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Input to the Office of the United Nations High Commissioner for Human Rights on the application of digital technologies in the administration of justice

Penal Reform International (PRI) welcomes the initiative of the Office of the United Nations High Commissioner for Human Rights (OHCHR) to inform the Secretary General's report to the General Assembly, pursuant to resolution A/RES/77/219, and the opportunity to provide input on the latest developments, challenges and good practices in human rights in the administration of justice, including on the application of digital technologies in the administration of justice.

Introduction

The global regulatory landscape for digital technologies in the administration of justice is diverse, with jurisdictions either adapting existing frameworks or introducing specific regulations. It is therefore crucial to evaluate the potential consequences of digital technologies in the administration of justice on the enjoyment of human rights, especially for people in vulnerable contexts, and examine the global challenges associated with the increasing digitisation of justice systems worldwide. PRI recognises the opportunities for improving criminal justice systems using technologies, but we remain concerned at the accelerating pace of technological advancements in criminal justice systems, especially prison settings, and emphasise the need for careful consideration of their impact on human rights.

Global trends in the role and use of technologies

The following draws on PRI's 2023 Global Prison Trends:

The expansion in the use of technologies and the digital capacity of prisons across the globe has been evidenced in a global review of 22 prison systems on 'digital maturity', which concluded that developments are complex and influenced by the level of readiness to provide digital services for people in prison. The study explained that key drivers to digitally mature prisons include active efforts to design solutions that are centred on the needs of people in prisons, including staff, as well as cross-organisation strategies and partnerships, including with the commercial sector. Testing and evaluating outcomes of using technology were also indicators of prisons being 'digitally mature'.

➔ **PRI recommends that any introduction or expansion of technological tools in justice systems are tailored, context-specific and based on robust needs assessments (that are ongoing).**

There is emerging evidence of the importance of users' perceptions and attitudes to technology in prisons. In Finland, for example, research identified that lack of trust is a barrier to use, but the age of a user of technology is not. In the US it was found that positive attitudes of staff towards technology facilitated the uptake of technology by the people they supervise.

➔ **PRI recommends that experiences of diverse users or 'beneficiaries' of technological tools in criminal justice systems should lead or be central to decision-making by authorities. This includes people in detention, staff of detention facilities, and other stakeholders.**

PRI has documented many examples of harms of digital technology used in places of detention. For example, the Center for Prisoners Rights, a Japanese NGO, reported in 2022 that people on death row are sometimes held in solitary confinement monitored 24 hours a day by CCTV with no measures in place to ensure privacy for using the toilet or changing clothes.

Like many other civil society actors, PRI is concerned at the increase in virtual hearings since 2020 in all regions especially with regards to the right to a fair trial. Particularly in the global south, the use of virtual hearings as well as video calls with family is expanding at a significant pace, somewhat propelled by the restrictions during the COVID-19 pandemic. For example, in India sixteen prisons have replaced face to face court appearances with virtual hearings. In Lebanon, UNODC supported the installation of 17 remote e-hearing systems, including 14 in selected courts, detention facilities and prisons. Research in Brazil has shown that virtual custody hearings are more likely to impact black and female detainees, since 'physically seeing and hearing the arrested person brings justice operators closer to the reality of people in custody', and furthermore virtual hearings make it more difficult for judges to identify signs of torture. PRI has observed virtual hearing 'spaces' or courts set up in diverse contexts, from Ireland to Philippines. Whilst safeguards can be put in place when it comes to vulnerable populations such as children or people who are illiterate or have learning disabilities for example, virtual hearings are never able to meet the thresholds required to protect the right to a fair trial.

➔ **PRI recommends further guidance in the form of international standards to virtual hearings. In the meantime, there should be frank and open dialogue including with donors and international institutions who are supporting the set-up or expansion of virtual hearings to ensure human rights impact assessments and transparency.**

➔ **Any form of virtual contact with people detained and their families or support networks should be supplemented by in-person contact, bearing in mind the UN Nelson Mandela Rules and the need for face-to-face contact for rehabilitative and mental wellbeing.**

Technologies to maintain security of prisons are also continually being developed. Prisons in Ecuador have introduced security systems which include Artificial Intelligence and facial recognition, in response to increased and fatal violence. Similarly, in Panama's La Joya prison, less invasive monitoring has been introduced such as mobile phone blockers, body scanning equipment and use of biometrics. There is also research pointing to the use of technologies in efforts to detect drugs, especially psychoactive substances like cannabinoids and other NPS, which remain difficult to detect.

➔ **Given the proven benefits of dynamic security approaches, as promoted by the UN Nelson Mandela Rules, using technologies for security should be used only in a manner that retains dynamic security. Any use of AI or facial recognition, or heat mapping, for instance should be strictly regulated in law, with constant monitoring ensuring that there are no human rights violations. Furthermore, any impact on rehabilitation, for instance by reducing the interaction between facility staff and people detained, should be closely monitored.**

Tech tools to support rehabilitation of people convicted of specific crimes are becoming more popular. For instance, the apparent benefits of immersive technologies such as Virtual Reality (VR) has recently been promoted in the European region. For people who have committed violent crimes such as Intimate Partner Violence, a study proved that it improved their thinking skills, ability to empathise, practice positive social skills and increase their motivation to engage in rehabilitation.

VR has also been incorporated into a suite of tools to support radicalisation risk assessments in seven European countries, and in Spain a pilot project in Lledoners Penitentiary Center has been set up to use VR in rehabilitation for a range of criminal behaviours. In Finland, as part of their Smart Prisons project, VR is being used by psychologists in rehabilitative individual work with the people in their care. The VR experience includes a virtual forest to boost well-being and relaxation, with reportedly positive results for people who use drugs.

Many countries lag behind in providing access to the Internet in prisons. Technological infrastructure and a dire shortage of resources are common in low-income settings, but in others Internet bans are in place in prisons on the grounds of security. In France, such a policy has come under criticism by the Inspector General of Prisons who recommended it be overturned on the grounds that many rights are precluded by the ban such as accessing legal information. Canada also retains a ban on Internet access in prisons, although a 2022 change saw defendants without legal representation being allowed access for legal purposes, albeit under supervision and limited to a specified time period. It has also been reported that under these conditions the authorities have not been able to grant all requests for such access. The European Court of Human Rights weighed in on the debate in a 2021 case against Turkey. The Court found that while prison authorities can legitimately restrict access to certain sites, they had violated the right to access information by refusing the pre-trial detainee access to websites of the European Court of Human Rights, the Constitutional Court and the Official Gazette, for the purpose of preparing his defence.

> ➔ **PRI recommends evidence-based rehabilitation programmes for people in prison. There is more research on the topic needed.[1] Digital literacy programmes should be promoted wherever possible, and internet bans in prisons should be lifted to enable the principle of normalisation and rehabilitation for detainees to be ensured.**

Challenges in electronic monitoring: human rights concerns, commercialisation pitfalls, and transparency

As many countries look to find solutions to serious prison overcrowding levels, private companies offer Electronic Monitoring solutions. Whilst EM has been around for decades, the pace that it is expanding – both geographically and in the number of people subject to it – is of concern to PRI.

Aside from the Council of Europe recommendation on the topic, there is a gap in international standards or guidance that is human-rights based, and **PRI therefore recommends the development of standards or guidance on the topic** so that Member States can ensure any introduction, implementation or expansion of EM is in line with international human rights law.

Some of the key challenges that PRI has documented and/or observed include:

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[1] UNICRI has been conducting research into the potential impact of technology on prisoner interventions to improve effectiveness and support rehabilitation and PRI understands this will be published in the coming weeks (March 2023).

- The principle of proportionality is often violated in imposing and implementing sentences or measures that involve EM (e.g. the imposition itself, prompting fears of net-widening, the duration and the conditions attached to it).
- The commercialisation of EM seen by private companies (e.g. driven by low-risk offender opportunities), and the lack of transparency in procurement policies.
- The surge in EM aligns with global trends in digital technologies, such as AI, machine learning, biometric identification, and surveillance systems, integrated into justice systems worldwide. This broader shift is evident in the adoption of EM systems across countries. This is coming without enough needs-based assessment or monitoring from a human rights perspective.
- Concerns have been raised about the use of EM for people with disabilities and neurodiversity who may face risks of violations, which could be attributed to a potential lack of understanding about how EM functions.
- There is a lack of training on using EM correctly to support rehabilitation, and accompanying support is often inadequate, 'setting people up to fail' and often be called to prison for breaches.
- Physically, the EM devices are one-size-fits-all which means that some people experience physical harm.

Other civil society groups and research done shows that criminal justice systems worldwide have witnessed a significant transformation with the surge in EM. The latest Vera Institute of Justice report sheds light on how EM, initially touted as a cost-effective alternative to incarceration in the United States, is an invasive and frequently dysfunctional technology which has become an extension of mass incarceration, thus perpetuating its harms. The Vera report explores the dramatic increase in the use of EM, revealing its physical, emotional, and financial toll on individuals, while emphasising its broader implications for a more punitive criminal justice system.

Research shows that the number of people on EM in the US skyrocketed from 2005 to 2021, increasing fivefold to over 250,000. In 2022, this number further surged to nearly half a million, demonstrating a tenfold rise in just 17 years. In addition, the lack of federal efforts to systematically track electronic monitoring data poses a critical challenge, allowing private vendors to enter into contracts with various public agencies. These private companies, often viewed as low-cost solutions, exploit a flawed system that ultimately burdens those under surveillance with exorbitant user fees, leading to a cycle of financial exploitation and potential abuse. As the US criminal justice system embraces EM, the Vera report unravels the deeper entanglement of individuals with the legal system, questioning the motives and consequences of the criminal justice system that seems more driven by profit than rehabilitation (the North American market for EM being valued at roughly $1.2 billion in 2023), while failing to address underlying issues such as prison overcrowding. Similar trends can be identified in low- and middle-income countries, such as Peru, where the user fee amounts to $ 242 monthly (the minimum wage being $ 276).

Navigating child-friendly digital justice

As Guidelines and best practices for child-friendly justice sector reform emphasise the advantages and risks associated with innovations in digital justice spaces. While digital communications, particularly video proceedings, have proven beneficial during the pandemic, enabling legal aid organisations to reach underserved areas and reducing anxiety for some children, serious concerns have been raised. Research indicates that video proceedings can hinder effective lawyer-client relations, complicate communication, and pose challenges to children's understanding of legal processes. Additionally, the digital divide exacerbates inequality, disadvantaging underserved communities, and children have expressed frustration regarding a lack of understanding, privacy, and access to lawyers in digital proceedings.

To address these challenges, [best practices](#) encourage policymakers to consider all aspects of justice and digital innovation to genuinely expand and improve children's access to justice by basing their decisions on sound research, ensuring that **only evidence-based technology is applied. A multi-disciplinary approach is therefore essential, including consultation with a broad range of stakeholders, and alignment with international law to uphold children's human rights.**

Conclusion and recommendations

International human rights obligations bind States to safeguard the rights and dignity of all individuals within their jurisdictions, irrespective of technological advancements. The increasing integration of digital technologies into justice systems requires a comprehensive assessment of their impact on fundamental human rights, including privacy, fair trial, and non-discrimination. PRI underscores the complex challenges associated with the digital transformation of justice worldwide. To address these challenges, it is imperative for the international community to prioritise transparency, accountability, and ethical considerations.

In addition to specific recommendations made above, **PRI recommends:**

- **The development and implementation of clear human rights impact assessments for digital technologies within justice systems, ensuring a focus on people in vulnerable contexts.**
- **Promotion of international collaboration to establish standards and regulations for the rights-based use of electronic monitoring, addressing issues of transparency, proportionality, human rights concerns, and the prevention of commercial exploitation.**
- **Any efforts to enhance the digital maturity of prison systems globally should ensure cross-organisational strategies centred on the well-being and needs of people in prison (the end user or beneficiary).**
- **The active involvement of all relevant stakeholders in decision-making processes related to the use of digital technology in the administration of justice, fostering transparency and accountability.**
- **Facilitate a dialogue among States, international organisations, and civil society to develop comprehensive standards or guidance on the use of digital technology in justice proceedings, ensuring effective monitoring and safeguarding tools.**

Penal Reform International Submission

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