



Promoting penal
reform worldwide

The Use and Practice of Imprisonment: Current Trends and Future Challenges

Side-event at the 22nd session of the Commission on Crime Prevention
and Criminal Justice, Vienna 22-26 April 2013

Discussion Paper

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. It serves to form the basis for dialogue and consultation, particularly at the 22nd session of the Commission on Crime Prevention and Criminal Justice in April 2013, in the run up to the 13th Crime Congress in Qatar, Doha where Penal Reform International plans to present a more comprehensive paper.

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.

Part one of the paper looks briefly at the difficulties in measuring changes in crime and re-offending rates before addressing changes in the extent and nature of prison populations. Part two discusses questions about the organisation and management of prisons, who is responsible for them, who works in them and how and what systems are in place for monitoring and inspection. Part three looks at the opportunities and challenges created by new technology while Part four seeks to place imprisonment in the broader context of criminal justice policies.

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 being faced in a large number of states.

Part One: The Use of Imprisonment

Crime, Re-Offending and the Use of Imprisonment

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.

The crime of homicide - intentional killing - lends itself most easily to comparison and is usually considered as a proxy indicator for violence in general. A UN study published in 2011 by the UN Office on Drugs and Crime (UNODC) estimated that some 468,000 homicides took place in 2010, a global average of seven per hundred thousand of the general population.¹ 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.

The UNODC study found that since 1995, the homicide rate has decreased in many countries, mainly in Asia, Europe and Northern America, but it has increased in others, particularly Central America and the Caribbean. Trend data for Africa is unavailable.

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 USA 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.² 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.³ 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.⁴

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.'⁵ This suggests that increasing the use of imprisonment plays a relatively modest role in preventing and reducing violence and other forms of crime.

Trends in the use of imprisonment

The absolute numbers behind bars on remand or serving sentences has increased almost across the world over the last 20 years.⁶ Some increase is to be expected given the

¹ United Nations Office on Drugs and Crime, 'Global Study on Homicide', 2011

² Blumstein et al, 'The Crime Drop In America', 2000

³ Jacobsen M., 'Downsizing Prison, How To Reduce Crime And End Mass Incarceration', 2005

⁴ 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

⁵ See note 1

⁶ Unless otherwise referenced, all prison population data used in this section are taken from ICPS World Prison Brief at www.prisonstudies.org

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. Despite falls in more than half the states' prison populations in the last two years, the USA still confines a higher proportion of its population than any other country.

In Asia, particularly large rises in the use of prison have been seen in Indonesia (277 per cent), Thailand (250 per cent) and the Philippines (200 per cent) with Vietnam and Iran more than doubling 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.

Former Soviet Union and Eastern European countries have not all seen their prison numbers fall. Before its recent large-scale amnesty 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 more than trebled in this period although it has recently been announced that low risk offenders serving short sentences may be released early. 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 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.⁷

In Africa, while data is less complete large percentage increases have been seen in some North African countries (Egypt, Algeria, Morocco), in South Africa and in some but not all East African states (Ethiopia, Kenya, Uganda). Rwanda's prison numbers were 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, placing an enormous financial burden on governments and at a great cost to the social cohesion of societies. It is estimated that more than 10.1 million people, including sentenced and pre-trial

⁷ Allen R., Reducing the use of imprisonment What can we learn from Europe?, CJA 2012

prisoners, were held in penal institutions worldwide in May 2011. 146 out of every 100,000 people of the world were therefore in prison at that time.⁸ The prison populations grew in 78 per cent of countries between 2008 and 2011, and in 71 per cent of countries in the previous two years.⁹

On this basis, out of 194 jurisdictions for which data had been collected by the World Prison Brief of the International Centre for Prison Studies, 118 had a rate of prison occupancy above 100 per cent (overcrowding). Out of these, 15 jurisdictions had rates of overcrowding above 200 per cent, 33 had rates between 150 and 200 per cent.¹⁰

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 90 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 one sixth of the USA's. Within the USA, 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, social and ethical costs associated with depriving people of their liberty, it would however seem to be important that countries keep under review whether imprisonment is playing an appropriate role in tackling crime. Such a review is particularly important where rates are extremely high – say the 16 countries, which confine more than 400 per 100,000 of their prison population - or extremely low - say the 24 countries whose imprisonment rate is less than 50.

Pre-trial Detention

In many nations of the world, 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 seven out of 10 prisoners may be awaiting trial. Even in wealthy 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.¹¹

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.¹² Many will spend months and even years in detention, without being tried or found guilty.¹³ 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)¹⁴, as compared to an average of 3.7

⁸ World Prison Population List, Ninth Edition, International Centre for Prison Studies, http://www.prisonstudies.org/images/news_events/wppi9.pdf

⁹ See note above and World Prison Population List, Eighth Edition (2008)

¹⁰ <http://www.prisonstudies.org/info/worldbrief/>

¹¹ See for example, Open Society Foundations, United Nations Development Programme, 'The Socio-Economic Impact of Pre Trial Detention', 2011

¹² Joint NGO Statement at the 50th 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; http://www.soros.org/initiatives/justice/articles_publications/publications/achpr-pretrial-20111025/pretrial-detention-statement-10252011.pdf; <http://www.prisonstudies.org/info/worldbrief/>

¹³ Open Society Justice Initiative, The Socioeconomic Impact of Pretrial Detention, October 2011, p. 12.

¹⁴ 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.

years in Nigeria.¹⁵ Over the course of a year approximately 10 million people pass through pre-trial detention globally.¹⁶

Latest UN data suggest that the share of the prison population in pre-trial detention worldwide decreased from 29 to 25 per cent between 2005 and 2011. Regionally, the percentage of pre-trial detainees fell from 61 to 35 per cent in Africa, from 25 to 24 per cent in the Americas and from 18 to 16 per cent in Europe, while it remained stable at 42 per cent in Asia.¹⁷

But official figures are likely to underestimate the numbers involved since in many countries detainees are held in police detention, escaping the prison statistics but not the fact of detention. Remands of course represent a much greater proportion of those admitted to prison each year than they do of the prison population on any one day. So while international law stipulates that penitentiary systems should comprise 'treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation',¹⁸ 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.¹⁹

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, and that it 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'.²⁰ This is important for a range of reasons not least of course to avoid wrongful conviction.

A number of models for providing legal and paralegal advice and assistance have been developed which are capable of replication at relatively low cost.²¹

¹⁵ Anthony Nwapa, *Building and Sustaining Change: Pretrial Detention Reform in Nigeria*, in *Justice Initiatives: Pretrial Detention*, New York: Open Society Institute, 2008, 86.

¹⁶ Open Society Justice Initiative, *The Socioeconomic Impact of Pretrial Detention*, October 2011, p. 15

¹⁷ UNODC, *World crime trends and emerging issues and responses in the field of crime prevention and criminal justice*, 2013

¹⁸ International Covenant on Civil and Political Rights (ICCPR)

¹⁹ See note 8

²⁰ 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

²¹ See e.g. PRI Index of Paralegal services in Africa <http://www.penalreform.org/publications/index-paralegal-services-africa>

Sentenced Prisoners

As for sentenced prisoners, there are diverse trends in the length of prison terms. Many countries have seen an increase in the numbers serving life and long-term imprisonment. The UK 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 USA, life sentences can be imposed for drug crimes and non-violent offences as a result of the 'three strikes' rule used in some states.²²

This rule is an example seen in the USA and New Zealand towards mandatory minimum sentences for repeat offenders; it imposes a sentence to life imprisonment after committing a third crime. Other examples include long, indeterminate and preventive sentences for 'dangerous offenders' (Germany) and harsh penalties for gang members (*mano dura* policies in Latin America). 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. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) pointed out that very lengthy sentences were imposed for crimes, which in other countries would receive much lower terms of imprisonment.²³

As many countries move towards the abolition of the death penalty, research indicates a significant increase in the number of offences that carry the sanction of life imprisonment, often without the possibility of parole. Moreover, the replacement of the death penalty by life imprisonment (without parole) has resulted in a widening net, applying life sentences beyond the 'most serious crimes' and no longer confined to formerly capital offences.²⁴

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 58 per cent of all prisoners in Thailand, more than half of federal prisoners in the USA and Mexico, a quarter of all prisoners in Spain and one in five entering prison in Japan.²⁵ More than half of the 900 prisoners awaiting execution in Malaysia in October 2012 were drug offenders.²⁶ A 2012 study revealed that more than one in four women in European and Central Asian prisons were imprisoned for drug offences.²⁷

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, up from 80 per cent in 2005.²⁸

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

²² See Penal Reform International's briefing, 'Life after death: What replaces the death penalty?', April 2012

²³ 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

²⁴ See Note 13

²⁵ Bewley-Taylor et al, 'The Incarceration of Drug offenders - an Overview', 2009

²⁶ <<http://www.nst.com.my/latest/possible-moratorium-on-death-sentence-pending-govt-s-final-decision-1,159690>>, accessed 5 April 2013

²⁷ 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

²⁸ UNODC, World crime trends and emerging issues and responses in the field of crime prevention and criminal justice', 2013

and pass on their drug habit. The Report suggests to rebalance drug control policy through alternative development, prevention, treatment and fundamental human rights.²⁹ 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.³⁰

Prison Population

a) Women Prisoners

More than 625,000 women and girls are held in prisons around the world. In two thirds of the world's jurisdictions, women represent between three per cent and 12 per cent although in some smaller countries up to one in five prisoners at any one time may be women. This number is increasing every year, and at a far greater rate than for men.

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'.³¹

The needs of women are usually very different from that of men. Women are mainly convicted of petty crimes closely linked to poverty, such as theft, fraud and drug related offences. Only a small minority of women are convicted of violent offences, and a large majority of these have been victims of violence themselves.

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.³² About one third of women prisoners in Canada³³, and 57 per cent in Thailand³⁴ were convicted of drug related offences.

The effects of detention on their lives, and their families' lives, may be much greater and the security risks they pose are generally much smaller in comparison with their male counterparts.

Experience in some countries indicates that women prisoners may be more susceptible to self-harm and suicides.³⁵ 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.³⁶

²⁹ United Nations Office on Drugs and Crime, World Drug Report 2012, preface iii, http://www.unodc.org/documents/data-and-analysis/WDR2012/WDR_2012_web_small.pdf

³⁰ http://www.unaids.org/en/media/unaids/contentassets/documents/document/2012/JC2310_Joint%20Statement6March12FINAL_en.pdf

³¹ United Nations Division for the Advancement of Women (DAW) Office of the High Commissioner for Human Rights (OHCHR)

discrimination, ~~24 November 2009~~ Report Group Meeting, Zagreb, Croatia
³² 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

³³ http://www.eurekalert.org/pub_releases/2011-05/smh-hrt053111.php

³⁴ Department for Corrections, Ministry of Justice, Thailand, website accessed on 19/3/2011. <http://www.correct.go.th/eng/statistics.html>

³⁵ UNODC/WHO Europe, Women's health in prison, Correcting Gender Inequity, 2009, p. 29

³⁶ "Study reveals rising suicide rate in female prisoners", 2 February 2009, The Royal College of Psychiatrists, <http://www.rcpsych.ac.uk/press/pressreleases2009/suicideinfemaleprisoners.aspx>

Given these 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 2010.³⁷ The Rules encourage the use of gender-specific non-custodial measures and sanctions, supplementing the Tokyo Rules on alternatives to imprisonment. They supplement the Standard Minimum Rules for the Treatment of Prisoners, giving guidance on how to meet the needs of women prisoners, often overlooked by criminal justice systems. Yet, their implementation is still lacking in most countries.

b) 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. By 2011, the average rate of juveniles deprived of liberty in the Americas was four to five times higher than average rates in Europe and Asia.³⁸

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 States across the globe, resulting in the criminalisation of more and younger children.³⁹ 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.⁴⁰

The age of criminal majority (the age at which offenders are no longer protected under the 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.

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

³⁷ UNGA Resolution A/RES/65/229

³⁸ See Note 9

³⁹ See Child Rights International Network, <http://www.crin.org/themes/ViewTheme.asp?id=16>

⁴⁰ See 'At What Age', <http://www.right-to-education.org/node/279>

verdict of South Africa's Constitutional Court in 2007 ruled that sentencing must take into account of the impact on the mother's children.⁴¹

c) Foreign National Prisoners, Minorities and Indigenous Peoples

The increased movement of people from one country to another 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.⁴²

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 2011, the mean percentage of foreign nationals in Council of Europe member states was 20 per cent and the median 10 per cent.⁴³ Some Middle Eastern countries have very high proportions of foreign nationals (United Arab of Emirates 92 per cent and Qatar 74 per cent).⁴⁴ 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 in many cases indigenous peoples are overrepresented among prisoners. In some countries, racial and ethnic minorities represent over 50 per cent of the prison population.⁴⁵ 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.⁴⁶ Black and minority ethnic groups are disproportionately imprisoned in Western Europe and North America.

d) 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.⁴⁷ 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.⁴⁸

e) 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 1990.⁴⁹

⁴¹ S v M (CCT 53/06) [2007] ZACC 18; 2008 (3) SA 232 (CC); (26 September 2007)

⁴² UNODC Handbook on Prisoners with Special Needs (2009)

⁴³ Council of Europe, forthcoming SPACE survey (Annual Penal Statistics of the Council Of Europe)

⁴⁴ ICPS World Prison Brief

⁴⁵ UNODC Handbook on Prisoners with Special Needs (2009)

⁴⁶ http://www.corrections.govt.nz/about-us/facts_and_statistics/prisons/ps-march-2012.html

⁴⁷ UNODC/WHO/UNAIDS technical guidance template for GF HIV proposals

R11 (and GF TB proposals)

http://www.unaids.org/en/media/unaids/contentassets/documents/programmes/programmeffectivenessandco-untrysupportdepartment/gfresourcekit/20110818_Technical_Guidance_prisons.pdf

⁴⁸ Lee D et al. *Global Fund financing of tuberculosis services delivery in prisons*. J Infect Dis, online edition. DOI: 10. 1093/infdis/jis042, 2012.

⁴⁹ The Guardian Dementia among inmates poses a growing challenge for prisons Friday 12 April 2013

Human Rights Watch found that in the USA 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.⁵⁰

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.⁵¹

Various studies have indicated that the percentage of people in prison who have a drug problem ranges from 40 to 80 per cent and drug use amongst offenders entering prison is on the increase.⁵²

Part Two: 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 or for the entire health care) 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 to 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 grant from the state and managing demand through reforms to pre-trial detention and sheriff's powers to release prisoners early.

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 the position 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. While international law does not prescribe in detail the ways in which criminal functions should be organised, the

⁵⁰ Human Rights Watch, 'Old Behind Bars: Aging Population in the United States', 2012

⁵¹ UNODC Handbook on Prisoners with Special Needs (2009), p. 4

⁵² UNODC, Drug Dependence Treatment: Interventions for Drug Users in Prison, Treatment, p. 11 (http://www.unodc.org/docs/treatment/111_PRISON.pdf)

requirement for a civilian as opposed to a military prison system is at the heart of the international human rights framework.

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.’⁵³ 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, thereby permitting the demilitarisation of the penitentiary system.⁵⁴

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 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 also make it clear that medical care in prison should be 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.

Prisons

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. 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 range from 1:0.3 in some of the smallest countries, 1:1.5 in Scandinavia through to 1:27 in Azerbaijan. The average number of prisoners per custodian has increased since 2008.⁵⁵

In 2011 according to draft figures, the average amount spent per day for the detention of one person in 2010 varied a hundredfold among the 47 Council of Europe member states and has declined since 2007.⁵⁶

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.

Low and middle-income countries typically confine their prisoners in old and dilapidated buildings, which can be highly dangerous in terms of fire risks. The Organization of American States has found that ‘the complex problems bedevilling 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.’⁵⁷

An analysis of prisons in Africa found that ‘many are in a deficient condition and their

⁵³ 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

⁵⁴ Concluding observations on Kazakhstan, adopted on 17 May 2011, UN-Doc. A/56/44(SUPP)

⁵⁵ Figures from Draft SPACE 1 report for 2011 circulated at March meeting of the PC-CP

⁵⁶ From €3 in Bulgaria and Ukraine to €330 in Norway. Data from Draft SPACE report 2011 and SPACE report 2008

⁵⁷ Dammert, L. and Zuniga, L. (2008) *Prisons: Problems and Challenges for the Americas* Santiago: FLACSO

practices are at odds with human rights standards'.⁵⁸ In Europe, the European Committee for the Prevention of Torture 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'.⁵⁹ 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'.⁶⁰

Particular challenges face prisons in post conflict and fragile states where the physical infrastructure may have been destroyed and the criminal justice often fails to function leaving vast numbers of detainees, including former combatants awaiting trial for long periods.

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.

Private Prisons

In order to address some of these problems, 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 USA, 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.⁶¹

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 USA and also followed in the UK, Australia and South Africa. A private company or consortium agree to finance, design construct and manage a prisons 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 or from involvement in determining the computation of sentences, deciding at which prison any prisoner will be detained, deciding on the placement or release of a prisoner, or grant temporary leave.

⁵⁸ 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

⁵⁹ 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

⁶⁰ 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

⁶¹ See e.g. Transforming Rehabilitation UK Ministry of Justice 2013

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).

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 regime activities. The contracts are usually for much shorter periods (e.g. 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 by not for profit, charitable or other nongovernmental organisations.

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.⁶² Private prisons have been considered in countries as diverse as Lesotho and the Dominican Republic, Costa Rica and Kenya, Latvia and Jamaica.⁶³

While private prisons offer attractive proposition for states that want to modernise their infrastructure and have problems raising funds, there are disadvantages. As the World Bank has said 'construction of new prisons without penal reform may simply lead to an increase in the prison population'.⁶⁴ 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.

⁶² Peru (<http://www.businessweek.com/ap/financialnews/D9EQJ0OG0.htm>); Jamaica (http://www.jamaicaobserver.com/news/Gov-t-talks-of-building-modern-prison-again_10852239); Nigeria (<http://allafrica.com/stories/201212311079.html?viewall=1>)

⁶³ 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; http://www.unafei.or.jp/english/pdf/Congress_2010/14Elias_Carranza.pdf; Kenya <http://www.businessdailyafrica.com/Corporate+News/G4S+opens+talks+to+run+Kenyas+prison+services/-/539550/1092596/-/item/1/-/15n3fry/-/index.html>

⁶⁴ World Bank (2012) Staff Guidance Note: World Bank support for Criminal Justice Activities http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/CriminalJusticeGuidanceNote_Feb2012.pdf

Philosophy of Imprisonment

In many countries, the philosophy of imprisonment as a sentence is increasingly thought of in terms of the concept of 'corrections'. Former Soviet Union countries in particular are moving away from a system based on isolation and exile towards a more rehabilitative approach. This is seen as both in line with international standards and more effective in reducing recidivism.

Alongside this philosophy, for those deemed to pose the greatest risks there appears to be a greater emphasis on security with 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 a normal, rather than an 'exceptional'. In the USA, for example, it is estimated that between 20,000 and 25,000 individuals are being held in isolation.⁶⁵ Other examples documented are the extensive use of solitary confinement in relation to pre-trial detention in Scandinavian prison practice⁶⁶ and a prison regime in Brazil⁶⁷, 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.⁶⁸

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.⁶⁹

Independent Monitoring

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

Sixty-seven countries have ratified the Optional Protocol to the Convention against Torture (OPCAT) and 46 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

⁶⁵ Alexandra Naday, Joshua D. Freilich and Jeff Mellow, "The Elusive Data on Supermax Confinement", *The Prison Journal*, vol. 88, issue 1, p. 69 (2008).

⁶⁶ 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.

⁶⁷ Law 10792 of 2003

⁶⁸ First interim report to the General Assembly on 18 October 2011, UN-Doc A/RES/65/205

⁶⁹ 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.

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.

Part Three: 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. Video-technology can also be used to arrange court hearings remotely.

Electronic monitoring of suspects and offenders

Electronic monitoring is being used predominantly in high income countries in the following 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; in the framework of conditional release from 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; as a means for protecting specific crime victims from individual suspects or offenders.

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 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.

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.

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.

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. Efforts at combating the digital exclusion of prisoners should not lead to their being detained in their cell with only a computer for company.

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 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.

The use of technology as an alternative to imprisonment has also shown to bear risks, such as a net-widening following the introduction of electronic monitoring. 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.

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.’⁷⁰ 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.

Part Four: Criminal and Social policies

Studies have suggested that moderate penal policies are associated with particular kinds of societies. A sparing user 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 USA 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.

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

⁷⁰ HM Inspector of Prisons Report on HMP/YOI Isis 2011

groups - women, juveniles and people with mental health issues and other problems - have been a particular focus for diversion.⁷¹

In lower income countries efforts are being made to reserve imprisonment 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.⁷² 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.⁷³ 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. 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.

Penal Reform International would like to thank PRI associate, Mr Rob Allen for authoring this paper.

⁷¹ See for example UNODC handbook on Alternatives to Imprisonment

⁷² <http://www.nzweek.com/world/sri-lanka-releases-1200-prisoners-on-independence-day-47528/>

⁷³ <http://www.civil.ge/eng/article.php?id=25801>