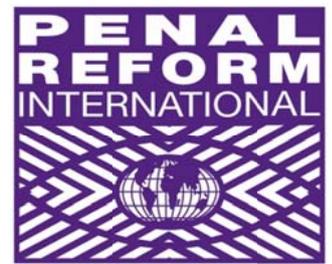


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23rd Session of the Commission on Crime Prevention and Criminal Justice

# The use and practice of imprisonment

Current trends and future challenges

An update – May 2014

## Introduction and Purpose of Paper

The aim of this paper is to describe some of the key global trends in the use and practice of imprisonment and to identify some of the pressing challenges facing states that wish to organise their penitentiary system in accordance with international norms and standards. An earlier draft was discussed at the 22<sup>nd</sup> session of the United Nations Commission on Crime Prevention and Criminal Justice in April 2013 and has been subject to a process of consultation over the last 12 months. Further consultations will be held in the run up to the 13th Crime Congress in Doha, Qatar where Penal Reform International plans to present a new publication based on this discussion paper, providing an update on global developments in penal reform and criminal justice annually.

Identifying key trends and challenges in penal policy and practice is a particularly important task during a period in which many countries are experiencing economic difficulties and looking to reduce public spending. This climate may lead both to increasing levels of crime and reduced resources for preventing and tackling it. The paper is also timely in view of the international community's work to produce a post-2015 development agenda which recognises the importance of security and justice in ensuring stable and peaceful societies.<sup>1</sup>

Part one of the paper looks briefly at what is known about crime rates and their relationship with the use of prison. Part two addresses trends in imprisonment and part three looks at recent changes in the extent and nature of prison populations around the world. Part four discusses questions about the organisation and management of prisons; who is responsible for them, who works in them, the challenges they face and how and what systems are in place for monitoring and inspection. Part five looks at the opportunities and challenges created by new technology while Part six seeks to place imprisonment in the broader context of criminal justice policies, followed by conclusions and recommendations.

The paper includes data and examples from various countries and regions. These are not intended to be comprehensive or exhaustive but rather to illustrate the trends and challenges in a large number of states.

## Part One: Crime, Re-Offending and Prison

Accurately measuring the true level of crime as a whole is an impossible task both for theoretical and practical reasons. Definitions of what is criminal vary from state to state and over time, and there is enormous variation in the extent to which crimes are reported to and recorded by the authorities. While victimisation studies produce a better picture than crimes recorded by the police, there are few countries where reliable data over time permits meaningful trends to be established.

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<sup>1</sup> A New Global Partnership: Eradicate poverty and transform economies through sustainable development, Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda, available at: [www.post2015hlp.org/wp-content/uploads/2013/05/UN-Report.pdf](http://www.post2015hlp.org/wp-content/uploads/2013/05/UN-Report.pdf)

The crime of homicide (intentional killing) lends itself most easily to comparison and is usually considered as a proxy indicator for violence in general. The UN Office on Drugs and Crime (UNODC) estimates that intentional homicide was the cause of death of almost half a million people (439,000 individuals) worldwide in 2012. Over a third of those homicides (36 per cent) occurred in the Americas, 31 per cent in Africa, 28 per cent in Asia, 5 per cent in Europe and 0.3 per cent in Oceania.<sup>2</sup> A more detailed study published by UNODC in 2011 estimated that some 468,000 homicides took place in 2010, a global average of seven per hundred thousand of the general population.<sup>3</sup> The homicide rate in Africa and the Americas was more than double this global average while in Asia, Europe and Oceania it was roughly half. The study found concentrations of violence in parts of urban settings and among young males with a significant role played by organised or gang related crime on the one hand and gender-based violence on the other.

UN research shows that globally, in countries where data are available, the recent trend is of a decreasing rate of homicides, but that masks diverse regional and sub-regional trends. Over the past five years, homicide rates have been stable in much of Asia and Oceania, as well as in much of Europe, except for a pronounced decline in Eastern Europe. In contrast, in Central America, homicide rates peaked in 2011 before declining somewhat in 2012. Trends in homicide rates fluctuated in South America, while continued to decrease in the Caribbean and slowly declining in North America. Based on the limited trend data available, recent homicide trends in East and North Africa have been upward. In 2012 in Southern Africa, after several years of falls, the homicide rate increased.<sup>4</sup>

While imprisonment certainly has an important role in securing accountability and public security, the question of whether there is a relationship between the use of imprisonment and serious crime is however a contested one. Studies from the US have estimated that the quadrupling of the prison population there since the 1980's has accounted for between 25 and 30 per cent of the fall in crime.<sup>5</sup> Recent experience in New York City has shown that falls in crime can be achieved at the same time as reductions in the prison population.<sup>6</sup> Other academic studies have not found a clear link between crime and violence on the one hand and the use of prison on the other.<sup>7</sup>

The UNODC homicide study found that levels of violence are related to development, and other studies have found strong links with inequality. 'Higher levels of homicide are associated with low human and economic development. The largest shares of homicides occur in countries with low levels of human development, and countries with high levels of income inequality are afflicted by homicide rates almost four times higher than more equal societies.'<sup>8</sup> This suggests that increasing the use of imprisonment plays a relatively modest role in preventing and reducing violence and other forms of crime.

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<sup>2</sup> UNODC, World crime trends and emerging issues and responses in the field of crime prevention and criminal justice', 2014

<sup>3</sup> UNODC, Global Study on Homicide, 2011

<sup>4</sup> UNODC, World crime trends and emerging issues and responses in the field of crime prevention and criminal justice', 2014

<sup>5</sup> Blumstein et al, 'The Crime Drop In America', 2000

<sup>6</sup> Jacobsen M., 'Downsizing Prison, How To Reduce Crime And End Mass Incarceration', 2005

<sup>7</sup> Van Dijk, Jan J.M., Robert Manchin, John van Kesteren, Sami Nevala and Gergely Hideg, 'The Burden of Crime in the EU', Research Report, 2007; EU ICS, 'A Comparative Analysis of the European Survey of Crime and Safety', 2005

<sup>8</sup> See note 3

## Part Two: Trends in the use of imprisonment

The absolute numbers behind bars on remand or serving sentences has increased almost everywhere across the world over the last 20 years.<sup>9</sup> Some increase is to be expected given the growth in the world's population. In countries, which have seen substantial population growth, increases in the numbers of prisoners may nonetheless represent a fall in the rate of imprisonment per head of population. For example, the rise in the prison population in Kenya from 41,000 in 1996 to 52,000 in 2012 represented a decrease in the imprisonment rate from 144 per 100,000 of the general population to 126.

Over the last 20 years prison populations have seen particularly sharp rises in Latin America, where Brazil saw a 380 per cent increase, Colombia a 322 per cent increase and Mexico, 158 per cent. The 70 per cent growth in the US prison population looks relatively modest in comparison although it started from a higher baseline with the start of its prison expansion occurring in the 1970's. While the total US correctional population (on probation, parole, in federal and in state prisons and in local jails) decreased for the fourth consecutive year in 2012, the US still confines a higher proportion of its population than any other country.

In Asia, particularly steep rises in the use of prison have been seen in Indonesia (277 per cent), Thailand (250 per cent) and the Philippines (200 per cent). Vietnam and Iran have more than doubled their numbers in prison. The countries with the largest absolute numbers of prisoners, China and India appear to have seen more modest rises although data for China is incomplete in respect of pre-trial detainees and those subject to administrative detention.

In Europe, prison populations have fallen in Russia, some of the former Soviet Union countries (for example the Baltic States) and some Eastern countries such as Romania. Notwithstanding the decline, the Estonian Justice Minister has recently said that the country's prison population of nearly 3,300 is still too high and has commissioned an audit of penal law. Sweden has experienced a sharp fall in the number of prison admissions in the past two years and closed down four prisons and a remand centre.<sup>10</sup>

Former Soviet Union and Eastern European countries have not all seen their prison numbers fall. Before its large-scale amnesty in 2012, Georgia's prison population had trebled since the early 1990's due to harsh sentencing policies. The prison population in Poland has also grown substantially with relatively large numbers waiting to serve their sentences, a quite common practice seen in Europe. Turkey's prison population has grown by almost a factor of five in this period and a five year programme of building more than 200 new prisons was announced in 2013.<sup>11</sup> In Western Europe, all countries have seen their prison populations grow but at different rates. Spain and the UK have seen sharp and continuous increases. In Germany and particularly the Netherlands increases have been

<sup>9</sup> Unless otherwise referenced, all prison population data used in this section are taken from ICPS World Prison Brief at [www.prisonstudies.org](http://www.prisonstudies.org)

<sup>10</sup> <http://www.theguardian.com/world/2013/nov/11/sweden-closes-prisons-number-inmates-plummets>

<sup>11</sup> [www.prisonstudies.org/country/turkey](http://www.prisonstudies.org/country/turkey) and <http://www.hurriyetdailynews.com/turkey-to-build-207-prisons-over-5-years.aspx?pageID=238&nID=54999&NewsCatID=341>

followed by falls. The Netherlands' prison numbers tripled in the twelve years from 1992 falling back since so that the population is now just double what it was at the beginning of the period.<sup>12</sup>

In Africa, while data is less complete large percentage increases have been seen in some North African countries (Egypt, Algeria, Morocco), until recently in South Africa and in some but not all East African states (Ethiopia, Kenya, Uganda). Rwanda's prison numbers hugely increased following the genocide and have started to decrease in recent years. West and Central African countries have seen relatively small rises (Nigeria, Cameroon). Tanzania and Zimbabwe report fewer prisoners today than 20 years ago.

In Oceania, prison populations in Australia and New Zealand have more or less doubled since the early 1990's.

### Imprisonment rates

The size of the prison population throughout the world is growing (though not in every country), placing an enormous financial burden on governments and at a great cost to the social cohesion of societies. It is estimated that more than 10.2 million people, including sentenced and pre-trial prisoners, were held in penal institutions worldwide (from data available in October 2013). 144 out of every 100,000 people of the world were therefore in prison at that time.<sup>13</sup>

Prison populations are growing in all five continents. In the last 15 years the estimated world prison population has increased by some 25-30 per cent but at the same time the world population has risen by over 20 per cent. The world prison population rate has risen by about 6 per cent from 136 per 100,000 of the world population to the current rate of 144.<sup>14</sup>

Out of 203 jurisdictions for which data had been collected by the World Prison Brief of the International Centre for Prison Studies in May 2014, 117 had a rate of prison occupancy above 100 per cent (overcrowding). Out of these, 25 jurisdictions had rates of overcrowding above 200 per cent, and a further 26 had rates between 150 and 200 per cent.<sup>15</sup>

Rates of imprisonment vary substantially across the world and even within regions and countries. More than 400 per 100,000 people are confined in El Salvador compared to fewer than 105 per 100,000 in neighbouring Guatemala. Finland's rate of imprisonment per 100,000 of its population is one eighth of its neighbouring country Russia, while Canada's is more than one fifth of the US'. Within the US, the overall rate of more than 700 prisoners per 100,000 masks variations – Louisiana imprisons more than one in a hundred of its citizens, Minnesota fewer than one in every three hundred.

There is of course no such thing as a 'correct' prison population rate for a particular country. Given the financial and social costs associated with depriving people of their liberty, ***countries should keep under review whether imprisonment is playing an appropriate role in tackling crime.*** Such a

<sup>12</sup> Allen R., Reducing the use of imprisonment What can we learn from Europe?, CJA 2012

<sup>13</sup> World Prison Population List, Tenth Edition, International Centre for Prison Studies, [www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/w ppl\\_10.pdf](http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/w ppl_10.pdf)

<sup>14</sup> See note above and World Prison Population List, Eighth Edition (2008)

<sup>15</sup> <http://www.prisonstudies.org/highest-to-lowest>

review seems an urgent priority where rates are extremely high, say the – currently 16 – countries with more than 400 per 100,000 of their population confined.

## Pre-trial Detention

In many nations, prisons are used in large part not as a punishment or correctional measure but to hold suspects and defendants until they can be tried in court. In more than 50 countries, the majority of people in prison on any one day are such pre-trial detainees. Perhaps understandably the problem is gravest in post conflict and low-income states where the justice system may function sporadically, if at all. Here more than 7 out of 10 prisoners may be awaiting trial. Even in high-income countries such as the Netherlands and Canada however, almost two in every five people held in prison are on remand. Excessive use of pre-trial detention is a global problem.<sup>16</sup>

For example, an overall 36.3 per cent of the prison population in Africa, totalling 857,994 inmates, are held in pre-trial detention, reaching 80-90 per cent in some countries.<sup>17</sup> Many will spend months and even years in detention, without being tried or found guilty.<sup>18</sup> The length of pre-trial detention varies largely, with an average of 5.5 months in 19 of the then 25 member states of the European Union (2003)<sup>19</sup>, as compared to an average of 3.7 years in Nigeria.<sup>20</sup> Over the course of a year approximately 10 million people pass through pre-trial detention globally.<sup>21</sup>

Latest UN data suggest the share of persons in pre-trial detention worldwide has decreased from 30 per cent in 2004 to 27 per cent in 2012. Progress has been most manifest in Africa and Asia, where the shares of pre-trial prisoners decreased but remained at high levels, declining from 67 to 57 per cent in Africa and from 52 to 47 per cent in Asia. In regions with lower shares of pre-trial detainees, the decrease has been less evident (in the Americas, from 25 to 24 per cent; and in Europe, from 20 to 18 per cent).<sup>22</sup>

However, official figures are likely to underestimate the numbers involved; for one thing in many countries detainees are held in police detention, escaping the prison statistics but not the fact of detention. For other countries even where the percentage of people in pre-trial detention on a particular date may appear low, people on remand still represent a much higher proportion of all of those admitted into prison over the course of a year. So, while international law stipulates that

<sup>16</sup> See for example, Open Society Foundations, United Nations Development Programme, 'The Socio-Economic Impact of Pre Trial Detention', 2011

<sup>17</sup> Joint NGO Statement at the 50<sup>th</sup> Session of the African Commission on Human and Peoples' Rights in Banjul, 25 October 2011; referring to International Centre for Prison Studies; World Prison Brief; [www.soros.org/initiatives/justice/articles\\_publications/publications/achpr-pretrial-20111025/pretrial-detention-statement-10252011.pdf](http://www.soros.org/initiatives/justice/articles_publications/publications/achpr-pretrial-20111025/pretrial-detention-statement-10252011.pdf) and [www.prisonstudies.org/info/worldbrief/](http://www.prisonstudies.org/info/worldbrief/)

<sup>18</sup> Open Society Justice Initiative, The Socioeconomic Impact of Pretrial Detention, October 2011, p. 12.

<sup>19</sup> Accompanying document to the Proposal for a Council Framework Decision on the European supervision order in pre-trial procedures between Member States of the European Union, SEC(2006)1079 (Brussels: European Commission, August 29, 2006), 10–11.

<sup>20</sup> Anthony Nwapa, Building and Sustaining Change: Pretrial Detention Reform in Nigeria, in Justice Initiatives: Pretrial Detention, New York: Open Society Institute, 2008, 86.

<sup>21</sup> Open Society Justice Initiative, The Socioeconomic Impact of Pretrial Detention, October 2011, p. 15

<sup>22</sup> UNODC, World crime trends and emerging issues and responses in the field of crime prevention and criminal justice', 2014

penitentiary systems should comprise 'treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation',<sup>23</sup> in practice much of the work of prisons continues to be in fulfilling a jailing function.

In Mexico, a study estimated the amount of income lost, as a result of their detention, by the country's pre-trial detainees who were employed at the time of arrest, as 1.3 billion pesos (or about US \$100 million) in 2006. In South Africa, the government spends R2.2 million (US \$300,000) a day imprisoning people who have been granted bail but are unable to afford it.<sup>24</sup>

The rate at which defendants are acquitted in criminal trials varies widely among different countries.

In the light of this and the high rates of pre-trial detention, the past years have seen an acknowledgment of the importance of legal aid to improve the performance of the justice system and to ensure respect for the rule of law, which in turn is essential for sustainable development.

***The adoption, in December 2012, of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems is therefore a significant development, yet as a new set of standards will require measures to ensure their implementation.***

The Principles provide that states should ensure that a comprehensive legal aid system is in place that is accessible, effective, sustainable and credible. They clarify that legal aid is a duty and responsibility of the state, and sufficient resources should be allocated for it. The new standards also state that legal aid needs to be provided 'promptly and effectively at all stages of the criminal process' and including 'unhindered access to legal aid providers for detained persons'.<sup>25</sup> This is important for a range of reasons not least of course to avoid wrongful convictions.

A number of models for providing legal and paralegal advice and assistance have been developed which are capable of replication at relatively low cost.<sup>26</sup> There has been a growing recognition of the importance of early access to legal advice and representation when suspects are first arrested by the police.<sup>27</sup>

## Sentenced Prisoners

### Proportionality and Sentence Length

As for sentenced prisoners, levels of penal severity vary enormously between states. Available data from 35 countries worldwide collected by UNODC show that of the total number of persons held in prisons, penal institutions and correctional institutions in 2012, more than two thirds had received prison sentences of up to five years, while, at the other end of the spectrum, 6.5 per cent had

<sup>23</sup> International Covenant on Civil and Political Rights (ICCPR)

<sup>24</sup> See note 18

<sup>25</sup> Adopted by the UN General Assembly on 20 December 2012, Resolution A/RES /67/187, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/67/187](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/67/187)

<sup>26</sup> See for example, PRI Index of Paralegal services in Africa [www.penalreform.org/publications/index-paralegal-services-africa](http://www.penalreform.org/publications/index-paralegal-services-africa)

<sup>27</sup> See for example UNODC/ UNDP Handbook on Early access to legal aid, [www.unodc.org/documents/justice-and-prison-reform/Early\\_access\\_to\\_legal\\_aid\\_eBook.pdf](http://www.unodc.org/documents/justice-and-prison-reform/Early_access_to_legal_aid_eBook.pdf)

received sentences of more than 20 years, including life sentences, and 0.2 per cent had been given death sentences. Available data on the distribution of prisoners by the length of sentence show a similar distribution for countries in Asia and Europe, but with a lower share of prisoners sentenced to 10 years or more in Asian countries than in European countries. Available data on a limited number of countries in Africa, the Americas and Oceania indicate a share of prisoners sentenced to 10 years or more that is significantly above the global average.<sup>28</sup>

Comparisons of penal severity illustrate how such variation occurs. Following the sentencing of Bradley Manning to 35 years imprisonment in the US for the disclosure of classified national security information, a survey of the laws and practices of 20 European countries found the penalties available to the courts are far less severe than in the US: up to 2 years in Denmark and Great Britain; 4 years in Spain and Sweden; 5 years in Belgium, Germany, Poland and Slovenia; and 7 years in France.<sup>29</sup>

For more commonplace crimes there is similar variation. Within Northern Europe, the maximum sentence for theft is 4 years in the Netherlands, 5 years in Germany and 7 years in England and Wales. The offence carries up to 10 years in Canada, Russia and Uganda, where recently promulgated sentencing guidelines suggest a starting point of 5 years.

Zero tolerance approaches to corruption and drug crimes have also led in some countries to harsher sentencing for particular offences. In Georgia, for example, which until early 2013 had the highest rate of imprisonment among the Council of Europe member states very lengthy sentences were imposed for crimes, which in other countries would receive much lower terms of imprisonment according to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).<sup>30</sup> The Australian State of New South Wales has recently raised the maximum sentences for violent crimes and introduced mandatory minimum sentences of 2 years for assault, and 4 years for affray.<sup>31</sup>

***There is a strong case for sentence lengths to be proportionate to the seriousness of the crime.***<sup>32</sup>

## Life and Long Term Sentences

As for more serious crimes, many countries have seen an increase in the numbers serving life and long-term imprisonment. Examples include long, indeterminate and preventive sentences for 'dangerous offenders' (Germany) and harsh penalties for gang members (*mano dura* policies in Latin America). The numbers of prisoners serving life imprisonment, often without the possibility of parole (LWOP), has increased significantly, partly as the default alternative sentence to the death penalty in the course of abolition.

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<sup>28</sup> UNODC, World crime trends and emerging issues and responses in the field of crime prevention and criminal justice', 2014

<sup>29</sup> <http://www.opensocietyfoundations.org/voices/sentencing-private-manning#comments>

<sup>30</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report of Visit to Georgia, 2010, CPT/Inf (2010)27

<sup>31</sup> <http://www.dailytelegraph.com.au/news/nsw/more-jails-to-be-built-to-cope-with-increase-of-prisoners-with-new-mandatory-minimum-sentences/story-fni0cx12-1226807302814>

<sup>32</sup> American Civil Liberties Union, A Living Death Life Without Parole for non-violent offenses, 2014

Moreover, the replacement of the death penalty by LWOP has resulted in a widening net, applying life sentences beyond the 'most serious crimes' and no longer confined to formerly capital offences.<sup>33</sup>

Some countries impose both the death penalty and LWOP. It has been calculated that in the USA in 2012, there were 3,278 prisoners serving LWOP for non-violent drug and property crimes in the federal system and in nine states that provided such statistics.

Life imprisonment has also increased in other contexts. The UK for example has more life-sentenced prisoners than the other Council of Europe member states put together (approximately 12,500 lifers in the UK and approximately 8,000 in the rest of Europe). In the US, life sentences can be imposed for drug crimes and non-violent offences as a result of the 'three strikes' rule used in some states.<sup>34</sup>

The European Court of Human Rights has ruled that grossly disproportionate sentences can constitute inhuman or degrading treatment and this test is also provided under the Eighth Amendment in the United States of America and the Canadian Charter of Rights and Freedoms which prohibit the infliction of cruel and unusual punishment.<sup>35</sup>

The recent judgment of the European Court of Human Rights in the case of *Vinter and Others v United Kingdom* has indicated that national law should contain provision for the review of whole life sentences after 25 years in custody.<sup>36</sup> It noted that detention can only be justified when it is based on legitimate penological grounds. While at the time a life sentence is imposed, many of these grounds will be present, the Court noted that the balance between them may shift in the course of the sentence. What may have been the primary justification for detention may not be so after a lengthy period. The Court considered that 'it is only by carrying out a review of the justification for continued detention at an appropriate point in the sentence that these factors or shifts can be properly evaluated'.<sup>37</sup>

## Sentences for Drug Offenders

The so-called 'war on drugs' resulted in the prosecution of drug offences in many countries with lengthy sentences for those involved in trafficking, but also for use and possession of narcotics. A recent analysis found that drug offenders - that is both users and traffickers - represent 70 per cent of prisoners in Indonesia, 58 per cent of all prisoners in Thailand, more than half of federal prisoners in the US and Mexico, a quarter of all prisoners in Spain and one in five entering prison in Japan.<sup>38</sup> More than half of the 900 prisoners awaiting execution in Malaysia in October 2012 were drug offenders.<sup>39</sup>

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<sup>33</sup> See <http://www.prisonstudies.org/info/worldbrief/>

<sup>34</sup> See Penal Reform International's briefing, 'Life after death: What replaces the death penalty?',

<sup>34</sup> <http://www.opensocietyfoundations.org/voices/sentencing-private-manning#comments>

April 2012

<sup>35</sup> <http://www.heritage.org/constitution#!/amendments/8/essays/161/cruel-and-unusual-punishment> and <http://laws-lois.justice.gc.ca/eng/const/page-15.html>

<sup>36</sup> *Vinter and Others v United Kingdom* ECtHR Applications nos. 66069/09, 130/10 and 3896/10

<sup>37</sup> As above, at 111.

<sup>38</sup> For Indonesia, <http://www.thejakartaglobe.com/news/drug-use-new-drugs-swell-as-institutions-flounder/>.

Other data see Bewley-Taylor et al, 'The Incarceration of Drug offenders - an Overview', 2009

<sup>39</sup> <http://www.nst.com.my/latest/possible-moratorium-on-death-sentence-pending-govt-s-final-decision-1.159690>

A 2012 study revealed that more than one in four women in European and Central Asian prisons were imprisoned for drug offences.<sup>40</sup>

A 2013 UNODC study suggests that offences related to drug possession currently comprise more than eight out of 10 of total global drug-related offences. The study states that the global increase in drug-related crime is driven mainly by a rising number of offences related to drug possession, particularly in Europe and Africa. As a result of such trends, offences related to drug possession currently comprise 83 per cent of total global drug-related offences.<sup>41</sup>

UNODC's 2012 World Drug Report points out that prisons can become effective vehicles for spreading drug use because it is easy for drug users to establish social relationships and pass on their drug habit. The report notes that 'there is growing recognition that treatment and rehabilitation of illicit drug users are more effective than punishment' and suggests a rebalancing of drug control policy through alternative development, prevention, treatment and helping drug users to be rehabilitated and reintegrated into society.<sup>42</sup> In March 2012, 12 UN agencies called on states to close compulsory drug detention and rehabilitation centres and implement voluntary, evidence-informed and rights-based health and social services in the community.<sup>43</sup>

In the last year, a number of countries have adopted a new approach to drugs.<sup>44</sup> In December 2013, Uruguay became the first country in the world to make it legal to grow, sell and consume marijuana.<sup>45</sup> In February 2014, Italy's Constitutional Court struck down a drug law passed in 2006, which tripled sentences for selling, cultivating or possessing cannabis and was blamed for causing prison overcrowding. The Court stated that the law was 'illegitimate' (without giving further details). Estimates suggest that 10,000 people might be released from jail as a result.<sup>46</sup>

The US is also showing signs of moving towards a less punitive approach towards drug offenders. In March 2014, Attorney General Eric Holder appeared before the US Sentencing Commission to announce his support for a proposal lowering the suggested penalties for certain drug crimes. 'Over reliance on incarceration is not just financially unsustainable, it comes with human and moral costs that are impossible to calculate,' Holder testified, noting that the harshest penalties should be 'reserved for dangerous and violent drug traffickers.'<sup>47</sup>

Twenty-one states and the District of Columbia have legalised marijuana for medical use. In recent years Colorado and Washington have allowed the sale and use of marijuana for recreational use. Several other states, including Oregon and Alaska, are expected to vote on legalising recreational marijuana within the next year.

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<sup>40</sup> Cause for Alarm: The Incarceration of Women for Drug Offences in Europe and Central Asia, and the need for Legislative and Sentencing Reform, Eka Iakobishvili, Harm Reduction International, March 2012

<sup>41</sup> UNODC, World crime trends and emerging issues and responses in the field of crime prevention and criminal justice, 2013

<sup>42</sup> UNODC, World Drug Report 2012, preface iii

<sup>43</sup> [www.unaids.org/en/media/unaids/contentassets/documents/document/2012/JC2310\\_Joint%20Statement6March12FIN\\_AL\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/document/2012/JC2310_Joint%20Statement6March12FIN_AL_en.pdf)

<sup>44</sup> [www.theguardian.com/world/2014/mar/04/us-dea-marijuana-congress-threatens-institutions](http://www.theguardian.com/world/2014/mar/04/us-dea-marijuana-congress-threatens-institutions)

<sup>45</sup> [www.bbc.co.uk/news/world-latin-america-25328656](http://www.bbc.co.uk/news/world-latin-america-25328656)

<sup>46</sup> [www.reuters.com/article/2014/02/12/us-italy-drugs-law-idUSBREA1B1FF20140212](http://www.reuters.com/article/2014/02/12/us-italy-drugs-law-idUSBREA1B1FF20140212)

<sup>47</sup> [www.huffingtonpost.com/laurenbrooke-eisen/attorney-general-holder-prison-reform\\_b\\_5043799.html](http://www.huffingtonpost.com/laurenbrooke-eisen/attorney-general-holder-prison-reform_b_5043799.html)

***In light of the growing recognition of the unintended negative consequences of the ‘war on drugs’ and the recognition that treatment and rehabilitation of illicit drug users are more effective than imprisonment drug policies should be reviewed.***

## Part Three: Prison Populations

### Women Prisoners

On the basis of figures up to the beginning of 2013 there are more than 660,000 women in prison throughout the world. About 6.5 per cent of the world’s prisoners are women and in most prison systems women constitute between 2 and 9 per cent of the total prison population. The prevalence of women within the total prison population is lowest in African countries and the highest levels are in Asia, especially South-eastern and Eastern Asia.

When considering all prisoners, male and female, the prison population rate for the world is about 144 per 100,000 of the world’s population. Of this 144, an average of 9 or 10 are women. The lowest levels of female imprisonment are in Africa, and Europe too has levels below average, except in Central and Eastern Europe (especially the countries of the former Soviet Union). Levels in the Americas are above average, as they are in South-eastern and Eastern Asia.

According to recent analysis by the International Centre for Prison Studies, the number of women in prison has increased, between about 2000 and the beginning of 2013, by over 40 per cent.<sup>48</sup> This compares to an increase in the world population of 16 per cent in the same period. Although the number of women in prison in Africa has risen by less than half the growth in the continent’s population, in all other continents the increase has been several times greater than the growth in the population of the continent. The prevalence of women within the total prison population has grown sharply. On the basis of figures up to the beginning of 2013, about 6.5 per cent of the world’s prisoners are women. In about 2000 the figure was about 5.3 per cent. This represents an increase of more than a fifth.

According to the UN Division for the Advancement of Women, in many countries, ‘racialised women, including indigenous women, represent the fastest growing segment of the prison population’.<sup>49</sup>

Worldwide statistics show that drug related offending is particularly high among women prisoners. For example, according to a recent comprehensive study, over 31,000 women across Europe and Central Asia are imprisoned for drug offences, representing 28 percent of all women in prisons in these regions. In some countries, up to 70 per cent of female prisoners are incarcerated for drug offences.<sup>50</sup>

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<sup>48</sup> Walmsley, R. Variation and Growth in Levels of Female imprisonment, 2014 [www.prisonstudies.org/news/female-imprisonment](http://www.prisonstudies.org/news/female-imprisonment)

<sup>49</sup> United Nations Division for the Advancement of Women (DAW) Office of the High Commissioner for Human Rights (OHCHR), United Nations Development Fund for Women (UNIFEM); Gender and racial discrimination, Report of the Expert Group Meeting, 21-24 November 2000, Zagreb, Croatia

<sup>50</sup> Harm Reduction International (2012), Cause for Alarm: The Incarceration of Women for Drug Offences in Europe and Central Asia, and the need for Legislative and Sentencing Reform, Iakobishvili, E., p.5

About one third of women prisoners in Canada<sup>51</sup>, and 57 per cent in Thailand<sup>52</sup> were convicted of drug related offences. Harsh drug laws are driving a surge in the number of women imprisoned in Latin America. Between 2006 and 2011 the female prison population in the region almost doubled, increasing from 40,000 to more than 74,000 prisoners. The vast majority are in prison for drug related offences, usually low level drug trafficking offences.

A report by the International Drug Policy Consortium calls for more proportionate penalties for drug offences, particularly for vulnerable groups, more prevention and income generating programmes to be established and a special focus to be put on alternatives to prison for those convicted of low-level, non-violent offences.<sup>53</sup>

The characteristics and needs of women are usually very different from that of men. For example, experience in some countries indicates that women prisoners are more susceptible to self-harm and suicides.<sup>54</sup> For example, in the UK research published in 2009 found that suicide was 20 times more common among female prisoners than in the general female population, whereas research conducted among male prisoners in 2005 found that suicide was five times more common among male prisoners than in the general male population.<sup>55</sup> Also, the effects of detention on women's lives, and in particular their children's lives, may be greater and the security risks they pose are generally smaller in comparison with their male counterparts.

Given these and other specific gender characteristics and needs of women offenders and prisoners the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) were adopted at the UN General Assembly in December 2010.<sup>56</sup> The Rules supplement the Tokyo Rules on alternatives to imprisonment and encourage the use of gender-specific non-custodial measures and sanctions, and give guidance on how to meet the needs of women prisoners, supplementing the Standard Minimum Rules for the Treatment of Prisoners. Yet, awareness about the Bangkok Rules is still lacking and ***states should work towards implementation of the Bangkok Rules.***

## Children and Young Persons

UNODC have found that 'worldwide, the number of children held in prisons, penal or correctional institutions decreased from 53 to 42 per 100,000 children (a 20 per cent decrease) between 2006 and 2011'. Rates declined in all regions, but the decrease was particularly pronounced in Europe especially in Eastern Europe, while there were also decreases in the Americas and Asia and Oceania.

<sup>51</sup> See [http://www.eurekalert.org/pub\\_releases/2011-05/smh-hrt053111.php](http://www.eurekalert.org/pub_releases/2011-05/smh-hrt053111.php)

<sup>52</sup> Department for Corrections, Ministry of Justice, Thailand, [www.correct.go.th/eng/statistics.html](http://www.correct.go.th/eng/statistics.html)

<sup>53</sup> <http://idpc.net/publications/2013/11/idpc-briefing-paper-women-drug-offenses-and-penitentiary-systems-in-latin-america>

<sup>54</sup> UNODC/WHO Europe, Women's health in prison, Correcting Gender Inequity, 2009, p. 29

<sup>55</sup> 'Study reveals rising suicide rate in female prisoners', 2 February 2009, The Royal College of Psychiatrists, [www.rcpsych.ac.uk/press/pressreleases2009/suicideinfemaleprisoners.aspx](http://www.rcpsych.ac.uk/press/pressreleases2009/suicideinfemaleprisoners.aspx)

<sup>56</sup> UNGA Resolution A/RES/65/229

By 2011, the average rate of juveniles deprived of liberty in the Americas was 4 to 5 times higher than average rates in Europe and Asia.<sup>57</sup>

Caution is needed in analysing such data as children can be deprived of liberty in a range of establishments outside the prison system, including in secure units, approved schools, boarding schools, and hospitals. For example, in Uzbekistan children under the age of criminal responsibility can be effectively deprived of their liberty in an institution, without a court order by the Commission of Minors.

Evidence suggests that the minimum age of criminal responsibility is being reviewed and lowered in a number of countries across the globe, resulting in the criminalisation of more and younger children.<sup>58</sup> In June 2010, Denmark lowered the minimum age of criminal responsibility from 15 to 14 years; in Peru a Bill aims to lower it from 18 to 16 years for 'serious crimes'; and in the Philippines there have been a number of Bills proposing it to be lowered from 15 to 10 years. A 2013 report by the Child Rights International Network showed that in 31 states the minimum age of criminal responsibility is seven, and in another 11 states it is at age eight.<sup>59</sup>

The age of criminal majority (the age at which offenders are no longer protected under the UN Convention on the Rights of the Child) is commonly held at 18 years of age but in many countries has been determined at 16 or 17. Moreover, in many countries measures are in place that effectively lower the age of criminal majority; for example, some countries allow children's cases to be transferred to adult courts on the basis of the crime being 'too serious' to be dealt with in the children's justice system or because the child is accused alongside adult co-defendants. Serious offending by children is a challenge, which has had recent international attention.

***Countries should redouble their efforts to meet the requirements of Article 37 of the UN Convention on the Rights of the Child which states that children should be detained as a last resort and for the shortest possible time.***

Separate from children and young people held for offences they have been alleged of or convicted for, there are thousands of children living in prison with their parent, mostly their mother. Recent years have seen a growing recognition of these children as a vulnerable group, introducing standards to account for their protection and needs, but also towards considering primary or sole caretaking responsibilities within sentencing. The UN Bangkok Rules as well as Article 30 of the African Charter for the Rights and Welfare of the Child have introduced a preference for non-custodial measures and sanctions, and a landmark verdict of South Africa's Constitutional Court in 2007 ruled that sentencing must take into account of the impact on the mother's (parent's) children.<sup>60</sup> In November 2013, the African Committee of Experts on the Rights and Welfare of the Child adopted a General Comment on the rights of children when their parents or primary caregivers are in conflict with the law.<sup>61</sup>

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<sup>57</sup> See Note 9

<sup>58</sup> See Child Rights International Network, [www.crin.org/themes/ViewTheme.asp?id=16](http://www.crin.org/themes/ViewTheme.asp?id=16)

<sup>59</sup> See 'At What Age', [www.right-to-education.org/node/279](http://www.right-to-education.org/node/279)

<sup>60</sup> S v M (CCT 53/06) [2007] ZACC 18; 2008 (3) SA 232 (CC); (26 September 2007)

<sup>61</sup> General Comment No. 1 on 'Children of Incarcerated and Imprisoned Parents and Primary Caregivers see <http://www.penalreform.org/news/damage-limitation-update-african-committee-experts-rights-welfare/>

## Foreign National Prisoners, Minorities and Indigenous Peoples

The increased movement of people from one country to another, including due to migration and globalisation, has led to a growing number of non-nationals being held in prison. In the European Union and some countries of South Asia and the Middle East foreign prisoners make up some 20 per cent of the prison population.<sup>62</sup>

Among Council of Europe member states for example more and more people are detained who are not nationals of the country in which they are being held. At the same time, increasing numbers of nationals of the member states are being held in prisons abroad. In September 2012, the mean percentage of foreign nationals in Council of Europe member states was 21 per cent and the median 13 per cent.<sup>63</sup> Some Middle Eastern countries also have very high proportions of foreign nationals (United Arab of Emirates 92 per cent and Qatar 74 per cent).<sup>64</sup> In many countries, foreign nationals are at high risk of being remanded in pre-trial detention and are over-represented among those charged with or convicted of offences such as drug trafficking.

In many countries too, minority groups including indigenous peoples are over-represented among prisoners. In some countries, racial and ethnic minorities represent over 50 per cent of the prison population.<sup>65</sup> For instance, 51.3 per cent of New Zealand's prison population in 2012 were Māori, despite representing only 15.4 per cent of the general population, and 11.5 per cent were Pacific peoples.<sup>66</sup> Black and minority ethnic groups are disproportionately imprisoned in Western Europe and North America.

***Countries should monitor the representation of prisoners from ethnic minorities and foreign nationals in order to analyse whether sentencing policies or practices might be discriminatory and in order to develop specific measures to meet their needs.***

## Health

While trend data is scarce, it is well known that the prevalence of infectious diseases such as HIV, other sexually transmitted infections, viral hepatitis B and C, and tuberculosis among prison populations tend to be much higher (up to 50 times) than in the community. HIV and tuberculosis (TB) affect prisons in all the regions of the world.<sup>67</sup> The number of prisoners infected with TB is estimated at 4,500 of every 100,000. The World Health Organization considers 250 cases per 100,000 an epidemic.<sup>68</sup>

In 2010, three European countries reported TB cases in prisons exceeding 10 per cent of the countrywide total of new cases with the relative risk of TB up to 145 times greater in prison than in the

<sup>62</sup> UNODC Handbook on Prisoners with Special Needs, 2009

<sup>63</sup> Council of Europe, SPACE survey (Annual Penal Statistics of the Council Of Europe)

[http://www3.unil.ch/wpmu/space/files/2011/02/Council-of-Europe\\_SPACE-I-2012-E\\_Final\\_140428.pdf](http://www3.unil.ch/wpmu/space/files/2011/02/Council-of-Europe_SPACE-I-2012-E_Final_140428.pdf)

<sup>64</sup> ICPS World Prison Brief

<sup>65</sup> UNODC Handbook on Prisoners with Special Needs, 2009

<sup>66</sup> See [www.corrections.govt.nz/about-us/facts\\_and\\_statistics/prisons/ps-march-2012.html](http://www.corrections.govt.nz/about-us/facts_and_statistics/prisons/ps-march-2012.html)

<sup>67</sup> UNODC/WHO/UNAIDS, Technical guidance note for global fund HIV proposals,

[www.unaids.org/en/media/unaids/contentassets/documents/programmes/programmeffectivenessandcountrysupportdepartment/gfresourcekit/20110818\\_Technical\\_Guidance\\_prisons.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/programmes/programmeffectivenessandcountrysupportdepartment/gfresourcekit/20110818_Technical_Guidance_prisons.pdf)

<sup>68</sup> [www.timeslive.co.za/thetimes/2014/02/10/bid-to-curb-prisons-tb-epidemic](http://www.timeslive.co.za/thetimes/2014/02/10/bid-to-curb-prisons-tb-epidemic)

community.<sup>69</sup> A 2012 study found wide regional variations in the provision of prison services for TB. Nearly 90 per cent of countries in Eastern Europe and Central Asia with grants from the Global Fund had TB services for prisoners. However, only one country in Southern Africa delivered a TB programme in prisons.<sup>70</sup> In many countries, there are serious shortfalls in measures to provide primary healthcare incorporating health promotion, prevention, diagnosis and treatment.

Awareness is increasing about the misuse of imprisonment of people with mental health problems. In some countries, prisons have become a 'dumping ground' for mentally ill individuals, who for example make up almost half of Australia's prisoners, according to the Chair of the National Mental Health Commission. He said the management of such people in prison is costing taxpayers millions of dollars per year and that the failure of the country's mental health services to cope with demand is absorbing as much as 50 per cent of police time, with police estimated to detain one mentally ill person every two hours. The Commission in Australia states that 38 per cent of the 29,000 people entering prison have a mental illness, and one in three prisoners with a mental illness has been in prison five times or more.<sup>71</sup>

## Other trends

Recent studies have also shown that penal systems are struggling to cope with a rising number of older prisoners. For example, in England and Wales, male offenders aged 50 or above are the fastest growing group in prison, rising by 74 per cent in the past decade to close to 10,000, 11 per cent of the total prison population. In the UK the over-60s population has increased eight-fold since 1990.<sup>72</sup>

Human Rights Watch found that in the US between 2007 and 2010 the number of sentenced state and federal prisoners aged 65 or older increased by 63 per cent, while the overall population of sentenced prisoners grew only 0.7 per cent in the same period. In 2012, 26,200 prisoners were aged 65 or older. Eleven per cent of federal prisoners aged 51 or older were serving sentences ranging from 30 years to life.<sup>73</sup> The reason for the increase in elderly prisoners is partly because of longer sentences and in some countries, like the UK because of the surge of people being convicted for offences many decades ago.

In some countries for example in Spain, people over 80 are not sentenced to prison.

This shift in the prison population results in new healthcare challenges, including an increase in dementia among prisoners. Fifty to 80 per cent of prisoners have some form of mental disability according to studies undertaken in a number of countries.<sup>74</sup> Various studies have indicated that the

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<sup>69</sup> Tuberculosis surveillance and monitoring in Europe 2013. Stockholm, European Centre for Disease Prevention and Control and WHO Regional Office for Europe, 2013, [www.euro.who.int/\\_data/assets/pdf\\_file/0004/185800/Tuberculosis-surveillance-and-monitoring-in-Europe-2013.pdf](http://www.euro.who.int/_data/assets/pdf_file/0004/185800/Tuberculosis-surveillance-and-monitoring-in-Europe-2013.pdf)

<sup>70</sup> Lee D et al, Global Fund financing of tuberculosis services delivery in prisons. *J Infect Dis*, online edition. DOI: 10.1093/infdis/jis042, 2012.

<sup>71</sup> [www.news.com.au/national/nearly-half-of-the-nations-prisoners-are-mentally-ill/story-fncynjr2-1226769068765](http://www.news.com.au/national/nearly-half-of-the-nations-prisoners-are-mentally-ill/story-fncynjr2-1226769068765)

<sup>72</sup> The Guardian, 'Dementia among inmates poses a growing challenge for prisons', 12 April 2013

<sup>73</sup> Human Rights Watch, *Old Behind Bars: Aging Population in the United States*, 2012

<sup>74</sup> UNODC Handbook on Prisoners with Special Needs, 2009, p.4

percentage of people in prison with a drug dependency problem ranges from 40 to 80 per cent and drug use amongst offenders entering prison is on the increase.<sup>75</sup>

## Part Four: Issues related to prison management

### Responsibility for prisons

Responsibility for prisons and the wider criminal justice system is located in a number of different government organs in different countries of the world. Within the machinery of government, the majority of prisons and detention facilities fall under a central Ministry of Justice, a Ministry of the Interior and/or a Ministry of Public Security. In many countries, there may be additional detention facilities run by the military (for dealing with breaches of military discipline); the Ministry of Health (for psychiatric patients) and social welfare/education departments (e.g. for children in conflict with the law).

In addition, in some federal countries, responsibility for prisons may be devolved at state, provincial or local levels. In the Philippines for example local jails are managed by the Department of the Interior and local government while national prison institutions are managed by the Department for Justice. California's 2011 Public Safety Realignment Act has shifted responsibility for lower level offenders from the state to the 58 counties. County jails and probation staff are now dealing with many more offenders than hitherto, expanding capacity with a billion dollar budget from the state and managing demand through reforms to pre-trial detention and sheriff's powers to release prisoners early.<sup>76</sup>

In recent years there has been a trend towards moving responsibility for prisons into the Ministry of Justice, in recognition of the benefit of the separation of the functions of investigation and prosecution on the one side, and of execution and supervision of criminal sanctions on the other side, and the different skills required from policing. Experience has also shown that rehabilitation of offenders has a higher prospect of success if allocated to judicial authorities rather than police.

The Ministry of Justice is responsible for prisons in all 47 countries of the Council of Europe, except Spain. This is also the situation in most of the Americas, much of Africa and some of Asia. In the Middle East, prisons are more commonly part of the Interior Ministry. Some countries of the former Soviet Union have moved prisons to the Ministry of Justice while in others the Ministry of the Interior has retained control. In Kazakhstan in 2002, responsibilities for prisons were transferred from the Ministry of Internal Affairs to the Ministry of Justice, implementing recommendations by the UN Committee against Torture. In 2011 however, authority for the penitentiary system was transferred back from the Ministry of Justice to the Ministry of the Interior.

While international law does not prescribe in detail the ways in which criminal functions should be organised, the requirement for a civilian as opposed to a military prison system is at the heart of the international human rights framework.

<sup>75</sup> UNODC, Drug Dependence Treatment: Interventions for Drug Users in Prison, Treatment, p. 11, [www.unodc.org/docs/treatment/111\\_PRISON.pdf](http://www.unodc.org/docs/treatment/111_PRISON.pdf)

<sup>76</sup> [www.bjs.gov/content/pub/pdf/cpus12.pdf](http://www.bjs.gov/content/pub/pdf/cpus12.pdf)

The UN Standard Minimum Rules for the Treatment of Prisoners state that ‘personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness.’<sup>77</sup> The UN Committee against Torture also expressed a recommendation to transfer responsibilities for prisons from the Ministry of Internal Affairs to the Ministry of Justice.<sup>78</sup>

While in most countries health in prisons is still under the authority of the Ministry responsible for the prison administration, there is currently a trend to shift this responsibility to the Ministry of Health. Indeed placing health under the responsibility of the Ministry of Health has shown to bring positive results in terms of access to health care in prisons and in terms of continuity of care (through care). This is the case for example in France, Australia, and more recently in the UK. International norms require medical care in prison of an equivalent nature to that in the community - best achieved by making prison health care part of the responsibility of the Ministry of Health rather than the prison system. In the Council of Europe area, an Expert group convened by the World Health Organization concluded that managing and coordinating all relevant agencies and resources contributing to the health and well-being of prisoners is a whole-of-government responsibility; and that health ministries should provide and be accountable for health care services and advocate healthy conditions in prisons.<sup>79</sup>

In many countries, the legislative underpinning for the prison system is outdated. In parts of Africa and South Asia for example, colonial era laws are still on the statute books.

## Prisons

Prisons around the world vary enormously in size, nature and function. Some prisoners do drill in military style boot camps while others are counselled in therapeutic communities. Prisoners deemed dangerous may be held in almost total isolation in the highest ‘Super-max’ conditions of security; low risk prisoners approaching their date of release go out to work during the day from open establishments. Some convicted prisoners can spend years in remote labour colonies, pre-trial detainees a few weeks in city centre lock ups. With such variation, identifying common trends and challenges is not straightforward. A number of the key dimensions are discussed below.

## Staffing and Resources

There is considerable variation in the size of prisons and in the ratio of staff to prisoners, both of which factors determine the level of control that can be exercised within the institution.

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<sup>77</sup> UN Standard Minimum Rules for the Treatment of Prisoners, Rule 46(3), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

<sup>78</sup> Concluding observations on Kazakhstan, adopted on 17 May 2011, UN-Doc. A/56/44(SUPP)

<sup>79</sup> <http://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/publications/2013/good-governance-for-prison-health-in-the-21st-century.-a-policy-brief-on-the-organization-of-prison-health>

In some European prisons there may be almost as many staff as there are prisoners, whereas in some low-income countries prisons may in effect be self-governing institutions with small numbers of staff limited to the provision of perimeter security. Within the Council of Europe countries average ratios of prison staff to prisoners ranged in 2012 from 1:0.1 in some of the smallest countries, 1:1.5 in Scandinavia through to 1:15 or more in Azerbaijan and Slovakia.<sup>80</sup> The average number of prisoners per custodian has increased since 2008.

## Size

Between 2000 and 2005 in the US, the 17 per cent increase in the number of correctional facilities housing more than 2,500 prisoners was higher than the increase in smaller sized institutions but more recent data is not available. In other parts of the world large prisons are being created. A modern high security prison that can accommodate a thousand prisoners is under construction in Melrose, central Mauritius. Currently, 2,700 inmates are accommodated in nine prisons across the island nation. Zambia has opened a prison for 1,500 built by a Chinese company.<sup>81</sup> One problem of large prisons is that detainees may be placed far from home and links with families – known to be important in achieving rehabilitation.

In 2011, the average amount spent per day for the detention of one person varies enormously. Among the 47 Council of Europe member states, for example, among the countries where all of the costs of imprisonment are measured, Romania spent 15.6 Euros, Sweden 621 Euros. The median spend fell by 8 Euros from 50 to 42 between 2010 and 2011.<sup>82</sup>

There may be a trend towards the building of larger prisons. In Europe, which has historically had smaller prisons, so-called Titan prisons of 2,000 are under fresh consideration having been rejected some five years ago.

## Condition of Prison Infrastructure

Low and middle-income countries typically confine their prisoners in old and dilapidated buildings. As well as creating security risks and providing inadequate facilities, such buildings can be highly dangerous in terms of fire risks. The fire in Honduras which killed more than 300 prisoners in 2012 is the worst but by no means the only example of fires in prisons in the region. The Organization of American States has found that ‘the complex problems bedeviling our prison systems manifest themselves in the form of overcrowding, protracted preventive detentions, inmate health, the anemic support that alternatives to incarceration enjoy, poorly trained prison officials and personnel and inadequate programmes in social rehabilitation and reintegration.’<sup>83</sup>

<sup>80</sup> Figures from SPACE 1 report for 2012 [http://www3.unil.ch/wpmu/space/files/2011/02/Council-of-Europe\\_SPACE-I-2012-E\\_Final\\_140428.pdf](http://www3.unil.ch/wpmu/space/files/2011/02/Council-of-Europe_SPACE-I-2012-E_Final_140428.pdf)

<sup>81</sup> <http://allafrica.com/stories/201312160609.html>

<sup>82</sup> See note 80.

<sup>83</sup> Dammert, L. and Zuniga, L. (2008) *Prisons: Problems and Challenges for the Americas* Santiago: FLACSO

An analysis of prisons in Africa found that ‘many are in a deficient condition and their practices are at odds with human rights standards’.<sup>84</sup> Few African states have maintained and added prison capacity post-independence with the result that it is now beyond repair and fails to meet minimum requirements generally accepted to day.<sup>85</sup>

In Europe, the European Committee for the Prevention of Torture (CPT) has found that ‘torture and other deliberate forms of ill-treatment of persons deprived of their liberty still exist in the Council of Europe area, and conditions of detention remain wretched in numerous establishments of various types’.<sup>86</sup> The UN Special Rapporteur on Torture has found in his fact-finding missions to many countries in different regions of the world ‘that police and prison authorities simply do not regard it as their responsibility to provide detainees with the most basic services necessary for survival, let alone for a dignified existence or what human rights instruments call an ‘adequate standard of living’.<sup>87</sup>

The global economic crisis appears to have had a deleterious impact on prison conditions. In Europe, the UK government is looking to reduce substantially the amount spent on prisons so that they are ‘spartan but humane’. In Latvia funds are not available to fully operate a newly built prison hospital and Russia’s major overhaul of its penitentiary system has been delayed by resource limitations. In Canada double bunking of federal prisoners in cells designed for one person, a practice which has been condemned by the Correctional Investigator will continue across Canada over the next five years, according to briefing documents prepared for the Public Safety Minister.<sup>88</sup> In the Australian state of Victoria, prisoners have been moved into shipping containers.<sup>89</sup>

***In low income countries there is a need to develop low cost and low technology solutions to infrastructure problems. Work on designs has been undertaken by the ICRC and UNOPS and should be widely disseminated.***

## Security issues and violence in prisons

The mortality rate in prison settings (which includes both deaths from natural causes and those resulting from external causes) tends to be higher than the rate for the general population.<sup>90</sup>

Prisons in many countries are places of violence, where assaults by staff and by fellow prisoners are commonplace. Gang related violence is a particular problem in Latin America. 506 people were killed in Venezuelan prisons in 2013, down by 14 per cent from 591 in 2013, according to the Venezuelan

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<sup>84</sup> Sarkin, J. J. “Prisons in Africa: An Evaluation from a Human Rights Perspective” in *Sur International Human Rights Journal*, Vol. 9, pp. 22-49, 2009

<sup>85</sup> Response from Civil Society Prison Reform Initiative to consultation on earlier draft of this paper, September 2013

<sup>86</sup> 20 years of combating torture 19th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 2009

<sup>87</sup> Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the UN General Assembly, 3 August 2009, UN-Doc. A/64/215

<sup>88</sup> [www.canada.com/Canada+prison+service+faces+serious+challenges/9418076/story.html](http://www.canada.com/Canada+prison+service+faces+serious+challenges/9418076/story.html)

<sup>89</sup> [www.theage.com.au/victoria/prisoners-moved-into-shipping-containers-20140106-30d23.html](http://www.theage.com.au/victoria/prisoners-moved-into-shipping-containers-20140106-30d23.html)

<sup>90</sup> UNODC, World crime trends and emerging issues and responses in the field of crime prevention and criminal justice’, 2014

Prison Observatory (OVP). The head of the OVP said as many as 6,163 prisoners have been murdered and 16,208 injured since 1999. Rates of homicide appear to be a greater problem in the Americas than in Europe, where suicide appears to be the main non-natural cause of death of inmates. In the seven countries in the Americas for which data were collected by UNODC in 2014, the homicide rate among prisoners (56.7 per 100,000 prisoners) is three times higher than the homicide rate for the general population (on average 19.1 per 100,000 population).<sup>91</sup>

Some former Soviet Union countries still struggle with so-called Black Prisons controlled by so-called thieves in law. Violence in institutions for teenagers has been identified as a particular problem in Europe and the Council of Europe is working on a recommendation outlining best practices.

In some countries, cellular accommodation is being introduced to replace dormitories so that vulnerable prisoners can be better protected from violence. Isolating prisoners of course brings other risks.

Allegations of sexual abuse in US prisons are increasing according to a new Department of Justice Study. The report found that between 2009 and 2011 administrators reported about 25,000 allegations of sexual victimisation in prisons, jails and other adult correctional facilities. Prison staff were allegedly responsible for 49 percent of reported incidents. Prosecution for crimes committed by staff are extremely rare. Over three quarters of staff responsible for sexual misconduct were allowed to resign before an investigation concluded or were fired. Around 45 percent were referred for prosecution but only one percent of perpetrators were convicted. The US government has warned states that they may lose some federal funding if they do not take steps to detect and reduce sexual assaults of prisoners.<sup>92</sup>

A particular challenge is posed in the management of prisoners who hold extreme views including those who have been charged with or convicted of terrorist offences. As the Global Counter Terrorism Forum has noted 'as part of the effort to counter violent extremism in all of its forms and manifestations, there is an increasing focus on prisons for several reasons. First, absent the appropriate and necessary safeguards, prisons may provide a "safe haven" where terrorists can network, compare and exchange tactics, recruit and radicalize new members, and even direct deadly operations outside the prison. Second, most imprisoned extremists will eventually be released. In order to reduce the likelihood that these individuals will return to terrorism after their release, it is essential to find ways to help them disengage from violent activities'<sup>93</sup>. The Forum has identified 25 good practices for developing rehabilitation programmes for such prisoners but as yet evidence is lacking about the effectiveness of so-called de-radicalisation.

## Post conflict countries

Particular challenges face prisons in post conflict and fragile states where the physical infrastructure may have been destroyed and criminal justice often fails to function leaving vast numbers of

<sup>91</sup> As above.

<sup>92</sup> [www.bjs.gov/index.cfm?ty=pbdetail&iid=4881](http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4881)

<sup>93</sup> Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders

detainees, including former combatants awaiting trial for long periods. There have been several examples of mass break outs from prisons due to invasions from outside or to corruption within.<sup>94</sup> Unrest and disturbances and gross overcrowding are commonplace in prisons in post conflict countries. For example, in 2013 a UN report found that torture remains a serious concern in numerous detention facilities across Afghanistan, despite significant efforts by the government and international partners to address the problem.<sup>95</sup>

## Privatisation of prisons

In order to address some of the problems of overcrowding and inadequate infrastructure, since the 1980's, private sector profit-making enterprises have played an increasing role in prison systems around the world. While historically private profits have been made from jailing detainees and debtors and from using convict labour, for most of the 20th century in the developed world, imprisonment has been seen as a core state function. Over the last thirty years, starting in the US, the practice of contracting out custodial functions for detainees awaiting trial and convicted prisoners serving sentences has grown steadily in a number of high and middle-income countries. The option of privatisation is being actively considered in a number of others and also in a number of low-income countries. This consideration is not limited to imprisonment but extends to rehabilitation programmes, electronic monitoring and the work of probation staff.<sup>96</sup>

There are a variety of outsourcing arrangements in place in different jurisdictions. At one end of the spectrum, private companies have been contracted to build and run prisons in their entirety. This model is common in the US and also followed in the UK, Australia and South Africa. A private company or consortium agree to finance, design, construct and manage a prison for a period, usually of 25 or 30 years after which the building reverts to the ownership of the state. In this model, all of the staff including the custodial and security staff are employed by the private company and the role of the public sector is limited to monitoring the company's compliance with the contract and sometimes, but not always, dealing with disciplinary infractions by prisoners. Under South African law for example, the contractor is explicitly prohibited from taking disciplinary action against prisoners.

Another model sees private companies financing the building of a new prison and operating certain functions such as maintenance, healthcare, catering or the provision of rehabilitation activities. In this hybrid model, which originated in France and has been followed in parts of Latin America and in Japan, security staff are not employed by the private company (although correctional officers are employed by private companies in Brazil and some security functions are outsourced in Japan). The arrangement is governed by two contracts, the first to construct the facility, the second to operate the prison or to provide the specified services. In each of these two models, the funds to pay for the construction of a new prison are raised by the private sector. The capital costs are paid back at regular intervals by the government alongside the fee which the private company charges for running the prison either in whole (in the first model) or in part (in the second).

<sup>94</sup> [www.thenational.ae/news/world/middle-east/corruption-blamed-for-escape-of-4-000-militants-from-iraq-prisons?pageCount=0](http://www.thenational.ae/news/world/middle-east/corruption-blamed-for-escape-of-4-000-militants-from-iraq-prisons?pageCount=0)

<sup>95</sup> [www.unama.unmissions.org/Default.aspx?ctl=Details&tabid=12254&mid=15756&ItemID=36279](http://www.unama.unmissions.org/Default.aspx?ctl=Details&tabid=12254&mid=15756&ItemID=36279)

<sup>96</sup> See for example, 'Transforming Rehabilitation' UK Ministry of Justice, 2013

A third model involves the contracting out of certain limited functions within an existing prison to a private company, for example, catering, maintenance or the provision of rehabilitation activities. The contracts are usually for much shorter periods (eg. five years) than in the first two models. Responsibility for the construction of the prison if it is new, and for security and custodial functions remain in public hands. This model is used in the Netherlands and some other European countries.

These three forms of public private partnership can be distinguished from the more specific roles, which private construction companies might play as contractors involved in the construction of new public prisons, or indeed from the remuneration which is made to private individuals who work in such prisons. They can also be distinguished from arrangements in which institutions are run in partnership with not for profit, charitable or other non-governmental organisations - of which there are examples in Brazil and Belize.<sup>97</sup>

Much of the experience of the Public Private Partnerships (PPP's) - the contracting arrangements, which govern these activities in the penal sector - has been in higher income countries although three middle-income countries (South Africa, Chile and Mexico) have implemented differing models of prison privatisation in the last 15 years. A number of lower income countries are reportedly considering privatisation. Peru, Jamaica and Nigeria are among states reportedly planning to invite bids for private prisons.<sup>98</sup> Private prisons have been considered in countries as diverse as Lesotho and the Dominican Republic, Costa Rica and Kenya, Latvia and Jamaica.<sup>99</sup>

While private prisons offer an attractive proposition for states that want to modernise their infrastructure and have problems raising funds, there are concerns and disadvantages. As the World Bank has said 'construction of new prisons without penal reform may simply lead to an increase in the prison population'.<sup>100</sup> Performance of private prisons has been mixed and there is a need to ensure proper accountability for abuses and misconduct by employees of private prisons.

***The risks involved for the state and those in prison and the mixed track record of private prisons demand a level of rigour and analysis focused on criminal justice reform, where increasing prison capacity may not be the required solution, on ensuring accountability and on the appropriateness of private sector involvement as a policy response.***

<sup>97</sup> [www.unodc.org/newsletter/en/perspectives/no02/page002.html](http://www.unodc.org/newsletter/en/perspectives/no02/page002.html) and <http://kolbe.bz/>

<sup>98</sup> Peru ([www.businessweek.com/ap/financialnews/D9EQJ0OG0.htm](http://www.businessweek.com/ap/financialnews/D9EQJ0OG0.htm)); Jamaica ([www.jamaicaobserver.com/news/Gov-t-talks-of-building-modern-prison-again\\_10852239](http://www.jamaicaobserver.com/news/Gov-t-talks-of-building-modern-prison-again_10852239)); Nigeria (<http://allafrica.com/stories/201212311079.html?viewall=1>)

<sup>99</sup> Lesotho Nathan S, 'Private Prisons: Emerging and Transformative Economies, in Capitalist Punishment: Prison Privatisation & Human Rights, Edited by A. Coyle, A. Campbell & R. Neufeld, Zed Books, London, April 2003; Dominican Republic and Costa Rica Carranza E, 2010;

[www.unafei.or.jp/english/pdf/Congress\\_2010/14Elias\\_Carranza.pdf](http://www.unafei.or.jp/english/pdf/Congress_2010/14Elias_Carranza.pdf); Kenya [www.businessdailyafrica.com/Corporate+News/G4S+opens+talks+to+run+Kenyas+prison+services/-/539550/1092596/-/item/1/-/15n3fry/-/index.html](http://www.businessdailyafrica.com/Corporate+News/G4S+opens+talks+to+run+Kenyas+prison+services/-/539550/1092596/-/item/1/-/15n3fry/-/index.html)

<sup>100</sup> World Bank (2012) Staff Guidance Note: World Bank support for Criminal Justice Activities [http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/CriminalJusticeGuidanceNote\\_Feb2012.pdf](http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/CriminalJusticeGuidanceNote_Feb2012.pdf)

## Solitary confinement

Although in many countries, the philosophy of imprisonment as a sentence is increasingly thought of in terms of the concept of ‘corrections’, for those deemed to pose particular risks there appears to be a greater emphasis on security. Examples include notorious ‘Super-max’ facilities where the purpose of the regime is to prevent all physical contact between a detainee and others, and to minimise social interaction between inmates and staff.

The Special Rapporteur on Torture has documented that states around the world continue to use solitary confinement extensively, and that in some countries, the use of ‘Super-Maximum Security Prisons’ to impose solitary confinement as normal, rather than ‘exceptional’. In the US, for example, it is estimated that between 20,000 and 25,000 individuals are being held in isolation.<sup>101</sup> Other examples documented are the extensive use of solitary confinement in relation to pre-trial detention in Scandinavian prison practice<sup>102</sup> and a prison regime in Brazil,<sup>103</sup> contemplating a ‘differentiated’ disciplinary regime in an individual cell for up to 360 days, without prejudice to extensions of similar length for new offences and up to one sixth of the prison term. A programme instituted in the Province of Buenos Aires in Argentina on the ‘Prevention of Violent Behaviour’ is another documented example, which consists of isolation for a minimum of nine months, the initial three months in full isolation.<sup>104</sup>

Medical research undertaken recently has confirmed that the denial of meaningful human contact can cause ‘isolation syndrome’ the symptoms of which include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia, psychosis, self-harm and suicide.<sup>105</sup> A US study found that prisoners held in New York City jails sent to solitary confinement are nearly seven times more likely to try to hurt or kill themselves than those never assigned to it.<sup>106</sup> New York State has subsequently announced sweeping reforms intended to curtail the use of solitary confinement, including prohibiting its use in disciplining prisoners under the age of 18 and for pregnant women, and limiting the punishment to 30 days for those who are developmentally disabled.<sup>107</sup>

***Countries should restrict the use of solitary confinement to exceptional cases when absolutely necessary, for as short a time as possible and subject to regular substantive review. Prolonged and indefinite solitary confinement, isolation of juveniles, pregnant women, women***

<sup>101</sup> Alexandra Naday, Joshua D. Freilich and Jeff Mellow, “The Elusive Data on Supermax Confinement”, *The Prison Journal*, vol. 88, issue 1, p. 69 (2008).

<sup>102</sup> Peter Scharff Smith, “The effects of solitary confinement on prison inmates: a brief history and review of the literature”, *Crime and Justice*, vol. 34 (2006), p. 441.

<sup>103</sup> Law 10792 of 2003

<sup>104</sup> First interim report to the General Assembly on 18 October 2011, UN-Doc A/RES/65/205

<sup>105</sup> Grassian, S. (2006) Psychiatric Effects of Solitary Confinement. *Journal of Law and Policy* Vol. 22:325-383.; Haney, C. (2003) Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement. *Crime & Delinquency* 49(1) 124-156; Shalev, S. (2008) *A Sourcebook on Solitary Confinement*. London: Mannheim Centre for Criminology, LSE.

<sup>106</sup> Fatos Kaba, Andrea Lewis, Sarah Glowa-Kollisch, James Hadler, David Lee, Howard Alper, Daniel Selling, Ross MacDonald, Angela Solimo, Amanda Parsons, and Homer Venters. Solitary Confinement and Risk of Self-Harm Among Jail Inmates. *American Journal of Public Health*: March 2014, Vol. 104, No. 3, pp. 442-447.

doi: 10.2105/AJPH.2013.301742

<sup>107</sup> <http://www.nytimes.com/2014/02/20/nyregion/new-york-state-agrees-to-big-changes-in-how-prisons-discipline-inmates.html? r=0>

***with infants and breastfeeding mothers in prison and of persons with mental illnesses should be prohibited.***

## **Independent Monitoring**

In the past decade, the importance of oversight of prisons and in particular external, independent monitoring of places of detention has increasingly been recognised. The adoption of the Optional Protocol to the Convention against Torture (OPCAT) in December 2002, which entered into force in June 2006 has been a significant development.

At the end of March 2014, 72 countries have ratified the Optional Protocol to the Convention against Torture (OPCAT) and 55 have established National Preventive Mechanisms (NPMs). Europe and South America are well represented among these states, while Africa and particularly Asia less well so.

In the designation of NPM, one trend has been to designate Ombudsperson's offices, yet this has shown to create problems as in many countries sufficient resources are not provided to take on the additional responsibilities. Furthermore, the tradition of Ombudspersons working on individual cases assessed against domestic law in many countries has shown to be a challenge, limiting the function of preventive monitoring as a broader approach assessing systemic risks of torture and ill-treatment based on standards of international law.

***Countries which have not ratified OPCAT should do so and establish National Preventive Mechanisms that are truly independent, with financial and operational autonomy and a statutory mandate that allows for regular and unannounced visits to all places where people are deprived of their liberty.***

## **Part Five: Role and use of new technologies**

There are a number of ways in which new technology is increasingly being used in the field of prison policy and practice, providing opportunities to address challenges in prison management, but also causing dangers.

### **Case management**

Effective systems of case management are needed to ensure that detainees are delivered to court on time and to collate data which can be used to identify levels of risk and needs among prisoners. Computerised systems are being developed in a number of low-income countries including Tanzania and Kenya.

Video-technology can also be used to arrange court hearings remotely, so that detainees do not have to be transported to court - a serious logistical problem in many countries.

## Electronic monitoring of suspects and offenders

Electronic monitoring was first developed in the US in the 1980's and is currently being used predominantly in high-income countries in a variety of ways; during the pre-trial phase of criminal proceedings; as a condition for suspending or of executing a prison sentence; as a stand-alone means of monitoring the execution of a criminal sanction or measure in the community such as house arrest; in combination with other probation interventions; as a pre-release measure for those in prison; as an intensive guidance and supervision measure for certain types of offenders after release from prison; as a means of monitoring the internal movements of imprisoned offenders and/or the perimeters of open prisons; or as a means for protecting specific crime victims from individual suspects or offenders.

Electronic monitoring has been used in Europe since the 1990s and continues to expand. It is predominantly being used to enforce curfews and home detention but newer technologies are emerging (eg. GPS) which can monitor the movements of suspects and offenders as well as help create and monitor exclusion zones; for example in Spain and Portugal to domestic violence offenders away from their victims. The Council of Europe adopted a Recommendation on Electronic Monitoring in February 2014.<sup>108</sup>

Outside Europe, electronic monitoring has been used on a relatively small scale in Argentina as an alternative to pre-trial detention since 1997<sup>109</sup> and is used in Brazil, Chile, Colombia, Mexico and Uruguay.<sup>110</sup> A programme was launched to monitor people on bail and on parole in South Africa in 2013.<sup>111</sup> It has been discussed as an option for the expanding community corrections available in China.<sup>112</sup>

## To enable and increase contact with the outside world

Technology is exploited to increase prisoners' contact with the outside world in some countries. Since 2008 families in Russia have been able to email with prisoners and the system is being expanded with the introduction of a Smartphone app. In the Philippines women prisoners can apply to have a skype or video call with family and friends. Scanners are being used in Jordan to check the food brought in by families.

## Improving health and education for prisoners

Use of new technology has also been introduced to address challenges in the provision of healthcare and education to detainees.

<sup>108</sup> <https://wcd.coe.int/ViewDoc.jsp?id=2163631&Site=COE>

<sup>109</sup> Di Tella, Rafael, and Ernesto Scharrodsky. "Criminal Recidivism after Prison and Electronic Monitoring." *Journal of Political Economy* vol. 121, no. 1 (February 2013)

<sup>110</sup> [www.unodc.org/documents/ropan/TechnicalConsultativeOpinions2013/Opinion\\_2/Advisory\\_Opinion\\_002-2013\\_ENGLISH\\_FINAL.pdf](http://www.unodc.org/documents/ropan/TechnicalConsultativeOpinions2013/Opinion_2/Advisory_Opinion_002-2013_ENGLISH_FINAL.pdf)

<sup>111</sup> [www.southafrica.info/news/offender-121113.htm#\\_U2SQKfldUm0](http://www.southafrica.info/news/offender-121113.htm#_U2SQKfldUm0)

<sup>112</sup> [www.ecns.cn/2014/04-14/109199.shtml](http://www.ecns.cn/2014/04-14/109199.shtml)

For example, in Ratchaburi prison in Thailand long distance medical care is provided through satellite communication without having doctors to attend the prison. Medical consultation is provided via a webcam with a professional nurse accompanying the inmates.

Beveren Prison in Belgium is one of seven new establishments planned to provide modern and humane infrastructure which aims to make a prisoner's life as normal as possible. Key to the vision is an innovative Prison Cloud system which will allow each prisoner access to a computer in their cell - to make phone calls, order items from the prison shop, undertake e-learning courses and make appointments within the prison for example with health professionals. They will be able to rent a movie from a library of 30,000 as well as watch television and pay for premium channels. While the IT system will initially be available 24/7, individual arrangements can be made for each prisoner, depending on risk, need and behaviour. Prisoners will be expected to work during the day, participate in education and sports and then 'go home' to their cell where they can make use of technological opportunities, albeit in a more limited way than would be possible outside.

Developments are patchy however. In the UK the Chief Inspector of Prisons has said 'we can't go on with prisons in a pre-internet dark age: inefficient, wasteful and leaving prisoners woefully unprepared for the real world they will face on release. I have not met one prison professional who does not think drastic change is needed.'<sup>113</sup>

### Concerns related to the use of technology

New technology clearly offers opportunities to improve the way the criminal justice system operates, the quality of life of prisoners and to reduce costs. Yet, there are dangers as well, such as technology increasingly enabling remote contact to replace human contact, which is known to be a crucial component of retaining mental health and wellbeing among prisoners.

Electronic monitoring of house arrests can assist but should not replace professional supervision of offenders, which aims at their rehabilitation. The use of technology as alternatives to imprisonment, including electronic monitoring, has also shown to bear risks, such as a net-widening. Also, the requirement of some regulation in order to take into account the intrusiveness of such measures including for third parties such as family members, and the maximum duration or the manner in which the imposition of this measure will be deducted from a final sanction. When chargeable to the suspect or convicted, there is also a risk of discrimination of poor and marginalised offenders, already over-represented in the global prison population.

Efforts at combating the digital exclusion of prisoners should not lead to their being detained in their cell with only a computer for company. There are questions too about whether the use of Closed Circuit Television in prisoners' cells as well as in communal areas breaches the right to privacy.<sup>114</sup>

Among the questions raised by the use of technology in these ways is whether quality – for example of medical diagnosis – is being sacrificed to costs. While for example remote medical assessment

<sup>113</sup> [www.independent.co.uk/news/uk/crime/internet-access-in-jails-can-cut-reoffending-8907722.html](http://www.independent.co.uk/news/uk/crime/internet-access-in-jails-can-cut-reoffending-8907722.html)

<sup>114</sup> See also PRI/ APT, Detention Monitoring Tool, Fact-sheet on 'Video recording in police custody', 2013

may well be cheaper avoiding the need for a permanent onsite doctor or the escorting requirements for a hospital visit, there are concerns about the quality of such care.

A further issue relates to the reliability of technology. For instance, inspectors at a youth prison in the UK found in 2011 that ‘the prison was bedevilled by a biometric roll check system. For the system to work, 100 per cent of prisoners, 100 per cent of the time had to leave an electronic thumbprint when they went from one area of the prison to another and the system had to record this every time. If one thumbprint failed to register, the roll check did not tally and all prisoner movement halted – sometimes for hours – until a manual check could be done. This happened once or twice a day on each day of the inspection with the result that education, training, work and other activities were severely disrupted.’<sup>115</sup> Such problems are likely to be greater in lower income countries where power can be regularly disrupted and technical skills may be in shorter supply.

***Prison systems should embrace the opportunities afforded by new technology to improve the functioning of criminal justice and the rehabilitation of prisoners, ensuring that human rights are not infringed and that human contact is not replaced as a way of cutting costs.***

## Part Six: Criminal and Social policies

Studies have suggested that moderate penal policies are associated with particular kinds of societies. A sparing use of prison is more likely in states with a consensual and corporatist political culture, with high levels of social trust and political legitimacy, and with a strong welfare state. More punitive policies that make more use of imprisonment are to be found in countries where these characteristics are less in evidence. A range of explanations for this include not only the levels and nature of crime, but the extent to which more generous welfare provision absorbs crime and offers non punitive solutions and the ways in which neo-liberal political economies tend to produce excluding rather than inclusive approaches towards offenders.

Even without substantial change to political economy, the costs and disputed effectiveness of imprisonment have led some countries to reform their criminal policies so that imprisonment is used more sparingly and for shorter periods. Many states in the US have looked to reverse years of prison population growth; most notably California whose realignment policy introduced in 2011 has led to the prison population falling dramatically. US state budgets for running corrections facilities have almost quadrupled in the last three decades, making it the second-fastest rising expense.

A variety of fiscal arrangements have been introduced in the last few years to reward counties which develop measures to reduce demand for custodial places at state level. A virtuous circle is created in which state savings on incarceration are reinvested in local alternatives, which in turn further reduce demand for expensive state placements. This process has been seen, for example, in New York State where four closed facilities for juveniles have been shut down with resources invested in family therapy and other alternative programmes in New York City. A recent report details the experiences of

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<sup>115</sup> HM Inspector of Prisons Report on HMP/YOI Isis 2011

17 US states participating in the so-called Justice Reinvestment Initiative (JRI) which aims to test a range of strategies designed to yield better public safety returns on their corrections spending.<sup>116</sup>

These have included measures to strengthen the support offered to released prisoners to reduce the likelihood that they will be recalled to prison for breaching their parole.

In Europe, Sweden has been able to close four prisons after a sustained drop in the number of prison admissions.<sup>117</sup>

Improving the reintegration or after-care of released prisoners through initiatives that help them find work and accommodation is an objective of penal policy in many countries. So too is the development of community-based measures which can be used in place of short prison sentences. Research has identified alternatives to imprisonment that cost less than prison and in some cases at least are more effective at reducing re-offending. Certain vulnerable groups - women, juveniles and people with mental health issues - have been a particular focus for diversion.<sup>118</sup>

In lower income countries efforts are being made to reserve imprisonment also for serious and persistent offenders. This may be by diverting certain kinds of cases out of the criminal justice system altogether so that they are dealt with through restorative processes, although the use of informal or traditional justice approaches tends to be a deeply divisive question. Where prosecutions are brought, affordable bail terms and community-based alternatives to incarceration are being developed for cases, which involve low risk and low levels of seriousness.

In recent years, a growing number of countries have resorted to amnesties and pardons to relieve prison overcrowding in Africa, South America, Europe and Asia. For example in early 2013 the President of Sri Lanka granted amnesty to 1,200 prisoners on the country's 65th Independence Day. Those released were serving minor sentences and some were those who had not been able to pay their fines.<sup>119</sup> The prison population in Georgia more than halved from 24,000 to 11,000 in early February 2013, mainly due to a broad amnesty in which 7,985 prisoners were released.<sup>120</sup> While providing short-term relief, amnesties and other forms of pardons have shown not to provide a sustainable solution to overcrowding and can erode public confidence.

More sustained policies to decongest prisons by substituting community supervision for short terms of imprisonment have been introduced in countries as diverse as Kenya and the Republic of Ireland. Several countries of the former Soviet Union and the People's Republic of China are looking to develop probation services or other forms of community-based supervision.

There are however a number of countries that have few if any alternatives to prison available to courts. Even where available, their use may be limited by lack of resources, judicial reluctance or hostile public attitudes. There is some distance to go in ensuring that international standards are being met in relation to the availability, use and effectiveness of alternatives to prison.

<sup>116</sup> <http://www.urban.org/publications/412994.html>

<sup>117</sup> <http://www.theguardian.com/world/2013/nov/11/sweden-closes-prisons-number-inmates-plummets>

<sup>118</sup> See for example, UNODC Handbook on Alternatives to Imprisonment, 2007

<sup>119</sup> [www.nzweek.com/world/sri-lanka-releases-1200-prisoners-on-independence-day-47528/](http://www.nzweek.com/world/sri-lanka-releases-1200-prisoners-on-independence-day-47528/)

<sup>120</sup> [www.civil.ge/eng/article.php?id=25801](http://www.civil.ge/eng/article.php?id=25801)

***Work should be undertaken to strengthen the availability and implementation of alternative sentences for minor offenders, to promote the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) and to increase public awareness of and involvement in their use.***

## Conclusion and Recommendations

While identifying global trends and challenges about the use and practice of imprisonment is virtually impossible, there are a number of broad themes which are worthy of consideration in a large number of countries. There are strong arguments for countries to develop:

- a) policies which involve a sparing use of prison which keeps pre-trial detention to a minimum and applies proportionate sentences in cases when alternatives are not suitable; and
- b) prisons which are appropriately sized, adequately staffed and meet the requirements of international standards, making suitable use of technology and subject to necessary oversight.

There is also a good case for:

- c) more research on the effectiveness of various penal approaches and the exchange of good practices between countries; and
- d) a greater priority being given to prison reform by international and national donors.

### **The more detailed recommendations emerging from this report are as follows:**

- 1) All countries should keep under review whether imprisonment is playing an appropriate role in tackling crime and those with very high rates of imprisonment should do so as a matter of urgency.
- 2) The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems require measures to ensure their implementation at the national level.
- 3) There is a strong case for sentence lengths to be proportionate to the seriousness of the crime.
- 4) Drug use should be treated as a public health rather than a criminal justice problem.
- 5) States should give priority to implementation of the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).
- 6) Countries should redouble their efforts to meet the requirement of Article 37 of the UN Convention on the Rights of the Child which states that children should be detained as a last resort and for the shortest possible time and where these criteria are met they should be kept separately from adults.

- 7) Countries should monitor the representation of prisoners from ethnic minorities and foreign nationals in order to develop specific measures to meet their needs.
- 8) In low-income countries there is a need to develop low cost and low technology solutions to infrastructure problems. Work on designs has been undertaken by the International Committee of the Red Cross and United Nations Office for Project Services (UNOPS) which should be widely disseminated.
- 9) The risks involved for the state and those in prison, and the mixed track record of private prisons, demand a level of rigour and analysis focused on both criminal justice reform, where increasing prison capacity may not be the required solution and the appropriateness of private sector involvement as a policy response.
- 10) Countries should move towards restricting the use of solitary confinement.
- 11) Countries should establish statutory independent and effective external monitoring bodies which have unimpeded and unannounced access to all places of detention; and states which have not ratified Optional Protocol to the Convention against Torture should do so.
- 12) Prison systems should embrace the opportunities afforded by new technology to improve the functioning of criminal justice and the rehabilitation of prisoners.
- 13) Work should be undertaken to strengthen the availability and implementation of alternative non-custodial sentences for minor offenders and to increase public awareness of and involvement in their use.
- 14) The international community should give priority to strengthening the rule of law and reforming criminal justice in the post-2015 development goals.

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