁶ In the Middle East, foreign national prisoners make up more than 50 per cent of national prison populations.

Globalisation is one reason for this increase, as well as foreigners being more likely to be arrested and to receive a prison sentence, as their status is more likely to exclude them from non-custodial measures at both the pre-trial and conviction

stages.¹⁵⁷ In Asia, where there has also been a significant increase in FNPs, possible causes are said to include the surge in migration, human trafficking and transnational crime.¹⁵⁸ For example, in Malaysia, 30 per cent of the prison population in 2016 were non-nationals,¹⁵⁹ and most were detained for minor immigration-related offences, such as working without a permit or not holding a passport.¹⁶⁰

A 2015 study¹⁶¹ confirmed that the specific needs of FNPs, including those due to their status, language difficulties and distance from their families, are largely unmet by prison authorities. Despite the international legal basis for consular assistance

to nationals in foreign prisons, in practice only a few countries provide this service.

In some countries, foreign nationals are held in mixed facilities with nationals, while in others they are detained in specific facilities only for FNPs. In Norway, for instance, the Government has rented a prison in the Netherlands (due to a lack of space in its own prisons) which is reserved entirely for FNPs, who constitute a third of the Norwegian prison population. Most foreign nationals held in this dedicated facility are from Eastern Europe and advantages of moving them to the Netherlands are reported to include

increased family visits due to closer proximity to families and additional facilities for phone contact.¹⁶²

Minorities continue to come into conflict with the law and be imprisoned at a higher rate than majority populations in a significant number of countries. The US-based Sentencing Project reported in June 2016 that African Americans were imprisoned across the country at more than five times the rate of whites, and at least 10 times the rate in five states.¹⁶³ Conversely, a change has been noted in the rates of imprisonment among women in the US, with data from the end of 2015 showing a decline in the number of black women being imprisoned, but an increase in the number of white women.¹⁶⁴

Elsewhere, minorities were also excessively imprisoned. For example, in India, Muslims, Dalits and Adivasis together formed over 50 per cent of the prison population but less than 40 per cent of the community.¹⁶⁵ In Hungary, Roma people make up around 40 per cent of the

country's prison population, despite representing only 6 per cent of the national population.

Disproportionate imprisonment of Indigenous peoples was reported in 2016 in several countries. In Australia, the imprisonment rate of Indigenous peoples grew by 40 per cent between 2001 and 2015, and Indigenous teenagers were found to be 24 times more likely to be imprisoned than their peers.¹⁶⁶ The higher rate of bail refusal in cases involving Indigenous defendants, often linked to their lack of housing or the ability to provide a stable address, has been suggested as a reason for this trend. Furthermore, longer periods spent in detention were blamed on a lack of Aboriginal interpreters, delaying court processes.¹⁶⁷

In Mexico, the National Commission for the Development of Indigenous Peoples reported that at least 9,000 Indigenous people are imprisoned, the majority for minor offences and without access to fair trial safeguards, such as bilingual legal representation

to understand the charges against them.¹⁶⁸ A study commissioned by the Canadian government recommended a separate sentencing system for Indigenous offenders as one way of reducing their over-incarceration.¹⁶⁹

Data shows that women from Indigenous communities are particularly over-represented in prisons. In Canada, women from Aboriginal communities make up in excess of 35 per cent of the female prison population, although only 4.3 per cent of the total Canadian population.¹⁷⁰ They are also detained for longer periods and at higher security levels than their non-Aboriginal counterparts.¹⁷¹

RECOMMENDATION 09

States should scrutinise their criminal justice systems for racial disparities and take measures to ensure that an accused person's membership of a minority ethnic group or status as a foreign national does not result in a harsher punishment.

Drug users in prison

Despite bans on the use of alcohol and drugs, significant proportions of prisoners use such substances in most prisons. While the scale of the problem and the types of drugs used in prisons vary from country to country, it is estimated that approximately one in three people have used drugs at least once while in prison and that many inject drugs for the first time while detained.¹⁷²

In Europe, the use of New Psychoactive Substances (NPS) by prisoners became an increasing concern in 2016, although data and corresponding responses on the use of NPS in prisons is scarce save for in a couple of countries. In the UK, the Prison Inspectorate called for strategies to deal with the 'devastating impact' of NPS in UK prisons, attributing deaths, serious illness and self-harm to the substances.¹⁷³ Responses by the government have focused on regulation and punitive

responses, for example, loss of privileges and additional custodial time for NPS possession and supply in prison based on new legislation. A different, health- and drug-related approach to NPS was promoted by the European Monitoring Centre for Drugs and Drug Addiction, which entails harm reduction and prevention measures.¹⁷⁴

Access to evidence-based harm reduction measures – such as Needle Syringe Programmes (NSPs) and Opioid Substitution Therapy (OST) – continue to be limited in prisons as outlined in the 2016 global report of Harm Reduction International.¹⁷⁵ Of the 158 countries reviewed, 90 currently provide NSPs outside of prison settings, while only eight provide it in at least one prison.¹⁷⁶ The provision of OST is more common in prisons. Forty-two of the 80 countries providing OST in the community make it available in at least one prison, an

increase of 21 per cent from 2014. However, there are concerns about the quality of OST in prisons.¹⁷⁷

At the international level, harm reduction measures, including the use of naloxone, were included in the Outcome Document of the UN General Assembly Special Session on drugs.¹⁷⁸ Some 46 governments expressed support for harm reduction measures at the Special Session.¹⁷⁹ (See UNGASS on drugs on page 15).

In recognition of the links between drug use in prison and transmission of infectious diseases, the Joint United Nations Programme on HIV/AIDS (UNAIDS) identified prisoners as a key population, linking the Sustainable Development Goal to end the HIV/AIDS epidemic by 2030 with harm reduction. In its 2016 report, *Prevention Gap*, UNAIDS noted the 'overwhelming body of evidence on

the effectiveness of harm reduction, including in prisons and other closed settings'.¹⁸⁰

There were some moves to adopt health-based approaches to drug use in prison. For example, in Kenya, following a harm reduction workshop for prison officers in February 2016, the Prison Service called for the introduction of treatment facilities for

drug users in prisons.¹⁸¹ Between 2014 and 2016 five countries (India, Lebanon, Macau, Morocco and Vietnam) introduced OST in at least one prison and in Tajikistan guidelines on the provision of OST have been developed, although implementation is still under consideration.¹⁸²

RECOMMENDATION 10

States should adopt a health-based approach to drug use in prison, and provide drug dependency treatment, evidence-based harm reduction programmes and prevention activities such as education and awareness raising measures.

Lesbian, gay, bisexual, transgender and intersex (LGBTI) prisoners

There are no reliable figures for the number of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) people in prison at a global level, and any kind of categorisation or definition of distinct identities is difficult. In 76 countries, (certain) sexual acts between adults of the same sex, or certain gender expressions are still criminalised, resulting in imprisonment of LGBTI persons.¹⁸³

There is growing acknowledgment that LGBTI prisoners are at high risk of discrimination, harassment, abuse and violence, and that abuse often goes unreported. In a 2016 report, the UN Special Rapporteur on torture stated that violence against LGBT prisoners is prevalent, with higher rates of sexual, physical and psychological violence experienced than the general prison population.¹⁸⁴

In some jurisdictions, there have been controversial moves to establish entirely separate prisons for LGBTI prisoners, including in Thailand and Turkey.¹⁸⁵ In the latter, the Justice Minister announced plans to contract an LGBT-only prison in Izmir following a ruling from the European Court of Human Rights in 2012 that solitary confinement of a homosexual prisoner on the grounds of protection had violated the prohibition of torture and ill-treatment, and constituted discriminatory treatment.¹⁸⁶ However, while the planned facility is justified as a safety measure, human rights advocates have argued that such segregation can lead to further discrimination.¹⁸⁷

For transgender prisoners, their visibility has meant they are frequently a target of harassment and discrimination, and there are recurrent discussions about appropriate prison placement, access to medical treatment and the procedures for body searches. The Special Rapporteur on torture noted that humiliating and invasive body searches, particularly for transgender detainees, may constitute torture or ill-treatment.¹⁸⁸

In Kazakhstan, there has been widespread media coverage about a transgender woman defendant who may be facing placement in a male prison on conviction.¹⁸⁹ In England, high-profile suicides of transgender women held in all-male prisons precipitated a new policy on the Care and Management of Transgender Offenders, which includes provisions on allocation at sentencing.¹⁹⁰ Elsewhere, in the US, a prisoner serving a life sentence was the first to receive state-financed sex-reassignment surgery during 2016, setting a precedent.

In recognition of human rights concerns for this group, the UN Human Rights Council appointed an Independent Expert on sexual orientation and gender identity in 2016.¹⁹¹

RECOMMENDATION 11

States need to take measures to protect LGBTI prisoners from discrimination, harassment and abuse. Individuals' gender identity and choice should be taken into account prior to placement of transgender prisoners for their protection should only occur in agreement with the person concerned, and must not lead to any limitations in accessing programmes and services.

Elderly prisoners

Elderly prisoners have become a significant population group in many prison systems. In Japan, almost 20 per cent of people arrested by the police were 65 or older in 2015,¹⁹² and in Singapore there were 651 prisoners over 60 years old in 2016, double the number in 2012.¹⁹³ In the UK, people aged 60 and over are the fastest growing age group in prison, constituting 14 per cent of the prison population in 2016.¹⁹⁴ Data from the Bureau of Justice Statistics in the US showed that there was a 250 per cent increase in federal and state prisoners aged 55 or older between 1999 and 2014.¹⁹⁵

While there continues to be a lack of data and comprehensive research available on elderly prisoners globally, the increasing length of prison sentences, partly due to punitive sentencing policies, has been identified as one of the reasons for this trend.¹⁹⁶

Elderly prisoners are a diverse and complex population that requires specialised assessment and intervention throughout the criminal justice system: at arrest and adjudication, detention, and transition back to the community. In prison, specific arrangements are required such as healthcare, which includes 'knowledge of the sensory, functional, and cognitive impairments affecting prisoners' health and wellbeing in the prison environment'.¹⁹⁷

In some countries, there have been moves to address elderly prisoners' needs through special facilities or early release mechanisms. In Thailand, the annual 'Royal Pardon' grants unconditional release to prisoners who are aged over 70, provided they are first-time offenders, and prisoners who are 60 years or older with less than three years of their sentence left to serve. In Japan's Asahikawa prison, where one in 10 people jailed in 2014 was aged 65 or over, facilities have been adapted with features such as ramps and handrails installed in public areas to help mobility-impaired people.¹⁹⁸ Similarly, in Singapore's prisons 25 cells have had new facilities installed, including handrails.¹⁹⁹

There has been criticism in some countries that penal systems are failing to adequately cater for elderly prisoners. In Canada, where one in four federal prisoners are aged 50 or older, the Government has been criticised by civil society and the prison's watchdog (the Correctional Investigators Office) for failing to develop a strategy on older offenders.²⁰⁰ In the UK, an NGO report criticised the lack of a national strategy on older prisoners and noted that 64 per cent of older prisoners reported mental health problems and eight in 10 reported a serious illness or disability.²⁰¹

A lack of consensus on the treatment of older prisoners was also pointed out by the European Court of Human Rights in a 2016 case brought by a 70-year-old prisoner against Switzerland. The prisoner unsuccessfully claimed that the prohibition of forced labour had been violated when his request to be exempted from compulsory work when he reached retirement age was denied. The Court noted that there was insufficient consensus among Council of Europe Member States on retirement and prison work, and that the prohibition of forced labour did not imply an absolute ban on compulsory work.²⁰²

RECOMMENDATION 12

States should collect data on the number and needs of older prisoners and review and adopt specific standards and policies accordingly. This could include architectural measures as well as training of staff on geriatric-focused prison regimes.

PART FOUR

Prison management

Prison health

Many prison systems continue to fall short of international minimum standards (reiterated recently, for example, in the 2015 UN Nelson Mandela Rules), particularly where there is overcrowding and a lack of healthcare staff.

In Colombia, for example, where occupancy levels are around 150 per cent,²⁰³ the Justice Minister declared the state of prison healthcare an emergency, signing a decree permitting prisons to take emergency measures to address the lack of medicine and healthcare staff.²⁰⁴ In Afghanistan, overcrowding was identified by the UN as a key contributing factor to the 15 outbreaks of scabies and tuberculosis in the country's 15 provincial prisons in recent years. Forty-two deaths in one prison were identified as attributable to diseases associated with substandard detention conditions.²⁰⁵ In Kenya, a prison audit in 2016 reported on a low ratio of toilets to prisoners in overcrowded facilities, unhygienic practices and unsafe drinking water. The audit linked such conditions to the majority of medical problems, including TB, diarrhoea and scabies.²⁰⁶

In Georgia, however, improved healthcare provision and a drastic reduction in the number of prisoners has led to a significant decrease in the number of deaths from ill-health. In 2011, as many as 114 prisoners died, mostly in the prison hospital, falling to 17 in 2016.²⁰⁷

High rates of infectious and contagious diseases among prisoners persist, with overcrowding and a lack of harm reduction measures for drug users as contributing causes. The latter problem was recognised in a Political Declaration on HIV/AIDS adopted by UN Member States in June 2016, which noted that prisoners are five times more likely to be living with HIV than adults in the general population. The Declaration called for access to harm reduction programmes, antiretroviral therapy and other interventions that prevent the transmission of HIV associated with drug use.²⁰⁸ (See Drug users in prison on page 20)

The impact of prison on mental health continues to receive too little attention. Programmes to address mental health in prisons have recently been

introduced in a couple of countries, including a suicide prevention programme in Georgia.²⁰⁹ Studies continued to evidence the high level of mental illness among women prisoners, often closely linked to their experience of violence before prison and isolation whilst in detention. In Southeast Asia, it was found that barriers faced in maintaining contact with children and families left foreign national women extremely isolated and in 'dramatic distress'.²¹⁰ In France, Human Rights Watch found particularly harsh conditions for women prisoners with mental health needs.²¹¹

RECOMMENDATION 13

States should improve prison healthcare in line with the Nelson Mandela Rules and Bangkok Rules, including the provision of mental healthcare. To address the HIV/AIDS epidemic, strategies to reduce prison overcrowding should be employed, and harm reduction programmes in prisons need to be expanded urgently.

Prison labour

The value of work in prisons is widely acknowledged and prison administrations continued to explore ways to provide meaningful activities, and for prisoners to acquire skills while detained. In Kazakhstan, for example, a new work programme has been established which enables prisoners to open their own small

business to sell goods (through a family member or friend) and to employ fellow prisoners.²¹²

However, the type of work provided in prisons varies considerably and work conditions gave rise to concern in some countries. Many failed to meet the requirement for 'equitable remuneration' or the standards of

health and safety, required by the Nelson Mandela Rules and other international standards.

In Zimbabwe, reports stated that prisoners were sold as cheap labour to local councils for as little as USD \$2 a day to cut grass or clear storm drains.²¹³ In Russia, a legislative bill has been proposed which would reintroduce forced labour



A number of countries saw an increase in prison violence, due to prison staff shortages and overcrowding.

© Karla Nur, 2014.

of prisoners on construction sites as a criminal sanction.²¹⁴ In the US, prisoners working in the kitchen or laundry usually receive only between 0.12 and 0.40 USD per hour.²¹⁵ In Indonesia, it is estimated that prisoners receive between USD \$7 to \$38 per month, which is lower than the minimum wage in the community.²¹⁶

In Myanmar, an investigation found inhuman working conditions in the 48 labour camps – renamed as ‘manufacturing centres’ and ‘agriculture and livestock breeding training career centres’ – holding some 20,000 prisoners.²¹⁷

Skill building is rarely a priority for prison work programmes, with much of the work available to prisoners

either associated with the running of prisons or factory work offered by external companies.

However, there are examples of more positive practices. For example, in Brazil, prisoners work to harvest vegetables which are donated to charity and can reduce their sentences by one day for every three days worked.²¹⁸

RECOMMENDATION 14

Prison work programmes should ensure prisoners can gain employable skills, with a view to successful reintegration. Working conditions need to be safe, in line with community standards, and remuneration should be equitable.

Security issues and violence

A number of countries saw the security situation in prisons deteriorate in 2016, and a marked increase in violence, commonly due to inadequate prison staffing and overcrowding.

Gang-related violence led to prison riots across Latin America, including in Brazil, El Salvador, Guatemala and Mexico.²²¹ High levels of overcrowding and self-governing structures were blamed for the surge in prison violence in the region.

In Brazil, a spate of violence ended in over 100 prisoners being killed in January 2017 alone, reportedly after the breakdown of a ‘truce’ between two powerful gangs vying for control of the prison. Media reported that in the state of São Paulo, a single guard oversees 300 to 400 prisoners in some facilities.²²² The Inter-American Commission condemned the fatal violence and expressed concern at the ‘systematic context of repeated acts of violence’ in the country’s detention centres.²²³

Other regions also saw alarming levels of prison violence. In Russia, the number of mass prison ‘uprisings’ increased from 12 incidents in 2012 to 19 in 2015;²²⁴ and in Senegal, when prisoners rioted to protest inhumane treatment, prison authorities reportedly fired asphyxiating explosives.²²⁵ Prison overcrowding

was blamed for a fatal prison riot in Guyana in March 2016, during which 16 prisoners were killed.²²⁶

In prisons in England and Wales, ‘wholly unacceptable’ levels of violence were reported, with six prisoners killed in 2015-16 and 4,000 attacks with weapons in prison.²²⁷ The number of attacks on prison staff also increased by 40 per cent between March 2015 and March 2016, at the rate of almost 15 per day, totalling 5,423 incidents.²²⁸ The situation was widely acknowledged as a ‘crisis’ and the Ministry of Justice explicitly recognised that staff cuts had led to the rise in violence.²²⁹

In Australia, the media reported that a prison officer was assaulted every three days in the state of Victoria in 2015. The Union representing prison officers said the rise in violence was linked to prison overcrowding and recommended increasing community sanctions.²³⁰

Falling staff-prisoner ratios and overcrowded facilities were also blamed for a rise in prisoner-on-staff assaults in countries as diverse as India, Ireland, Canada, the US and New Zealand.²³¹ In India, where a third of prison guard positions are reportedly vacant in overcrowded prisons, some officials blamed inadequate numbers of staff as one reason for the escape of over 180 prisoners in more than 40 escapes in two years.²³²

Essex paper 3: Guidance on UN Nelson Mandela Rules

In February 2017, Penal Reform International and the Human Rights Centre at the University of Essex published the *Essex paper 3*.²¹⁹ The paper provides initial guidance on the UN Nelson Mandela Rules (the revised Standard Minimum Rules for the Treatment of Prisoners), in six chapters covering:

1. The right to dignity
2. Prison management
3. Contact with the outside world
4. Healthcare
5. Restrictions, discipline and sanctions
6. Incident management

The *Essex paper 3* reflects on the revised areas of the Standard Minimum Rules and offers initial practical and concrete interpretation of specific Rules. The authors used the deliberations of some 30 international experts convened at a meeting in 2016 as a starting point and drew on other international law sources, including treaties, soft law instruments and reports and recommendations of Treaty Bodies and Special Procedures, as well as good practice.²²⁰

On the other hand, prison governors in Ireland attributed a reduction in violence to improved detention conditions, with one prison that received 28 million Euros to refurbish the facility reporting a 40 per cent reduction in violent incidents.²³³

UNODC and others have noted the benefits of a dynamic security approach, which is based on positive prisoner-staff relations and prison intelligence, and can provide ‘early warning’ of escapes, riots or other violent incidents.²³⁴

RECOMMENDATION 15

States should adopt measures to ensure the safety of prisoners and staff, including adequate staff-prisoner ratios that allow for the exercise of effective control, as well as through improvement of prison conditions and investment in dynamic security.

Large-scale study confirms effectiveness of torture prevention measures

The results of a multi-country study on the effectiveness of torture prevention measures was published in July 2016. The study, *Does torture prevention work?*,²³⁵ commissioned by the Association for the Prevention of Torture (APT), analysed torture and more than 60 preventive measures over a 30-year period in 16 countries.

Of the four areas analysed, ensuring access to procedural safeguards in detention as laid out in international standards were found to be the most effective measure in preventing torture, particularly during the first

period after arrest. Highlighted safeguards included the detainees' right to notify relatives or friends, access to a lawyer and an independent medical examination.

Secondly, the study findings showed that the work of monitoring bodies is effective in preventing torture. The ability to make unannounced visits and conduct private interviews was found to particularly enhance their impact.

Reducing the use of confessional-based evidence in criminal proceedings was also found to lower the risk of torture. On the other hand, inadequate training or investigative skills, a lack of modern technologies (e.g. to record interviews), results-based incentives linked to 'tough on crime' policies were cited as contributing to torture

to obtain confessions. The study noted that there is often a gap between law and practice in terms of prosecuting torture, and statistical analysis showed a high correlation between 'somewhat consistent' rates of prosecutions and a reduced risk of torture.

Of the four areas analysed only one – complaints mechanisms – was found to have had no measurable impact on torture prevention, except in cases where the mechanism was mandated to undertake effective investigations and refer for prosecution.

The study found that political will alone is not sufficient to eliminate torture, as systemic obstacles can persist regardless. It concluded that concrete safeguards reduce the risk of torture, with some being more effective than others.

Prison staff

Prison systems worldwide struggle with inadequate levels of staffing and related high levels of inter-prisoner violence, attacks against prison staff and escapes (see Security issues and violence on page 25).

Prison and correctional departments in various countries have been affected by governmental budget cuts over the last few years. For example, in the US state of Oklahoma, where the prisons workforce has decreased by 25 per cent since the year 2000 despite a 26 per cent rise in the prison population, budget cuts in 2016 mean the state's correctional department can only afford to fill 67 per cent of the required prison staff positions. In England and Wales, prison guard positions were cut by 25 per cent between 2010 and 2016 and management-level staff saw a 44 per cent reduction.²³⁶ Subsequent rises in violent incidents, self-harm and suicides, led to a recent announcement that resources would be invested in recruiting more prison officers.²³⁷

Without sufficient staff-prisoner ratios, facilities are usually forced to decrease the time prisoners can spend out of their cells, and to cancel rehabilitation programmes, visits and other key activities. Violence tends to increase as a result. In South Africa, for example, five correctional officers were stabbed when intervening in a fight between prisoners in August 2016 and staff blamed a newly introduced shift system

for the incident which had led to a small number of guards supervising some 500 prisoners.²³⁸ In the Australian state of New South Wales, a 2016 audit connected a decrease in staff (due to cost-saving measures) with increased 'lockdowns' and tension between prisoners and staff.²³⁹

The crucial role of prison staff in ensuring criminal justice systems are effective is generally unrecognised, and poor working conditions persist in most countries. Prison staff in several countries protested, including through industrial action calling for better conditions and pay. Industrial action by Belgian prison staff lasted for two months in some prisons and led to conditions the Council of Europe's Committee for the Prevention of Torture (CPT) described as 'disturbing' and 'inhumane and degrading'.²⁴⁰ In Romania, nationwide protests by prison staff in September 2016 called for better work conditions, pay and an increase in staff numbers (2,400 staff positions were reported vacant). In Libya in June, the police responsible for guarding jails threatened to go on strike since they were unable to pay the catering companies which supply the prisons.²⁴¹

A recent handbook published by UNODC on dynamic security and prison intelligence reiterates that good prison management, in line with international standards, is reliant on prison staff. The handbook highlights

the 'need for staff to communicate with prisoners, have regular contact with prisoners, establish professional relationships and involve themselves in prisoners' daily lives'.²⁴²

Over the last few decades, an increasing number of women prison officers have been employed, including in men's prisons around the world, with recognised benefits.²⁴³ However, the corrections sector remains male dominated, and gender-based discrimination of female staff has been reported, including salary inequalities and under-representation of women in managerial positions. One positive example of gender equality in corrections is New Zealand, where women make up 44 per cent of the work force and 51 per cent of senior management. In 2014, the gender pay gap was negligible, close to zero.²⁴⁴

RECOMMENDATION 16

States should ensure that pay, working conditions, training programmes and staffing levels are adequate to ensure the safe and effective operation of prisons in line with international standards. Policies should be in place to encourage recruitment of female correctional staff, and to prevent any gender-based violence or discrimination.²⁴⁵

**GLOBAL PRISON TRENDS
SPECIAL FOCUS 2017**

THE SUSTAINABLE DEVELOPMENT GOALS AND CRIMINAL JUSTICE

Pull-out section



THE GLOBAL GOALS
For Sustainable Development

On 25 September 2015, a new set of development goals was agreed by all 193 UN member states. The Sustainable Development Goals (SDGs) of the '2030 Agenda for Sustainable Development' came into force on 1 January 2016 and comprise 17 goals to end poverty, protect the planet, and ensure prosperity for all. The international community agreed 169 targets and indicators to monitor and review progress towards the goals. The SDGs replace and build on the UN Millennium Development Goals.

While the Sustainable Development Goals are not legally binding, every UN member state is 'expected to take ownership and establish a national framework' for achieving the 17 goals, including through voluntary national reviews (VNRs). These VNRs serve as a basis for regular reviews by a High-level Political Forum,¹ the central platform for follow-up and review of the SDGs.

Limited consideration has been paid and little data collected so far on the impact of criminal justice policies on development. This Special Focus, therefore, summarises why criminal justice and prison reform must play a part in achieving the goals set out in the 2030 Agenda.

It does so by drawing on illustrative examples from a range of countries and highlighting specific issues addressed in the targets and indicators.

THE COMMITMENT TO 'LEAVE NO ONE BEHIND' IN IMPLEMENTING THE SDGs MUST INCLUDE PEOPLE IN PRISON.



Goal 1

Ending poverty in all forms everywhere

People in prison are overwhelmingly from poor socioeconomic backgrounds; they are more likely to have lived below the poverty line, and to have been homeless. For example, in one US study, about two thirds of people in jail reported previous incomes below the poverty line.² In the United Kingdom, 15 per cent of nearly 1,500 prisoners surveyed in 2012 reported having been homeless before custody,³ and in another study a fifth of homeless people admitted to committing an imprisonable offence in order to get shelter.⁴

Many people are convicted of criminal offences as a direct result of their poverty or marginalisation. In many African countries, for example, it is still possible to be arrested for being a 'rogue', 'vagabond' or an 'idle and disorderly person'. In one reported case, a school teacher with a psychosocial disability missed his medication due to a local drug shortage and was walking down the road singing – he was arrested, charged with being 'idle and disorderly', and subsequently spent three months in prison.⁵ In Costa Rica and Colombia, many imprisoned women cited economic survival as their

reason for having committed small-scale drug dealing and other low-level transactions, saying that they needed to provide for their children.⁶

"ABSURDLY, REGULATIONS THAT PENALIZE BEHAVIOURS ASSOCIATED WITH POVERTY AND HOMELESSNESS OFTEN IMPOSE FINES THAT PERSONS LIVING IN POVERTY ARE UNABLE TO PAY."

UN Special Rapporteur on extreme poverty and human rights⁷

In a 2014 report, the UN Special Rapporteur on extreme poverty and human rights noted with concern the increasing penalisation of poverty through the criminalisation of activities the poorest engage in to support themselves, such as street vending or petty bartering. Law enforcement officers also frequently use 'poverty, homelessness or disadvantage as an indicator of criminality'.⁸

The impact on marginalised people is bigger still. Women offenders are one such group. The 'feminisation of poverty'⁹ has been identified as one likely cause for the increase in the female prison population, at a faster rate than that of men.¹⁰

Women are twice as likely as men to live in poverty and data suggests that their economic and social position is deteriorating relative to men.¹¹ A survey of female prisoners in Uganda revealed that three quarters of the women identified as poor or very poor, and in a similar survey in Tunisia the figure was two thirds.¹²

"[W]ITHOUT EFFECTIVE DRUG CONTROL STRATEGIES THAT COUNTER OR PREVENT DRUG-RELATED HARMS, POVERTY, INEQUALITY AND EXCLUSION WILL PERSIST AND WE WILL NOT DELIVER ON THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT."

UN Development Programme¹³

There is also a link between poverty, drug offences and imprisonment. Many people who use drugs belong to vulnerable, poor and socially excluded groups, and are easier targets for law enforcement.¹⁴ The UN Development Programme has noted that poverty can push people into the drug trade, which is seen as a viable option for the 'disadvantaged, including

unemployed youth, indigenous populations, and marginalized groups for whom there are few opportunities to make a living'.¹⁵

Poverty is also a determining factor behind high rates of pre-trial detention. In recent years, increasing attention has been paid to the high number of people on remand because of unaffordable bail amounts. In South Africa, for example, a 2014 study found that roughly 10,000 prisoners awaiting trial qualified for bail but could not afford the bail sum. In half of these cases the amount was less than 1,000 Rand (approximately USD \$75).¹⁶

For most, imprisonment is not a one-off event, but triggers a downward spiral affecting the next generation.¹⁷ Research shows that children of imprisoned parents have no or little access to primary education, are more likely than their peers to commit offences, and to abuse drugs and alcohol. This gives their poverty an enduring quality, lasting over a lifetime and often over generations.

The loss of a family member's income because of their imprisonment (often the primary income) creates a financial strain for families of those detained. In Sierra Leone, for example, research showed that for every four detainees

in pre-trial detention, there were five family members who no longer had the support of a main breadwinner. Most pre-trial detainees in the country are men in the prime of their working lives, who have on average four dependents.¹⁸

As well as loss of employment and earnings, contact with the criminal justice system also has direct costs, including legal fees and expenses relating to visits, phone calls and the provision of necessities such as medication and food. A US study involving a survey of 712 imprisoned people found that the cost of legal expenses and visitation could amount to as much as a year's total household income for a family.¹⁹



Goal 2

End hunger, achieve food security and improved nutrition, and promote sustainable agriculture

The consequences of inadequate food – in terms of calories and/ or food safety standards – for the 10 million people in prison are wide ranging and include starvation, ill-health, premature death, the spread of infectious diseases, increased violence and corruption.

Many prison systems fail to meet the basic nutritional needs of prisoners. During the 2016 political and economic crisis in Venezuela, there were food shortages in prisons, causing starvation in some cases.²⁰ Prison authorities in Haiti blamed insufficient funds from the State for the 42 deaths in the first two months of 2017 from malnutrition-related diseases.²¹ In post-conflict situations, the UN Department of Peacekeeping

has highlighted a lack of food for prisoners, who are 'the lowest priority' in such environments.²²

Prisoners who are sick or elderly, women and children, as well as persons with disabilities may have specific dietary needs and be particularly badly affected by food shortages, often with serious consequences.

The World Health Organization identified adequate nutrition as the most immediate and critical need of HIV/AIDS patients, for example, and an integral part of any response to the epidemic, which is affecting many prison systems.²³ Malnutrition and food security are risk factors for HIV infection, and worsen the severity of the HIV disease.²⁴

Pregnant and breastfeeding women also have specific nutritional needs which, if not met, impact both the mother's and the child's health. The UN Special Rapporteur on violence against women has highlighted that when food is scarce in women's prisons it can easily become a 'commodity traded for sex'.²⁵ In Zambia, for example, women in police custody were reportedly isolated from visitors who would bring food as an attempt to coerce them into sex.²⁶

Children who live in prison with their mother may also receive insufficient food, sometimes because children are not accounted for in prison budgets.²⁷ UN reports on prisons in Mexico and Benin described cases where women had to split their already meagre food rations to feed their children.²⁸



Goal 3

Ensure healthy lives and promote well-being for all at all ages

There is a higher prevalence of disease, substance dependency and mental illness among prisoners – both as a cause and consequence of imprisonment.²⁹

Prisoners have complex health needs, often due to untreated conditions and unhealthy lifestyles, both regularly linked to poverty. While in prison, it is common for their health to deteriorate due

to inadequate health services, unhealthy conditions and overcrowding. Mortality rates have been shown to be as much as 50 per cent higher for prisoners than for people in the community,

and prisoners are also more likely to suffer from health issues such as diabetes and infectious diseases.³⁰

However, the provision of healthcare for prisoners is routinely underfunded, understaffed and lacks the full spectrum of treatment available in the community, even more so in overcrowded facilities. In Colombia, for example, the Ombudsperson found that there was only one doctor for every 496 prisoners.³¹ In France, prisoners reported being on a waiting list for one to two years to have an initial appointment with a psychologist.³²

Communicable diseases are a particular concern in prison, with infection rates for TB between 10 and 100 times higher than in the community.³³ It is estimated that up to 90 per cent of people who inject drugs are imprisoned at some point

in their lives, and prisoners have been found to be five times more likely to be living with HIV than adults in the general population.³⁴ Prisoners frequently lack adequate access to services and have been identified as a key population left behind in responses to the AIDS epidemic by UNAIDS.³⁵ For example, Needle and Syringe Programmes (NSPs) – an evidence-based intervention to prevent the transmission of HIV – are rarely available in prisons. In 2016, only eight countries provided NSPs in at least one prison.³⁶

Moreover, the healthcare needs for specific prison sub-populations are rarely catered for. For example, despite the increasing number of elderly people detained, age-related health issues such as dementia usually go undiagnosed and untreated.³⁷ The specific healthcare needs of women prisoners, including

preventive healthcare or distinct psychological care needs, are also often unmet.

Children and young people in detention also have distinct medical needs and are usually in a poorer state of mental health, leading to a higher risk of self-harm and suicide than their peers outside prison.³⁸

Health concerns do not end with release from prison. Continuity of care is vital as an interruption to treatment can lead to drug resistance, further illness and can even be fatal.³⁹ Research also suggests that people who have left prison face a multitude of problems (including housing, employment, and stigmatisation) and consequently deprioritise their health.⁴⁰ In turn, ill health contributes to social exclusion and increases the risk of re-offending.⁴¹



Goal 4

Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all

A high proportion of people who come in contact with criminal justice systems have been excluded from 'equitable quality education' and life opportunities – factors playing a significant role in their pathways to offending. In Scotland, for example, the prison service revealed in 2010 that 81 per cent of prisoners lacked functional literacy and 71 per cent lacked functional numeracy.⁴² A survey of Ugandan women prisoners showed that 32 per cent had never been to school⁴³ and in Jordan nearly a quarter of women interviewed in judicial detention were illiterate.⁴⁴

These barriers to education are further exacerbated by imprisonment. As the UN Special Rapporteur on the right to education has established, penal systems fail to identify prisoners with special educational needs, and – where it is provided at all – education is usually not individualised or age/skill-level appropriate.⁴⁵ Moreover, an over-emphasis on safety

and security, combined with understaffing, can lead to prison administrations' unwillingness to provide access to education and vocational programmes.⁴⁶

For women and girls, well-documented gender disparities in educational and vocational programmes in prison lead to additional disadvantages.⁴⁷ A UN report noted such discrimination stating: '[i]n many countries, the quality and range of programmes is poorer than those provided for men and, where they are offered, they often reflect traditional female roles such as sewing, kitchen duties, beauty care, and handicrafts'.⁴⁸ A State Advisory Committee in New Hampshire, US, observed that 'the vocational training opportunities made available to incarcerated men reflect the kinds of well-paying work from which women have been traditionally excluded – automotive mechanics, carpentry, and the like while the sole industry available to women [is] sewing'.⁴⁹

For many children and young people, failures in the education system are part of the pathway to detention. Many children in conflict with the law have a history of school failure and/or learning disability.⁵⁰ Once detained, their chance of child-oriented education is even more remote. Upon release, for a whole host of reasons including continued exclusion and being released in the middle of the academic year, over two thirds of children do not return to school.⁵¹

“LEARNING IN PRISON THROUGH EDUCATIONAL PROGRAMMES IS GENERALLY CONSIDERED TO HAVE AN IMPACT ON RECIDIVISM, REINTEGRATION AND, MORE SPECIFICALLY, EMPLOYMENT OUTCOMES UPON RELEASE.”

UN Special Rapporteur on the right to education⁵²



Goal 5

Achieve gender equality and empower all women and girls

It is widely recognised that gender inequality and disempowerment is a primary factor in women's pathways to offending, and that women continue to face multi-faceted discrimination and violence when in contact with the criminal justice system.

“THERE IS A STRONG LINK BETWEEN VIOLENCE AGAINST WOMEN AND WOMEN'S INCARCERATION, WHETHER PRIOR TO, DURING OR AFTER INCARCERATION.”

UN Special Rapporteur on violence against women⁵³

Criminal laws are discriminatory in many countries, penalising women exclusively or disproportionately including for example, for violation of dress codes, extramarital affairs, prostitution or witchcraft. In Afghanistan, approximately 50 per cent of women in prisons were estimated to have been convicted of 'moral' crimes.⁵⁴

Abortion is criminalised in a number of countries, even in cases of rape, and prostitution and 'running away' also tend to largely penalise women. The phenomenon of 'protective detention', where women are detained to 'protect' them from family violence (including 'honour crimes'), is an extreme example of gender discrimination.⁵⁵

High levels of poverty among women, linked to unequal access to economic resources, are a major factor behind offending and bring disadvantages in the criminal justice system. Many are unable to afford legal representation, bail or fines. Eligibility for legal aid is often based on household income, discriminating against women who do not have access to family budgets.

A clear link has been recognised between the increasing number of women imprisoned for low-level drug-related offences and poverty, violence and inequality. In 2016, over 90 per cent of women in prison in Indonesia and the Philippines

were charged with or convicted of drug-related offences,⁵⁶ and the same was true for over 60 per cent of women imprisoned in Argentina, Brazil, Costa Rica and Peru.⁵⁷ Common factors leading to their involvement with drugs include coercion by violent partners, low levels of education, and high levels of poverty and unemployment.

Furthermore, non-custodial alternatives to detention are invariably tailored to men and often not accessible to women on an equal basis. For instance, in Sierra Leone, research has highlighted that women are held in pre-trial detention because by law they cannot own property and hence rely on a male family member to provide a 'surety' as a bail condition.⁵⁸

Prison systems also are designed for the male majority population. Gender inequality characterises all aspects of the prison regime, from security procedures to healthcare, rehabilitation programmes and contact with the outside world.⁵⁹



Goal 6

Ensure availability and sustainable management of water and sanitation for all

Lack of sufficient and clean drinking water and poor hygiene conditions are common problems in prison settings and have serious health consequences.

Where there are no water sewage systems, diseases from diarrhoea and contagious skin infections to hepatitis flourish. In Ugandan prisons, for example, poor sanitation and the ongoing use of the bucket system for sewage leads to frequent outbreaks of cholera and diarrhoea, which are a major cause of morbidity and death among prisoners.⁶⁰

In the absence of clean water, prisoners may be forced to drink contaminated water. For example, in a case in the US State of Texas where prisoners drank water with unsafe levels of arsenic, a federal judge ruled that safe water must be provided. The judge explained that the option of finding alternative sources of water, which people in the community do have, obviously does not exist for prisoners.⁶¹

As a basic need, water is also commonly used as a commodity in corrupt practices. A report on

prisons in Cambodia, for example, stated that 'everything has a price', including drinking water.⁶²

As a minority in prison systems, women prisoners can face additional challenges in accessing water and hygiene facilities. A report on Chad described how women share toilets and bath facilities with men, which puts them at risk of sexual violence, including rape, by male prisoners and guards working in the male quarters.⁶³



Goal 8

Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.

Unemployment or low-paying jobs may lead to offending in the first place. Moreover, a lack of suitable rehabilitation programmes in prison and reintegration support following release has been shown to make reoffending more likely.

Employment is a prerequisite for securing housing, supporting family and gaining self-confidence. Providing work opportunities in prison serves the dual purpose of giving prisoners meaningful activity and improving their prospects of employment following release.

However, in many countries, there are no opportunities for prisoners to work. In others, labour is of little vocational value or prisoners work in exploitative and/or unsafe conditions.

Examples of abusive practices include forced labour on prison farms and misappropriation of profits from prisoners' work.⁶⁴

Inequalities faced by women in the labour market are usually mirrored in prison by fewer or lower quality opportunities for work and vocational training. Where programmes exist, they are often 'gendered', involving work traditionally thought appropriate for women or only equipping them for low-paid jobs – as noted by the UN Special Rapporteur on the right to education.⁶⁵

“SOCIAL REINTEGRATION IS MORE DIFFICULT FOR OFFENDERS WITH POOR BASIC EDUCATION AND UNMARKETABLE SKILLS. INSUFFICIENT OPPORTUNITIES FOR PRISONERS TO PARTICIPATE IN VOCATIONAL AND EDUCATIONAL TRAINING MAKE IT HARD FOR THEM TO PLAN FOR A SUCCESSFUL AND LAW-ABIDING RETURN TO THE COMMUNITY.”

UN Office on Drugs and Crime⁶⁶

Upon release, prisoners face multiple obstacles in securing employment, including due to having a criminal record, facing legal bans on employing former offenders,⁶⁷ stigmatisation and low levels of education and skills. Research shows this comes at a significant cost to society.⁶⁸



Goal 10

Reduce inequality within and among countries

Inequalities in society are mirrored in criminal justice systems. Discriminatory laws along with higher levels of poverty contribute to the over-representation of minorities in criminal justice systems.

Racial profiling by law enforcement agencies, higher arrest rates and longer periods spent on remand are common. Discrimination also impacts judicial procedures and influences sentencing, with minorities more likely to receive a prison sentence, and longer prison terms.⁶⁹

The so-called 'war on drugs' also affects minority groups disproportionately. In the US, for instance, African Americans account for 33 per cent of drug arrests and 37 per cent of people sent to state prisons on drug charges, while making up only 13 per cent of

the population. Despite comparable drug usage, black people are 3.7 times more likely to be arrested for marijuana possession than white people.⁷⁰ Similar racial disparities in the application of drug policies have been observed elsewhere, including in the UK, Canada and Australia.⁷¹

“RESEARCH INDICATES THAT MINORITIES OFTEN FACE A GREATER LIKELIHOOD OF A PRISON SENTENCE RATHER THAN CONDITIONAL RELEASE, GREATER LIKELIHOOD OF LONGER TERMS OF IMPRISONMENT OR A SENTENCE OF LIFE IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE, AS WELL AS GREATER LIKELIHOOD OF IMPOSITION OF THE DEATH PENALTY.”

UN Special Rapporteur on minority issues⁷²

Indigenous peoples also constitute a disproportionate share of the prison population in several countries. In New Zealand, for example, Māori make up over half of the prison population, although they only comprise about 14 per cent of the country's population.⁷³ In Canada, the number of Aboriginal women in federal institutions grew a staggering 97 per cent between 2002 and 2012, compared to 34 per cent for Aboriginal men.⁷⁴



Goal 16

Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build, effective, accountable and inclusive institutions at all levels.

Goal 16 is closely linked with criminal justice and prison reform. The Goal recognises the importance of the rule of law, accountable and transparent institutions, peaceful and inclusive societies, the prevention of violence (and related deaths), and tackling corruption as critical elements in achieving sustainable development.

Fair and effective criminal justice systems build trust between people and the state, which is an essential element for a peaceful and inclusive society. Within peacekeeping contexts, it has been acknowledged that the ‘strengthening of police, justice and prison systems play[s] a key role in the restoration and consolidation of peace’.⁷⁵

“LAW AND ORDER CANNOT BE ESTABLISHED, AND THE SAFETY AND SECURITY OF CITIZENS AND OF THE STATE CANNOT BE PRESERVED, WITHOUT POLICE AND OTHER LAW ENFORCEMENT AGENCIES OPERATING IN CONJUNCTION WITH FUNCTIONING JUSTICE AND CORRECTIONS SYSTEMS.”

UN Department of Peacekeeping Operations⁷⁶

To contribute to peaceful and inclusive societies, prisons need to have sufficient resources and capacity to fulfil their purpose, i.e. to protect society and rehabilitate those under their supervision. However, many systems are thwarted by high numbers of pre-trial detainees. Extensive research has illustrated the socioeconomic impact of pre-trial detention,⁷⁷ showing that achieving health, gender equality, and universal education for all has been inhibited directly ‘by the

significant expense incurred and opportunity lost when someone is detained and damaged through pre-trial detention’.⁷⁸

Pre-trial detention infringes access to justice because it impedes the presumption of innocence and the ability of suspects to defend themselves. Evidence shows that defendants who are free as they await their trial have a significantly better chance of being acquitted than those in pre-trial detention.⁷⁹

Violence and violence-related deaths are a prevalent problem in prisons, and often exacerbated by overcrowding and lack of staffing. It may be perpetrated by prison staff against prisoners, by prisoners against each other or by prisoners against guards, but in most countries prison violence results in deaths, although to a varying degree. In Brazil, for example, nearly 100 prisoners were killed in January 2017 in riots between two rival criminal gangs vying for control of the prison, with prisoners decapitated, mutilated, burned and shot. There is a link between the lack of effective control in prison and the level of violence, and where detention conditions do not meet the minimum standards, levels of violence rise.⁸⁰

High levels of violence against children in the criminal justice system and cases of torture are common, with often irreversible and life-long consequences.⁸¹

In a survey in Kazakhstan in 2015, 55 per cent of the children in conflict with the law said they were treated cruelly or violently by police and 37 per cent said they had been abused by staff in a detention centre.⁸² A cycle of violence can

be triggered by such ill-treatment; children who have been abused are more likely to go on to perpetrate violence against others and engage in other high-risk behaviours such as smoking, alcohol and drug use.⁸³

Corruption occurs throughout the criminal justice chain, including by police, prosecution, judges, lawyers – and in prison. The police may misuse their power of arrest to extort money. During criminal proceedings, victims and their families may have to pay bribes to move a case forward with the police or prosecution. In Nigeria, a Federal High Court Judge explained: ‘Corruption is the only reason that can explain the snail’s speed at which the administration of criminal justice works’.⁸⁴ The Inter-American Commission on Human Rights identified corruption as one of the reasons for the excessive use of pre-trial detention.⁸⁵

It is a common scenario in some systems for prisoners to be forced to pay to access basic commodities they are entitled to, such as food, water, medical care, living space, family visits – or for safety.⁸⁶

In Bulgaria, allegations of corrupt practices included prisoners having to pay money to prison and healthcare staff to be transferred to a hospital or access work programmes.⁸⁷ In Cambodia, reports cite corrupt practices including prison officials demanding payment for processing release papers.⁸⁸ In Mali, the UN Subcommittee for the Prevention of Torture described the prison system as ‘riddled with corruption’, with detainees who did or could not pay never leaving their cells, sometimes for several years, except to use the toilet once or twice a day.⁸⁹

RECOMMENDATION 17

States should recognise the relevance of criminal justice and prison reform for achieving the Sustainable Development Goals of the 2030 Agenda and include information on progress in their Voluntary National Reviews. Donors should consider favourably requests for assistance in implementing criminal justice reform.

An overview of international criminal justice standards that are relevant to the Sustainable Development Goals

GOALS AND TARGETS	INDICATORS	APPLICABLE INTERNATIONAL STANDARDS
GOAL 1: END POVERTY IN ALL ITS FORMS EVERYWHERE		
1.1 Eradicate extreme poverty (people living on less than \$1.25 a day) for all people everywhere	1.1.1 1.2.1	Nelson Mandela Rule 4. Bangkok Rule 58. Tokyo Rule 1.5. Beijing Rule 26.*
1.2 Reduce at least by half the proportion of people living in poverty in all its dimensions, per national definitions	1.2.2	
GOAL 2: END HUNGER, ACHIEVE FOOD SECURITY AND IMPROVED NUTRITION AND PROMOTE SUSTAINABLE AGRICULTURE		
2.1 End hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round	2.1.1 2.2.1 2.2.2	Nelson Mandela Rules 22, 35, 114. Bangkok Rule 48.
2.2 By 2030, end all forms of malnutrition. Address the nutritional needs of adolescent girls, pregnant and lactating women and older persons	2.2.1 2.2.2	Bangkok Rule 48. Havana Rules 37, 73.**
GOAL 3: ENSURE HEALTHY LIVES AND PROMOTE WELL-BEING FOR ALL AT ALL AGES		
3.1 Reduce the global maternal mortality rates	3.1.1 3.1.2	Nelson Mandela Rules 24, 27-28, 48. Bangkok Rules 10, 24, 39.
3.2 End preventable deaths of newborns and children under 5 years of age	3.2.1 3.2.2	Nelson Mandela Rule 29. Bangkok Rules 5, 9, 33(3), 51.
3.3 End the epidemics of AIDS, tuberculosis, malaria and combat hepatitis, water-borne diseases and other communicable diseases	3.3.1- 3.3.4	Nelson Mandela Rules 13, 24, 27, 30(d), 35(1). Bangkok Rules 6, 14-15, 17, 34. Havana Rules 49, 54.
3.4 Reduce by one third premature mortality from non-communicable diseases and promote mental health and well-being	3.4.1 3.4.2	Nelson Mandela Rules 24-25, 27, 29-30, 33. Bangkok Rules 10, 15, 17-18, 35, 39. Havana Rules 49, 50-53.
3.5 Strengthen the prevention and treatment of substance abuse	3.5.1 3.5.2	Nelson Mandela Rules 4, 24, 30(c). Bangkok Rules 15, 62. Havana Rule 54.
3.7 Ensure universal access to sexual and reproductive health-care services	3.7.1 3.7.2	Nelson Mandela Rules 24, 26, 28. Bangkok Rules 6(c), 17-18, 38, 48.
3.8 Achieve universal health coverage, including access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines	3.8.1	Nelson Mandela Rules 24-35. Bangkok Rules 9-10, 12, 14, 17-18, 39, 48, 51. Havana Rules 31, 49-51.
3.c Substantially increase health financing and the recruitment, development, training and retention of the health workforce	3.c.1	Nelson Mandela Rules 25(2), 27, 78(1). Havana Rule 81.
GOAL 4: ENSURE INCLUSIVE AND EQUITABLE QUALITY EDUCATION AND PROMOTE LIFELONG LEARNING OPPORTUNITIES FOR ALL		
4.1/ 4.2 Ensure that all girls and boys have access to quality early childhood development, care and pre-primary, primary and secondary education	4.1.1 4.2.1 4.2.2	Bangkok Rules 37, 51(2). Beijing Rules 13.5, 24, 26. Havana Rules 18(b), 38-41.
4.3 Ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university	4.3.1 4.4.1	Nelson Mandela Rules 4, 64, 92, 98, 102, 104, 108. Bangkok Rules 32, 37, 42(1), 60. Beijing Rule 26.4.
4.4 Substantially increase the number of youth and adults who have relevant skills, including technical and vocational skills, for employment, decent jobs and entrepreneurship	4.5.1 4.6.1	Havana Rules 38-42, 45-46.
4.5 Eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations		
4.6 Ensure that all youth and a substantial proportion of adults, both men and women, achieve literacy and numeracy		

GOAL 5: ACHIEVE GENDER EQUALITY AND EMPOWER ALL WOMEN AND GIRLS

5.1	End all forms of discrimination against all women and girls everywhere	5.1.1	Bangkok Rule 1 [†] . Nelson Mandela Rules 2, 11, 58(2), 74(3), 81. Tokyo Rule 2.2. Beijing Rule 26.4. Havana Rule 4.
5.2	Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation	5.2.1 5.2.2	Bangkok Rules 1, 6, 7, 19, 25, 31-32, 36, 38, 41, 42(4), 44, 56-57, 59-62, 66. Nelson Mandela Rules 11, 34, 81.
5.5	Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life	5.5.2	Bangkok Rules 29, 30, 32. Nelson Mandela Rules 74(3), 81. Beijing Rule 22.2. Havana Rule 83.
5.6	Ensure universal access to sexual and reproductive health and reproductive rights	5.6.1 5.6.2	Nelson Mandela Rules 24, 26, 28. Bangkok Rules 6(c), 17-18, 38, 48.
5.c	Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls	5.c.1	Nelson Mandela Rule 10. Bangkok Rules 1, 67-69.

GOAL 6: ENSURE AVAILABILITY AND SUSTAINABLE MANAGEMENT OF WATER AND SANITATION FOR ALL

6.1	Achieve universal and equitable access to safe and affordable drinking water for all	6.1.1	Nelson Mandela Rules 18, 22, 35, 42-43. Bangkok Rule 5.
6.2	Achieve access to adequate and equitable sanitation and hygiene, paying special attention to the needs of women and girls and those in vulnerable situations	6.2.1	Havana Rules 34, 37, 73.

GOAL 8: PROMOTE SUSTAINED, INCLUSIVE AND SUSTAINABLE ECONOMIC GROWTH, FULL AND PRODUCTIVE EMPLOYMENT AND DECENT WORK FOR ALL

8.5	Achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities	8.5.1 8.5.2	Nelson Mandela Rules 4, 74, 92, 96, 98, 102, 116. Bangkok Rules 37, 60. Tokyo Rules 9, 15-16.
8.6	Substantially reduce the proportion of youth not in employment, education or training	8.6.1	Beijing Rules 24, 26.1. Havana Rules 42-43, 45.
8.7	Take immediate and effective measures to eradicate forced labour and end child labour	8.7.1	Havana Rules 44, 46.
8.8	Protect labour rights and promote safe and secure working environments for all workers	8.8.2	Nelson Mandela Rules 14, 40(1), 74, 97, 99, 100-103. Beijing Rule 24. Havana Rules 44, 46.

GOAL 10: REDUCE INEQUALITY WITHIN AND AMONG COUNTRIES

10.2	Empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status	10.3.1	Nelson Mandela Rules 2, 4(2), 66. Bangkok Rules 1, 54-55. Tokyo Rule 2.2. Beijing Rule 1. Havana Rule 4.
10.3	Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action		

GOAL 16: PROMOTE PEACEFUL AND INCLUSIVE SOCIETIES FOR SUSTAINABLE DEVELOPMENT, PROVIDE ACCESS TO JUSTICE FOR ALL AND BUILD EFFECTIVE, ACCOUNTABLE AND INCLUSIVE INSTITUTIONS AT ALL LEVELS

16.1	Significantly reduce all forms of violence and related death rates everywhere	16.1.1 16.1.3	Nelson Mandela Rules 1-2, 11, 32(1)(d), 34, 47, 71, 82. Bangkok Rules 1, 6, 7, 19, 25, 31-32, 36, 38, 41, 42(4), 44, 56-57, 59-62, 66, 76(b)-(c). Havana Rules 1, 2, 64-65, 87.
16.2	End abuse, exploitation, trafficking and all forms of violence against and torture of children	16.2.1 16.2.3	Bangkok Rules 36, 38. Havana Rules 1, 2, 64-65, 87.
16.3	Promote the rule of law at the national and international levels and ensure equal access to justice for all	16.3.1 16.3.2 16.5.1	Nelson Mandela Rules 8, 54-57, 61, 71, 83-85. Bangkok Rules 7, 25-26. Havana Rules 24-25, 72-78. Tokyo Rules 5-6. Bangkok Rules 56-58, 65. Beijing Rules 11, 13. Havana Rules 1-2, 17. Nelson Mandela Rules 56-57, 83-85. Bangkok Rule 25. Havana Rules 56-57, 72-78.
16.5	Substantially reduce corruption and bribery in all their forms	16.7.1	Nelson Mandela Rules 56-57, 83-85. Bangkok Rule 25. Havana Rules 56-57, 72-78.
16.6	Develop effective, accountable and transparent institutions at all levels	16.b.1	Nelson Mandela Rules 2, 5(2), 10, 66, 83-85. Bangkok Rules 1, 54-55. Tokyo Rule 2.2. Beijing Rule 1. Havana Rule 4
16.7	Ensure responsive, inclusive, participatory and representative decision-making at all levels		

* Referring to the 2015 UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), 2010 UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), 1990 UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), and 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

** Referring to the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules).

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**GLOBAL PRISON TRENDS
SPECIAL FOCUS 2017**

The Sustainable Development Goals and criminal justice

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THE GLOBAL GOALS
For Sustainable Development

Solitary confinement

National practice is divided on the use of solitary confinement, with reforms limiting its use in light of growing awareness of its damaging impact on the physical and mental health of prisoners at one end of the spectrum, and reports about an increase in its use and/or discriminatory application at the other.

A report from Israel revealed that the number of prisoners placed in solitary confinement nearly doubled between 2012 and 2014.²⁴⁶ In France, Belgium and the Netherlands, suspected and convicted terrorists were placed in solitary confinement, arguing it was necessary for the prevention of radicalisation in prison.²⁴⁷ In Australia, plans were announced to build a small 'supermax' prison near Sydney with a 'High Risk Management Unit' where terrorist suspects would be housed in single segregation cells with individual small caged 'yards'.²⁴⁸

In the US, over 65,000 prisoners were held in prolonged solitary confinement (defined as more than 15 consecutive days in the Nelson Mandela Rules), with 3,000 held there for over six years (half of these in Texas).²⁴⁹ A 2016 report on New York State prisons demonstrated a racial bias in the use of solitary confinement, showing that Black and Latino prisoners are disciplined at up to twice the rate of white prisoners and for longer.²⁵⁰

International and regional bodies reported on solitary confinement in a wide range of countries. The UN Human Rights Committee expressed concern that solitary confinement was used in South Korea as the 'most common form of disciplinary punishment of inmates'²⁵¹; and the UN Committee on the Rights of the Child called for Sweden to end its practice of placing children in solitary confinement in remand prisons and police cells.²⁵² In its report on France, the UN Committee against Torture expressed concern at the frequent use of isolation for prisoners suffering from a mental health disorder.²⁵³ A mission report on Argentina by the Inter-American Rapporteur was highly critical of the 'deplorable' conditions for detainees in solitary confinement.²⁵⁴

In several countries, however, efforts have been made to restrict the use of solitary confinement, some prompted by the new limitations stipulated in the Nelson Mandela Rules. For example, in Ireland – where at the start of 2016 half of the 51 prisoners in solitary confinement were held for at least 100 days²⁵⁵ – a law was tabled in Parliament in 2016 which if passed would incorporate a definition of solitary confinement into national law for the first time and place statutory restrictions on holding prisoners in isolation for long periods.²⁵⁶

Significantly, in January 2016 the then US President, Barack Obama, ordered an end to the solitary confinement of youth in federal custody, and directed the Department of Justice to implement a range of solitary confinement reforms in the federal Bureau of Prisons.²⁵⁷ At the state level, the US also saw growing restrictions on the use of solitary confinement with new legislation in California and Colorado.²⁵⁸ A court in Pennsylvania criticised the holding of prisoners on death row in solitary confinement without meaningful review and due process, even where death sentences had been vacated (before they were re-sentenced to life imprisonment), citing the psychological impact of extreme isolation.²⁵⁹ In Canada, new data revealed that the number of prisoners in indefinite solitary confinement was halved in 2015 following policy changes brought in by the new government.²⁶⁰

RECOMMENDATION 18

States should implement the Nelson Mandela Rules on solitary confinement in law and practice, and restrict its use to exceptional cases. It should be applied only for the shortest time possible and be subject to regular, substantive review. Prolonged and indefinite solitary confinement should be prohibited entirely.

Violent extremism and prison

Discussions on how to address the issue of violent extremist offenders (VEOs) is increasingly prominent at national, regional and international levels. Literature on the topic generally refers to 'violent extremist offenders' to clarify that it is not the religious or ideological views of individuals that constitute the problem, but the promotion and/or use of violence to pursue extremist views. While there is no internationally agreed definition

of the term 'radicalisation',²⁶¹ it has been described as 'a dynamic process whereby an individual increasingly accepts and supports violent extremism', with reasons that 'can be ideological, political, religious, social, economic or personal'.²⁶²

A 2016 study of the profiles of 79 recent European jihadists found that over half (45) had previously spent time in prison, and of these over a quarter

(12) had been radicalised whilst in prison, although the process had intensified afterwards.²⁶³

It is widely acknowledged that a distinction is to be drawn between prison management for offenders convicted of violent extremist offence, and the risk of recruitment and grooming by extremists amongst the 'regular' prison population.

The development of tools to distinguish between ‘regular’ offenders and those who are ‘violent extremists’ or vulnerable to being radicalised has been a main area of discussion amongst experts. However, risk assessment tools currently in use (for example, VERA 2R and ERG22+)²⁶⁴ have proven challenging to implement in jurisdictions without significant human and financial resources. Moreover, the link between risk factors captured in these tools and the actual risk of committing violent offences has yet to be validated, and data on the evaluation and effectiveness of programmes and interventions is lacking to date.²⁶⁵

Training materials for prison administrations on indicators and warning signs to identify those posing a risk of radicalisation – to themselves or to other prisoners – are in high demand. A range of training material has been produced over the past couple of years, for example, in Belgium and Kenya.²⁶⁶ The European Organisation of Prison and Correctional Services (EuroPris) has started to collect training practices to make them accessible to prison services and is also developing eLearning and classroom training courses within its regional R2PRIS project.²⁶⁷

There is a general acknowledgment that humane prison conditions and good prison management are key tools for preventing prisoners from turning to violent extremist views. The UN Secretary-General’s Plan of Action to Prevent Violent Extremism warned, for example, that ‘Governments that exhibit repressive and heavy-handed security responses in violation of human rights and the rule of law, (...) tend to generate more violent extremists’.²⁶⁸ The Council of Europe ‘Guidelines for prison and probation services regarding radicalisation and violent extremism’ also caution that ‘violence, racism, islamophobia and other forms of discrimination generate resentment and provide the ground for radicalising narratives to take root’.²⁶⁹

It has also been noted that where prison managers cannot provide safe conditions, prisoners may turn to other prisoners for protection.²⁷⁰ Furthermore, research from 2010 on 15 countries had established that ‘over-crowding and under-staffing amplify the conditions that lend themselves to radicalisation’.²⁷¹

In Somalia, for example, measures to tackle overcrowding and provide prisoners with running water, beds and televisions has contributed to the reduction in violence in prison and has enabled staff to engage prisoners more effectively in disengagement activity.²⁷²

The debate continued on whether prisoners deemed to be at risk of radicalising others should be separated from, or integrated with the general prison population.

In the UK, where prisoners sentenced under terrorism legislation have been dispersed, a 2016 report recommended that this system be reviewed, and ‘consideration given to containment of known extremists within dedicated specialist units’.²⁷³ In Kyrgyzstan, the President approved a law in April 2016, which envisages the separate accommodation of violent extremist prisoners in cell-type facilities.²⁷⁴

Algeria separates those charged with terrorism-related offences from the rest of the prison population, but strictly avoids the concentration of a high number terrorist suspects in one single prison facility.²⁷⁵ Morocco has changed its approach from separating and concentrating extremist prisoners to dispersing them to different prisons after the initial approach was found to lead to increased radicalisation among these prisoners and a hardening of commitment to their belief.²⁷⁶ Canada, too, has chosen a model which integrates radicalised offenders into the general prison population, but also permits physical/geographical separation of these detainees based on security information.²⁷⁷

There has been a growing realisation that assessment tools, as well as de-radicalisation and resettlement programmes, need to be adapted to take into account the specific background of women, children and young people.²⁷⁸ The UN Plan of Action to Prevent Violent Extremism recommends that states ‘introduce disengagement, rehabilitation and counselling programmes for persons engaged in violent extremism which are gender-sensitive and include programmes for children to facilitate their reintegration into society’.²⁷⁹ However, the causes of radicalisation and violent extremism are complex and not well understood. For example, a recent review of the issue in prisons in England and Wales concluded

that ‘work on risk and management of extremism and radicalisation in the under-18 offender cohort is in its infancy’.²⁸⁰

The Global Counterterrorism Forum produced a life-cycle toolkit for countering violent extremism that includes the Neuchâtel Memorandum on Juvenile Justice,²⁸¹ which sets out how to respond to children at different stages of the criminal justice process, including whilst in detention.

Programmes for adult prisoners for de-radicalisation, disengagement and rehabilitation have been developed in a wide range of countries, including Algeria, Egypt, Indonesia, Jordan, Malaysia, Morocco, Pakistan, Saudi Arabia and Yemen.

Efforts to address radicalisation in prisons are underway in the Central Asian region; in Kazakhstan, the newly adopted counter-terrorism plan and action plan includes prisons as a priority issue.²⁸² In Sri Lanka, a programme for former LTTE combatants consists of six interventions: educational; vocational; psychosocial and creative therapies; social, cultural, and family; spiritual and religious; and recreational.²⁸³ Turkey has a prison programme which uses family members, often mothers, to ‘talk sense’ to prisoners.²⁸⁴ With support from the European Union, Nigeria has begun a de-radicalisation programme for former Boko Haram members.²⁸⁵

Responding to the need for guidance on good prison management in this specific context, the UNODC published *Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons*.²⁸⁶

RECOMMENDATION 19

States should take a human rights-based approach to preventing radicalisation in prisons and refrain from repressive responses which tend to generate, rather than prevent violent extremist views. Risk assessment tools, training on warning signs and rehabilitation programmes should be developed, and adapted for women, children and young people.

© Ministry of Corrections of Georgia, 2014.

It is acknowledged that humane prison conditions are a factor preventing prisoners from turning to violent extremist views.

Prison clothing

A recent review of literature on prison clothing and uniforms by PRI found a wide diversity of policies and practices.²⁸⁷

International standards provide that clothing must be adequate, clean, appropriate to the season, and must not humiliate or degrade,²⁸⁸ but are mostly silent on the question of whether or not detainees should wear uniform. However, standards are clear in two cases. Firstly, that 'whenever a prisoner is removed outside the prison' they should be allowed to wear their own clothing or 'other inconspicuous clothing',²⁸⁹ and that for pre-trial detainees, the presumption of innocence means that civilian clothing should be permitted,²⁹⁰ especially when appearing in court so that wearing a prison uniform does not convey a subliminal message of guilt or dangerousness to the judge or to a jury.²⁹¹

Many jurisdictions, including recently China, have therefore recognised that a defendant appearing in court in a prison uniform or other prison paraphernalia (such as handcuffs or shackles) has the potential to prejudice a judge or jury and compromise the presumption of innocence.²⁹² Additionally, in an

unusual but insightful judgment, the Constitutional Court of South Korea has referred to the humiliation of wearing a prison uniform during trial and its potential impact on the defendant's ability to mount an adequate defence.²⁹³

For the term of imprisonment, some countries have abolished prison uniforms, but others issue uniforms ranging from something akin to medical 'scrubs' to the kind of casual wear commonly worn outside of prison.

Uniform is often used as a prison management tool with colour employed to distinguish between different categories of prisoner, on the premise that it will reduce the risk of escape or facilitate recapture and assist with easy identification and management of prisoners on a day-to-day basis. Uniforms may also be labelled with information indicating the prisoner's status, their sentence, and, in a few extreme cases a reference to their offence. In Kazakhstan, for example, life sentenced prisoners' uniforms are marked with 'PLS' – 'Sentenced to Life in Jail'.²⁹⁴ This practice is also found in Ukraine, which was criticised by the European Committee for the Prevention of Torture (CPT) as 'stigmatising' and 'humiliating'.²⁹⁵

Prison-issue clothing often falls short of minimum standards, and may even amount to a violation of a prisoner's right to inherent human dignity. For example, clothing provided to prisoners in Zambia was described by Human Rights Watch as 'grossly inadequate' with some wearing only half a uniform or wet clothes.²⁹⁶ Clothing may also be inappropriate for the weather or uncomfortable. In Florida, for example, death row inmates were reported wearing 'bright orange scrubs made of some hot, heavy, itchy fabric'.²⁹⁷ In a few instances prison clothing was found to be more systematically used to humiliate inmates. For example, to emasculate male prisoners in Texas²⁹⁸ and Arizona,²⁹⁹ guards forced them to wear pink uniforms.

Although rarely the subject of research, the impact of wearing uniforms on detainees' identity and self-esteem has been noted by both policy-makers, prison administrators and by prisoners themselves.³⁰⁰ A link has also been made between what prisoners wear and rehabilitation.³⁰¹ The CPT also advised in a visit to Sweden that the reintroduction of uniform at all times and including during visits was counter-productive to the goal of rehabilitation and reintegration.³⁰²

Fragile and conflict-affected states

Challenges facing criminal justice and prison systems in fragile and conflict-affected states remained formidable throughout 2016. The UN Department of Peacekeeping Operations has produced a policy on prison support which states that, 'in many host countries of peace operations, corrections systems tend to lack governmental political support and resources and suffer from: outdated legislation, weak infrastructure; significant overcrowding; inadequate budgets; lack of administrative, operational and security systems; poorly-paid, insufficiently trained and under-equipped personnel; an inability to prevent and respond to prison incidents; and general noncompliance with international human rights standards'.³⁰³

In Libya, for example, a 2016 report revealed that prisons were being run by different branches of the rival governments and also by politically aligned armed groups outside the state's purview.³⁰⁴ In Cote d'Ivoire, an uprising in Abidjan's central prison led to the death of a prison guard and 10 inmates.³⁰⁵ In Haiti, 174 prisoners escaped having killed a guard and stolen firearms.³⁰⁶ In Cameroon, poor prison conditions were aggravated by large numbers of prisoners detained on suspicion of association with Boko Haram.³⁰⁷

In some contexts, prisons became military targets. In Yemen, a detention facility in Hudaydah was bombed in air strikes by the Saudi-led coalition leading to the deaths of over 50 people, most of whom were prisoners in pre-trial detention

or convicted of minor offences.³⁰⁸ Fragile and conflict-affected states in many parts of the world have also seen prisons targeted by insurgent groups. In the Philippines, militants linked to the terrorist group known as ISIS freed prisoners from jail,³⁰⁹ and in Libya, militants from ISIS attacked Zliten prison and helped an estimated 60 prisoners to escape.³¹⁰

Prisons in fragile and conflict-affected areas were used for arbitrary detention and torture in breach of international law. A multitude of human rights abuses in Syria's prisons was documented by Amnesty International in 2017. It reported that 17,723 people have died in custody since the crisis began in March 2011 – an average of over 300 deaths each month – including mass extrajudicial executions

by hanging in Saydnya prison, torture and the systematic deprivation of food, water, medicine and medical care.³¹¹

Once active conflicts have been brought to a close, the importance of creating a system of justice is increasingly recognised and peacekeeping missions are typically engaged in: 'the basic functioning of the criminal justice system; the investigation and prosecution of atrocity crimes and crimes that fuel conflict; reductions in the level of prolonged and arbitrary detention; the professionalization of justice and corrections personnel; the development and implementation of national justice and corrections reform strategies; and

the strengthening of the legislative and regulatory framework'.³¹² Peacekeeping missions have, for example, used their convening authority to coordinate criminal justice frameworks in Mali and helped to reopen courts and prisons in 'islands of stability' in the Democratic Republic of the Congo.³¹³

There is increasing awareness of the importance of recruiting women to work in the UN's 16 peacekeeping operations globally,³¹⁴ although progress has been modest. By 2014 uniformed female personnel deployed in UN peacekeeping missions had increased to three per cent for military personnel and ten per cent for police personnel.³¹⁵ The increase

in numbers is seen as part of the commitment to ensure women's participation in peacekeeping, but also as a way to reduce the risk of sexual violence against women and girls following a number of documented incidents of abuse committed by peacekeeping personnel.³¹⁶

RECOMMENDATION 20

The establishment of prisons which meet international standards should assume a greater priority in peacekeeping operations, within the development of fair and proportionate criminal justice systems.

Privatisation

Prison privatisation exists in various forms throughout the world including in Brazil, Japan and Chile as well as Australia, Scotland, England and Wales, New Zealand, South Africa and the US. However, definitive evidence about the benefits of private companies operating prisons – both in terms of value for money and in terms of justice outcomes, is lacking. In Australia, research conducted in 2016 concluded that the case for privatisation of prisons had not been made, stating that: 'any evidence of performance improvements and efficiency gains remains patchy and opaque; systems of accountability vary significantly; public reporting remains poor; and the total cost of private prisons remains unknown'.³¹⁷

In the US, the Justice Department's Inspector General issued a report comparing 14 correctional facilities run by the federal Bureau of Prisons with 14 privately run facilities. It found that those privately operated were more dangerous and had higher rates of assaults and lockdowns, incidents of use of force by correctional officers, and confiscated weapons. Within a week of the report, the Justice Department announced it would phase out private prisons to house federal inmates.³¹⁸ In a memorandum announcing the decision, the Deputy Attorney-General wrote that private prisons 'compare poorly to our own Bureau facilities. They simply do not provide the same level of correctional services, programs, and resources; they do not save substantially on costs; and

(...) they do not maintain the same level of (...) rehabilitative services that the Bureau provides, such as educational programs and job training (...) – and these services are essential to reducing recidivism and improving public safety'. This move ignited debate about privatisation of prisons in many other countries as well. However, in February 2017, the Trump administration issued an order to revive the use of private prisons, rescinding the previous order to phase them out.³¹⁹

A number of privately run prisons elsewhere encountered problems during 2016. In Brazil, prosecutors have demanded that a multi-million-dollar private prison contract in Amazonas State be halted because of signs of corruption and mismanagement.³²⁰ In the UK, 11 staff were suspended or dismissed from a privately-operated facility for children after staff were alleged to have inappropriately restrained children and falsified statistics to improve the jail's record.³²¹ In New Zealand, the Government ended a contract with a private company that was running a prison after a string of controversies, including video footage that was released showing 'fight clubs' operating. A recent report revealed that since the Ministry of Corrections took back management of the facility, there has been a 55 per cent drop in serious inter-prisoner assaults.³²²

While in high- and medium-income countries there is growing scepticism about privately run prisons, a number

of lower income states have shown interest in this model. Cambodia, for example, has announced plans for a privately built and run prison as a way of addressing overcrowding,³²³ and has even suggested that prisoners could pay to 'upgrade' their living conditions.³²⁴ In Russia, the Bar Association called for privately run prisons to be built as a means of allowing lawyers better access to clients as there are insufficient visiting rooms in existing facilities.³²⁵

In England and Wales, where the probation service was partly privatised in 2015, questions were raised around the effectiveness of this move and fears expressed about potential deterioration in services.³²⁶ In a detailed assessment of probation services post-privatisation in one district, the Chief Inspector for Probation reported on 'inexperienced officers, extremely poor oversight and a lack of senior management and control', meaning probationers were not seen for weeks or months, and some were lost in the system altogether.³²⁷

RECOMMENDATION 21

The mixed outcomes of privatisation should be considered in any decision on contracting out penal functions and other privatised services. Proper accountability for abuses and misconduct by employees of private prisons must be ensured.

There is a growing recognition of the need to equip prisoners with the skills and education needed to obtain work on release.



Rehabilitation and reintegration

The Doha Declaration, adopted by the international community at the UN Crime Congress in April 2015, reiterated that states should implement and enhance policies for prisoners that focus on education, work, medical care, rehabilitation, social reintegration and the prevention of recidivism.³²⁸ It also called for the strengthening of policies to support the families of prisoners, as well for the promotion and encouragement of the use of alternatives to imprisonment where appropriate, and the review or reform of restorative justice and other processes in support of successful reintegration.

Research has pointed to a link between recidivism and unemployment after release. In Japan, a Justice Ministry report revealed a recidivism rate of 29.8 per cent among former prisoners who were unemployed at the end of their probation period. That was four times higher than the rate for those who found employment.³²⁹ Similarly a study in the US State of Florida found that employment could reduce recidivism by as much as 50 per cent.³³⁰

There appears to be a growing recognition of the need to equip prisoners with the skills and education they need to obtain work on release. In New Zealand, where there is an 80 per cent unemployment rate amongst former prisoners for up to a year after their release, the Government has provided a funding package for prisoners to access education and training, financial support, health services, and social

and housing support.³³¹ The Taiwanese Justice Minister recommended that prisoners be allowed to work six months to one year ahead of their release in both state-run companies and in the Justice Ministry.³³² In Nigeria, the National Open University waived its fees for prisoners to enable their access to a wide range of courses.³³³ The Dominican Republic is building new prisons with provision for educational, technical and vocational training programmes, such as for industrial and residential electricity technicians.³³⁴

During 2016, a number of countries pursued new training and vocational opportunities with the private sector. In Singapore, employers can register with the Singapore Corporation of Rehabilitative Enterprises (SCORE) to provide offenders with work, which has resulted in more prisoners securing jobs before their release than previously.³³⁵ A report by the UK-based Centre for Entrepreneurs suggested that harnessing prisoners' entrepreneurship skills could be a successful way to reduce reoffending as, unlike traditional employment, entrepreneurship does not discriminate on the basis of a criminal record. It also enables former prisoners to pursue opportunities best suited to their skill sets, attributes and interests while offering them a more flexible environment in which to reintegrate into society.³³⁶ India is increasingly involving private companies in prison labour, including the Himalaya Drug Company and automotive component manufacturer Spark Minda Corporation.³³⁷

New practical measures to improve employment skills have been introduced in several countries. In South Africa, prisoners were given the opportunity to learn baking skills through an accredited training scheme that included a vocational certificate.³³⁸ Following a decree by the Correction's Minister, prisoners in Georgia can now create and sell hand crafted goods online.³³⁹ In Harare Central Prison in Zimbabwe, prisoners have access to knitting machines to produce prison uniforms and acquire employable skills.³⁴⁰ One prison in Uruguay allows prisoners to run their own business making bricks, pizzas and ice creams.³⁴¹

RECOMMENDATION 22

Initiatives to support rehabilitation and reintegration of prisoners upon release should be expanded and individualised to each prisoner. Programmes should address the key barriers to reintegration by providing support with education, vocational training, work, healthcare, social and psychological services.

PART FIVE

Role and use of technologies

Exploiting technological advances to address challenges and improve efficiency in prisons is not new, but the uses for technology in prison settings continue to expand. A 2016 report on technological disparity across prison systems stated that technology can be used to 'save time, resources, enhance knowledge, and improve communication'.³⁴²

However, concerns about the role and use of technologies in prison have persisted, particularly around the involvement of the private sector, data protection and privacy issues, and the negative impact on replacing face-to-face contact for prisoners with remote security systems and remote contact with family. Technological advances are also bringing new challenges to security for prison management.

In the UK, the Government reported a 'sharp rise' in the use of drones to fly and drop contraband into prison grounds in 2016, and described it as a 'significant new and evolving threat'.³⁴³ The Chief Prison Inspectorate for England and Wales stated that drones were a reason for high levels of drug use in certain prisons,³⁴⁴ and in July 2016, a prison sentence was handed down for the first time in a case where a man used a drone to fly contraband into prisons.³⁴⁵ The Prisons Minister has proposed the use of eagles to address the issue, an idea borrowed from police in the Netherlands where the birds have been trained to hunt and intercept illegal drones.³⁴⁶ In early 2017, the French military also began to use trained eagles to bring down drones.³⁴⁷

Information and Communications Technology (ICT) is used in prisons worldwide, but to varying degrees and for different purposes. Information collected in a 2016 survey of 36 countries across all continents found that, aside from electronic information systems (for prisoner file management) which exist in every continent at all

stages of development, the most common use of technology was for security systems, electronic staff communications and closed-circuit television (CCTV). E-learning systems, healthcare and video visitation were also common, but mostly in high-income countries.³⁴⁸

In India, a new software developed by a prisoner to digitise a coupon system for the prison canteen has been expanded to store prisoners' records electronically and rolled out across Haryana state.³⁴⁹ As part of a pilot project in South Africa, which provided laptops to prisoners who could access the internet and communicate with lecturers, 15 prisoners graduated with university degrees.³⁵⁰ In Belgium, the 'Prison Cloud' programme introduced in 2015 is now running in three prisons, involving a cloud platform-based digital service enabling prisoners to purchase items, watch video on demand, make phone calls and access limited pages on the internet, for example. The Prison Cloud also allows for a centralised electronic file for every prisoner that can be used by all relevant agencies, including medical files. Cashless prisons can be found in many countries from Georgia, to Thailand and Finland.³⁵¹

Telemedicine (remote diagnosis and treatment of patients) has also been employed in an increasing number of prison systems as part of efforts to cut costs and on the grounds of decreasing risks associated with transferring prisoners. In the US, where most state prisons provide telemedicine, the California Correctional Healthcare Services reportedly provided 25,000 telemedicine visits in 2015 saving USD \$12 million.³⁵² The American Civil Liberties Union pointed out that while in some cases it can give prisoners quicker access to specialists, improving healthcare access, it should be employed 'as a supplement for on-site staff' not as a substitute.³⁵³

Facilitating contact between prisoners and the outside world through telecommunication tools, such as Skype and video conferencing, is also increasingly common.³⁵⁴ In most cases, this form of contact is supplementary to in-person visits. For example, in Georgia, only close relatives can visit prisoners, so video conference technology has been rolled out to give prisoners the opportunity to speak with other family members and friends. In the Philippines, a project called 'e-dalaw' (Filipino for 'visit') was introduced in 2011, allowing prisoners to 'Skype' with their families as up to 40 per cent never receive visits from families due to travel costs.³⁵⁵

However, in some US states, in-person visits have been abolished and replaced entirely by 'video visitation'.³⁵⁶ A 2016 study found that video visitation can be beneficial when families face financial and geographical barriers to in-person visits, but cautioned that the costs of the service are borne by the user (prisoners and their families).³⁵⁷ The controversy about prison phone call rates continued in the US with telecommunication companies bringing a court case to challenge industry regulations that were introduced following an outcry from prisoner advocates.³⁵⁸

Elsewhere, in Singapore a pilot project was introduced with video analytics and facial recognition so prisoners did not require guards to escort them within the prison complex. The Commissioner of Prisons stated that there would be no cut in staffing numbers as a result, but that staff would instead focus more time on rehabilitation of prisoners rather than just providing static security.³⁵⁹

Technology has also had a great impact on the delivery of non-custodial alternatives to imprisonment. The use of electronic monitoring (EM) continues to grow rapidly, not just in Europe or North America where it was first

**In some US states,
in-person visits have been
abolished and replaced
entirely by video visitation.**



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introduced in the 1990s, but also in low- and middle-income countries looking to decongest prisons. In Thailand, amendments to relevant legislation in 2015 and 2016 paved the way for electronic monitoring as a pre-trial and probationary measure. Introduced as a pilot project in 2013 by the Probation Department, over 3,000 offenders were electronically monitored in 2015 and there are plans to purchase a further 3,000 devices in 2017.³⁶⁰

The expansion of electronic monitoring – in terms of the number of people and its modalities – has sparked concerns about privacy, net-widening, stigmatisation and the involvement of the private sector. A 2016 study on the use of EM in five European jurisdictions

noted the lack of data on its use and suggested that electronic monitoring does not automatically result in lower prison populations. Rather, the data that does exist points to a link between high use of imprisonment and high use of electronic monitoring. Less extensive use of EM was found to be associated with long-term reductions in prison populations.³⁶¹

A 2017 academic study on the use of technologies in criminal justice system stresses the importance of evaluation when implementing electronic monitoring systems, as while ‘it is a promising and technologically advanced tool, we must remember that it is still fairly new to the field [...] and requires more evaluation to determine its effectiveness’.³⁶² In the

US, for example, the model of EM used in the State of Massachusetts, which involves a comprehensive assessment of each offender and follow-up and evaluation, has been looked to by other states as an effective model.

RECOMMENDATION 23

Technology should be leveraged to increase prisoners' opportunities for education, skill-building and communication, as well as to reduce the use of imprisonment and improve efficiency in case management. Telecommunications should complement rather than replace face-to-face visits for prisoners.

PART SIX

Alternatives to imprisonment

Pre-trial non-custodial measures

In the last few years, there has been growing attention to the ways in which monetary bail contributes to the disproportionate and unnecessary imprisonment of poor people illustrated by the use of terms such as ‘prisoners of poverty’ and the ‘criminalisation of poverty’.

A study in South Africa found that 76 per cent of detainees could not afford bail set at amounts of R 1,000 (USD \$72) or less.³⁶³ In one case in Sri Lanka, a woman accused of drug possession was held in prison for a year because she was unable to pay the 15,000 Rupee (USD \$134) bail sum.³⁶⁴ In India, pre-trial detainees continued to be held in prison for long periods because they could not afford bail.³⁶⁵ Reports also indicated that being granted bail usually depended on the quality of the defendant’s lawyer.³⁶⁶

In the US, research found a high number of people in local jails awaiting trial because they were unable to pay bail amounts that could amount to USD \$10,000. The average annual income of the affected population was just over USD \$15,000, with women and black people generally even poorer.³⁶⁷

The use of electronic monitoring continued to become more popular as an alternative to pre-trial detention. For example, in Thailand, electronic monitoring was used by 12 courts in a pilot project starting in October 2016, following its introduction the year before. The scheme is applied to offenders who cannot afford bail and have been charged with minor offences liable to punishment of less than five years, if they pass a risk

Community service: Lessons learned from East Africa

In 2016, PRI concluded an innovative two-year pilot project in Kenya, Uganda and Tanzania to improve access to justice by targeting the development of community service systems as an alternative to the overuse of imprisonment.

Lessons learned from the project have been published in a blog and a summary evaluation report which outline the following:³⁶⁸

1. Effective and tangible community service placements are needed to ensure offenders can develop their skills for employment after their sanction.
2. Implementation of community service requires adequate numbers of trained staff. However, where human resources are lacking, creative solutions can be found. For example, volunteers can play a role in supporting probation officers.
3. Local leadership and community participation is important. Including the local community in decisions about what kind of public works offenders complete increases participation in and ownership of the justice system. Initiatives such as open days dedicated to raising awareness about community service were successful in facilitating public engagement with the concept.
4. Feedback mechanisms ensure that the results of community service work are reported back to the community and also to the courts, so informed decisions can be made in future cases.
5. Alternative approaches to persuading stakeholders on the benefits of alternatives to imprisonment sometimes require different approaches. One example was to change their perceptions through visits to overcrowded prisons.
6. Introducing performance management, such as targets for individual magistrates to complete a set number of cases, appeared to have encouraged the use of community service orders as a sanction.
7. Accurate data and consistent, reliable methods for its collection are critical to the effectiveness of community service orders.
8. Systemic level changes such as decriminalisation of out-dated misdemeanours and legislation (such as being a ‘rogue and vagabond’, for example) help to reform criminal justice systems. Sentencing guidelines can help ensure that non-custodial sentences are the primary choice for non-serious crimes.
9. A number of aspects need to be approached in a gender-sensitive way: from the decision-making involved at sentencing, to the type of community work.

assessment and get approval from the judge. The device can be a bracelet or smartphone with a tracking system.³⁶⁹ In Ireland, mobile phone monitoring was used as an innovative alternative to pre-trial detention for defendants without secure housing to ensure their court attendance.³⁷⁰

RECOMMENDATION 24

Electronic monitoring and other non-custodial alternatives to pre-trial detention should be used in line with the principles of proportionality and necessity. Amounts of monetary bail should be set according to the circumstances of the individual defendant.

Non-custodial sanctions

In most regions, countries looked to non-custodial penalties for less serious offenders. This reflects widespread recognition that there is an urgent need to release pressure on overcrowded prison systems and to provide a more constructive response to criminal offending than imprisonment.³⁷¹

Research has shown that many people in prison do not pose a risk to society. For example, a study in the US found that a quarter of prisoners (364,000 people) could have been more effectively sentenced to non-custodial alternatives without 'meaningfully threatening public safety or increasing crime', while a further 14 per cent could be released within a year and pose 'little risk to public safety'.³⁷²

In Kenya, President Uhuru Kenyatta instructed his Interior Cabinet Secretary and the Commissioner of Prisons to fast-track the release of petty offenders to decongest prisons.³⁷³ In Indonesia, the Law and Human Rights Ministry recommended greater use of non-custodial sentences and restorative justice in responding to drug use.³⁷⁴ The Ombudswoman of the Czech Republic wanted to see more probation and mediation services to replace prison.³⁷⁵ In Scotland, a similar call came from the Chief Inspector of Prisons to replace prison for short sentences, with a

presumption against imprisonment for sentences of 12 months or less and greater use of electronic tagging.³⁷⁶

Amendments to the Criminal Code in Thailand in 2016 have extended the maximum prison sentence eligible to be served on probation from three years to five.³⁷⁷ In Azerbaijan, a new law adopted early February 2017 paves the way for the establishment of a probation service and the introduction of electronic monitoring.³⁷⁸ In Nepal, a Bill was under consideration in Parliament in March 2017 which would introduce community service to replace prison sentences of up to six months, depending on the nature and gravity of the offence, the age and conduct of the offender as well as the circumstances of the offence.³⁷⁹

In some countries, it is proving more difficult to promote the use of non-custodial alternatives. In Jordan, for example, tribal culture seems to encourage retribution by the victim on the perpetrator, making it unclear whether communities will accept community service as a punishment.³⁸⁰

Plans to reduce overcrowding also included greater use of early release for prisoners, sometimes combined with electronic monitoring, as seen in Japan and Thailand.³⁸¹ In the latter, changes to the Criminal Code and Probation Act in 2016 now combine in-person

supervision of offenders with the use of electronic monitoring devices during the probationary period.³⁸² Electronic tagging was also used for more serious offences, including robbery in some countries. In the Netherlands, for example, one in four offenders who received a tagging order in 2016 were convicted of some form of violent crime, and 23 per cent for drug-related crimes.³⁸³

Given the increasing number of women being imprisoned, there have been some efforts to design non-custodial sanctions in a gender-sensitive way, including alternatives to prison terms for women convicted of drug-related offences. (See 'Pilot project on community service and probation for women' below)

In Costa Rica, the law was amended to provide for women who were convicted of bringing drugs into prison when visiting family members. It allowed for women living in poverty, heads of households or custodians of minor children, older adults or persons with some form of disability to be granted home arrest, supervised release, residence in a halfway house, or electronic monitoring.³⁸⁴

A study on alternatives to coercive sanctions (ACS) in response to drug-related offences was commissioned by the European Commission, and identified 13 different

Pilot project on community service and probation for women

During 2016, PRI ran a pilot project with the Kenya Probation and Aftercare Service to study and develop gender-sensitive community service and probation for women in Kenya. Results from field research across ten regions (and a probation hostel for girls) were published in *Community service and probation for women: a study in Kenya*.³⁸⁵

Interviews with 97 women showed the majority were mothers with young children, of low educational status, low earners, victims of violence, in

poor health and unskilled. Many were convicted for offences relating to poverty, with 67 per cent indicating they had offended to earn money and support their family. Certain offences affected women more than men. Many of these were misdemeanours, such as selling alcoholic drinks without a licence, which is a common income-generating activity because women can engage in it at home while caring for children.

Challenges faced by women in completing their non-custodial order centred around caretaking obligations and socio-economic issues. Most women struggled to pay for transport to attend appointments or their community service placement.

These kinds of difficulties tended to be linked to the length and scheduling of the order, which if not managed well could prevent women from securing part-time employment to support their families. Other challenges included stigmatisation, health issues and a lack of support programmes, particularly for economic empowerment and skill building.

While the project focuses on Kenya, lessons and recommendations on how to deliver gender-sensitive community sanctions were drawn out for other countries in a short briefing paper, *Community service and probation for women: Lessons and recommendations based on a study in Kenya*.³⁸⁶

Many countries looked to non-custodial penalties to reduce overcrowding and provide a more constructive response to offending.



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types of ACS across 28 member states, with drug treatment the most common. The research found that the use of alternatives was strongly influenced by the individual beliefs of those responsible for sentencing, such as prosecutors and judges.³⁸⁷

Policies dealing with breach of probation or community service orders were the subject of discussion in New Zealand. Plans to strip benefits from offenders who do not complete community sentences have been

criticised for being ineffective and for unfairly impacting innocent children of prisoners. Penal experts cautioned that removing the safety net would expose children of these offenders to poverty and impact on offenders with mental illnesses or drug and alcohol dependencies, who are unlikely to respond to the threat of losing their benefit.³⁸⁸ It was instead advised to invest more in better support for offenders.

RECOMMENDATION 25

Countries should develop non-custodial sanctions to enable proportionate responses to offending, commensurate to the circumstances of the individual and the case. Alternative sanctions should address the root causes of offending, be gender-sensitive and replace the use of prison, rather than widen the net of criminal justice control.

25 key recommendations

01 States should review their penal systems with a view to reducing the use of imprisonment. They should increase alternative strategies to crime, shifting resources to crime prevention and social interventions, and adopt measures to reduce overcrowding in line with the UN Tokyo and Bangkok Rules.

02 States should assess the proportionality of criminal sanctions and bear in mind the danger of net-widening when applying alternatives to imprisonment. Mandatory minimum sentences should be discontinued as they impede the independence of judges and the consideration of individual circumstances in sentencing.

03 Any decision on pre-trial detention should be guided by international standards: the presumption of innocence, the principle that pre-trial detention be used as a means of last resort, and with regard to the principles of necessity and proportionality. States should enshrine these standards in their national criminal laws.

04 Countries that retain the death penalty should progressively move towards abolition, by establishing a moratorium, by reducing the number of crimes attracting the death penalty and by improving conditions on death row. At a minimum, death sentences must only be employed for the 'most serious offences' and adhere to procedural safeguards as laid out in international law.

05 States should abolish life sentences without any possibility of parole and reduce the number of life-sentence applicable offences in line with the principle of proportionality. Prisoners on life sentences are entitled to the same minimum standards as other prisoners and conditions must not be punitive by virtue of the sentence.

06 States should review their drug policies with regard to proportionality of sanctions, treat drug use as a public health rather than criminal justice problem, and provide drug dependency treatment and harm reduction programmes in prison settings.

07 States should examine the offences women are convicted of and the reasons for their offending, with a view to ensuring laws are not disproportionately impacting women. Prison policy and practice should be adapted for women, in line with the UN Bangkok Rules.

08 The age of criminal responsibility must be no lower than 12 years and should be progressively raised to 18. Justice systems need to be child-friendly and gender-sensitive, using detention only as a very last resort for children, and prohibiting the death penalty and life imprisonment.

09 States should scrutinise their criminal justice systems for racial disparities and take measures to ensure that an accused person's membership of a minority ethnic group or status as a foreign national does not result in a harsher punishment.

10 States should adopt a health-based approach to drug use in prison, and provide drug dependency treatment, evidence-based harm reduction programmes and prevention activities such as education and awareness raising measures.

11 States need to take measures to protect LGBTI prisoners from discrimination, harassment and abuse. Individuals' gender identity and choice should be taken into account prior to placement of transgender prisoners. Separation of prisoners for their protection should only occur in agreement with the person concerned, and must not lead to any limitations in accessing programmes and services.

12 States should collect data on the number and needs of older prisoners and review and adopt specific standards and policies accordingly. This could include architectural measures as well as training of staff on geriatric-focused prison regimes.

- 13** States should improve prison healthcare in line with the Nelson Mandela Rules and Bangkok Rules, including the provision of mental healthcare. To address the HIV/AIDS epidemic, strategies to reduce prison overcrowding should be employed, and harm reduction programmes in prisons need to be expanded urgently.
- 14** Prison work programmes should ensure prisoners can gain employable skills, with a view to successful reintegration. Working conditions need to be safe, in line with community standards, and remuneration should be equitable.
- 15** States should adopt measures to ensure the safety of prisoners and staff, including adequate staff-prisoner ratios that allow for the exercise of effective control, as well as through improvement of prison conditions and investment in dynamic security.
- 16** States should ensure that pay, working conditions, training programmes and staffing levels are adequate to ensure the safe and effective operation of prisons in line with international standards. Policies should be in place to encourage recruitment of female correctional staff, and to prevent any gender-based violence or discrimination.
- 17** States should recognise the relevance of criminal justice and prison reform for achieving the Sustainable Development Goals of the 2030 Agenda and include information on progress in their Voluntary National Reviews. Donors should consider favourably requests for assistance in implementing criminal justice reform.
- 18** States should implement the Nelson Mandela Rules on solitary confinement in law and practice, and restrict its use to exceptional cases. It should be applied only for the shortest time possible and be subject to regular, substantive review. Prolonged and indefinite solitary confinement should be prohibited entirely.
- 19** States should take a human rights-based approach to preventing radicalisation in prisons and refrain from repressive responses which tend to generate, rather than prevent violent extremist views. Risk assessment tools, training on warning signs and rehabilitation programmes should be developed, and adapted for women, children and young people.
- 20** The establishment of prisons which meet international standards should assume a greater priority in peacekeeping operations, within the development of fair and proportionate criminal justice systems.
- 21** The mixed outcomes of privatisation should be considered in any decision on contracting out penal functions and other privatised services. Proper accountability for abuses and misconduct by employees of private prisons must be ensured.
- 22** Initiatives to support rehabilitation and reintegration of prisoners upon release should be expanded and individualised to each prisoner. Programmes should address the key barriers to reintegration by providing support with education, vocational training, work, healthcare, social and psychological services.
- 23** Technology should be leveraged to increase prisoners' opportunities for education, skill-building and communication, as well as to reduce the use of imprisonment and improve efficiency in case management. Telecommunications should complement rather than replace face-to-face visits for prisoners.
- 24** Electronic monitoring and other non-custodial alternatives to pre-trial detention should be used in line with the principles of proportionality and necessity. Amounts of monetary bail should be set according to the circumstances of the individual defendant.
- 25** Countries should develop non-custodial sanctions to enable proportionate responses to offending, commensurate to the circumstances of the individual and the case. Alternative sanctions should address the root causes of offending, be gender-sensitive and replace the use of prison, rather than widen the net of criminal justice control.

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