

GLOBAL PRISON TRENDS 2015



SPECIAL FOCUS

Pull-out section

**Drugs and
imprisonment**

Global Prison Trends 2015

PRI would like to thank Rob Allen for authoring this paper. This paper also draws on the expertise of contributors to our 2014-2015 blog series on trends and challenges in penal reform (<http://www.penalreform.org/blog/>):

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

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

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Foreword

This report, *Global Prison Trends 2015*, has set itself enormous challenges. Not only does it describe global trends in imprisonment, but it seeks also to place these trends in a wider context and then to draw policy recommendations from the discussion of the data.

The mere description of global trends is difficult enough. Fortunately, PRI was able to draw on the work of others: that of Roy Walmsley, the author of the *World Prison Brief*, and of the United Nations Office on Drugs and Crime, as well as important regional studies, such as very detailed SPACE reports on penal statistics published by the Council of Europe. The current report skilfully weaves together information from all these sources, as well as from national data and PRI's own resources, in order to give a carefully nuanced picture. Yes, there are many prisoners in the world – more than 10 million in all – certainly more than a decade ago – but the trend is not only in one direction. In many countries there are declines in prisoner numbers. Why this is happening in some countries but not others requires closer examination.

The wider context for developments in imprisonment worldwide, which the current report provides, is a good basis for such an examination. The report usefully dismisses some lazy

assumptions that are often made about links between changing crime rates and increases in prison populations. The failure of crime rates to increase globally as a result of the international economic recession since 2008 has not only confounded settled criminological wisdom; it has also fatally undermined the simple justification that more crime requires more use of imprisonment. This is often the approach of countries that have allowed their prison populations to increase in recent years. At the same time, the report also stresses the importance of recognising the link between social development and improvements in criminal justice, which can lead to better prison conditions.

Part of the wider context of modern imprisonment is the rapid development of new technologies of control. The report describes succinctly how they can be used both in prison and to develop alternatives to imprisonment, such as electronic monitoring. It points out that new technologies can have positive or negative consequences. Positively they facilitate the release of suspects or offenders who would otherwise be held in prison. Negatively however, electronic links can be substitutes for interpersonal contacts and thus contribute to the increasing isolation of prisoners.

The recommendations for reform are solidly based on this detailed contextual analysis. They range from suggestions on how to reduce the overall prison population, with a particular focus on women and remand prisoners, to detailed suggestions for how prison conditions can be improved. The special focus on drugs in the report is valuable. The recommendation that, wherever possible, drug problems should be seen as medical rather than criminal justice questions, points the way both to imprisoning fewer drug offenders and treating those drug users who are in prison more effectively.

I trust that *Global Prison Trends 2015* will encourage ever more careful collection of penal data and ever more rigorous analysis of the conclusions to which the data point. In this way it will contribute greatly to penal reform worldwide. Ultimately such reform depends crucially on accurate information and careful policy recommendations applied consistently in the many and diverse penal systems that make up the world penal order.

Dirk van Zyl Smit

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Why this report?

This is intended to be the first of an annual series of reports designed to describe 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.

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 report is also timely in view of the international community's work to implement a

post-2015 development agenda which recognises the importance of security and justice in ensuring stable and peaceful societies.¹

The report comprises seven main parts, a special feature and a series of conclusions and recommendations. Part one 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 regimes in prison and Part six at the opportunities and challenges created by new technology. Part seven looks at the use of alternatives to imprisonment, and is followed by conclusions and recommendations. A special feature of this first edition puts in focus penal policies with regard to drugs and prison. Significant international developments, recent research projects and precedent-setting court decisions are highlighted throughout.

The report includes information 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, prison and policy

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. 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.² 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 100,000 of the general population.³ 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 certain 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.

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 a contested one. Studies from the US have estimated that the quadrupling of the prison population there since the 1980s has accounted for between 25 and 30 per cent of the fall in crime.⁴ More recent experience has shown

that falls in crime can be achieved at the same time as reductions in the prison population. Between 2008 and 2013 most US states reduced their imprisonment rates while experiencing less crime.⁵

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.'⁶

Another topical UNODC report stresses that 'there is a compelling case for concluding that crime and criminal justice have a strong link with development'. The report highlights a 'consistent relationship between income levels and crime' which confirms 'the existence of a link between levels of economic development and citizens' security, with low-income countries exposed to higher risks of violent crime'.⁷

This suggests that increasing the use of imprisonment plays a relatively modest role in preventing and reducing violence and other forms of crime. While the criminal justice system as a whole provides some deterrent effect on crime, research generally indicates that increases in the certainty of punishment, as opposed to the severity of punishment, are more likely to produce deterrent benefits.⁸

Moderate penal policies in which prison is used sparingly – as a last resort and for the shortest possible time – are likely to prove the fairest and most cost-effective response to crime in most societies.

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. In 2013, 35 states passed at least 85 bills to change some aspect of how their criminal justice systems address sentencing and corrections. In reviewing this legislative activity, the Vera Institute of Justice found that policy changes have focused mainly on the following five areas: reducing prison populations and costs; expanding or strengthening community-based corrections; implementing risk and needs assessments; supporting offender re-entry into the community; and making better informed criminal justice policy through data-driven research and analysis.

The size of the world prison population has increased by approximately 10% since 2004.



Pre-trial detention facility, Karaganda region, Kazakhstan. © Karla Nur 2014

PART TWO

Trends in the use of imprisonment*

The absolute numbers behind bars on remand or serving sentences have increased in many countries since the turn of the millennium. According to UNODC, the size of the world prison population has increased by approximately 10 per cent since 2004, with large differences in rates of imprisonment between sub-regions, varying from under 100 to more than 600 prisoners per 100,000 population in 2011-13.⁹

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 India from 358,000 in 2005 to 385,000 in 2012 represented a decrease in the imprisonment rate from 31 per 100,000 of the general population to 30. The prison population in India in 2013 – 412,000 – still only represents an imprisonment rate of 33 per 100,000.

Over the last fifteen years or so, prison populations have seen particularly sharp rises in Latin America, where Brazil has seen a 150 per cent increase,¹⁰ Colombia a 125 per cent increase¹¹ and Mexico, 53 per cent.¹² The 16 per cent growth in the US prison population between 2001 and 2012 looks relatively modest in comparison, although it comes after a long period of prison expansion which started in the 1970s. The total US correctional population (on probation, parole, in federal and state prisons and in local jails) decreased for the fourth consecutive year in 2012, but 2013 figures show that the number of federal and state prisoners had started to rise again.¹³

In Asia, particularly steep rises in the use of prison have been seen in Indonesia (183 per cent)¹⁴ and Vietnam

(136 per cent).¹⁵ Prison numbers rose by 58 per cent in the Philippines¹⁶ and by 38 per cent in Iran.¹⁷ Thailand's prison population fell between 2001 and 2007 but then rose again – its 325,000 prisoners in 2014 amounted to 30 per cent more than in 2001. India's prison numbers rose by a similar percentage between 2001 and 2013. China with the largest absolute numbers of prisoners in Asia appears to have seen a more modest rise although data is incomplete in respect of pre-trial detainees and those subject to administrative detention.

In the Gulf region, the use of prison has doubled in Saudi Arabia (from 23,700 prisoners in 2000 to 47,000 in 2013) and in Qatar – from 569 in 2002 to 1,150 in 2013.

In Europe, since 2000, prison populations have fallen in Russia, some of the former Soviet Union countries (for example the Baltic States¹⁸), and some Eastern countries such as Romania although here it started to rise again after 2010. Notwithstanding the decline in his country, the Estonian Justice Minister said in January 2013 that the country's prison population of nearly 3,300 was still too high and has commissioned an audit of penal law because 'practice shows that just putting a person in prison is not necessarily the best solution'.¹⁹ 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.²⁰

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 2001 due to harsh sentencing policies. The prison population in Poland has remained relatively stable after sharp increases at the end of the nineties with relatively large numbers waiting

to serve their sentences, quite a common practice in Europe. Turkey's prison population has by contrast grown rapidly from 55,000 in 2001 to 160,000 in 2015²¹. A five year programme to build more than 200 new prisons was announced in 2013.²²

In Western Europe, while all countries saw their prison populations grow during the 1990s (albeit at different rates), the experience since 2000 has been more variable. The UK and France have seen a continuous increase. Prison numbers rose in Germany and the Netherlands until 2004 and then started to fall,²³ as they did in Spain after 2007.

In Africa, while data is less complete, large percentage increases have been seen in some North African countries such as Algeria (76 per cent between 2001 and 2013) and Morocco. South Africa's prison numbers peaked in 2004, falling back from 188,000 then to 158,000 in 2014. Prison numbers have risen in some but not all East African states. Ethiopia's prison population increased from 55,000 in 2000 to 93,000 in 2011, with smaller percentage rises in Kenya and Uganda. Rwanda's prison numbers which hugely increased following the genocide have fallen dramatically since 1998. Tanzania and Zimbabwe report fewer prisoners today than 15 years ago. West and Central African countries have seen increases; some relatively small as in the case of Cameroon, others sharper as in the case of Nigeria since 2008.

Prison populations in Oceania have increased substantially since 2001. Prison populations in 2014 were 50 per cent higher in Australia and 46 per cent higher in New Zealand.

* Unless otherwise stated, all figures cited in this part are taken from the 'World Prison Brief' published by the International Centre for Prison Studies, <http://www.prisonstudies.org/world-prison-brief>, <accessed 27 January 2015>.

Imprisonment rates

Growing prison populations throughout the world (though not in every country) place 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.²⁴

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 six per cent from 136 per 100,000 of the world population to the current rate of 144.²⁵

Out of 203 jurisdictions for which data had been collected by the World Prison Brief of the International Centre

for Prison Studies in January 2015, 112 had a rate of prison occupancy above 100 per cent (overcrowding). Out of these, 21 jurisdictions had rates of overcrowding above 200 per cent, and a further 29 had rates between 150 and 200 per cent. Even systems which are less than 100 per cent occupied may find it difficult to place prisoners in appropriate accommodation.

Rates of imprisonment vary substantially across the world and even within regions and countries. More than 440 per 100,000 people are confined in El Salvador compared to 115 per 100,000 in neighbouring Guatemala. Finland's rate of imprisonment per 100,000 of its population is one eighth of neighbouring Russia, while Canada's is about one sixth of the rate in 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.²⁶

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 review seems an urgent priority where rates are extremely high, say the – currently 17 – countries with more than 400 per 100,000 of their population confined.

RECOMMENDATION

Countries should keep under review whether imprisonment is playing an appropriate role in tackling crime.

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. UNODC has highlighted that the proportion of pre-trial detainees is highest, on average, for countries at the lower end of income levels and lowest for countries at higher income levels, suggesting that high levels of pre-trial detention may point to shortcomings in criminal justice systems.²⁷ In post conflict and low-income states seven out of ten 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, which has been described in a recent Open Society Foundation (OSF) survey as 'one of the most overlooked human rights crises of our time'.²⁸ In some countries periods in pre-trial detention are relatively short; for example, in 2011, in the 27 Council of Europe countries for which data is available, the average length of pre-trial detention was 5.7 months.²⁹ In Nigeria, the average length of pre-trial detention nationally has been reported at 3.7 years.³⁰

A survey by the Open Society Foundation found that in 2012, overall about a third of the world's 10 million prisoners were in pre-trial detention. The region with the highest proportion of pre-trial detainees was Asia (40.6 per cent) followed by Africa (34.7 per cent). In the Americas somewhat over

a quarter, and in Europe about one in five, of all prisoners were pre-trial detainees in 2012.³²

Latest UN data from a small sample of countries suggests that the proportion of people in pre-trial detention worldwide may have decreased from 30 per cent in 2004 to 27 per cent in 2012. Progress has been most manifest in Africa and Asia, where the proportions of pre-trial prisoners decreased but remained at high levels.³³

However, official figures are likely to underestimate the numbers involved; 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 the role of penitentiary systems should comprise 'treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation',³⁴ 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.³⁵

The rate at which defendants are acquitted in criminal trials varies widely among different countries. In China, according to the Supreme People's Court, in 2011 the combined conviction rate for first- and second-instance criminal trials was 99.9 per cent.³⁶ A similar rate is reported in Japan.³⁷ In Russia, judges acquit fewer than 1 per cent of defendants although juries (who deal with 0.05 per cent of criminal cases) acquit 20 per cent.³⁸ In the USA, 93 per cent of federal prosecutions led to conviction in 2012.³⁹ In England and Wales 83 per cent of defendants tried in the Crown courts (the most serious cases) were convicted in 2011.⁴⁰

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 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by the UN General Assembly in 2012, 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

Landmark ruling by Indian Supreme Court on pre-trial detention

In a landmark ruling in September 2014, the Indian Supreme Court ordered prisons to release pre-trial detainees who had been held for more than half of the maximum term they could be sentenced to if they were found guilty.

This verdict by the Supreme Court is a step towards the enforcement of a provision in India's Code of Criminal Procedure which was amended by Parliament in 2005.

Section 436A of this Code introduced detailed provisions on the maximum period for which individuals can be held on remand ('undertrial prisoners'). It provides for their release by the Court 'on his personal bond with or without sureties' if the remand prisoner has undergone detention 'for a period extending up to one-half of the maximum period of imprisonment specified for that offence under the law'.

In exceptional cases, pre-trial detention may be extended, upon decision by the court following a plea for continued detention by the Public Prosecutor, and if the delay in proceeding has been caused by the accused.

However, across the country the provision is not implemented and excessive numbers of pre-trial prisoners contribute to the notorious overcrowding in prisons in India.

The Supreme Court ruling ordered the implementation of the law, requesting local judges and magistrates to 'hold one sitting each week in each jail/prison for two months commencing from 1st October, 2014 for the purposes of effective implementation of 436A of the Code of Criminal Procedure'. The objective is to identify those pre-trial prisoners benefiting from this provision and 'pass an appropriate order in jail itself for release (...) immediately'. Furthermore, the Supreme Court requested to receive reports of these sittings.

The verdict has implications for hundreds of thousands of detainees. Almost two thirds (67.6 per cent) of the 400,000 prisoners held in custody in India are awaiting trial.³¹

(See Supreme Court of India, Writ. Petition (Crl.) No. 310 of 2005 titled as 'Bhim Singh Versus Union of India & Ors.', 24 September 2014, Endst No. 29613 Gaz. II(17).)

all stages of the criminal process' and including 'unhindered access to legal aid providers for detained persons'.⁴¹ 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.⁴² 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.⁴³

RECOMMENDATION

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

Early access to legal aid in criminal justice processes: UNODC handbook* for policymakers and practitioners

In 2014, UNODC published a practical guide to help states ensure suspects and defendants can obtain legal advice when they are first arrested. The handbook looks at the challenges facing the

implementation of the 2012 United Nations Principles and Guidelines on Access to Legal Aid, and suggests solutions drawing on case studies from a number of countries

The case studies cover efforts such as in Pakistan and Bangladesh to improve police investigations so that they rely less on confessions, an important component of a strategy to make access to lawyers a reality in police stations. They also include a number of models for

providing legal advice, including national public defender services such as those set up in Chile, Georgia, and Moldova; services supplemented by private lawyers such as those in Brazil and Israel; and paralegal schemes such as those in the USA and Sierra Leone.

The handbook sets out the roles that need to be played by police, prosecutors and judges whatever system is in operation and includes training resources for key stakeholders.

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 shows 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 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 shows 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.⁴⁴

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 for the same offence

are far less severe than in the US: up to two years in Denmark and Great Britain; four years in Spain and Sweden; five years in Belgium, Germany, Poland and Slovenia; and seven years in France.⁴⁵

For more commonplace crimes there is similar variation. Within Northern Europe, the maximum sentence for theft is four years in The Netherlands, five years in Germany and seven years in England and Wales.⁴⁶ The offence carries up to ten years in Canada, Russia⁴⁷ and Uganda, where recently promulgated sentencing guidelines suggest courts start their considerations of a particular case at five years, before adjusting it to take account of aggravating or mitigating factors.

Identifying trends is not straightforward. Some jurisdictions have looked to make penalties harsher. The Australian State of New South Wales has recently raised the maximum sentences for violent crimes and introduced mandatory minimum sentences of two years for assault, and four years for affray.⁴⁸ UNODC has established that in systems with the highest detention rates, half of the prison population is convicted to short term sentences (up to five years) while the share of long-term detentions is very low.⁴⁹

Many countries have recognised the concept of proportionality as one of the key principles of sentencing,

based on the premise that, to be just, a sentence must be of a length and type which fits the crime, and the circumstances of the offender. The concept of proportionality has been recognised by the European Court of Human Rights in *Harkins and Edwards v. the United Kingdom and Rrapo v. Albania* as constituting an essential part of human dignity, and 'grossly disproportionate' sentences can be found to breach Article 3 of the European Convention on Human Rights. Article 12 of Canada's Charter of Rights and Freedoms prohibits cruel and unusual punishment which the Supreme Court has ruled includes grossly disproportionate terms of imprisonment,⁵⁰ and proportionality in sentencing has constitutional status in Ireland (see the discussion in *Whelan and Lynch v. Minister for Justice, Equality and Law Reform*).⁵¹

While this is so, the concept of proportionality has tended to be invoked by courts only in the case of very long sentences (see right).

RECOMMENDATION

There is a strong case for sentence lengths to be more proportionate to the seriousness of the crime and the circumstances of the offender.⁵²

* For more information, see http://www.unodc.org/documents/justice-and-prison-reform/eBook-early_access_to_legal_aid.pdf

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.

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.

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.⁵³

Life imprisonment has also increased in other contexts. The UK for example has approximately the same number of life-sentenced prisoners as all the other Council of Europe member states put together (approximately 9,000)⁵⁴. In the UK the average length of the tariff, (the minimum period to be served before parole can be considered) increased between 2005 and 2012 for all kinds of life sentences. For murder cases

they increased from 16.1 years to 20.2 years and for other crimes from 6.2 years to 9 years.⁵⁵

There may be signs of increasing concern about this trend. The European Court of Human Rights has ruled that grossly disproportionate sentences can constitute inhuman or degrading treatment. This test is also provided under the Eighth Amendment in the USA and the Canadian Charter of Rights and Freedoms which prohibit the infliction of cruel and unusual punishment.⁵⁶ In a much noted statement in 2014 Pope Francis argued that life-long incarceration should be opposed as strongly as the use of capital punishment.⁵⁷

In a number of countries life sentences cannot be imposed for offenders over a certain age – 65 in Azerbaijan and Russia for example.⁵⁸

The recent judgment of the European Court of Human Rights in the case of *Vinter and Others v United Kingdom*⁵⁹ has indicated that national law should contain provision for the review of whole life sentences after 25 years in custody. 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’.⁶⁰ There are also signs that other courts are becoming more willing to find that very long sentences violate human dignity. The Supreme Court of the United States has also moved against mandatory sentences of life without parole (LWOP), finding them to be a form of ‘cruel and unusual’ punishment, though thus far only in the case of juveniles.⁶¹

While the US Supreme Court and the European Court of Human Rights have taken issue in different ways with sentences lasting the duration of an individual’s life, sentences short of these extremes have yet to give rise to similar decisions, or indeed similar levels of discussion. It is however the case that the UN General Assembly has urged states not to impose life imprisonment (nor the death penalty) for offences committed by persons under 18.⁶⁶

RECOMMENDATION

In accordance with emerging international jurisprudence, life sentences should always be capable of review after a period of no more than 25 years and should not be imposed for offences committed by persons under 18.

New rulings for life prisoners

Regional human rights courts issued landmark rulings that restricted the permissibility of life sentences in 2013 and 2014.

In 2013, life imprisonment for minors in Argentina was judged unlawful. The Inter-American Court of Human Rights ruled – in the case of *Mendoza et al v. Argentina* – that life imprisonment for offences committed when someone was below 18 years of age must be prohibited. Even

though life sentenced prisoners in Argentina can apply for parole after 20 years,⁶² the Court ruled that life sentences, ‘by their nature, do not comply with the purpose of social reintegration of children’,⁶³ were disproportionate, and ‘provoked a high psychological impact on the victims’.⁶⁴

Within the Council of Europe region, life sentences without the possibility of review have been deemed to constitute cruel or inhuman treatment. In 2013 the case of *Vinter and Others v. The United Kingdom* (and reaffirmed in 2014 in *László Magyar v. Hungary*)

found that human dignity requires for prisoners to have the hope of release. This does not mean that they must be released, but that some mechanism needs to be in place for reviewing the sentence, at least every 25 years.⁶⁵ The case of *Trabelsi v. Belgium* in 2014 extended this to extradition cases, ruling that extradition from Council of Europe member states cannot take place if individuals are facing life imprisonment without the possibility of release or if proper review procedures are not in place in the country to which they are to be sent.

PART THREE

Prison populations

Overview

The vast majority of prisoners the world over are adult men. In most countries, they tend to be drawn from the poorest strata of society. The UN Special Rapporteur on Extreme Poverty and Human Rights reported in 2011 that ‘disproportionately high numbers of the poorest and most excluded are arrested, detained and imprisoned’.⁶⁷ The Open Society Justice Initiative confirmed that ‘most pre-trial detainees are poor, and economically and politically marginalized’.⁶⁸

A comparative study of Latin American prisoners in six countries revealed ‘the prevalence of broken homes and abandonment in inmates’ family histories’ and relatively low levels of education.⁶⁹ Similar findings have been found in the UK,⁷⁰ where 15 per cent of male prisoners are thought to show symptoms of psychosis compared to four per cent of the general population. A study of South African prisoners found even higher levels of mental ill health; 23.3 per cent of prisoners in

Durban were suffering from current psychotic, bipolar, depressive and anxiety disorders.⁷¹ These conditions were for the most part undetected and untreated.

Some categories of prisoners have specific vulnerabilities and the experience of prison can impose additional burdens.

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 nine or ten are women.

According to recent analysis by the International Centre for Prison Studies, the number of women in prison increased between 2000 and the beginning of 2013 by over 40 per cent.⁷² This compares to an increase in the world population of 16 per cent in the same period. On the basis of

figures up to the beginning of 2013, about 6.5 per cent of the world’s prisoners are women. In 2000 the proportion was about 5.3 per cent. This represents an increase of more than a fifth.

The lowest levels of female imprisonment are in Africa, and Western Europe too has levels below average, but levels are higher 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 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’.⁷³ In Australia, aboriginal women are the fastest growing sector of the prison population, representing a third of women prisoners but only two per cent of the general population.⁷⁴ In Canada, a Justice

Department study found the overall number of aboriginal women behind bars in federal institutions nearly doubled between 2002 and 2012, rising 97 per cent, compared to 34 per cent for men.⁷⁵

Worldwide statistics show that imprisonment for drug related offences is particularly high among women. For example, according to a recent comprehensive study, over 31,000 women across Europe and Central Asia are imprisoned for drug offences, representing 28 per cent of all women in prisons in these regions. In some countries, up to 70 per cent of female prisoners are incarcerated for drug offences.⁷⁶ About one third of women prisoners in Canada⁷⁷, and 57 per cent in Thailand⁷⁸ were convicted of drug related offences. Harsh drug laws are also 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.



About 6.5% of the world's prisoners are women. Between 2000 and 2013 the number of women in prison increased by over 40%.

Luzira women's prison, Uganda. © Scott Langley 2014

PRI research: Who are women prisoners?

During 2013-14 PRI surveyed almost 1,200 women in prison in six countries (Armenia and Georgia, Kazakhstan and Kyrgyzstan, Jordan and Tunisia). The findings show commonalities across borders and paint a picture of poverty, discrimination and the damaging long-term consequences of imprisonment.

- Most women said that they were of very poor to average income, and seven or eight out of ten women had children.
- Theft and fraud were the most common offences women were charged with or convicted of (with the exception of Armenia). The main reasons given for the offence were financial,

to support family, and in some cases 'bad judgement'. In Georgia, Kazakhstan and Kyrgyzstan around a third of convicted women were in prison for drug-related offences.

- Violent offences made up less than 25 per cent of cases in all countries with the exception of Kyrgyzstan. However in Kyrgyzstan, an analysis of cases where the victim had been a male family member revealed that at least half of the female perpetrators reported abuse and 56 per cent said they had acted in self-defence. It is likely that women's experience of domestic violence and abuse is underreported.
- The main consequences of imprisonment for women were loss of employment and housing, stigma, and family breakdown,

reflecting the reality that many women are not welcomed back by their families after release in the way that men tend to be. Also, imprisonment has a greater impact on the mental health of women. Across all six countries, the women surveyed had extremely high rates of depression and insomnia.

Since the UN Bangkok Rules were adopted in December 2010 a body of research has been building, filling a gap in the knowledge on women prisoners. The research should serve as a starting point for the implementation of a gender-sensitive penal system in line with the Bangkok Rules. It should be based on the pathways of women to crime and an understanding of the characteristics and needs of women offenders to rebuild their lives following release.

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.⁷⁹

The characteristics and needs of women are usually very different from those of men. Research shows that poverty and marginalisation play a particular role for women offenders, that their educational profile reflects discrimination in education in society and that a high percentage are mothers, often sole or primary caretakers, or lead a single-headed household. A disproportionate number of women offenders have experienced violence in their lives, including sexual abuse, and this cycle of violence often continues in prison and after

release. Linked to this violence are the high rates of mental health illness,⁸⁰ substance dependencies and susceptibility to self-harm and suicide among women prisoners.*

Typical offences committed by females are drug-related offences, property and other non-violent crimes, often with motivations relating to their financial situation. Violent female offenders have often experienced extreme violence themselves, or have responded to domestic violence for instance.⁸¹ Compared to men, a higher percentage of female offenders are first-time offenders and recidivism rates are lower. Women in conflict with the law face greater stigmatisation in the majority of countries around the world than that faced by their male counterparts.

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 to address the specific gender characteristics and needs of women

offenders and prisoners.⁸² The Rules supplement the UN Tokyo Rules on alternatives to imprisonment and encourage the use of gender-specific non-custodial measures and sanctions. They also 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.

RECOMMENDATION

States should work towards implementation of the Bangkok Rules.

* For example, in the UK while making up only 5 per cent of the prison population, women account for half of incidents of self-harm with between a fifth and a quarter of women harming themselves while in prison: Hawton K and others, 'Self-harm in prisons in England and Wales: an epidemiological study of prevalence, risk factors, clustering, and subsequent suicide' The Lancet, Vol 383, No 9923, 2014, pp1147-1154.

Children and young persons

UNODC have found that ‘globally, between 2004-2006 and 2011-2013, the rate of children in prison fell from 12 to 10 per 100,000 children’.

Rates declined in all regions, but the decrease was particularly pronounced in Europe especially in Eastern Europe, while there were also decreases in parts of the Americas and Asia and in Oceania.⁸³ However, significant increases were observed in Central America and Western Asia. In Europe, rates of juvenile imprisonment fell in most sub-regions by more than 30 per cent, with the exception of Southern Europe.⁸⁴

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.

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.

However, 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.⁸⁶ 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 be lowered from 15 to ten 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.⁸⁷

Moreover, in many countries measures are in place that effectively lower the age of criminal majority; for example, some jurisdictions (eg in the USA) 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.

International attention to serious offending by children has increased recently, in particular relating to a number of high profile cases of gang rape in India where one of the accused was under 18 (and therefore liable for a maximum penalty of three years in prison under India’s progressive juvenile justice legislation). A new Bill allows for children aged 16 and over accused of some serious crimes to be transferred to adult courts. The proposed amendments have been described by India’s National Commission for Protection of Child Rights (NCPCR) as ‘retrograde in nature and against the principles of reformatory and restorative justice’.⁸⁸

At the same time, evidence suggests that children experience high levels of violence in detention, particularly in police custody and transportation. Almost half of all children surveyed in Central Asia said they had been treated cruelly or violently by police (most to coerce confessions) and 30 per cent said they experienced severe physical violence.⁸⁹ Children in detention are also often subjected to damaging disciplinary measures in detention such as restraint, use of force and solitary confinement, instead of positive forms of discipline, such as incentive schemes, rewards for good behaviour and ensuring children are occupied in meaningful and constructive activities such as education and training, sport and leisure.

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

UN Global Study on Children Deprived of Liberty

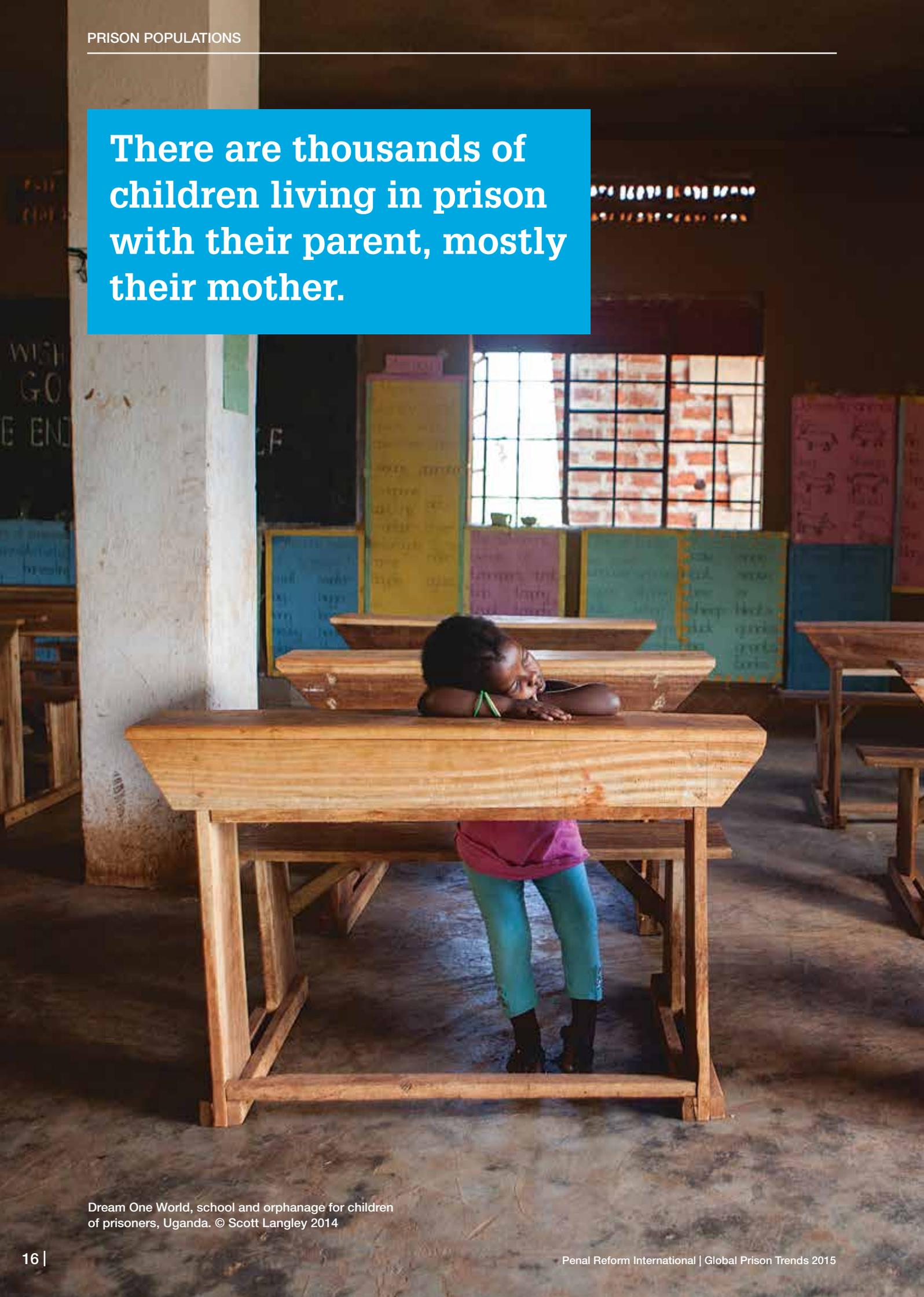
Obtaining accurate information about the numbers and situation of children and young persons deprived of their liberty has always proved difficult. In an effort to address this lack of qualitative and quantitative data, the UN General Assembly adopted a resolution in December 2014 inviting the Secretary-General to commission an in-depth global study on children deprived of liberty.⁸⁵

The study will help document the full extent to which children are deprived of their liberty, identify best practices, and put forward recommendations for how states can better fulfil their international obligations, including the implementation of the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children. The Global Study had been recommended, in May 2014, by the Committee on the Rights of the Child, noting that there is a great lack of quantitative and qualitative data, research and verified information on this subject.

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 the impact on the mother’s (parent’s) children.⁹⁰

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 (see page 17).⁹¹

There are thousands of children living in prison with their parent, mostly their mother.



Dream One World, school and orphanage for children of prisoners, Uganda. © Scott Langley 2014

Children of prisoners highlighted by African Child Rights Committee

The first-ever General Comment drafted by the African Committee of Experts on the Rights and Welfare of the Child focuses on children of prisoners, both those accommodated in prison with their parent and those left behind. Adopted in November 2013, the General

Comment advises African states on how to implement Article 30 of the African Charter on the Rights and Welfare of the Child which is the only treaty provision explicitly protecting the rights of children of prisoners. The General Comment deals with every aspect of Article 30, explaining how it relates to other parts of the Charter and giving examples of how the rights of children of imprisoned parents should be protected.

It requires that the best interests of each individual child are considered whenever they may be affected (for example at point of arrest, sentencing or when visiting an imprisoned parent). Children should be able to participate in proceedings that affect them.

The General Comment also clarifies that Article 30 is applicable to children whose mother, father or other primary caregiver are in the criminal justice process at any stage, from arrest to detention and through to release and reintegration.

Awareness of prisoners' children is growing; however, the General Comment delivers the first comprehensive guidance on this issue by any human rights body worldwide.

RECOMMENDATIONS

In responding to offending by children, detention should be considered only as a last resort, for the shortest possible time. The age of criminal responsibility should be set compliant with the recommendations of the UN Committee on the Rights of the Child⁹² and countries should not allow for the transfer of children to the adult justice system. Decisions whether to allow children to live in prison with a parent must be made on an individualised basis, based on the best interests of the child.

Elderly prisoners

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 1990.⁹³ In the US, the number of state and federal prisoners age 55 and older was 8,853 in 1981, rose to 124,900 in 2012 and was estimated by experts to be over 400,000 by 2013.⁹⁴

In Canada the segment of the prison population over the age of 50 grew by more than 50 per cent between 2001 and 2011. Increasing numbers of older prisoners are also reported in Australia and New Zealand, where a special wing for older prisoners was opened in Rimutaka prison in 2011.⁹⁵ In Japan, the number of prisoners over 65 increased by 160 per cent between 2000 and 2006⁹⁶ and reportedly reflects an increase in crime among pensioners.⁹⁷

The reason for the increase in elderly prisoners is partly because of longer sentences and in some countries, like

the UK, also because of the surge of people being convicted for offences many decades ago.

In some countries for example in Spain, people are released from prison once they reach the age of 80. In other jurisdictions age is one of the bases for granting conditional release, including in the case of a life sentence. For example, in Azerbaijan and Russia the maximum age whereby the court will issue a life sentence is 65, while in Georgia conditional release can be considered at 60.⁹⁸

This shift in the prison population poses 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.⁹⁹

Prisons are likely to be ill-equipped for the needs of elderly prisoners. Prison infrastructure, 'stairs, access to sanitary facilities, [and] upper bunk beds'¹⁰⁰ may cause problems of accessibility and activities, rehabilitation and release programmes may be tailored to younger offenders in terms of skills training and education and not address the resettlement challenges of older prisoners.¹⁰¹

RECOMMENDATION

Special policies and strategies should be developed by prison services to address the special needs of this vulnerable group of prisoners.¹⁰²

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. It was estimated in October 2014 that globally they number almost half a million prisoners.¹⁰³

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. In Spain, the proportion of non-nationals rose from 19.9 per cent in 2000 to 30 per cent in 2013.¹⁰⁴ Dutch prisons house detainees and convicted persons from more than 100 countries.¹⁰⁵ At the same time, increasing numbers of nationals of 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.¹⁰⁶ Some Middle Eastern countries also have very high proportions of foreign nationals (United Arab of Emirates 92 per cent and Qatar 74 per cent).¹⁰⁷ 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. Foreign nationals present a number of challenges to prison systems including ensuring access to justice and legal representation, facilitating contact with families and preparation for release or deportation.

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.¹⁰⁸ For instance, 51.3 per cent of New Zealand's prison population in 2012 were Maori, despite representing only 15.4 per cent of the general population, and 11.5 per cent were Pacific peoples.¹⁰⁹

Black and minority ethnic groups are disproportionately imprisoned in Western Europe and North America. Almost three per cent of black male US residents of all ages were imprisoned on 31 December 2013 (2,805 inmates per 100,000 black

male US residents), compared to one per cent of Hispanic males (1,134 per 100,000) and 0.5 per cent of white males (466 per 100,000).¹¹⁰

In the age range with the highest imprisonment rates for males (ages 25 to 39), black men were imprisoned at rates at least 2.5 times greater than Hispanics and six times greater than white males.

For men aged 18 to 19 – the age range with the greatest difference in imprisonment rates between whites and blacks – black men (1,092 inmates per 100,000 black males) were more than nine times more likely to be imprisoned than white males (115 inmates per 100,000 white men).

RECOMMENDATION

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 tends 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.¹¹¹ The number of prisoners infected with TB is estimated to be 4,500 in every 100,000. The World Health Organization considers 250 cases per 100,000 an epidemic.¹¹²

In 2010, three European countries reported TB cases in prisons exceeding ten 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 community.¹¹³ 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 to Fight AIDS, Tuberculosis and Malaria had TB services for prisoners. However, only one country in Southern Africa delivered a TB programme in prisons.¹¹⁴ In many countries, there are serious shortfalls in measures to provide primary healthcare incorporating health promotion, prevention, diagnosis and treatment.

Thirteen European countries reported to the WHO in 2014 that some of their laws, regulations or policies presented obstacles to effective HIV prevention, treatment, care and support for key populations and other vulnerable subpopulations. People who inject drugs, sex workers, prisoners and migrants were most often affected.¹¹⁵

In low income countries, the challenges of meeting healthcare needs are enormous. Assistance in implementing healthcare services in prison, such as those delivered by the NGO Health through Walls¹¹⁶ for example, is therefore crucial in order to develop the capacity to provide

Good governance for prison health

In the face of frequent neglect of the right to health of prisoners, UNODC and the World Health Organization analysed relevant studies on the health of prisoners, as well as sources of international law, and identified and compiled the legal and ethical requirements for healthcare in prison in the 2014 publication 'Good governance for prison health in the 21st century: A policy brief on the organization of prison health'.

The policy brief concludes, amongst others, that prison health services must:

- be at least of equivalent professional, ethical and technical standards to those applying to public health services in the community;
- be fully independent of prison administrations, and yet liaise effectively with them;
- be integrated into national health policies and systems, including training of healthcare staff;
- include adequate provision with regard to hygiene, catering, space, heating, lighting, ventilation, physical activity and social contacts;
- never be involved in the punishment of prisoners, but be provided exclusively to care for prisoners;
- be provided conscious of the higher burden of communicable and non-communicable disease of prisoners and in prison compared to the general population.

prisoners with health services such as medical screening, treatment, and discharge planning ensuring continuity of care upon release.

The prevalence of poor mental health among prisoners has been found to be considerably higher than in the community, often exacerbated by overcrowding, various forms of violence, isolation, lack of privacy and of meaningful activity and by inadequate health services, especially mental health services. Studies worldwide have shown that suicide rates in prisons are up to ten times higher than those in the general population.¹¹⁷ A recent UNODC report suggests that suicide among prisoners seems more frequent in Europe compared to other regions, with suicide rates among prisoners averaging 62 per 100,000 and accounting for over 13 per cent of all deaths in prison.¹¹⁸

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 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.¹¹⁹

RECOMMENDATION

The performance of prison health systems should be assessed against the right to health as enshrined in international human rights law and against standards of medical ethics,¹²⁰ including full independence of prison health staff from prison authorities.

PART FOUR

Prison management

Responsibility for prisons

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

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

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 healthcare 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 at a minimum – best achieved by making prison healthcare part of the responsibility of the Ministry of Health rather than the prison system.¹²¹ 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 healthcare services and advocate healthy conditions in prisons.¹²²

Size and spending

Prisons around the world vary enormously in size, nature and function. There may however be a trend towards the building of larger prisons. Between 2000 and 2005 in the USA, 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 although more recent data is not available. 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.¹²³ In Europe, which has historically had smaller prisons, so-called Titan prisons of 2,000 are under fresh consideration in the UK having been rejected some five years ago.¹²⁶ Russia is planning to open a 4,000 place prison in St Petersburg in 2015 to replace the Kresty prison.

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. Many experts consider

that to carry out a really effective programme of rehabilitation, the operational capacity of any correctional facility should never exceed one thousand offenders. The UN Standard Minimum Rules for the Treatment of Prisoners state, in Rule 63 (3), that the 'number of prisoners in closed institutions should not be so large that the individualization of treatment is hindered' and that 'in some countries it is considered that the population of such institutions should not exceed five hundred'.¹²⁴

* 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.

UN data shows that the median number of prison staff ranged from 115 per 100,000 of the general population in Canada and the USA to five per 100,000 in South Asia.



Prison guard coming into work from guard accommodation, Luzira women's prison, Uganda.
© Scott Langley 2014

The average amount spent per day for the detention of one person varies enormously. Among the 47 Council of Europe member states in 2011, for example, in the countries where all of the costs of imprisonment are measured, Romania spent 15.6 Euros, and Sweden 621 Euros. The median spend fell by 8 Euros from 50 to 42 between 2010 and 2011.¹²⁵

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 anaemic support that alternatives to incarceration enjoy, poorly trained prison officials and personnel and inadequate programmes in social rehabilitation and reintegration’.¹²⁷

An analysis of prisons in Africa found that ‘many are in a deficient condition and their practices are at odds with human rights standards’.¹²⁸ Few African states have maintained and added prison capacity post-independence with the result that many are now beyond repair and fail to meet minimum requirements generally accepted today.¹²⁹

In Europe, the European Committee for the Prevention of Torture (CPT) has found that conditions of detention remain wretched in numerous establishments of various types in the Council of Europe region.¹³⁰ 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

Staffing in prisons

Data from around the world suggests great variation in the numbers of prison staff between different countries. Comparisons are not easy to make because states count prison staff differently; some include health, education and social workers as well as prison officers; others may include personnel working in headquarters. It is true too that different types of prisons require different staffing levels. The size of a prison, the level of security it provides and the use of technology (such as CCTV cameras) all have an impact on the numbers of staff required.

UN data from the 2000s shows that the median number of prison staff ranged from 115 per 100,000 of the general population in Canada and the USA, to five in South Asia. This data takes no account of the numbers of prisoners however.

The Council of Europe publishes data on prison staff numbers and the ratio of inmates to different categories of staff. While the Council of Europe data must be treated with caution because some of it relies on estimates, countries in Western and Northern Europe generally have significantly better staffing

ratios than those in Eastern and Central Europe. This may partly reflect the tradition of cellular accommodation in Western and Northern Europe, with fewer staff needed in establishments comprising dormitories which still characterise prisons in some Eastern European countries.

For other regions, data on staff numbers is collected by the UN although relatively few countries provide it. In Africa, high numbers of staff in South Sudan reflects a practice in post conflict situations of employing former combatants in government posts including as prison officers. In some other countries too, some of the staff assigned to prison services may not necessarily be deployed full time in prisons. Leading international athletes are, for example, employed by prison services in several East African countries. The data from the Americas shows less variation than other regions although the low numbers of staff per prisoner in Peru is illustrative of the prevalence of prison settings in which prisoners play a substantial role in the governance of the establishment. As with the Americas data, variation between Asian countries reflects different models of imprisonment.

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”.¹³¹

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’.¹³² Reduced staffing has led to increases in suicides, self-harm and assaults.¹³³ In Canada double bunking of federal prisoners in cells designed for one person will continue across Canada for several years, according to briefing documents prepared for the Public Safety Minister, even though the practice has been

condemned by the Correctional Investigator.¹³⁴ In the Australian state of Victoria, prisoners have been moved into shipping containers.¹³⁵ Colombia has seen industrial action by prison staff demanding better pay and conditions.¹³⁶ Prison education programmes have been threatened in the USA.¹³⁷

RECOMMENDATION

In low income countries there is a need to develop low cost and low technology solutions to infrastructure problems. Work on prison infrastructure and design has been undertaken by the ICRC¹³⁸ and UNOPS.¹³⁹

DRUGS AND IMPRISONMENT

The enforcement of drug laws has major implications for the use and practice of imprisonment the world over.

This special feature seeks to map out the various ways in which a country's drug policy impacts on its prisons.

In March 2016 the UN General Assembly will hold a special session on drugs, the first for 20 years. This provides an opportunity to rethink the best ways to regulate narcotic drugs and to limit the role of criminal punishment to grave crimes.

International conventions require drug offences to be punishable and the most serious crimes to be 'liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty'.¹ Treatment, as an alternative to prison, is however mentioned in many provisions of the conventions alongside education, after-care, rehabilitation and social reintegration, clearly indicating that 'abusers of drugs' do not need to be criminally punished.

Drugs and the use of prison

The so-called 'war on drugs' has 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. In most US states possession is classed as a felony leading to harsh prison terms which in many cases are mandatory.² Recent figures show that in England and Wales in 2013-14 almost 2,000 people received immediate prison sentences for possessing Class C drugs which include tranquillisers, valium and anabolic steroids.³

People charged with or convicted of offences related to the prohibition of drugs represent a sizeable proportion of people in prison both awaiting trial and serving sentences, in many countries. These offences comprise on the one hand the cultivation, production, sale and trafficking of illegal drugs and on the other hand, their possession and use. It has been estimated that expenditure by EU countries on drug law offenders in prisons is within the range of EUR 3.7 billion to EUR 5.9 billion.⁴

A 2013 UNODC study suggests that offences related to drug possession currently comprise more than eight out of ten 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.⁵ Moreover the vast majority of traffickers in prison are low-level offenders.

Research suggests that punishment has a limited impact upon reducing illicit drug use, with countries which impose severe penalties for possession and personal consumption of drugs no more likely to deter drug use in the community than countries imposing less severe sanctions.⁶ A recent survey conducted by the UK government found that 'evidence from other countries show that levels of drug use are influenced by factors more complex and nuanced than legislation and enforcement alone'.⁷

Evidence also shows that a high rate of relapse to drug use, drug overdose and recidivism among drug dependent individuals after they are released from prison, especially if there are no linkages to community services and no continuum of care.⁸

In addition to offences related to the production, sale or use of illegal drugs, in many parts of the world large numbers of prisoners are charged with or convicted of other crimes whose commission is in some way connected to illegal drugs. These include violent crimes committed by drug gangs and organised criminal groups which, according to the UN High Commissioner for Human Rights have in the worst cases 'corrupted significant State institutions (...) creating a climate of impunity, and

establishing vast illegal economies that significantly weaken the State'.⁹ They also include property crimes committed by people dependent on drugs who require funds to feed their addiction. Reliable statistics are not available about the numbers of these categories but crimes triggered by drug-related activities account for a particularly large proportion of prisoners in Latin America.

There is also evidence that many crimes are committed under the influence of drugs or alcohol. A recent study of more than 7,000 prisoners in Latin America found that 31 per cent of inmates consumed alcohol or drugs before committing the crime for which he or she was incarcerated.¹⁰

Gender disparity

Prison statistics show that a higher percentage of women than of men are in prison for drug offences.

A 2012 study revealed that more than one in four women in European and Central Asian prisons were imprisoned for drug offences.¹¹

In many Latin American countries such as Argentina (68.2 per cent) Costa Rica (70 per cent) and Peru (66.38 per cent) the rates are higher still.¹² In Ecuador, 77 per cent of women in prison were incarcerated for drug offences compared to 33.5 per cent of the male prison population.¹³ The gender disparity has been attributed to the greater ease with which low-level crimes can be prosecuted.¹⁴

Percentage of prisoners in selected jurisdictions whose main offence relates to the sale or possession of drugs; and the percentage of prisoners estimated to be drug users

Percentage of prison population	Whose main offence is a drug offence	Who are drug users ¹⁵
EUROPE¹⁶		
Bulgaria	6.2	21.6
Croatia	22.4	17.3
Denmark	22.1	8
France	13.9	–
Germany	14.1	33
Iceland	21.4	–
Ireland	19.6	–
Italy	38.8	23.9
Latvia	14.3	17.7
Netherlands	14	57
Portugal	20.6	–
Romania	4.2	2
Russia	–	14.8
Spain	25.8	–
Sweden	20.6	42
Ukraine	14.9	–
AMERICAS¹⁷		
Argentina Federal	33 Federal	64.4
Bolivia	45	–
Brazil	19.2	–
Canada	16.2 (15.7m, 26.3f)	56.7
Colombia	17	–
Ecuador	34	33.9
Peru	23.8	–
Trinidad and Tobago	35	–
USA states	16.8 (16.2m, 25.1f)	–
USA Federal	49	–
AFRICA¹⁸		
South Africa	2.9	–
ASIA-PACIFIC¹⁹		
Australia	12	70
Indonesia	–	70
New Zealand	10	5.5
Thailand	65 (82f)	–

Research also suggested that more serious offenders, mainly male, escape imprisonment or have their sentences reduced by entering plea-bargaining deals and providing assistance to the prosecution, which women are usually unable to provide.²⁰

Drug offences and the death penalty

Although the death penalty for drug offences is non-compliant with international law, it is retained by 33 countries. Around 1,000 people are executed every year as a result. In 2013, the death penalty was used for drug-related offences in a number of countries, including China, Indonesia, Iran, Laos, Malaysia, Pakistan, Qatar, Saudi Arabia, Singapore, Thailand, UAE, Viet Nam and Yemen.²¹

900 prisoners awaiting execution in Malaysia in October 2012 were drug offenders.²² In October 2014, 111 prisoners on death row in Pakistan were drug offenders.²³

In some States, ethnic minorities and marginalised groups living in poverty are disproportionately targeted by drug enforcement efforts.²⁴ Statistics also show that very large proportions of foreign nationals in prison are charged with or convicted of drug related offences particularly trafficking.

Drug law enforcement also disproportionately impacts on minorities. In the USA, African Americans make up 13 per cent of the population. Yet they account for 33.6 per cent of drug arrests and 37 per cent of people sent to state prison on drug charges. Black people are 3.7 times more likely to be arrested for marijuana possession than white people despite comparable usage rates.²⁵ Similar racial disparities have been observed elsewhere including the UK, Canada and Australia.²⁶

Alternatives to prison

A variety of alternatives to imprisonment have been developed to deal with offenders who have problems with drug dependency. Specialist drug courts have proved successful in reducing recidivism, for example in the USA by promoting recovery from addiction.²⁷ Their sanctions provide a judicially supervised programme of substance dependency treatment and other services, aiming to address not only an individual's immediate offence, but their longer-term reintegration into the community, thereby helping to prevent reoffending.

Community based alternatives can include various forms of treatment combined with regular drug testing to ensure that offenders abstain

from drugs. This may include talking therapies, and/or the use of substitution drugs which reduce the harms associated with sharing of needles and provide an opportunity to recover from addiction. In the USA and a variety of other countries, specialist drug courts oversee such programmes.²⁸ Promising results have been obtained by the HOPE Probation programme in Hawaii.²⁹ This has shown that imposing swift, certain but moderate sanctions on offenders who fail to comply with the terms of their probation supervision reduces re-offending and increases rates of recovery.

In some countries, particularly in South East Asia, residential alternatives may be little different to imprisonment. Many people are held in mandatory 'drug detention'

centres, including some 235,000 people in China and South East Asia.³⁰ UN monitors found a treatment facility in Brazil to be more like a prison than a hospital, 'as evidenced by the architecture of this facility and by the fact that patients had to keep their heads down and their hands behind their backs when walking through the facility and when talking to staff'.³¹ Inadequacies of informal rehabilitation centres in Peru were exposed by two deadly fires in 2011 and 2012.³²

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.³³

Drugs and the management of prisons

The often large numbers of prisoners with drug problems and/or involved in drug trafficking pose a wide range of challenges for prison administrators. 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.³⁴ The constantly changing nature of psycho-active substances, some legal others not, adds a further dimension of complexity to the problem.

Harsh drug laws have led to sharp increases in the number of prisoners who are detained before trial and serve their sentences in accommodation which is often wholly inadequate in terms of space and facilities. A report on the Americas concluded that 'prisons not only fail to rehabilitate, but often serve as shelters from which criminals continue to operate'.³⁵ A study in East Africa found that 'the rehabilitation mandate of prisons is difficult to achieve in an environment where inmates abuse drugs and substances; this is because cases of inmate 'indiscipline and infractions rise'.³⁶

Apart from the general pressures resulting from overcrowding there are a number of specific challenges arising from the over-incarceration of drug related offenders.

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.³⁷ Boredom and lack of constructive activities in prisons can also increase the likelihood of drug use.

There is evidence that many prisoners initiate injecting drugs for the first time in prison.³⁸ Between three and five per cent of women prisoners surveyed in 2014 in Jordan and nine per cent in Tunisia stated that they started using drugs or alcohol while in detention.³⁹

Health challenges

Health challenges arise from the fact that people who inject drugs often continue drug use inside prison.

In many countries, access to proven harm-reduction measures – including syringe exchange programmes and opiate substitution

therapy – is extremely limited, non-existent or banned. Where these measures have been introduced, levels of disease have fallen among prisoners, for example in Moldova.⁴⁰

Failure to provide healthcare and harm-reduction programmes for drug injecting users facilitates transmission of diseases such as HIV and hepatitis C.⁴¹ Unsterile injection equipment is often shared in the absence of the provision of needles and syringes, which are available in perhaps 60 out of 10,000 prisons worldwide.⁴² In Mauritania in 2012 there was an estimated HIV prevalence of 24.8 per cent among prisoners, 40 per cent of whom inject drugs.⁴³ The number of HIV positive prisoners in Romania increased six fold between 2008 and 2013.⁴⁴ Attention has also been drawn to the unacceptable high number of deaths of prisoners from overdose in the immediate post release period.⁴⁵ Access to substance abuse treatment programmes, in many countries, is discriminatory towards women, available only in men's prisons⁴⁶ or in less advantageous conditions (eg without a separate 'clean zone').⁴⁷

Safety and violence

In many countries, drugs are smuggled into prison by visitors, businesses which come to the prison, or during trips to court.⁴⁸ There is evidence from a number of countries that drugs are sold to prisoners by, or with the corrupt approval or involvement of staff and even cultivated inside prisons.⁴⁹ For example, illegal drug sales and use are widespread in prisons in Guatemala.⁵⁰ The use and manufacture of illicit drugs in prisons is a serious problem in Indonesia.⁵¹

In some countries, the buying and selling of drugs forms part of a black market inside prisons.⁵² The rivalries triggered thereby frequently lead to lethal violence within prisons. The problem is most acute in so called self-governing prisons, for example in Latin America, where leaders of drug gangs are often in effective control of prisons. Corruption, overcrowding, prisoner abuse, alcohol and drug addiction, and lack of security combine to produce life threatening conditions.⁵³

In Denmark's Ringe Prison where up to 75 per cent of inmates have a substance abuse problem, monitors were told that drugs were available on the accommodation wings and their use and trade were linked to violent incidents.⁵⁴ An inspection of a private prison in Liverpool in the UK found that 'gang issues and the availability of drugs, particularly new psychoactive substances (so-called 'legal highs' such as 'Spice' and 'Black Mamba'), were a significant factor in much of the violence'.⁵⁵

Attempts to assert control over drug problems can lead to unrest and even riots.⁵⁶

In order to gain control, prison authorities often attempt to keep convicted drug traffickers apart from the rest of the prison population. This strategy is used in many prisons in Brazil⁵⁷ and is being planned in Thailand.⁵⁸ In Turkey drug offenders are held in high security prisons where many are held in isolation with consequent damage to their physical and psychological well-being.⁵⁹

Trends in policy and practice

There is a growing recognition that drug use should be treated as a public health rather than a criminal justice problem. In its World Drug Report 2012, UNODC suggested rebalancing drug control policy through alternative development, prevention, treatment and fundamental human rights.⁶⁰

According to the UNODC, treating drug use as a public health issue and reducing the use of imprisonment is entirely consistent with international conventions.⁶¹ The Executive Director told the 2014 Commission on Narcotic Drugs that 'a public health response to the drug use problem should consider alternatives to penalization and incarceration of people with use disorders'.⁶²

The UN High Commissioner for Human Rights has also stated that it is 'possible, and consistent with current international drug control treaties, to re-frame some drug-related conduct as administrative offences, followed with a social and medical response'.⁶³

As a consequence a number of countries have introduced a less repressive approach, particularly to the possession of small quantities of drugs. For example, Georgia,⁶⁴ Italy,⁶⁵ Malta,⁶⁶ Slovakia,⁶⁷ Dubai,⁶⁸ The Gambia,⁶⁹ Jamaica,⁷⁰ Ecuador⁷¹ and Japan⁷² have reduced or are planning to reduce the severity of the criminal justice response to drug users.

In August 2013, the US Attorney General instructed federal prosecutors to stop charging many non-violent drug defendants with offences that carry mandatory minimum sentences. More recently, the Justice Department has encouraged more applications for clemency by such offenders and the US Sentencing Commission voted to lower substantially its recommended sentences for drug dealers, and has made this retroactively applicable to 46,000 prisoners, whose sentences would be cut by an average of 25 months. Prisoners will not be released before November 2015 and the releases are to be phased in over a period of years.⁷³

Reducing penalties for drug use can have unintended consequences however. In Brazil, the 'depenalisation' of drug use appears to have led to more users being charged with trafficking offences for which sentences were increased. This, in turn, is one of the main factors behind the increase in Brazil's prison population in recent years.⁷⁴

A small number of countries are looking to toughen responses to drug possession eg Bulgaria⁷⁵ and others to increase sentences for trafficking eg the Australian state of Victoria.⁷⁶

More deep seated reforms to the regulation of drugs are underway in a number of countries. Twenty-one US states and the District of Columbia have legalised marijuana for medical use. 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.⁷⁷ In December 2013 Uruguay became the first country in the world to make it legal to grow, sell and consume marijuana.⁷⁸

RECOMMENDATION

In light of the growing acknowledgement 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.

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**GLOBAL PRISON TRENDS
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Review of the UN Standard Minimum Rules for the Treatment of Prisoners

At the time of writing, three Inter-Governmental Expert Group meetings (IEGMs) have been held to discuss the revision of the UN Standard Minimum Rules for the Treatment of Prisoners (SMR).

The revision process was initiated by a resolution of the UN General Assembly in December 2010 (res 65/230) and aims to bring the Rules into line with modern human rights and criminal justice standards and good practice.

The approach taken is one of 'targeted revision', which will leave the structure and most of the Rules unchanged and review

only the text considered to be the most outdated. The nine areas under review are:

1. respect for prisoners' inherent dignity and value as human beings
2. medical and health services
3. disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet
4. investigation of all deaths in custody, as well as any signs or allegations of torture or inhuman or degrading treatment of prisoners
5. protection and special needs of vulnerable groups deprived of their liberty, taking into consideration countries in difficult circumstances

6. the right of access to legal representation
7. complaints and independent inspection
8. the replacement of outdated terminology
9. training of relevant staff to implement the Standard Minimum Rules.

Resolutions relating to the review, both at the level of the UN Crime Commission and the UN General Assembly, have repeatedly pledged that 'any changes to the Rules should not lower any of the existing standards'.

A first set of provisions was negotiated at the third IEGM in March 2014, and a fourth Inter-Governmental Expert Group meeting will take place in March 2015 in Cape Town, hosted by the government of South Africa.

Security issues and violence

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.¹⁴⁰

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. For example, 506 people were killed in Venezuelan prisons in 2013, down by 14 per cent from 591 in 2012, according to the Venezuelan Prison Observatory. The head of the Observatory 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 was 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).¹⁴¹

Some former Soviet Union countries still struggle with a division between the 'red' prisons, run by prison authorities, and the 'black', de facto administered by inmates. In his report on Ghana, the UN Special Rapporteur on Torture observed prisoner-on-prisoner violence being committed by certain prisoners designated by the authorities as 'black coats'.¹⁴²

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 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 per cent of reported incidents. Prosecution for crimes committed by staff is extremely rare. Over three quarters of staff responsible for sexual misconduct were allowed to resign before an investigation concluded or were dismissed. Around 45 per cent were referred for prosecution but only one per cent 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.¹⁴³

A particular challenge is posed by 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, there is an increasing focus on prisons in efforts to tackle violent extremism. This is because first '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'.¹⁴⁴

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. One of the good practices involves proper assessment

and categorisation of prisoners. While in many low income countries, the lack of infrastructure makes this difficult, Nigeria, for example, is looking to improve the way prisoners are classified.¹⁴⁵

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 detainees, including former combatants, awaiting trial for long periods. For example, 14 out of 59 prisons in Mali were destroyed in the 2013 conflict and the prison population of 2,000 in Libya at the end of 2013 comprised fewer than 500 convicted prisoners, the vast majority awaiting trial.¹⁴⁶ There have been several examples of mass break-outs from prisons due to invasions from outside or to corruption within.¹⁴⁷ While there is no comprehensive collection of data on such incidents, in 2013 UN Department of Peace-Keeping Operations (DPKO) recorded more than 360 security incidents and the escape of 3,500 prisoners in countries where UN peacekeeping missions had a justice and corrections component.¹⁴⁸

There may be a growing recognition of the importance of corrections components in UN peacekeeping

operations but the resources available to bring about necessary improvements to infrastructure, development of law and policy and training of staff are in many cases insufficient.

After conflict or natural disasters, prisoners almost always face conditions of gross overcrowding. The holding space per detainee at the National Penitentiary in Port au Prince, Haiti, for example was just 0.62 square metres at the end of 2013.¹⁴⁹ As well as gross overcrowding, there are risks of other human rights violations 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.¹⁵⁰

While repairing or rebuilding infrastructure will often be an urgent priority – particularly to ensure that women and other groups with special needs are protected in custody¹⁵¹ – there is a need to focus on the

recruitment and training of staff and on improving the operation of the wider criminal justice system. For instance, DPKO has reported that in the Central African Republic there was at the end of 2013, only one operational court,¹⁵² while in South Sudan, more than 400 court judgments were rendered by six mobile courts supported by the UN Mission during the course of the year.¹⁵³

Training of prison staff is a particular priority in circumstances where former combatants are recruited in order to encourage their integration into society after the cessation of hostilities.

RECOMMENDATION

Appropriate resources and expertise need to be provided by the UN and international partners to rebuild prisons in the short term and develop penal policy and institutions in the longer term, as an important ingredient in (re-) establishing the rule of law following conflicts.

Privatisation of prisons

In recent years, 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 30 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.¹⁵⁴

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 has also been followed in the UK, Australia and South Africa. The UK has recently moved away from this 'wholesale' approach to privatisation, looking instead to outsource specific components

of prisons such as facilities management.¹⁵⁵ South Africa has halted its privatisation programme.¹⁵⁶

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).

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 than in the first two models (eg five years). 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.¹⁵⁷

Much of the experience of the Public Private Partnerships (PPPs) – 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.¹⁵⁸ Private prisons have been considered in countries as diverse as Lesotho and the Dominican Republic, Costa Rica and Kenya, Latvia and Jamaica.¹⁵⁹ In 2014 the

Lithuanian government approved a new Prison Modernisation Programme, which provides for the modernisation of detention facilities by 2022. Four of the proposed programme projects will be implemented on a public-private partnership (PPP) basis.¹⁶⁰

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'.¹⁶¹ The 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.

RECOMMENDATION

While private prisons offer an attractive proposition for states, the 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.

Solitary confinement

Although in many countries, the philosophy of imprisonment 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.

In the US, for example, it is estimated that between 20,000 and 25,000 individuals are being held in isolation although many more may be in forms of restricted housing which involve isolation.¹⁶² In Thailand, unlike general prisons, Super-max prisons do not allow inmates to walk around, use money or accept food or items brought by families or friends. There is also no coffee and smoking is banned. Only direct relatives

can 'visit' via a video-conference system that officials can listen to. Inmates are allowed only one hour of exercise a week.¹⁶³ In New Zealand, the UN Subcommittee for the Prevention of Torture noted grave concern about the newly built cells at the Auckland Maximum Security prison, stating that they can best be likened to a tin-can. The Subcommittee established that persons were held in solitary confinement cells which were extremely small and under constant video surveillance and afforded little room for internal movement or activity.¹⁶⁴

In Canada, the use of solitary confinement has been increasing, with 850 federal prisoners in isolation on any one day at the end of 2014 representing a five per cent increase since 2009.¹⁶⁵ The prison service maintain segregation is used only as a last resort to manage an inmate

whose safety is at risk; who jeopardizes the security of the prison, other inmates or staff; or who might interfere with an investigation.¹⁶⁶ The Correctional Investigator has suggested it is being used increasingly in response to incidents involving mentally disordered prisoners.¹⁶⁷

The UN Special Rapporteur on Torture has recommended that the use of prolonged solitary confinement should be prohibited, and identified 'prolonged' isolation as any period exceeding 15 days.¹⁶⁸

Medical research 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.¹⁶⁹

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.¹⁷⁰ 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.¹⁷¹ New York City plans to end solitary confinement for 16 and

17 year olds by the end of 2014.¹⁷² As a result of legislation or lawsuits, ten states adopted 14 measures aimed at curtailing the use of solitary, abolishing solitary for juveniles or the mentally ill, improving conditions in segregated units, or gradually easing isolated inmates back into the general population.¹⁷³

In 2014, the European Committee for the Prevention of Torture urged Finland to make more efforts to provide adequate protection to 'fearful inmates' without resorting to isolation or use of regimes akin to solitary confinement.¹⁷⁴

RECOMMENDATIONS

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 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. The UN Convention against Torture (CAT) celebrated the 30th Anniversary of its entry into force in 2014, with 156 ratifications as of January 2015.

At the end of 2014, 76 countries had ratified the Optional Protocol to the Convention against Torture (OPCAT) and 54 had established National Preventive Mechanisms (NPMs).¹⁷⁵ Europe and South America are well represented among these states, while Africa and particularly Asia less well so.¹⁷⁶

In the designation of an NPM, one trend has been to designate Ombudspersons' 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 has had a tendency to limit their ability to address systemic risks of torture and ill-treatment and conduct assessments based on standards of international law.

Collaboration with civil society organisations and/or independent experts differs across states, from formal inclusion of civil society organisations or independent experts, to cooperation in joint visits to places of detention, and collaboration through special advisory bodies. However, NPMs have been found to often lack a particular cooperation strategy with civil society.¹⁷⁷

Research has found weaknesses in documenting, let alone following up on recommendations made by NPMs and most NPMs have not (yet) developed a strategy or tools to monitor the implementation of their recommendations.

Good practices include the undertaking of thematic reports on particular aspects of detention, as has happened in Bulgaria, France and Poland, the formulation of 'SMART' recommendations¹⁷⁸ and the publication and dissemination of reports and recommendations. More emphasis on the assessment and documentation of implementation and the measuring of compliance with human rights standards has also been documented as good practice, eg using a database, indicators, benchmarks and action plans with clear timetables and responsibilities. Improvement could also be based on Article 22 of the Optional Protocol which obliges state authorities to 'examine the recommendations of the

NPM and enter into a dialogue with it on possible implementation measures'. The incorporation of a legal obligation to either conform to the recommendation or inform about the reasons for failing to do so is considered best practice in this regard.¹⁷⁹

RECOMMENDATIONS

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.

NPMs and other monitoring bodies should focus on systemic risks of torture and ill-treatment based on standards of international law and dedicate sufficient resources to follow up their recommendations.

PART FIVE

Prison regimes

In many countries, prison systems aim to provide rehabilitation so that when prisoners are released they are able to play a productive role

in society and do not reoffend. The extent to which prisons are able to offer work, education, training or forms of treatment varies enormously.

Such opportunities are often limited to sentenced prisoners who may form a minority among the prison population as a whole.

Work

Productive paid work is an important component of prison life providing an active day for prisoners and generating financial resources for them. Work should not be excessively onerous or be required at the expense of the rights and welfare of prisoners. In many countries, involvement in work can lead to early release from prison; eg prisoners working in Greece gain a substantial reduction of their sentence length – this can be from 24 days to 45 days per month.¹⁸⁰ The European Prison Rules state that prison work should be a positive element of the prison regime and never be used as a punishment.¹⁸¹ Good practice suggests that prisoners should be able to choose their type of employment within limits; the organisation of work should resemble similar work in the community; and the interests of prisoners should not be subordinated to the pursuit of profit. In all instances there should be equitable remuneration of the work of prisoners.

Recent experience in providing work has been mixed. In the USA, Federal Prison Industries have struggled to meet their target of providing work opportunities to 25 per cent of prisoners.¹⁸² In Canada it has been reported that many of the job opportunities offered in federal prisons fail to equip prisoners with the skills they need to get real jobs, preparing them instead for industries that are either obsolete or will have few openings when they get out of prison.¹⁸³

A more positive example is provided by Kyrgyzstan where 14 prison colonies are producing razor wire, pasta, cinder blocks, paving squares and clothing. For the first time since the fall of the Soviet Union, in 2012 the Finance Ministry allocated funds for developing production at correctional facilities.¹⁸⁴ In Uruguay half of prisoners are studying or working following the creation of a National Rehabilitation Institute in 2010.¹⁸⁵ In Poland, prisoners are now guaranteed to get at least the minimum wage, pro-rata in the case of part-time employment. However, the recent economic crisis and a lack of measures to encourage companies to employ prisoners (eg tax exemptions), has reduced the number of inmates who work.¹⁸⁶

Linking work experience in prisons to genuine job opportunities on release is a feature of an initiative in Thailand where up to 270,000 prison inmates are to be drafted in to work for small and medium-sized enterprises (SMEs) facing labour shortages. Two-hundred Bhat (\$6) a day will be paid for basic production with higher rates for skilled work.¹⁸⁷ In South Australia, a relationship has formed between the state's oyster industry and some of the region's prisons. Port Lincoln prisoners have been constructing and repairing cages, baskets and lines obtaining skills for future employment.¹⁸⁸ Prisons in New Zealand and the UK are seeking to increase the opportunities for prisoners to work a full 40-hour week.¹⁸⁹ Prison farms provide the chance for African prisoners to work and learn skills which will help them

sustain themselves after release as well as building links with local communities.¹⁹⁰

Other innovative employment and training initiatives have been reported including the opening of restaurants attached to prisons in New Delhi, India and in the UK. In Slovenia to deal with the overcrowding the authorities have introduced 'open prisons' where the prisoners work during the week and stay in prison at the weekends. In Mekelle Prison in Ethiopia, the International Labour Organization has worked to provide education, skills training and opportunities so that prisoners can access finance and engage in economically useful activities. This has resulted in the creation of 31 active cooperatives that run successful businesses providing decent work for prison inmates and released prisoners.¹⁹¹

In many countries there is scope for expanding work opportunities for prisoners in particular by developing those which involve the acquisition of skills which will be useful in the labour market and by addressing gender inequalities.

In many prisons the types of activities offered to women as part of rehabilitation programmes are gendered,¹⁹² and skills taught to women often represent work conventionally conducted by women in the household or equip them for the most low-paid jobs in the economy.

Productive paid work is an important component of prison life providing an active day for prisoners and generating financial resources for them.



Shoes made in prison workshop, Vellore Central Prison, India. © Andrea Huber 2014

This reinforces women's dependency on men and their inability to find employment with sufficient income following release.

For example, a report by the State Advisory Committee on prisons in the US state of New Hampshire observed that 'it is noteworthy that the vocational training opportunities made available to incarcerated men reflect the kinds of well-paying work from

which women have been traditionally excluded – automotive mechanics, carpentry, and the like while the sole industry available to women at the Goffstown prison is sewing'.

The Committee established that the contrast in services offered to women prisoners had resulted in an exceptionally high recidivism rate for female offenders in the state.¹⁹³

RECOMMENDATIONS

Prison work should not simply provide cheap labour for private companies or governments, but offer meaningful activity and focus on employable skills and reintegration. In order to prevent exploitation and ensure safe labour conditions, states should put in place a regulatory framework covering work in prison.

Education and training

A recent large scale study found that prisoners who receive general education and vocational training are significantly less likely to return to prison after release and are more likely to find employment than their peers who do not receive such opportunities.¹⁹⁴ Yet most prisons struggle to provide education on the scale required. A review of education in Europe found that among the 640,000 strong prison population in the European Union there is a significant proportion of low-skilled people. In most EU countries less than a quarter of prisoners participate in education and training.¹⁹⁵ Exceptions include countries such as Germany, where between a half and three quarters participate in education and training. In the USA, state-level spending on prison education programmes declined sharply during the economic

downturn, with the sharpest drop occurring in states that incarcerate the most prisoners.¹⁹⁶

In Saudi Arabia, a reformatory model has been established which includes full-fledged educational institutions, factories and workshops for vocational training, farms for the cultivation and herding of all types of livestock, and fully furnished facilities to organise reform programs, including social and cultural and recreational ones.¹⁹⁷ A different approach has been adopted in India where the Indira Gandhi National Open University (IGNOU) has established 94 Special Study Centres in prisons across the country. So far 25,000 prisoners have benefited from the initiative. In 2010 IGNOU announced its 'Free Education for Prisoners' initiative and waived fees for all prisoners who wished to pursue the University's programmes.¹⁹⁸

Efforts to incentivise participation in education include a measure in Italy by which prisoners will see their sentences reduced by three days for each book they read, with the maximum set at 48 days over a one year period – the equivalent of 16 books in twelve months.¹⁹⁹ This is a less generous system than in Brazil where the sentence is shortened by four days per book.²⁰⁰

RECOMMENDATION

Given the low level of basic skills among prisoners in many countries, properly funded education and training programmes can be effective ways of reducing recidivism, particularly among young prisoners. Education ministries should ensure that education is accessible in prisons, and equivalent to that provided in the community.

PART SIX

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 presenting dangers. Technology has enabled fewer staff to be involved in security duties with close circuit television (CCTV) and sophisticated alarm systems reducing the need for

perimeter patrolling and watchtowers. Devices such as the Body Orifice Security Scanner (BOSS) chair have replaced the need for the strip searching of prisoners.²⁰¹ Technology has enabled many high income countries to remove cash from the prison economy which helps to reduce the risk of corrupt transactions at the same time.²⁰² Technology may also be used increasingly by prisoners. Mobile

phones are commonly being smuggled into prisons despite the common prohibition of possession by prisoners. In Europe, Australia and North America there have been examples of drones being used to drop drugs and cell phones into jails.²⁰³ Conversely, Ohio state prisons are believed to be the first in the country testing security drones in the hope of cutting down on illegal activity at the penitentiaries.²⁰⁴

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. In India the government is working with the National Informatics Centre to create 'software' to track pre-trial detainees through the system and help to ensure that they do not stay in prison longer than they should. A pilot system is being tried out at the Tihar Jail in Delhi.²⁰⁵

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.

Improving health and education

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 doctors having to attend the prison. Medical consultation is provided via a webcam with a professional nurse accompanying the inmates. In Ethiopia's federal prisons, health education messages are broadcast over the prison loudspeaker system and prison radio stations have also been developed to provide a mix of entertainment and information.²⁰⁶ In Hungary, Prison Radio Station 'Bars FM' seeks to offer inmates information on prison life and to help with readjustment to society following their release.²⁰⁷

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 that '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'.²⁰⁸

Electronic monitoring

Electronic monitoring of suspects and offenders was first developed in the USA in the 1980s 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 keep domestic violence offenders away from their victims.

The Council of Europe adopted a Recommendation on Electronic Monitoring in February 2014 (see

right).²⁰⁹ Among its basic principles is that electronic monitoring may be used as a stand-alone measure in order to ensure supervision and reduce crime over the specific period of its execution. In order to seek longer term desistance from crime it should be combined with other professional interventions and supportive measures aimed at the social reintegration of offenders.

Outside Europe, electronic monitoring has been used on a relatively small scale in Argentina as an alternative to pre-trial detention since 1997²¹⁰ and is applied in Brazil, Chile, Colombia, Mexico and Uruguay.²¹¹ A programme was launched to monitor people on bail and on parole in South Africa in 2013.²¹² It has been discussed as an option for the expanding community corrections available in China.²¹³ In Costa Rica, it is hoped that tagging will save up to \$12,000 per offender who would otherwise be in prison.²¹⁴ In Kazakhstan, electronic monitoring has been introduced in the new criminal and penal codes that came into effect on 1 January 2015, applicable to those sentenced to restricted freedom, those given a suspended sentence and those released on parole.²¹⁵

Other forms of monitoring being used in the USA and trialled in Europe include 'sobriety tags', worn around the clock, which enforce abstinence by measuring a person's perspiration every 30 minutes and testing whether or not it contains alcohol.²¹⁶

Contact with the outside world

The Commentary to the 2006 European Prison Rules states that prisons 'should be alert to the fact that modern technology offers new ways of communicating electronically. As these develop, new techniques of controlling them are emerging too and it may be possible to use them in ways that do not threaten safety or security'.²¹⁷

Technology has indeed been 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.

Council of Europe guidance on electronic monitoring

In February 2014 the Council of Europe adopted Recommendation CM/Rec(2014)4 on the use of electronic monitoring, representing the first guidance on this tool internationally.

Defining electronic monitoring as 'forms of surveillance with which to monitor the location, movement and specific behaviour of persons in the framework of the criminal justice process', the recommendation lists current uses of electronic monitoring and outlines basic principles, conditions of execution at different stages of the criminal process, ethical issues, data protection, consent of victims and training of staff.

The recommendations, for example, state that decisions to impose or revoke electronic monitoring shall be taken by the judiciary, without discrimination and without widening the net. Type and modalities need to be proportionate to the offences alleged or committed in terms of duration and intrusiveness. They need to take into account the impact they have on families and other third parties, as well as age, disability or other relevant personal circumstances of each suspect or offender.

National law needs to regulate how time spent under electronic monitoring supervision at pre-trial stage may be deducted from any final sanction; and particular attention shall be paid to regulating strictly the use of data collected in the framework of electronic monitoring.

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 well-being 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 been shown to bear risks, such as a net-widening and in the UK has not worked well with minors.²¹⁸ The intrusiveness of such measures for third parties such as family members needs to be taken into account, as does the need for regulation of the maximum duration of the measure, and the manner in which it will be deducted from a final sanction. When chargeable to the suspect or convicted, there is also a risk of discrimination against poor and marginalised offenders, already over-represented in the global prison population.²¹⁹

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 (CCTV) in prisoners' cells as well as in communal areas breaches the right to privacy.²²⁰

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

Another example of undesirable ramifications from the use of technology has been observed in the US where ultimately the US Federal Communication Commission intervened to reduce the exorbitant costs of telephone calls and other forms of communication from prison (due to alleged profiteering by telecommunications companies) in 2013.²²¹

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 was 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'.²²² 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.

RECOMMENDATION

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 SEVEN

Alternatives to prison

Overview

Research has identified alternatives to imprisonment that cost less than prison and in some cases at least are more effective at reducing re-offending. Diversion may be more effective for certain vulnerable groups such as children, juveniles and individuals with mental health issues.²²³ The need to take into account women's specific characteristics and needs has been recognised in some countries by the development of gender-sensitive non-custodial programmes, for example in the UK, Ireland, Germany, the USA, Australia and Canada.²²⁴

In lower income countries efforts are being made to reserve imprisonment for both men and women to 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.²²⁵ 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 amnesties 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.²²⁶ 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.²²⁷ While providing short-term relief, amnesties and other forms of pardons have been shown not to provide a sustainable solution to overcrowding and can erode public confidence.

More sustained policies to decongest prisons by substituting short terms of imprisonment for community supervision 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. In Europe in 2010 the numbers under the supervision of probation agencies ranged from 10 per 100,000 of the population (in Croatia) to 944 (in Poland).²²⁸

Non-custodial measures

International norms, in particular the UN Standard Minimum Rules for Non-Custodial Measures, (the Tokyo Rules) require countries to make available a wide variety of community based sanctions and measures.²²⁹

Not only can these reduce the unnecessary use of imprisonment but they are a more appropriate response to minor crimes. In Europe in 2010, more than three quarters of probation and community based orders were completed successfully.²³⁰

The norms require alternatives to comply with human rights – corporal punishment, for example is not permitted – and contribute where possible to social justice and the rehabilitation of offenders.

As far as alternatives to prison sentences are concerned, measures such as probation supervision, and drug and mental health treatment aim to rehabilitate while restitution and to an extent community service play a restorative role. Other measures

such as house arrest and attendance centres can restrict liberty while fines and confiscation meet the requirements of punishment.

There have been two important developments in the community-based supervision of offenders in Western countries. One is electronic monitoring (see page 32). Another is the development of psychological programmes to address offending-related risks and needs, which nowadays play an increasing

A man is seen from behind, wearing a bright green high-visibility vest with reflective silver stripes. The vest has the text "County Government of Kiambu & Kenya Judiciary, Community Service Order" printed on it. He is holding a large metal watering can in his right hand, pouring water onto a row of young green plants. He is wearing a red and white plaid shirt and dark trousers. The background shows a weathered wall and some trees.

County Government of Kiambu
&
Kenya Judiciary,
Community Service Order

Some alternatives to imprisonment cost less than prison and are more effective at reducing re-offending.

Community service at a tree seedling project outside Nairobi run by the Kenyan Probation Service. Some of seedlings are sold to the public while others are given out to schools and other public institutions. © Allan Gichigi 2014.

role in probation supervision (as they do in some prisons). Often based on cognitive behavioural psychology, treatment programmes are used to tackle sexual offending, anger management, substance misuse and domestic violence as well as the more general problems of failure to consider the consequences of actions. While promising, these approaches have proved less successful in reducing offending behaviour than pilot projects suggested that they might be.²³¹ A desistance paradigm which emphasises the processes through which offenders change their lives around and the relationships needed to sustain the changes is gaining greater acceptance among probation experts.²³²

Community service has proved a popular and relatively successful measure in a wide range of countries over the last forty years. Work in a number of jurisdictions has identified three key challenges which face the successful operation of such programmes.

The first is to ensure that it is used in appropriate cases. In some countries, community service is limited to first time offenders and/or very minor crimes. In such cases, community service can widen the net of punishment, by taking the place not of prison but of less onerous penalties such as discharges or small fines. Offenders may even face a spell in prison for failure to comply with the

community service order when the original offence did not merit custody. Equally, community service will not be appropriate in very serious cases.²³³

The second challenge relates to the implementation of community service. Identifying an appropriate body to organise and arrange the unpaid work that offenders will undertake is a prerequisite. Whether it is a state organ or NGO, successful schemes ensure that a range of placements are available, that offenders are properly supervised in their work, and that failures to comply are promptly followed up. In East Africa, in good practice cases, offenders work to build clinics, dig latrines, grow trees, farm fish and even keep bees, all of which are undertaken for the benefit of the general public. But all too often, the work consists of 'slashing' – clearing overgrown land – which may have limited impact on the public or the offender.

The third challenge relates to public attitudes.²³⁴ In some cultures, unpaid work is seen as too soft an option even for minor crimes. Such attitudes discourage judges from imposing orders, afraid that they will be suspected of taking a bribe if they impose what is widely seen as a lenient sentence. Measures to overcome hostility include public education or sensitisation campaigns, using the media to show the benefits of community service work and enabling local people to nominate

particular work projects that will make a difference to their lives. In Uganda, for example, two preachers who were sentenced to community service following a case of defamation, used their communication skills to educate the public through a series of meetings. In the UK some years ago, the then Chief Judge spent a day doing community service in order to satisfy himself about its punitive value, obtaining considerable press coverage as a result.²³⁵

Asia and the MENA region have been relatively slow to introduce community service although a very good scheme is operating in Algeria²³⁶ and similar schemes are being developed in Lebanon and Jordan.

RECOMMENDATIONS

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 trends and challenges in criminal justice can vary widely between countries, there are a number of broad themes which are worthy of consideration in a large number of countries.

Based on these themes there are strong arguments for countries to:

- adopt policies which keep pre-trial detention to a minimum, involve a sparing use of prison, and apply proportionate sentences in cases when alternatives are not suitable;
- develop prisons which are appropriately sized, adequately staffed and meet the requirements of international standards, making suitable use of technology and subject to necessary oversight;
- conduct more research on the effectiveness of various penal approaches and the exchange of good practices between countries.

25 key recommendations

The 25 key recommendations emerging from this report are as follows:

01 All countries should keep under review whether or not imprisonment is playing an appropriate role in tackling crime. Countries with very high rates of imprisonment should do so as a matter of urgency.

02 States should review thoroughly the need to build new prisons as the 'construction of new prisons without penal reform may simply lead to an increase in the prison population'.²³⁷

03 States should take the necessary steps to implement the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

04 There is a strong case for sentence lengths to be proportionate to the seriousness of the crime and the circumstances of the offender.

05 States should review their drug policies, with regard both to proportionality and the effectiveness of penalties, develop prevention and income generating programmes, and treat drug use as a public health rather than a criminal justice problem.

06 Life sentences should always be eligible for review after a period of no more than 25 years and should not be imposed for offences committed by persons under the age of 18.

07 States should dedicate capacity to the implementation of the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

08 Detention should be considered only as a last resort for children. The age of criminal responsibility should be compliant with the recommendations of the UN Committee on the Rights of the Child. Countries should not allow for the transfer of children to the adult justice system.

09 Decisions as to whether to allow children to live in prison with a parent must be made on an individualised basis, based on the best interests of the child.

10 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.

11 More emphasis is required on the provision of healthcare to prisoners, incorporating measures of prevention, diagnosis and treatment, and taking into account mental healthcare issues and the prevalence of infectious diseases in prisons.

12 Special policies and strategies should be developed to address the special needs of older prisoners.

13 Where it is not, states should consider transferring responsibility for prisons to the Ministry of Justice, in view of the different skill sets required and the benefits of separation of the functions of investigation and prosecution on the one side, and of execution and supervision of criminal sanctions on the other.

14 Health ministries should provide and be accountable for health care services and advocate healthy conditions in prisons.

15 The performance of prison health systems should be assessed against the right to health as enshrined in international human rights law and against standards of medical ethics, including full independence of prison health staff from prison authorities.

16 Given the disadvantages and difficulties inherent in managing large prisons, their size should be limited to allow for individualised treatment and rehabilitation programmes, consistent with Rule 63(3) of the UN Standard Minimum Rules for the Treatment of Prisoners.

17 In post-conflict contexts, appropriate resources and expertise should be provided by the UN and international partners to rebuild prisons in the short term and develop penal policy and institutions in the longer term.

18 While private prisons offer an attractive proposition for states, the 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.

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

20 Countries which have not ratified the Optional Protocol to the Convention against Torture (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.

21 Prison work should not simply provide cheap labour for private companies or governments, but offer meaningful activity and focus on employable skills and reintegration. In order to prevent exploitation and ensure safe labour conditions, states should put in place a regulatory framework covering work in prison.

22 Education and training programmes should be properly funded and education ministries should ensure that education is accessible in prisons, and equivalent to that provided in the community.

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

24 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.

25 International and national donors should dedicate appropriate attention to the links between poverty and imprisonment and between fair and proportionate criminal justice systems and sustainable development.

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Regular monitoring of crime trends and the operations of criminal justice systems is [...] key to measuring progress in strengthening the rule of law and advancing towards sustainable development. ”

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