

GLOBAL PRISON TRENDS 2016



SPECIAL FOCUS
Pull-out section

**Prison staff:
overworked
and underpaid?**





Global Prison Trends 2016

PRI would like to thank Rob Allen for authoring this report. This report also draws on the expertise of contributors to our expert guest blog series (<http://www.penalreform.org/blog/>), in particular: Luciana Pol (Center for Legal and Social Studies, Argentina), Laura Maiello and Stephen Carter (CGL Companies) and Bruno Min, Fair Trials.

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Cover photo: A prison guard closes the main gate, Chichiri prison, Malawi. Photo by Luca Sola and used with kind permission. (www.lucasola.com)

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

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

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

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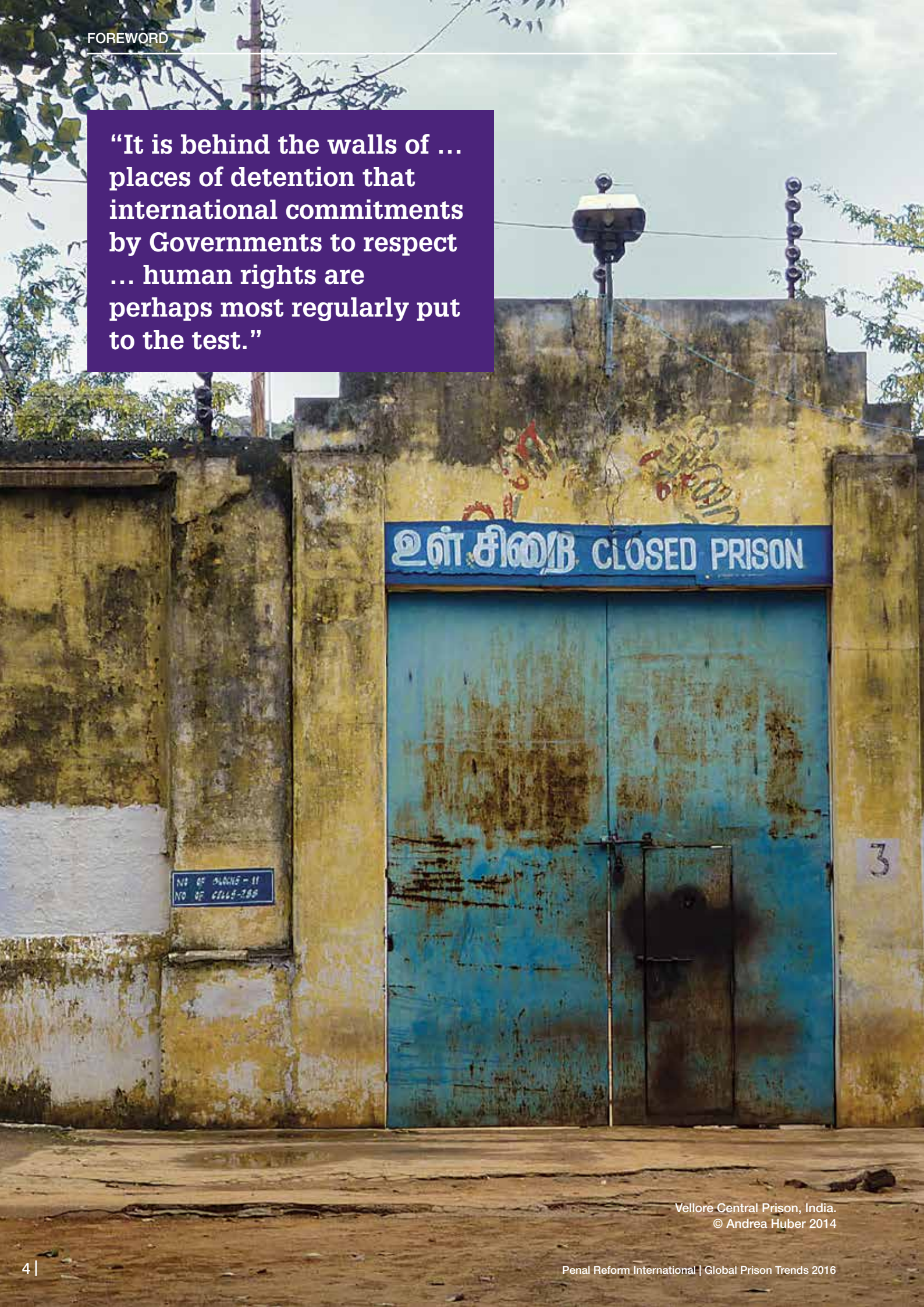
CENTREFOLD

Special focus 2016 (pull-out section)

Prison staff: overworked and underpaid?

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“It is behind the walls of ... places of detention that international commitments by Governments to respect ... human rights are perhaps most regularly put to the test.”



Vellore Central Prison, India.
© Andrea Huber 2014

Foreword

The human rights of prisoners are a topic that typically elicits limited public attention and even less public sympathy. But it is behind the walls of prisons, police cells and other places of detention that international commitments by Governments to respect, protect and fulfil human rights are perhaps most regularly put to the test.

According to the United Nations Office on Drugs and Crime, at any one time more than 10 million people around the world are being held in prison and other places of detention – only about a third of them in connection with violent crime. That includes an estimated one million children, as well as more than 700,000 women – a number that's growing far more quickly than the general prison population. Excessive use of pre-trial detention combined with delays in the judicial process means that more than three million people are being held on remand, awaiting trial – in many cases in connection with minor theft-related charges.

Inevitably, global numbers mask dramatic differences at the national level, with steady declines in prison populations in some countries offset by steep increases in others, creating serious problems of overcrowding. The number of prisoners now exceeds official prison capacity in 116 countries – in 21 of these countries it is even between double and quadruple official capacity.

As a result, detainees are too often crowded into small, insanitary cells, denied access to adequate food and water, as well as to recreation, education and rehabilitation. With staffing stretched thin, inter-prisoner

violence becomes more difficult to prevent – exposing many prisoners to serious physical and sometimes sexual assault. The situation has become so acute that the UN Special Rapporteur on torture has described conditions in some prisons as amounting to inhuman and degrading treatment or even torture. A 2015 report by the United Nations High Commissioner for Human Rights urged countries to commit to a series of steps aimed at ending over-incarceration and overcrowding, and guaranteeing respect for the inherent dignity of all detainees.

Improving conditions in prisons is key to both improving outcomes for prisoners and creating safer communities. In December 2015, the United Nations General Assembly unanimously adopted the Nelson Mandela Rules – a revised set of international minimum standards on the treatment of prisoners. The new standards have been strengthened in several respects, including by the inclusion of an absolute prohibition on torture and ill-treatment of prisoners, much more specific provisions on solitary confinement, and a commitment to provide all prisoners with the same standard of health care available in the community. Their adoption was accompanied by an acknowledgement by many States that much more needs to be done to close the gap between the standards enshrined in the Mandela Rules and the reality for those in custody in prisons around the world.

It is also important – from the perspective of both human rights and sustainable development – to reduce the number of people going to prison

in the first place. Achieving this goal will require more systemic reforms to national criminal justice systems – including greater use of parole, non-custodial sentences and other alternatives to incarceration, reduced use of pre-trial detention, and sustained investment in education, rehabilitation and reintegration of ex-prisoners into society. Special measures are also needed to reduce imprisonment of women and children, and protect those for whom prison is unavoidable.

The report before you presents an important snapshot of the state of detention globally and related trends. It draws on a multitude of sources from across government, UN agencies, civil society and academia to produce a compelling, nuanced analysis of the factors fuelling incarceration, the impact on the individuals concerned and the measures needed in order to improve outcomes – for people in conflict with the law, their families and communities. It deserves to be widely read not just by policymakers in the criminal justice sector but by anyone with a commitment to human rights, justice and the rule of law.

Charles Radcliffe

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PART ONE

Introduction

This second edition of *Global Prison Trends* looks at some of the key developments in prison policy and practice since the first edition was published.¹ 2015 has seen a number of important milestones at the global level including:

- The adoption by the United Nations (UN) of the 2030 Agenda for Sustainable Development, including a requirement for states to, 'Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels' and to 'achieve gender equality'.²
- The 2015 Doha Declaration adopted at the 13th UN Congress on Crime Prevention and Criminal Justice, which proposed that member states review their penal policies.³
- Significant revisions to the UN Standard Minimum Rules for the Treatment of Prisoners and their adoption by the UN Crime Commission, and subsequently by the UN General Assembly, as the Nelson Mandela Rules.⁴
- The publication by the UN High Commissioner for Human Rights of an important report on the 'Human rights implications of overincarceration and overcrowding'.⁵

2015 also saw plenty of evidence that this considerable strengthening of the normative framework for prison reform is much needed. The UN Office on Drugs and Crime (UNODC), for example, argued that, 'a large number of prison systems around the world are at a stage of crisis, the serious effects of which harm prisoners, their families and societies as a whole'.⁶ As well as poor prison conditions and overcrowding, dimensions of the crisis include the following:

- insufficient measures to prevent crime, in particular youth crime;
- excessive use of pre-trial detention;
- lack of access to legal advice and assistance;
- punitive criminal justice policies and inappropriate use of imprisonment;
- scarce use of alternatives to imprisonment;
- insufficient measures to promote social reintegration;
- inadequate prison management and infrastructure;
- detention used too readily for children in conflict with the law;
- specific needs of women offenders and prisoners not met.

This report focuses specifically on the most significant developments in how prison is being used and how prisons are being managed and organised.

The report includes information and examples from various countries and regions. These are not intended to 'single out' certain countries, but are meant to be illustrative of trends and challenges.

RECOMMENDATION 01

Countries should undertake reviews of their penal systems in light of the revised UN Standard Minimum Rules for the Treatment of Prisoners and the recommendations of the 2015 Doha Declaration. Donors should consider favourably requests for assistance both in carrying out such reviews and in reforming criminal justice systems.

Sustainable development goals and criminal justice

The number of people behind bars, whether on remand or serving sentences, has increased in most countries over the last 20 years, placing an enormous financial burden on governments and at great cost to the social cohesion of societies. In many countries, criminal justice systems are unfair and discriminatory. Instead of protecting society from crime while safeguarding the rights of those accused or convicted, they can cause, drive and deepen poverty and hinder social and economic progress.

In September 2015, the international community agreed a new set of development goals, the 2030 Agenda for Sustainable Development, comprising 17 goals and 169 targets, to replace and build on the UN Millennium Development Goals (MDGs, 2000-2015).

Justice and prison reform can and should play a part in achieving not just Goal 16 on peaceful and inclusive societies, access to justice and accountable institutions, but several of the goals set out in the 2030 Agenda.

GOAL 1: Ending poverty in all its forms everywhere

People who come into contact with the criminal justice system disproportionately come from poor and marginalised backgrounds. A large percentage come into conflict with the law as a symptom of their poverty and, without the financial resources to afford proper legal representation, they are also more likely to be given prison sentences. The social stigma of criminalisation creates a cycle of deprivation that people cannot break out of, effectively criminalising poverty. Children of offenders are drawn into this cycle of crime and poverty and evidence suggests they are more likely to end up in the criminal justice system themselves.

Systems that use a variety of sanctions in a proportionate way and take recourse to imprisonment only for serious offences are not

only fairer, but can help people to break the cycle. Non-custodial sanctions, especially for minor, non-violent offences, allow offenders to keep their jobs, provide for their families, compensate victims and provide accountability to society.

GOAL 2: End hunger, achieve food security and improved nutrition, and promote sustainable agriculture

When food security and safety are problems in a country in general, this is frequently reflected in its prisons. Many countries do not allocate sufficient budget to adequately feed their prison populations and corruption may also siphon money away from where it is needed. Where food in detention is insufficient, unhygienic and lacks nutrition, prisoners face serious, if not permanent, health issues, and even starvation. Adequate nutrition is of particular importance for vulnerable groups including pregnant or breast-feeding women, sick prisoners and for children held in prison with a parent.

GOAL 3: Ensure healthy lives and promote well-being for all at all ages

Many prisoners receive healthcare of a far inferior standard to that available in the community, if they receive it at all. Existing medical conditions may be ignored or neglected, and prisoners often develop health problems whilst in prison due to unhealthy and unhygienic conditions, lack of healthcare and poor control of infectious diseases, such as HIV or tuberculosis. Medical care in prisons not only contributes to the health of detainees, but also to the protection of public health as the vast majority of prisoners return to the community at the end of their sentence.

GOAL 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all

Lack of education and training opportunities causing unemployment and poverty are often drivers for offending. Criminal justice systems need to address such causes of offending. Developing self-worth and having the prospect of a livelihood to return

to are essential ingredients for successful rehabilitation. Ensuring access to education, work and training while in prison – or while serving non-custodial sanctions – therefore contributes to Goal 4 and also to Goal 1.

GOAL 5: Achieve gender equality and empower all women and girls

Women face discrimination in criminal justice systems in various ways, from gender-specific offences to lack of consideration of their gender-specific circumstances and needs in sentencing and in their treatment in detention. Many systems fail to recognise the link between women's experience of violence and offending and also fail to protect women from violence when detained. Efforts to address gender inequalities have largely overlooked women offenders and prisoners.

GOAL 6: Ensure availability and sustainable management of water and sanitation for all

In many prisons poor infrastructure prevents sufficient access to clean water for drinking and hygiene. Water may also be withheld as a disciplinary measure and/or as a form of ill-treatment. Provision of water and sanitation in prisons also contributes to health and well-being (Goal 3).

GOAL 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all

Providing work and training opportunities for prisoners is important both to provide meaningful activity during the day and improve their job prospects following release. However, in many countries, there may be no opportunity for prisoners to work, the work may be of little vocational value, or prisoners may be required to work in unsafe or exploitative conditions.

Former prisoners often struggle to find work on release, in part due to low educational attainment prior to prison and lack of opportunities in prison, and in part due to stigma and employment restrictions on

former offenders. Researchers in the USA have also calculated that high unemployment levels among former prisoners can present a significant loss to national GDP.⁷

GOAL 10: Reduce inequality within and among countries

Prisoners often come from the most marginalised sections of the community. Stigma and discrimination towards former prisoners – for example, limiting their civil rights or access to employment – reinforces their marginalisation. Ensuring access to justice for all and upholding the rule of law require the law to be applied in a non-discriminatory way.

There are also clear links between economic inequality and crime, with research suggesting that inequality is associated with increased levels of crime.⁸

GOAL 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

Significantly, this goal recognises the importance of the rule of law, good governance and accountable, transparent institutions to sustainable development. Access to justice requires fair and effective criminal justice systems. Prisons, by their very nature, are closed institutions hidden away from public view, and therefore require particular attention with regard to external scrutiny, transparency and good governance. At the same time, prisons can be part of more inclusive societies if they provide prospects for rehabilitation and reintegration of offenders back into society.



THE GLOBAL GOALS
For Sustainable Development

PART 2

The role of imprisonment

The report of the UN High Commissioner for Human Rights on the human rights implications of prison overcrowding confirms that states should resort to the deprivation of liberty only insofar as it is necessary to meet a pressing societal need and in a manner proportionate to that need.⁹ According to the latest available information from UNODC (for 2012), only 34 per cent of prisoners were serving sentences that were principally tied to violent offences (including intentional homicides), less than 30 per cent to property crimes, 20 per cent to drug law offences, three per cent to financial crimes or corruption and 14 per cent to other types of crime. The UN Secretary-General's report to the UN Crime Commission also found considerable variation in the lengths of prison sentences.¹⁰

One reason for the continuing popularity of imprisonment is the commonly held view that locking up people convicted of crimes helps to reduce crime levels. US research published in 2015 has confirmed, however, that imprisonment has only a limited role to play in controlling crime.¹¹ In the USA (which has seen a fivefold increase in the prison population since 1970 and serves as a model for many western countries¹²), increased incarceration has accounted for approximately six per cent of the reduction in property crime in the 1990s and for less than one per cent of the decline in property crime this century. The research also finds that, '[i]ncreased incarceration has had little effect on the drop in violent crime in the past 24 years. In fact, large states such as California, Michigan, New Jersey, New York, and Texas have all reduced their prison populations while crime has continued to fall'.¹³ Greater impacts on crime have been produced by greater targeting of police resources in high crime areas and changes to social, economic and environmental factors.

Another reason for high prison populations is that the public are often thought to favour a tough approach to sentencing and in a number of countries political leaders have encouraged this through policies of so-called penal populism. Recent Australian research has indicated that the public may not be so wedded to punitive approaches as is often supposed¹⁴ and in the USA, the California Crime Victims Survey found in 2013 that the overwhelming majority of Californian victims prefer investing in probation and rehabilitation, prevention, health and education over spending more on incarceration.¹⁵ Three in four victims believed that prisons either make inmates better at committing crimes or have no impact at all. Only a small minority believed that prisons rehabilitate people.

In the USA, more than half of states have introduced laws or policies that have sought to reduce the severity of sentencing for non-violent offences and breaches of parole and supervision in order to avert unaffordable prison growth. The extent to which these have contributed to the stabilisation or reduction in prison numbers is contested in some states but the overall trends have changed – 2014 was the first time in 38 years that both federal and state prison populations fell in tandem. Many states have used some of the spending that would have been used on new prisons to strengthen alternatives.¹⁶ At the federal level, 6,000 drug offenders sentenced to harsh penalties were released in October 2015.

Growing scepticism about expanding incarceration has not been confined to the USA. Thailand's Minister of Justice has said that, 'The government has no plans to build more prisons because it would be like accepting the fact that our society is going down. We want the Department of Corrections to reduce prison terms for inmates with good behaviour'.¹⁷

Several countries have continued with a tradition of granting amnesties, pardons or otherwise releasing prisoners on the occasion of religious or national holidays. These include Indonesia,¹⁸ Pakistan,¹⁹ Myanmar,²⁰ Russia,²¹ Tanzania²² and Egypt.²³

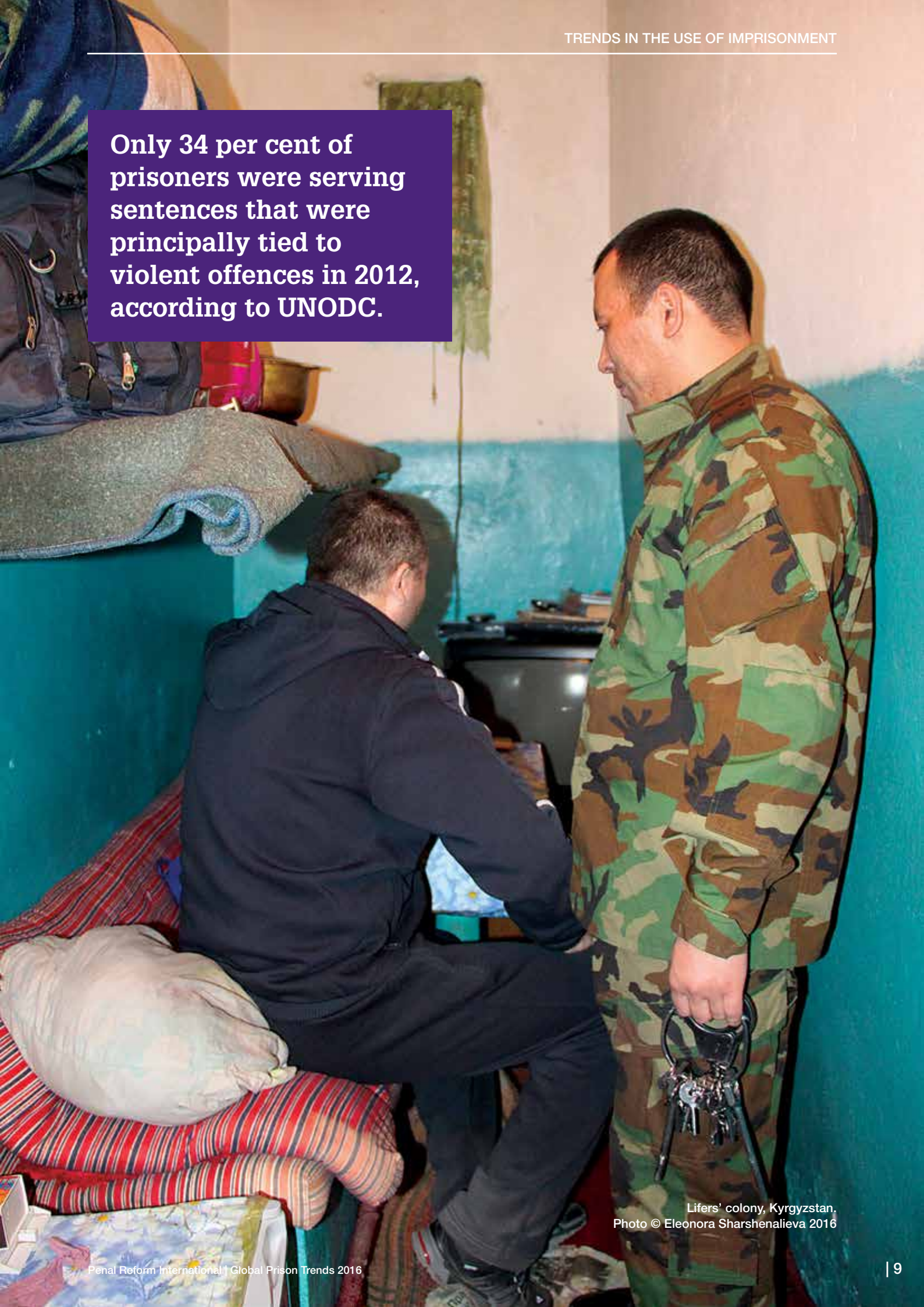
In Sri Lanka, a task force which will include representatives of government ministries has been set up to analyse the causes of overcrowding and to recommend and implement measures to ease congestion in the country's prisons.²⁴

Some countries with lower rates of imprisonment have moved in the other direction. In Finland, from 2016 prison sentences will be more likely for repeat low-level offenders. Individuals who are handed a series of fines will be liable for a prison sentence if they fail to pay, or if they commit a further offence within a certain timeframe.²⁵ Critics claim the reform will increase the workload on crime prevention authorities, and will cost the taxpayer 12.4 million euros every year. In Switzerland, Parliament has decided to reintroduce short-term prison sentences to complement a system of suspended fines as part of efforts to tighten the penal system.²⁶

RECOMMENDATION 02

Jurisdictions should review whether imprisonment is playing an appropriate role in addressing crime and increase alternative strategies such as education, crime, prevention and social interventions which have been shown to produce more effective results.

Only 34 per cent of prisoners were serving sentences that were principally tied to violent offences in 2012, according to UNODC.



Lifers' colony, Kyrgyzstan.
Photo © Eleonora Sharshenalieva 2016

PART 3

Trends in the use of imprisonment

At the global level, the UNODC reports that prison population rates have been relatively stable over the past decade.²⁷ The UNODC estimates that the size of the prison population has increased approximately ten per cent since 2004, reaching more than 10.2 million people in the period 2011-13. However, that growth was offset by the equally steep growth in the world population over the same period, thus resulting in stable average rates at the global level (148 per 100,000 population in the period 2011-13). More recent data collected by the Institute for Criminal Policy Research (ICPR) has shown that these trends are, by and large, continuing.²⁸

Both UNODC and ICPR have identified diverging trends at the regional level, with prison population rates declining in all African sub-regions, North America, and Western and Eastern Europe and increasing in Central and South America and the Caribbean, in South-East and West Asia, and in Northern and Southern Europe. There continue to be large differences between sub-regions in terms of prison population rates, which varied from under 100 prisoners to more than 600 prisoners per 100,000 of the population in 2015.

These diverging trends are reflected in the so-called BRIC countries (acronym for four major emerging national economies: Brazil, Russia, India, and China). According to ICPR data,

Brazil's prison population rate has continued to rise sharply while Russia's has fallen. In India and China, the trend has been stable.

In Africa, there are diverging trends too; by way of example, South Africa's prison population has been falling, while those in Nigeria, Kenya and Malawi have been relatively stable.

RECOMMENDATION 03

Countries should undertake detailed examination of both the numbers of admissions to prison and the size of their prison population to satisfy themselves that the rates of incarceration are in line with appropriate comparator countries.

Pre-trial detention

The 2015 Doha Declaration calls for, 'practical measures to reduce pre-trial detention (...) and to improve access to legal aid to the extent possible'. Excessive recourse to pre-trial detention was considered one of the main causes of overincarceration and overcrowding by the UN High Commissioner for Human Rights, often 'applied even to such minor cases as theft of a mobile telephone, a pen or a chicken'.²⁹ The UN Subcommittee on Prevention of Torture (SPT) recognised in 2015 that, '[s]tates parties must reduce the number of persons in pre-trial detention by respecting the presumption against pre-trial detention and using alternatives to remand in custody'.³⁰

The remand population, both among adults and children, remains one of the biggest challenges for

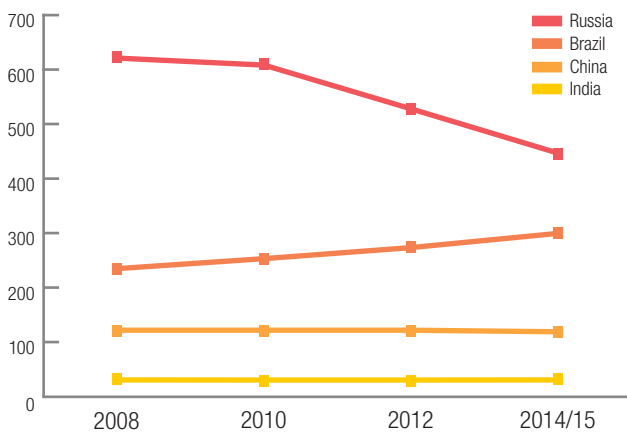
prison systems. It is estimated that worldwide at any one time more than three million people are detained in prisons and detention centres awaiting trial. The numbers remanded into custody during the course of a year are of course very much higher, reaching perhaps a total of 14 million people.³¹ As the UN Subcommittee on Prevention of Torture found, 'states continue to disregard the presumption against detention and pre-trial detainees account for a significant number, sometimes a majority of persons deprived of their liberty in the criminal justice context within states'.³²

The 2015 UN report on the state of crime and criminal justice worldwide confirmed that, although in all regions pre-trial detainees represent less than half of the prison population, these averages mask the fact that

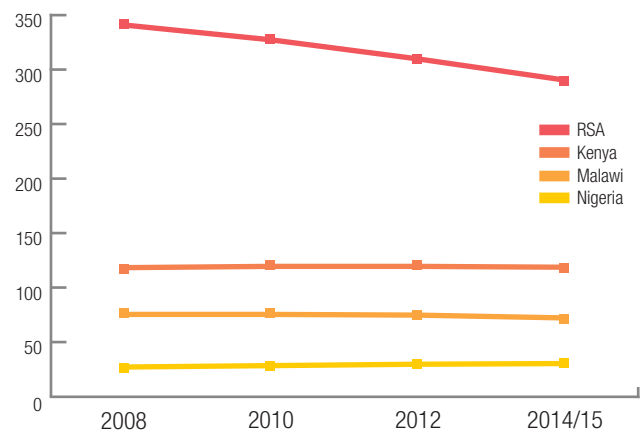
all over the world there are a significant number of countries where pre-trial detainees constitute the majority of the prison population.³³ In the period 2011-13, pre-trial detainees constituted the majority of persons detained in two-fifths of the reporting countries in Africa (a proportion that has remained stable in recent years), more than a third of those in the Americas (an increase since the period 2004-06) and about one in seven of those in Asia (a decrease since the period 2004-06). Pre-trial detainees have made up less than half of prisoners in most European countries since 2004.³⁴

According to data collected by the ICPR, in 44 out of 211 jurisdictions, the majority of people in prison on any one day are pre-trial detainees.³⁵

Trends in prison population rates in BRIC countries
(number of people per 100,000 of the population)



Trends in prison population rates in Africa
(number of people per 100,000 of the population)



The UN report on the state of crime and criminal justice worldwide in 2015 found that the shares of pre-trial detainees are highest, on average, in countries at the lower end of income levels and lowest in countries with higher income levels. The report considers that, 'this may point to possible resource constraints in the criminal justice system that prevent expeditious processing of crime suspects in pre-trial detention. High levels of pre-trial detention may point to shortcomings of the criminal justice system'.³⁶ In certain regions, particularly Latin America, high levels may reflect the obligatory use of pre-trial detention. In Bolivia, Ecuador, Mexico and Peru, pre-trial detention must be imposed in cases of drug crimes, 'independent of whether the infractions are minor or major. Without making a distinction over the degree of participation, drug offenses are classified as serious crimes, along with murder, rape and kidnapping'.³⁷

The problem of overuse of pre-trial detention is gravest in post-conflict and poorest states where the justice system may function sporadically, if at all. ICPR data shows that the countries whose prison systems comprise the largest percentage of pre-trial detainees include Libya, Liberia, Democratic Republic of Congo, Congo (Brazzaville), Bangladesh and Bolivia. Here more than seven out of ten prisoners on any one day are awaiting trial. But even in some high-income countries (such as the Netherlands and Canada), almost two in every five people held in prison are on remand.³⁸

In some countries, periods in pre-trial detention are relatively short – in 2012, in the 30 Council of Europe countries for which data is available, the average length of pre-trial detention was 5.2 months.³⁹ Studies of pre-trial detention in Africa have found much longer average periods, for example 19 months in Sierra Leone and 14 months in Ghana, with some defendants held for several years.⁴⁰

Official figures are likely to underestimate the numbers held in pre-trial detention; for one thing, in many countries detainees are held for relatively long periods in police custody rather than prison, 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 penitentiary systems should comprise 'treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation', in practice much of the work of prisons continues to be in fulfilling a jailing function.

Not all defendants in criminal proceedings are remanded in custody. In almost all countries, the law permits alternatives to pre-trial detention to be used in the majority of cases. Such alternatives allow defendants to remain at liberty during the period before their trial commences, although the court can sometimes impose conditions of one sort or another in order to try

to ensure that the proceedings are not put at risk or to achieve other objectives.

Releasing a defendant on bail is one of the commonest options available to the courts. While the legal and practical arrangements vary from one country to another, bail often requires a defendant or other party to pay a sum of money to the court as a form of guarantee that they will return for their trial. Indeed, in some countries the term bail (short for bail bond) has come to mean the cash or property equivalent demanded of arrestees as a surety as well as the release process of which it forms part.

While bail should be a measure that helps to ensure that remnants into custody are kept to a minimum and for the shortest duration, there has recently been growing concern in several countries about how it is working in practice. In Canada, a report has argued that it is operating in a manner that is contrary to the spirit – and, at times, the letter – of the law. 'Legally innocent individuals are processed through a bail system that is chaotic and unnecessarily risk-averse and that disproportionately penalizes – and frequently criminalizes – poverty, addiction and mental illness'.⁴¹ In the USA, bail has been described as 'nothing more than a shockingly effective way to coerce guilty pleas from poor people'. In lower income countries, critics argue that bail is unaffordable for the vast majority of defendants, many of whom are charged with petty offences.⁴²

A number of initiatives are underway to reform bail. In 21 jurisdictions in the USA, a more systematic approach to the granting of bail is being used with courts increasingly using risk assessment tools to assess a defendant's likelihood of flight or of further offending.⁴³ The 'Public Safety Assessment Tool', for instance, has been developed by a Charitable Foundation following research on over a million cases which identified factors most likely to predict a defendant's conduct.

RECOMMENDATION 04

Jurisdictions should review their pre-trial arrangements and ensure that remand is used as a last resort, only where necessary and proportionate. The use of non-custodial measures should be increased in light of the negative impact on the rights of defendants as well as the socio-economic cost for detainees, their families and society.

RECOMMENDATION 05

Where necessary, states should develop effective prisoner file management systems in accordance with the Nelson Mandela Rules, to help ensure that detainees and prisoners spend no longer in custody than is strictly required by law and in order to inform the planning and resourcing of criminal justice and penal institutions.

New research: Bail in 45 jurisdictions

During 2015, Penal Reform International (PRI) initiated a comparative research study into how bail works as an alternative to pre-trial detention. A survey questionnaire was distributed with generous assistance from Advocates for International Development (A4ID)⁴⁴ with responses received from 45 jurisdictions.⁴⁵

In most countries which responded, release on bail requires the payment of a surety either by the defendant or a third party guarantor. In Thailand, for example, persons with a relationship to the defendant can provide guarantees only if they have professional status (such as government officials, MPs or lawyers). The system in the Czech Republic and Slovakia allows churches and other public interest organisations to act as guarantors.

In a few countries, including the USA and Nigeria, third parties can be related or unrelated to the accused, so commercial bail bondsmen or agents can provide personal guarantees that the accused will not abscond. A bail agent generally charges the defendant a non-refundable fee – usually ten per cent of the bail – to post a bond and bail them out. Defendants do not get that fee back even if they are found innocent. In exchange for the fee, bail agents promise courts that they will track down defendants who fail to appear for their next court date. If the defendant cannot be located, the agent is responsible for paying the entirety of the bail.

In most other countries' court systems, commercial bail is not permitted.

In some countries, the law sets a minimum and maximum amount of a surety. In the Czech Republic, for instance, it is approximately USD\$400; in Brazil, for offences carrying a term of imprisonment of more than four years, it is between ten and 200 times the minimum wage. Practice varies as to whether the whole sum must be lodged with the court. In Ireland, a third of the amount set as surety must be paid into court with the remainder subject to forfeiture in the event of non-appearance.

Bail can be provided in various forms. In Armenia, bail may consist of money, securities and other valuables, with real estate posted with the court's permission.

While money bail is seen as necessary to provide a reason for a defendant to meet their obligations to participate in the judicial process, it has been argued that in the USA increasing reliance on bail has the effect of jailing poor defendants, even if they committed minor crimes and are unlikely to attempt to flee justice, while allowing wealthier defendants to go undetained regardless of the risk they pose to public safety.

Some countries do not have a system of bail, for example the Netherlands where despite a relatively mild penal climate – the imprisonment rate is 75 per 100,000 – about 40 per cent of the prison population on any one day is made up of pre-trial detainees. Finland is currently considering the introduction of bail in the light of an increase in numbers held on remand.

Sentenced prisoners

The UN High Commissioner for Human Rights stated in 2015 that, 'proportionate sentencing is an essential requirement of an effective and fair criminal justice system'.⁴⁶ His report went on to illustrate how countries had reformed their laws to meet the requirement of proportionality, for example by reducing minimum and maximum penalties (Moldova),⁴⁷ or decriminalising petty crimes and reducing criminal sanctions for economic offences (Ukraine),⁴⁸ thereby reducing the total prison population. Other examples of the introduction

of milder sentences have been seen in Ireland where, in April 2014, the Fines (Payment and Recovery) Act 2014 was adopted with the aim of reducing, to the greatest extent possible, the use of imprisonment as a sanction for fine default.⁴⁹

2014 also saw Romania bring into force legal provisions which have reduced sentence lengths and the range of offences which are punishable by prison.⁵⁰ In the USA, states have undertaken a range of measures to make sentences more proportionate,

including reducing the sentence lengths for drug possession cases, minor thefts and parole breaches.⁵¹

In a number of jurisdictions, opportunities for early release from prison have been extended so that the actual time served in prison is reduced. In the Philippines, the Bureau of Jail Management and Penology, 'has implemented and supported many early-release measures to reduce overcrowding. These have ranged from release on recognizance, probation, parole and executive clemency – to programmes to monitor and help

expedite court cases and secure needed documents from the courts for speedy disposition of inmates' cases'.⁵² Kenya has, for the first time, introduced legislation to allow certain prisoners to earn a third remission (other than those serving life sentences or sentenced for robbery with violence). Research has continued to show the benefits of allowing prisoners to transition back into the community in this way. A New Zealand study has shown that intensive psychological treatment and early release to parole is more effective at reducing reoffending among high risk prisoners than serving out the full prison sentence.⁵³

Drug-related offences

The 2015 edition of *Global Prison Trends* mapped out the links between drugs and imprisonment in a special supplement to mark the forthcoming UN General Assembly Special Session on drugs in 2016, highlighting in particular issues around proportionality of responses. It highlighted how, in many countries, drug-related offences account for a large and growing proportion of people in prison, particularly women. This has been confirmed in a recent study, which found that a third of admissions to prison in the USA are for drug offences.⁵⁶ The UN Special Rapporteur on health has written as part of the process for the 2016 UN General Assembly Special Session (UNGASS) that, 'as drug control enforcement fuels rising incarceration rates, overburdened prison systems are unable to provide acceptable standards of care and living in both pre- and post-conviction environments'.⁵⁷

There has been growing concern about the use of the death penalty for drug offences. In recent years, approximately 600 people are known to have been executed annually for drug-related offences. Credible estimates, however, suggest there may be 1,000 unreported executions. The vast majority of known executions have taken place in a small handful of countries, notably China, Iran and Saudi Arabia. Many hundreds

Concern has continued to grow about the imposition of life sentences, in particular those that do not allow for the possibility of parole or other form of early release.⁵⁴ A major study is underway about the use of the life sentence globally.⁵⁵

RECOMMENDATION 06

Countries should assess the proportionality of criminal sanctions and consider the possibility of reducing maximum sentence lengths, in particular for non-violent crimes.

more are believed to remain on death row in these countries and in Malaysia, Indonesia, Pakistan and Thailand. In 1979, only around ten countries prescribed the death penalty for drugs; today it has risen to at least 33. In at least ten of these countries, the death penalty is a mandatory punishment for drug-related charges.⁵⁸ A large number of the 966 people executed in Iran in the 2015 were drug offenders.⁵⁹ Indonesia executed 14 drug offenders in the same period compared with just four in the previous seven years.⁶⁰ The death penalty is considered by the UN Special Rapporteurs on extrajudicial, summary or arbitrary executions and on torture to be a violation of international law.⁶¹ The UN Human Rights Committee has on numerous occasions found that drug-related offences do not meet the criterion of 'most serious crimes',⁶² a finding reiterated in 2007 by the then UN Special Rapporteur on extrajudicial, summary or arbitrary executions,⁶³ in 2009 by the then UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,⁶⁴ and in 2013 by the UN Secretary-General.⁶⁵ Both the Special Rapporteur on extrajudicial executions and the Special Rapporteur on torture have repeatedly reiterated this position since then, most recently on World Day against the Death Penalty in October 2015.

Momentous report on death penalty in India

In a report dated August 2015, the Indian government was recommended by its own law reform experts to abolish the death penalty for ordinary crimes.

Based on a reference from the Supreme Court⁶⁶ to, 'study the issue of the death penalty in India to allow for an up-to-date and informed discussion and debate on the subject',⁶⁷ the twentieth Law Commission concluded an exhaustive study of the death penalty by recommending abolition in all cases except 'terrorism related offences and waging war'.⁶⁸ It found 'that there is no evidence of a link between fighting insurgency, terror or violent crime, and the need for the death penalty'⁶⁹ but nonetheless recognised the fears among many lawmakers that 'abolition of death penalty for terrorism related offences will affect national security'.⁷⁰ It therefore stated that it, 'does not see any reason to wait any longer to take the first step towards abolition of the death penalty for all offences other than terrorism related offences'.⁷¹

The Commission is part of the Ministry of Justice and is tasked with helping the government review and reform the law. This is only the second time it has reviewed the death penalty: it noted that both India and the world had changed since 1967, when it had warned against abolition. The exhaustive 242-page report covered the history and practice of the death penalty in India, arguments for and against abolition, and the international trends that have moved away from capital punishment. It concludes that the death penalty 'fails to achieve any constitutionally valid penological goals'⁷² and supports abolition for most crimes.

The Law Commission report received wide coverage in India and abroad. However, the Indian Home Ministry rejected the call for abolition, citing the threat of terrorism. Despite this, the seniority of the Law Commission, the turn in opinion since it last considered the death penalty, and the comprehensiveness of its report render it a significant development in India and beyond.

UN Special Session on Drugs

On 19-21 April 2016, the United Nations General Assembly convened a Special Session on drugs in New York.⁷³ This was the third such forum held on drug-related policies, following Special Sessions in 1990 and 1998.

The third session had been planned for 2019, as set out by the 2009 Political Declaration and Plan of Action on drugs. However, a growing sense of urgency to discuss the direction of global drug policies led to the decision to convene a session three years earlier than planned. Initiated by the governments of Mexico, Guatemala and Columbia, 95 UN member states eventually supported the call to discuss global drug control and options for alternative strategies in 2016.⁷⁴

The Special Session consisted of a general debate and round tables conducted in parallel with the plenary. A summary of the deliberations in the five round tables was presented at the plenary by the Chairs. The five round tables covered the following issues:⁷⁵

- drugs and health
- drugs and crime
- human rights, women, children and communities
- new challenges, threats and realities
- drugs and (alternative) development.

Negotiations on the outcome document were held at the UN Commission on Narcotic Drugs in Vienna.

A Civil Society Task Force was established in order to better enable participation by NGOs, farmers, drug users and academia in the debate.

Besides capital punishment, the length of terms of imprisonment for drug offences continue to be particularly harsh globally. In Bolivia, the maximum sentence for narcotics trafficking (25 years in prison) is higher than what is stipulated for homicide (20 years) and rape (15 years). The situation is similar in Mexico, where the maximum penalty for trafficking is 25 years in prison and 24 years for homicide.

The majority of people deprived of liberty for drug-related crimes are involved at a low level. The UNODC estimates that offences related to drug possession comprise 83 per cent of total global drug-related offences.⁷⁶ According to the report by CELS,⁷⁷ in Colombia, approximately two per cent of all prisoners convicted of drug crimes are medium- or high-ranking figures. That means that the remaining 98 per cent are people who did not have, or were not proven to have, significant participation in drug trafficking rings. In Mexico, the study found that 75 per cent of people detained for drug crimes were detained with small quantities.⁷⁸ Criminal offences relating to drug trafficking, however, have remained relatively stable over time,⁷⁹ and the vast majority of traffickers in prison are low-level offenders.⁸⁰

There is, however, a discernible trend towards reducing the harshness of the criminal justice response to drug use and possession (if not trafficking).

Sentence lengths have been reduced in Ecuador and in the USA, where the Smart on Crime initiative has led to changes in prosecution practice, amendments to mandatory sentencing regimes, and the expansion of alternatives to prison.⁸¹ More than twenty jurisdictions have decriminalised or legalised possession of small quantities of drugs, including Uruguay and several US states.⁸²

Early evidence from the US state of Colorado has found no increase in young people's cannabis use or in road fatalities or crime. There have been a number of positives, including: 'a dramatic drop in the number of people arrested for cannabis offences; a substantial contraction in the illicit trade as the majority of supply is now regulated by the government; and a significant increase in tax revenue, which is now being spent on social programmes'.⁸³ A range of other countries are reportedly considering the decriminalisation of marijuana (eg. Ireland),⁸⁴ although there have been fewer signs of change in South East Asia. In the US state of Vermont, the Commissioner of Corrections has reportedly called for the decriminalisation of possession of all drugs.⁸⁵

Within the criminal justice system, a lively debate has emerged about the suitability of Drug Courts as a way of dealing with offenders who suffer from substance use problems. These are

specialised criminal courts that can order offenders to undertake treatment under threat of punishment if they commit offences. While evidence about their effectiveness is mixed, their approach has been criticised as an inappropriate way of tackling what is fundamentally a health problem.⁸⁶ Dissuasion Commissions (Comissões para a Dissuasão da Toxicodependência) established in Portugal offer an alternative model.⁸⁷ These commissions comprise a social worker, a psychiatrist and a lawyer and can impose small fines and other penalties, as well as refer people who have consumed drugs to community-based or residential treatment.

It is not only consumption of illegal drugs that can lead to imprisonment. 2015 has seen increases in prison populations in Kenya following a crackdown on illicit alcohol. Large numbers of women have been sent to prison as a result of being unable to pay the large fines imposed on them for brewing unlicensed drinks.⁸⁸ The development of new psychoactive substances (NPS), which have similar effects to controlled substances, continues to pose challenges for lawmakers and criminal justice practitioners. Seventy countries from all regions have reported the emergence of NPS in their drugs market.⁸⁹ The UK government's plans to outlaw all such substances were considered to be rushed by a parliamentary committee,⁹⁰ but there is widespread concern about the impact that NPS are having in UK prisons. There has been a sevenfold increase in the numbers of UK prisoners seeking help for addiction between 2014 and 2015, NPS was implicated in 19 deaths in prison between 2012 and 2014, and the Chief Inspector of Prisons considers the trade in these substances to lead to debts, intimidation and gang violence.⁹¹

RECOMMENDATION 07

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

New research: How many countries permit prisoners to vote?

The right to vote for prisoners is protected under international law. The UN Basic Principles for the Treatment of Prisoners establish that all prisoners 'retain the human rights and fundamental freedoms' set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR).⁹² Although not an absolute right, conditions to the exercise of this right need to be objective and reasonable, and the length of the suspension of the right to vote should be proportionate to the offence and the sentence.⁹³ Pre-trial detainees should not be excluded from exercising their right to vote⁹⁴ as they have to be considered innocent unless and until proven guilty.

In a 2015 study⁹⁵ for PRI, Advocates for International Development (A4ID) reviewed the extent of (dis)enfranchisement of detained persons in 63 jurisdictions, and, where applicable, the conditions under which voting rights were restricted. While only occasionally used as sanction on its own –

generally for 'election-related' offences – in approximately 45 per cent of the jurisdictions, conviction to imprisonment is automatically followed by disenfranchisement (eg. Armenia, Morocco⁹⁶).

The study showed that in 29 jurisdictions (eg. Kyrgyzstan, Lebanon, New Zealand) prisoners who are convicted and serving a prison sentence are not entitled to vote (a so-called blanket ban).⁹⁷

In the approximately 55 per cent of the jurisdictions where prisoners have the right to vote in principle, restrictions and/or conditions still apply, generally based on severity of or type of offence and/or the length of the sentence imposed. In some countries, restrictions are related to the type of election (eg. in the Czech Republic, Latvia and Ukraine, prisoners may not be entitled to vote in local elections on the grounds that they are 'not affected by local issues').

In only a small number of jurisdictions do legislators or the judiciary offer a rationale for restricting or completely revoking the right to vote, which is generally that those who have

committed crimes against the public should not be allowed to determine or participate in political processes.

The study indicates that participation by prisoners can be low even where they do have the right to vote.⁹⁸ Practical difficulties, such as limited provision of information on how to register to vote, complicated procedures and failure by government or prison management to facilitate voting, may be contributing factors.

Generally, people serving non-custodial sentences are entitled to vote. However, in some jurisdictions (eg. Belgium, Ethiopia, Tunisia), which allow for disenfranchisement to be handed down as a secondary sentence, or in jurisdictions (eg. Brazil, Kuwait) which do not distinguish between those deprived of liberty or those serving alternative sentences, disenfranchisement can also affect those serving a non-custodial sentence.

In some jurisdictions (eg. the majority of US states, Belgium, Luxembourg, Kuwait, Poland), voting rights may not be automatically reinstated upon release from prison. In Luxembourg, for example, a prison sentence of more than ten years automatically entails a lifelong disenfranchisement.

PART 4

Prison populations

Women

The 2015 Doha Declaration proposes that states promote gender-specific measures as an integral part of policies on crime prevention, criminal justice and the treatment of offenders, 'including the rehabilitation and reintegration of women offenders into society, taking into consideration the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders' (the Bangkok Rules).⁹⁹

According to the ICPR World Female Imprisonment List, which compiled the latest data available in July 2015, more than 700,000 women and girls are held in penal institutions throughout the world.¹⁰⁰

The ICPR data shows that the number of women and girls in prison has increased by about 50 per cent since the year 2000, a period in which the general world population rose by just 18 per cent. Increases have been particularly marked in Asia, Oceania and the Americas, while in Africa the rise in the female prison population was less than the increase in the population of the continent. The data identifies particularly sharp increases in Guatemala and El Salvador, Brazil and Colombia, Cambodia and Indonesia. According to Brazil's Justice Ministry, the country's female prison population increased by 567 per cent between 2000 and 2014 (from 5,601 to 37,380). Sixty-eight per cent of female prisoners in 2014 were serving time for drug offences, compared with 25 per cent of their male counterparts. Nearly two-thirds of them are of African descent.¹⁰¹

A large proportion of women in prisons worldwide are mothers. This includes 87 per cent in Brazil, 80 per cent in the United States, 66 per cent in the

United Kingdom, and 82 per cent in Thailand. In November 2014, there were 267 pregnant women in the Thai prison system and 256 children living in prison with their mothers.¹⁰² A survey of 194 women in Ugandan prisons (approximately ten per cent of the total number) found that 92 per cent of the women had children, totalling 276 children, 35 of whom were living with their mothers in prison.¹⁰³

Canada has seen a sharp rise in the number of aboriginal women in prison – they represent 35 per cent of the prison population¹⁰⁴ but less than five per cent of the general population. Similar levels of overrepresentation of Aboriginal women are seen in Australia where former Prime Minister Kevin Rudd warned in 2015 that the country is facing an Indigenous incarceration epidemic.¹⁰⁵ More than half of women prisoners in New Zealand were of Maori origin in 2013 despite the fact that people of Maori origin comprise only 14 per cent of the population as a whole.¹⁰⁶

In many countries, a majority of women in prison are charged with or convicted of crimes that are not violent. In China, for example, the recent rise in imprisonment is due to increased involvement in drugs, property crime and fraud.¹⁰⁷

There are exceptions to this general trend. In Uganda, for example, a recent study of women prisoners found unusually high rates of women charged with or convicted for murder, manslaughter or assault (57 per cent), a rate broadly similar to male offenders for these crimes.¹⁰⁸ It is worthy of note that 74 per cent of the women with such convictions reported a background of domestic abuse.¹⁰⁹

In other respects the findings of the Uganda survey are familiar. 76 per cent of women surveyed identified themselves as poor or very poor; 32 per cent had never been to school. As a result of their imprisonment, 43 per cent of women had lost their job, 35 per cent their home and 31 per cent had had their children taken away.¹¹⁰

While legislative and judicial attitudes towards female offenders who commit violent offences vary significantly, only a few jurisdictions appear to recognise this explicitly. Most jurisdictions rely on general provisions of self-defence, 'temporary insanity' or provocation to capture a history of abuse among female defendants, although such defences have proved to be ill-adapted to the situation of a woman suffering from 'battered woman syndrome' or 'slow-burn reaction'.¹¹¹

Following the adoption of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules),¹¹² there has been a growing recognition of the need for a distinctive approach to women in the broader criminal justice system. Trauma-informed approaches, which recognise that women have in many cases suffered from violence or abuse, are being increasingly recognised as essential to the humane and effective assessment and treatment of women in the criminal justice system.¹¹³

Practical measures that have taken place in 2015 include Cambodia's decision to release a number of pregnant women or those who have recently given birth.¹¹⁴ In Scotland, plans for a 300-place women's prison were abandoned in 2015. Instead a new 80-place unit will be built for the

The number of women and girls in prison has increased by about 50 per cent since the year 2000.



Pre-trial detention centre, Kyrgyzstan.
Photo © Karla Nur 2014

New research: Criminal justice approaches to women who kill in response to domestic violence

Where women are imprisoned for violent offences, research shows there is often a history of domestic and sexual abuse, which, in many cases, motivates or is a significant factor in the commission of the offence. A 2015 study for PRI by Linklaters LLP¹¹⁵ of nine jurisdictions reviewed the legislative framework (at state and country level) and the judicial treatment for cases where women have committed violent offences against their abuser, following protracted domestic abuse. The jurisdictions reviewed were Australia, Brazil, Hong Kong, India, Japan, Mexico, Poland, Spain and the USA.¹¹⁶

With a few exceptions at the state level, there is no specific legislative basis allowing for a history of abuse to be considered as a mitigating factor in the jurisdictions reviewed.¹¹⁷ In practice, all of the nine jurisdictions considered recognise a female defendant's right to present evidence of a history of abuse either as a factor in terms of liability in making a plea under more 'traditional' defences (such as self-defence, provocation, duress or temporary insanity which

can be total defences or partial defences reducing a murder charge to manslaughter) or as a mitigating factor for sentencing.

In all nine jurisdictions, women had sought to draw on these more 'traditional' defences and in some instances evidence of abuse was a factor or was conclusive in establishing such a defence (for instance, in the US state and federal courts and in India). However, most defences prove to be ill-adapted to the situation of woman in these situations, who are often suffering from battered woman syndrome or slow-burn reaction.¹¹⁸

In a small number of jurisdictions considered, most notably a number of Australian states, there have been legislative amendments to the criminal law to facilitate more lenient treatment in these cases. These amendments take various forms, from introduction of new defences specifically available to victims of abuse (eg. Queensland, Australia), to amendment of existing defences so that they are better adapted to dealing with victims of abuse (eg. Victoria, Australia).

In terms of sentencing, while most jurisdictions give courts discretion to consider an experience of violence under their general sentencing principles, none explicitly require a history of abuse to be considered.

The study found that the weight given to a history of abuse by the courts in sentencing varied widely. For example, in India, courts have accepted the presence of battered woman syndrome to reduce the sentences of women charged with violent crimes, but in Spain a history of abuse is not in itself a mitigating factor and will only impact sentencing indirectly through its effect on liability – ie. where the court finds it to form part of one of the three available statutory defences (temporary mental disorder, self-defence or insurmountable fear).

The study concluded that in the absence of a specific legislative (or quasi-legislative) basis for a fair and proportionate response to women who commit violent offences against their abuser, consideration is left to the discretion of judges and juries. This raises the risk that evidence of abuse is not considered or treated inconsistently between cases, particularly in legal systems that do not recognise the doctrine of precedent.

The study recalled Rule 61 of the UN Bangkok Rules which requires that courts have the power to consider mitigating factors such as lack of criminal history and typical backgrounds of women offenders – including the high proportion of victims of sexual and domestic abuse among women offenders.

most serious offenders. Five smaller regional units, each for 20 women, will also be constructed where help will be offered with problems relating to drugs, alcohol and domestic abuse.¹¹⁹ The size and scale of these units are in line with the principles which should inform custodial units for women, which should be different from those for men, emphasising accommodation that supports relationships and promotes a positive sense of self.¹²⁰

RECOMMENDATION 08

In line with the UN Bangkok Rules, women should be diverted from prison if at all possible, with distinct arrangements made for those for whom prison is unavoidable, including design features in prisons which reflect the distinctive needs of women.

Children and young persons

The UN Special Rapporteur on the Independence of Judges and Lawyers stated in 2015 that, 'because of their unique vulnerability, children in conflict with the law require higher standards and broader safeguards to be applied to them, particularly at the sentencing stage in criminal proceedings'.¹²¹ She argued that judges and prosecutors must be aware of the specific negative effects of criminal sanctions on children, in particular those involving deprivation of liberty: prosecutors and judges must primarily consider the best interests of the child when requesting and imposing sanctions on children and this includes making an individual analysis of the circumstances of both the offence and the child. Prosecutors and lawyers should always first consider alternative

measures to detention, such as care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programmes, to ensure that children are treated with full respect for their needs and rights, as well as for their well-being and development'. The Special Rapporteur has also called on, 'the competent authorities to be extremely vigilant when imposing pre-trial detention on children, which, as in instances of deprivation of liberty ordered at the end of a trial, they must justify in writing, having shown that they took into account the child's special needs, rights and best interests'.¹²²

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has highlighted that, 'children deprived of their liberty are at a heightened risk of violence, abuse and acts of torture or cruel, inhuman or degrading treatment or punishment'. He further

stated that, 'even very short periods of detention can undermine a child's psychological and physical well-being and compromise cognitive development. Children deprived of liberty are at a heightened risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder'. Finally, he noted that a number of studies had shown that, 'regardless of the conditions in which children are held, detention has a profound and negative impact on child health and development'.¹²³

The impact can be particularly damaging for girls. The Special Representative of the UN Secretary-General on Violence against Children has reported that, 'girls in detention are not only vulnerable to sexual violence. Under certain prison regimes, physical abuse and punishment is a daily occurrence, and in countries where inhuman forms of punishment are still condoned, girls may be sentenced to flogging or death by stoning or lashing on the grounds of perceived immoral behaviour'.¹²⁴

As a result of their vulnerability, children in detention are considered by the Special Rapporteur on torture to need specific attention and modified standards in relation to such matters as the disciplinary system and use of segregation, opportunities for rehabilitation and the training of personnel.¹²⁵

Developments in the treatment of children have been mixed. The Indian Juvenile Justice Act has been changed to enable children aged between 16 and 18 years old who have been accused of heinous crimes to be tried as adults.¹²⁶ Juvenile Justice Boards will determine whether the child ought to be treated as a 'child'

or 'adult'. Brazil has also approved a constitutional amendment that reduces the age of criminal responsibility from 18 to 16 years of age.¹²⁷

In the USA, meanwhile, reforms to the way children are treated by the criminal justice system have dramatically cut the number of young people in state prisons.¹²⁸ A new draft law in Cambodia aims to provide rehabilitation opportunities for children, rather than simple prison sentences.¹²⁹ A new juvenile justice code in Georgia has established specialised police prosecutors and courts and reduced lengths of detention as well as limiting a child's criminal record.¹³⁰

As far as institutions for children are concerned, in Europe, the European Committee for the Prevention of Torture (CPT) has noted 'progress in ensuring that juveniles who are sent to prison are not held together with adults but in juvenile-only units', but the quality of regimes in many of these units are still impoverished.¹³¹ The use of pre-trial detention and the use of isolation for minors in Sweden has been criticised by the UN Committee against Torture.¹³² An internal report at a juvenile prison in Izmir, Turkey, has exposed sexual abuse and bullying of minors by older prisoners.¹³³

Outside Europe, a Zambian Health Ministry spokesman has announced that the government is building and renovating cells for juvenile prisoners at prisons across the country so that juveniles will no longer be held with adult prisoners.¹³⁴ In Dubai, the Public Prosecution and Dubai Courts are reportedly working with public and government institutions to replace prison sentences with vocational training.¹³⁵

Non-prison institutions can be a cause for concern in many countries too. Nearly 40 per cent of juvenile offenders in India live in conditions 'like or even worse than' adult prisons, according to a scathing judicial report that studied the state of children's homes across the country.¹³⁶ A PRI study in Central Asia found that conditions in institutions for children in conflict with the law were poor and children were subject to violence inflicted by other children or staff. A quarter of children said they had been abused by staff, and significant numbers of children are held in custody longer than domestic law permits.¹³⁷

There appears to be a growing consensus that adolescence continues well beyond a person's 18th birthday. Some countries already treat young people up to 21 as juveniles (eg. Japan, where the age range is 14-20 years). The work of the Transition to Adulthood Alliance (T2A) in the UK has proved influential. Drawing on research from criminology, neurology and psychology, T2A argues that young adults are a distinct group with needs that are different both from children under 18 and adults older than 25. T2A promotes a distinctive approach by police, prosecutors, courts, probation and prison systems, which takes account of the developmental maturation process that takes place in this age group.¹³⁸

RECOMMENDATION 09

As well as seeking to ensure that children under 18 are kept out of institutions as far as possible, countries should put in place distinct arrangements for young people over the age of 18 who are still developing towards adult maturity, which is often not acquired until young people reach their mid-twenties.

Elderly prisoners

In many countries, the proportion of elderly prisoners has continued to increase. In the USA, the number of older inmates grew rapidly in 2014, continuing a trend that translates into higher federal and state prison healthcare spending. New federal data shows that, from 1999 to 2014, the number of state and federal prisoners aged 55 or older increased

by 250 per cent. This compares with a growth rate of only eight per cent among inmates younger than 55, according to the Bureau of Justice Statistics, which also reported that the US prison population fell in 2014 to its lowest level since 2005. In 1999, inmates aged 55 and over – a common definition of older prisoners

– represented just three per cent of the total population. By 2014, that share had grown to ten per cent.¹³⁹

In the UK, older prisoners are the fastest growing segment of the prison population.¹⁴⁰ In part, this is because longer sentences see prisoners age within the prison system, although in Japan older people reportedly commit

more crimes than teenagers and sharp rises in crime by older people have been found in South Korea. Experts suggest a combination of isolation and poverty is to blame, and there have been calls for the government to do more to support people later in life.¹⁴¹

A Swiss study has argued that, 'the steady increase of ageing prisoners requires an active search for ethically acceptable solutions, in line with the principle of equivalence of care'.¹⁴²

An Australian study has found that, '[o]lder prisoners are characterised by different issues compared to the overall prisoner population, and present unique challenges across a number of domains, including physical and mental health needs, costs associated with incarceration, vulnerability to victimisation, functioning within the prison environment, program

delivery and release planning. Such challenges must be managed in the context of complex prison systems, within which operational, safety, health and rehabilitation issues, among others, must be both practically and strategically managed by both administrators of individual prisons and government corrections departments'.¹⁴³

In some countries, separate facilities have been created for older prisoners. In Hong Kong, for example, an elderly unit responds to the deterioration in the physical functioning of older prisoners by displaying notices in large print, providing warm showers throughout the year, and offering barrier-free access and ramps, easy access to bathrooms and toilets, wheelchairs, walking frames and crutches with handrails for support.¹⁴⁴

While a number of countries have developed policies on compassionate release for prisoners who are suffering from a terminal illness, these are not always flexible enough to respond to sudden changes in the health status of prisoners.¹⁴⁵ Older prisoners – men over 50 and women over 55 – were one of the categories eligible for a large-scale prisoner amnesty in Russia in May 2015.¹⁴⁶

RECOMMENDATION 10

Countries should collect data about the numbers of elderly prisoners and their needs as a precursor to developing appropriate placement options, including the possibility of compassionate release or alternative accommodation outside prison.

Foreign national prisoners, minorities and Indigenous peoples

In July 2015, the UN Special Rapporteur on minority issues reported on the way minorities are treated in criminal justice systems around the world.¹⁴⁷ The report found that, whether through intentional prejudice or indirect discrimination, minorities often face a greater likelihood of a prison sentence than of conditional release, greater likelihood of longer terms of imprisonment or a sentence of life imprisonment without possibility of parole, and greater likelihood of imposition of the death penalty. Within prisons, treatment or conditions are poorer than those for other groups, often because of a failure to respect standards relating to religious and cultural practices, customs as regards food, relations with families, and the assistance of an interpreter.

The Special Rapporteur concluded that, 'failure to accommodate a convicted minority prisoner's particular needs may cause so much additional suffering, compared with that of

non-minority prisoners in an equivalent position, as to render the punishment discriminatory and a violation of equality before the law. Such punishment could constitute cruel, inhuman or degrading punishment or even torture.'

Canada and Australia continue to see large overrepresentation of Indigenous peoples in their prisons. In 2013-14, Aboriginal and Torres Strait Islander children were 26 times more likely to be imprisoned than non-Indigenous children in Australia.¹⁴⁸ As far as adults are concerned, the UN has called for the abolition of Australia's mandatory sentencing laws to reduce Indigenous imprisonment rates. New South Wales is developing a specialist prison to rehabilitate Aboriginal offenders. Kariang Correctional Centre will provide four-month courses for 50 young adult men with sentences of under two years, with support of Aboriginal elders and other community members.¹⁴⁹ Similar initiatives have been introduced in Canada.

Foreign nationals continue to be overrepresented in the prison systems of many countries, a trend that has almost certainly grown as a result of large numbers of migrants leaving parts of the Middle East and Africa due to conflicts in these regions.¹⁵⁰ Drug-related offences continue to account for a disproportionate number of foreign nationals in many prison systems. It is estimated, for example, that about 600 South Africans are in prison for such offences around the world.¹⁵¹

In Europe, the Prisoner Transfer Agreement between EU countries does not yet seem to have led to many offenders being returned to their home country. Nor have there yet been any cases making use of the European Supervision Order, which allows for supervision measures imposed on a defendant as an alternative to pre-trial detention to be supervised in another Member State.¹⁵²

TB prison hospital, Kazakhstan.
Photo © Karla Nur 2014

Given the levels of overcrowding in many prisons, both prisoners and staff are at high risk of contracting infectious diseases.



A number of states have signed bilateral treaties to allow for foreign nationals to be transferred back to their country of origin. Poor prison conditions in their countries have often acted as an obstacle to such transfers. In order to address such concerns, the UK has recently announced that it will fund the

USD\$38 million construction of a prison in Jamaica to house prisoners who are returned from the UK.¹⁵³

Some countries have designated particular prison establishments, or parts of prisons, for foreign nationals. One such prison opened in South Korea in 2010.¹⁵⁴

RECOMMENDATION 11

States must ensure that courts do not apply harsher punishments by reason of an accused person's membership of a minority ethnic group or status as a foreign national.

Health issues

The Nelson Mandela Rules make clear that the provision of healthcare for prisoners is a state responsibility and that prisoners should enjoy the same standards of healthcare that are available in the community, and should have access to necessary healthcare services free of charge without discrimination on the grounds of their legal status. Moreover, healthcare services should be organised in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence.

It is widely accepted that these requirements are better met if prison health is administered by the ministry of health rather than the ministry responsible for prisons. Finland, Azerbaijan and Moldova have recently transferred health services in prison to ministries of health, and Kyrgyzstan has decided to do so as well.¹⁵⁵ However health services are organised, concentrations of disease and ill health remain substantially higher in prisons than in the general population. While global data is not available, a number of countries have reported an increase in the numbers of prisoners dying in prison, including the USA, UK, Belgium and Turkey. Nearly 2,000 people died in Syrian prisons of torture, starvation and lack of medical treatment in 2014, according to the Syrian Observatory for Human Rights. The British-based monitor said it had documented 1,917 deaths in Syrian prisons since the start of 2014, among them 27 children under the age of 18 and 11 women.¹⁵⁶

Given the levels of overcrowding in many of the world's prisons, infectious and contagious diseases represent a constant hazard. The prison systems in West Africa appear

to have protected themselves effectively from the Ebola outbreak in 2014 (although there are reports that breaches of public health edicts led to increasing use of detention, including for women). Liberia released detainees in order to reduce overcrowding and the associated risk of contagion in prisons.¹⁵⁷

Tuberculosis remains a threat to prison and public health, although a comprehensive and sustained strategy can achieve results as in Kyrgyzstan, where morbidity fell between 2011 and 2014.¹⁵⁸ Doctors in Mumbai have been concerned about an outbreak of drug resistant tuberculosis in prisons.¹⁵⁹ The UNODC's 2015 World Drug Report suggests that injecting drug use in unsafe conditions, 'may explain why the prison environment can be characterized by high levels of infectious diseases, particularly HIV but also hepatitis C and tuberculosis, and by limited access to prevention and treatment, which increases the risk of contracting blood-borne viruses'.¹⁶⁰

In an important study on the impact of the world drug problem on the enjoyment of human rights, the UN Commissioner for Human Rights endorsed the statement by the Special Rapporteur on the right to health that, 'if harm reduction programmes and evidence-based treatments are made available to the general public, but not to persons in detention, this contravenes the right to health'.¹⁶¹ The study found that in 2014, while opioid substitution therapy was available in 80 countries, only 43 countries provided such therapy in prisons. According to Harm Reduction International, needle exchange provision in prisons has significantly decreased since 2012, with only eight countries globally providing this harm reduction intervention.¹⁶²

Thailand has established drug-free prisons ('white prisons') for prisoners aiming to address their drug addictions.¹⁶³

Mental illness also remains an enormous problem in prisons in many parts of the world. Attention has been drawn to the fact that, in the USA, the misuse of force against prisoners with mental health problems is widespread and may be increasing.¹⁶⁴ Western Australia has opened the first Disability Justice Centre to provide 'civilised treatment' for prisoners with mental disorders. The centre is the result of the four-year campaign to create a 'declared place' for people considered unfit for standard jails. The Mentally Impaired Accused Review Board can now decide to send defendants with mental health problems to the new justice centre to be housed and supported.¹⁶⁵

RECOMMENDATION 12

States should increase their attention to prison healthcare, in light of the negative impact of poor physical and mental health on rehabilitation prospects as well as the impact on public health, especially on the spread of infectious diseases.

PRISON STAFF: OVERWORKED AND UNDERPAID?

Working in a prison requires specific skills, but prison personnel are often poorly paid, under-trained and experience high levels of work-related stress and violence.

This special feature gathers information and data from different countries about prison staff recruitment, pay and conditions, training and issues relating to their health, safety and well-being.

The day-to-day experience for prisoners around the world is very heavily influenced by the staff who work in the prison establishments in which they are detained. The quality of life in prison is often a function of the number of staff, the role they play and the attitude with which they approach their work.

This is why the revised UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) emphasise the need for, 'careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends'.¹

In all countries, working in prisons is a demanding job. This is illustrated, for example, by figures published by the Bureau of Labor Statistics in the USA, according to which, 'correctional officers have one of the highest rates of injuries and illnesses of all occupations' because of exposure to violence and contagious diseases in the workplace.²

However, work in prisons often goes unrecognised despite the vital role of prison staff in the achievement of the aims of criminal justice, notably the rehabilitation of offenders, as well as in the meeting of prison standards.

The work of prison officers varies greatly between prisons, countries and contexts. In some places, prison officers rarely enter prisoners' areas, while in others

they build positive relationships with prisoners and use their interpersonal skills, discretion and authority to diffuse tensions without using force.³ The aim of this section is to summarise key issues in respect to prison staff and to highlight the importance of prison systems making adequate provision for sufficient numbers of personnel, as well as their selection, training, and working conditions.

International standards

The Nelson Mandela Rules require that staff should be full-time civil servants and receive appropriate pay with training before starting work and during their career.⁴ The recent review has also updated provisions on prison staff training.⁵ Yet, there are still relatively few international or regional standards relating to personnel.

The adoption by the Council of Europe of a Code of Ethics for Prison Staff in 2012 was therefore an important development. It

contains guidelines for prison staff conduct covering accountability, integrity, respect for and protection of human dignity, care and assistance, fairness, impartiality, non-discrimination, cooperation, confidentiality and data protection.⁶

According to the Code of Ethics, the roles and duties of prison staff should be different from those of the police, military, prosecution and judiciary in respect to prisoners. They also make clear that duties of staff go beyond those required

of mere guards, and should take account of the need to facilitate the reintegration of prisoners into society after their sentence has been completed through a programme of positive care and assistance. The Inter-American Commission on Human Rights similarly requires that 'the personnel of places of deprivation of liberty shall receive initial instruction and periodic specialized training, with an emphasis on the social nature of their work' (ie preparing prisoners for release).⁷

Prisoner-staff ratios

As the United Nations Office for Project Services (UNOPS) has observed, '[n]eedless to say, management of a prison becomes more difficult with lower ratios of staff to prisoners, as the risk of incident increases'.⁸ The US state of Oklahoma, which has the highest

rate of homicide among prisoners nationally (14 per 100,000 prisoners compared to a national average of four), also reportedly has the lowest guard-to-prisoner staffing ratio in the country.⁹

Inadequate numbers of staff hamper the ability of prison officers to carry out their functions and create an insecure environment within prisons. Norms in the Americas therefore make clear that '[s]ufficient and qualified personnel shall be available to

ensure security, surveillance, and custody, as well as to attend to medical, psychological, educational, labor, and other needs'.¹⁰ In several countries, the European Committee for the Prevention of Torture (CPT) has highlighted both, 'a potentially dangerous situation for vulnerable prisoners', as well as 'dangers for staff, whose position can be compromised by their inability to exert proper control over – and develop a constructive dialogue

with – prisoners'.¹¹ Furthermore, inadequate staffing levels can mean staff are expected to undertake significant amounts of overtime and long shifts in order to maintain basic security. This can lead to 'high levels of stress in staff and their premature burnout'. Too few staff can also mean that prisoners spend large amounts of time locked up in their cells and are unable to participate in out-of-cell activities where these are available.¹²

The Council of Europe concluded that on average in its region, there were about three inmates per member of custodial staff in 2013 (excluding health education and other staff).¹³ The ratios ranged from 2.9 prisoners per guard in Scotland to 12.9 in the Slovak Republic.¹⁴

In other regions, reliable information about the numbers of prison staff is even more difficult to find and to interpret.

Recruitment and retention

In many parts of the world, work in prison is not highly valued or recognised. Typically, this is also reflected in a lack of active recruitment policies, in low salaries, other unattractive conditions of service, low social status of the work, or competition from other professions such as law enforcement agencies. As the UNODC put it: 'unfortunately [...] the status of prison staff is very low in most countries. Little attention is given to their proper recruitment and training. A large majority will not have sought a career in the prison service in particular, eg. they might be former military personnel, or people who have been unable to find other employment'.¹⁵ In the United Arab Emirates, police recruits with the lowest scores in graduation tests are assigned to the prison system.¹⁶ A Penal Reform International (PRI) study found that in Kazakhstan 'staff working in institutions for children in conflict with the law thought that the biggest problems they faced were the lack of resources, poor working conditions and low pay'.¹⁷ In Northern Ireland, it was reported in 2015 that, of the 411 staff who had joined the prison service since 2012, 99 had left. The dominant reason, according to the trade union, was low pay, although low staffing levels and threats were also significant factors.¹⁸

In order to address the problem of the social status of prison staff, the Nelson Mandela Rules encourage prison administrations to improve awareness of the importance of this work as a social service.¹⁹ Salaries should be adequate to attract and retain suitable staff, and benefits and conditions of employment should reflect the exacting nature of the work as part of a law enforcement agency. Norms in the Americas, for example, explicitly require that personnel of places of deprivation of liberty be provided with the 'necessary resources and equipment so as to allow them to perform their duties in suitable conditions, including fair and equitable remuneration, decent living conditions, and appropriate basic services'.²⁰

While international standards express a clear recommendation that staff should have civilian status,²¹ in many countries there are strong links between the prison system and the police or military forces. In some countries there is no specific profession of prison officer, but rather they form part of the police, military or security forces. In the Dominican Republic, a strategy has been put in place to transform the police and military administration system – which allowed for the abuse of prisoners and was corrupt, unhealthy, unsafe and completely lacking in human rights observance – into a 'new model'

correctional service. New staff have been recruited to the system with enhanced pay and increased responsibilities. Corrupt practices are met with instant dismissal.²²

International standards require that prison staff are employed without discrimination on any grounds,²³ and that staff should comprise suitable employees and officers, of both sexes. In a recent report, the UN Special Rapporteur on minority issues highlighted the underrepresentation of minorities in law enforcement agencies, and suggested that, '[t]argeted measures such as quota systems as well as affirmative action policies may help to achieve an actual increase in the recruitment, retention and progression of minorities, including at the most senior levels'.²⁴

In many systems, prison officers are appointed with a probationary period. However, in the USA, an investigation found that over a third of newly employed corrections officers at New York City's Rikers Island jail 'were not fit for service and should not have been hired'. In a random sample of 153 recruits, ten had been arrested more than once, 65 had psychological issues, and others had gang affiliations as well as 'unexplained' relationships with current prisoners. However, it can be difficult to dismiss prison staff in countries with strong unions.²⁵

Training

International standards are clear that staff should receive initial training before they start work, as well as continuing in-service training. Specialist training should be provided for staff who work with specific categories of prisoner, such as women, young persons and prisoners with special needs, foreign nationals or prisoners with mental health problems.²⁶

There is substantial variation in the recruitment and training of prison staff. Basic induction training may last a matter of weeks or much longer. In England and Wales, basic training will be increased from six weeks to 12 weeks in 2016, with ten weeks at a learning centre and two weeks in a prison.²⁷ In the Australian state of Victoria, new recruits attend a pre-service training course that runs for seven weeks.²⁸ Canada's initial course comprises three stages, including eight weeks online

learning followed by 10-11 weeks classroom training.²⁹ In Hong Kong, recruits attend a 26-week residential training course.³⁰ Officers in the Indian state of Maharashtra attend a 12-month basic training course,³¹ while in Norway prison officers go through a two-year education at the Staff Academy, where they receive full pay and are taught various subjects like psychology, criminology, law, human rights and ethics.³² Since September 2007, all newly recruited prison officers in Ireland complete an accredited two-year Higher Certificate in Custodial Care, which replaced the previous nine-week induction training. The course includes modules on communication and interpersonal skills, human rights, pro-social modelling, health and safety, prison-craft, the sociology of Irish society, equality and diversity, healthcare, prison law, education, mentoring, and ethics.³³

Some countries have established prison training academies where induction and specialist training takes place. This is not only the case in Europe where there is a network of such institutions.³⁴ In India, the Academy of Prisons and Correctional Administration was established in Vellore in 1979, financed by the four southern states, with the aim of preparing correctional officers 'to achieve the goals of Reformation, Rehabilitation and Reintegration of Prisoners into Society'.³⁵ The UNODC has undertaken work to enhance training at Nigeria's staff college in Kaduna³⁶ and is currently working to develop Ethiopia's prison training school in Aleltu.³⁷ The training academy in the Dominican Republic has been central to the transformation of the previously corrupt and militaristic prison culture into a professional public service.³⁸

Working conditions

While salary levels and other conditions of service should reflect the important contribution made to society, the UNODC reports that the salaries of prison staff, 'are normally quite inadequate, which contributes to dissatisfaction and corrupt practices'.³⁹ There appears considerable variation among salaries in higher income countries. In the US state of Texas, starting salaries for correctional officers are less than USD\$2,700 a month⁴⁰ and in Western Australia the equivalent of USD\$4,000.⁴¹

In lower income countries, pay rates can be very low and can render staff vulnerable to corrupt practices. The former UK Ambassador to Afghanistan reported being told by the Governor of Pul e Charkhi prison that, at a time when an Afghan family needed USD\$100 a month to survive, he was paid USD\$42 and his guards USD\$17

and, '[s]taff had no option but to offer supplementary services to the prisoners in return for money'.⁴²

While creative measures can be taken to reduce corruption, for example, by moving staff frequently to new locations or to employment without direct contact with prisoners, this is not always possible or desirable. Addressing pay and working conditions is required to resolve the problem. Prison officer remuneration and benefits (eg. pension, health insurance) should be aligned with comparable public service professions, for example police officers, teachers or nurses, and take into account the complex and sometimes dangerous nature of the role.

There are other aspects of working conditions that have an impact on prison staff. For example, where detention conditions are

reported to be a concern, or even amounting to torture or other forms of ill-treatment, prison staff may be subject to the same conditions as inmates. These may include poor physical infrastructure, insufficient space, air and light, a lack of sewerage and waste disposal or other unhygienic conditions.⁴³

In lower and middle income countries, accommodation provided to prison staff may be sub-standard. A report in Kenya, for example, found that staff quarters were in a deplorable condition.⁴⁴ In neighbouring Uganda, new accommodation was constructed for staff at Luzira Prison, providing major improvements to the almost slum dwellings available previously.⁴⁵

Irrespective of accommodation standards, prisons are often located in isolated places, away from urban settlements, making

it difficult for prison officers to access services and facilities such as shops, doctors, social activities and schools for their children.

The organisational culture of a prison has a significant influence on the working conditions and

experiences of prison officers employed within it.⁴⁶ In France, the General Controller who inspects the country's prisons has reported consistently since the beginning of his mission (in 2011), that 'respect for human rights in prison [...] was

also dependent on the working conditions of staff' and that prison officers who feel valued, trusted and respected at work are more likely to apply these values to the treatment of prisoners.⁴⁷

Safety, security and health

Prison officers may experience an almost continuous risk of assault while on duty, and at the same time have to deal with challenging situations such as self-harm and suicide attempts by prisoners. Working day to day in such an environment takes its toll, with documented effects including depression, a sense of isolation, poor physical health, sleepless nights, difficulties relaxing, 'bringing the job home', and emotional desensitisation, sometimes resulting in alcohol and drug dependency. Demands are particularly great for staff involved in supervising high-risk offenders and those on death row.⁴⁸

Prison staff are also exposed to health risks. Many studies have shown that the risk of infection with diseases such as hepatitis B and C and tuberculosis (TB) is significantly higher among prisoners than in the general population, in particular where prisons are overcrowded and detainees subject to unhealthy conditions such as lack of air, light, sanitary facilities and means of personal hygiene, and adequate nutrition. The TB notification rate in prisons ranges from 11 to 81 times higher than in the general population.⁴⁹ While with sensible precautions risks can be minimised, they cannot be eliminated.

Prison staff face risks of violence in their daily work. In 2013-14, 682 officials were injured on duty in South Africa's prisons.⁵⁰ Fifty were assaulted and stabbed by prisoners. Of the 682 injured, 338 required basic medical attention, while another 332 suffered temporary total disablement, and ten were permanently disabled. Two died from their injuries (they were not injured by prisoners).

Prison staff can be at risk of being taken hostage when prisoners are protesting about conditions or other aspects of their cases. One such incident was reported in Mauritania when prisoners protested that they had not been released having completed their sentence.⁵¹

Sickness levels are often high, exacerbated by physical conditions (such as extreme heat),⁵² exposure to disease, or witnessing traumatic events. In one prison in Scotland, between 2013 and 2015 the number of 'days lost' by prison wardens and staff absent as a result of anxiety, stress or depression amounted to more than six years of work.⁵³ In Canada, it is estimated that one in four prison guards suffers from post-traumatic stress, with one study finding that during the course of a career a prison officer might be exposed to 28 'critical incidents' such as suicides, hostage takings, murders or assaults.⁵⁴ Prison staff are thought to be at higher risk of suicide than police officers.⁵⁵ Research in the UK has found that 84 per cent of prison officers feel pressure to work while unwell at least sometimes, whereas more than half always experience such duress.⁵⁶

In countries experiencing conflict, prison staff can find themselves in the front line. The Nigerian Prison Service has lost 42 officers in the war against Boko Haram, which target prisons as a way of promoting lawlessness and recruiting conscripts.⁵⁷ Riots, uprisings and attacks from insurgents have cost prison staff their lives in a range of other countries, particularly in the Middle East and Latin America.⁵⁸

The adoption by the UN of the Nelson Mandela Rules provides an important opportunity for member states to review their compliance with the revised standards and to introduce reforms where their prison systems fall short. Assessing the adequacy of the numbers of prison staff, their pay, conditions and training should be a central component of such a review, to be undertaken with regard not only to international standards but to good practice from around the world, making use of expert technical assistance where appropriate.

RECOMMENDATION 13

States should assess the adequacy of prison staffing arrangements ensuring sufficient prisoner-staff ratios, pay levels and working conditions. They should ensure adequate training prior to and continuously during service and adopt a code of ethics for prison personnel. The awareness of the public should be increased as to the importance of the work of prison staff as a service to society.

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**GLOBAL PRISON TRENDS
SPECIAL FOCUS 2016**

**Prison staff:
overworked
and underpaid?**

Pull-out section

PART 5

Prison management

Tackling overcrowding

In many countries, overcrowding has continued to be the dominant problem for prison administrations. The UNODC told the Doha Crime Congress that prison overcrowding has reached epidemic proportions in many countries.¹⁶⁶ In 2014, 77 countries worldwide were reported to have a prisoner occupancy rate higher than 120 per cent, with some as high as almost 400 per cent. The problem is localised and extremely challenging, according to the UNODC. Countries which mandate pre-trial detention for drug-related crimes, particularly in Latin America, are one such example.¹⁶⁷

While the main answer to prison overcrowding lies in reductions in the unnecessary use of imprisonment, other responses have been tried. In 2015, Norway arranged for 400 prisoners to be accommodated in the Netherlands, and Switzerland is considering transporting prisoners to France or Germany as its own prisons have exceeded capacity.

Prison construction may be needed when existing facilities are beyond repair or otherwise inadequate. In 2015, the United Nations Office for Project Services (UNOPS) published a detailed guide to facilitate a human rights approach to the development of prison infrastructure.¹⁶⁸ A number of countries are seeking to build new prisons as a way of tackling overcrowding.

In India, measures to address overcrowding include a major prison building and renovation programme (125 new jails across the country), as well as: better access to legal aid support; more resources for the courts; better use of technology to expedite court processes; release if there has been inordinate delay; plea bargaining; and the expansion of bail and other alternatives to imprisonment.¹⁶⁹ New prisons are planned in Korea with an increase in the minimum space per person from 2.8 square metres to 3.3 square metres.¹⁷⁰ One of the new prisons planned in Malaysia will be an 'agro' (agricultural) prison to help the system become more self-sufficient.¹⁷¹

Two new prisons are being built in Honduras, one a minimum security prison for 2,000 prisoners, the second a medium and maximum security prison with capacity for 2,500 prisoners. A system of early release is also to be offered to prisoners convicted of minor crimes who have completed half their sentence and shown good behaviour.¹⁷²

The trend towards larger prisons looks to continue. The Saudi Arabian General Directorate of Prisons, for example, has said that three correctional institutions for the treatment, training and social rehabilitation of young offenders will be established to accommodate 12,000 prisoners.¹⁷³

In Turkey, five large campuses have been developed, with 10,000 people living on one campus. Prison officers also live on the campus and there are social facilities for them (housing, shops, sport areas and parks, barber, tailor, café, etc). One hundred and forty-two prisons are planned to close.¹⁷⁴ The construction of such large facilities runs the risk of providing unnecessary places and may have a negative impact on rehabilitation, not only because prisoners will tend to be further from home but because they may not receive individual attention.

There is a growing recognition that for the very many women in prison with histories of trauma, 'the controlling prison atmosphere can trigger a traumatic memory, and elicit a reaction that can be perceived by staff as uncooperative or disruptive'.¹⁷⁵ This has implications for the design of women's prisons, favouring housing units that support relationships and promote a positive sense of self.

RECOMMENDATION 14

Prison building should be undertaken only when options of reducing the demand for prison have been exhausted or when existing facilities cannot be refurbished. New prisons should be designed in accordance with principles of good practice on a suitable scale and those for women designed in a gender-sensitive manner.

Nelson Mandela Rules: The review of the Standard Minimum Rules for the Treatment of Prisoners

After four years of negotiation, on 17 December the UN General Assembly adopted the revised UN Standard Minimum Rules for the Treatment of Prisoners.¹⁷⁶

The review had been completed by the UN Commission on Criminal Justice and Crime Prevention in May 2015 after consensus was reached at the fourth and last inter-governmental Expert Group meeting in South Africa. To honour the legacy of Nelson Mandela, it was decided that the revised Rules would be known as the 'Nelson Mandela Rules'.

The completion of the review was a historic event. It was the first time that the international community had updated one of its soft law standards,¹⁷⁷ and it also consolidated criminal justice and human rights standards, now both acknowledging the rights of prisoners and providing solid and up-to-date guidance for prison staff.

Eight substantive areas were revised. Some of the main changes are listed below.

Respect for prisoners' inherent dignity

Two principles – the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and the principle that prisoners should be treated with respect for their dignity and value as human beings – are incorporated throughout the revised Rules, and are also listed as basic principles in Rule 6. Both these principles are reflected in the obligation to treat the body of a deceased prisoner with respect and dignity, and a prohibition on holding prisoners in slavery or servitude. The revised Rules also include, for the very first time, guidance on searches of prisoners, cells and visitors, closing a significant gap in international standards.

Medical and health services

The Rules now clarify that prison healthcare: is a state responsibility, should be the same standard as available in the community, and should be organised in close relationship to the general public health administration. Existing provisions on health screening

on admission (and afterwards) have been amended and now require healthcare staff to seek to identify any signs of prior ill-treatment or of psychological or other stress, including risk of suicide or self-harm, and substance withdrawal symptoms. Healthcare is to be governed by the same ethical and professional standards as those applicable to patients in the community, which includes the principles of informed consent and confidentiality.

Disciplinary measures and sanctions

Changes in this area were comprehensive and include updated guidance on the use of instruments of restraint, procedural safeguards in disciplinary procedures, and clarification of prohibited disciplinary sanctions (eg. restriction of drinking water). As an overarching principle, prison staff are encouraged to use conflict prevention and other alternative dispute resolution mechanisms to prevent disciplinary offences and resolve conflicts. Solitary confinement, defined as separation from the general prison population without meaningful human contact for 22 hours a day or more, should be limited to exceptional cases as a last resort, for as short a time as possible, and be subject to independent review. Indefinite and prolonged solitary confinement (exceeding 15 days) is prohibited absolutely.

Investigations of deaths and torture in custody

Under the updated Rules, prison directors are now obliged to report, without delay, any death, disappearance or serious injury to whichever competent, independent authority is mandated to conduct prompt, impartial and effective investigations. The revised Rules also capture explicitly the obligation of the prison administration to fully cooperate with that authority and ensure all evidence is preserved. They are also obliged to notify the prisoner's next of kin or emergency contact persons. As an important tool to record such incidents and related complaints, the revised Rules require a standardised file management system in every place of detention, with a secure audit trail.

Protection of vulnerable groups

Revisions to provisions for prisoners with particular vulnerabilities were limited. Overall, it was clarified that prison administrations should identify the individual needs of prisoners and should not regard measures taking account of such needs as discriminatory. Some new provisions were incorporated on children imprisoned with their parent, including that decisions on cohabitation should be based on the best interest of the child and that adequate healthcare must be provided for these children. Prison administrations are now required to make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis. Outdated terminology regarding prisoners with disabilities has also been addressed.

Access to legal representation

Provisions have been updated and expanded to cover access to legal representation not only during pre-trial detention and criminal proceedings, but also beyond conviction and for other legal proceedings. Rules were also brought in line with the 2012 UN Legal Aid Principles and Guidelines.¹⁷⁸ Prisoners must be given adequate opportunity, time and facilities to communicate and consult with legal advisers, including legal aid providers, without delay, interception or censorship and in full confidentiality. For pre-trial detainees, the denial of access to the legal adviser or legal aid provider must be subject to independent review, without delay. Prisoners are allowed to keep documents relating to their legal proceedings in their possession.

Complaints and independent inspection

Standards on what information prisoners must be given and their access to complaints mechanisms have been updated. The revised Rules call for measures to protect prisoners against retaliation, intimidation or other negative consequences as a result of making a complaint. The impact of external monitoring has been acknowledged with the introduction of a requirement of a twofold system of regular inspections, internal as well as external, by an independent body. The revised Rules specify the powers of inspectors, including their right to access all

relevant information and places of detention, make unannounced visits, have free choice of interviewees, and undertake fully confidential interviews with both prisoners and prison staff. The updated Rules require written inspection reports and encourage their publication.

Training of staff

Provisions on staff training were updated and now emphasise the necessity of training staff prior to their entry into service, as well as of ongoing in-service training, with a curriculum reflective of contemporary evidence-based best practice. The list of training requirements includes: security and safety, the concept of dynamic security, use of force and instruments of restraint, as well as management of violent offenders, with due consideration of preventive and defusing techniques. Any staff in charge of working with certain categories of prisoner should receive specialised training.

While they consolidate relevant guidance for prison administrations and staff into one document, the revised Rules continue to be supplemented by other criminal justice and human rights standards, such as the UN Bangkok Rules for women prisoners, the UN Beijing Rules for juvenile prisoners and the UN Basic Principles on the use of force and firearms.

The UN Resolution which adopted the revised text encourages Member States to endeavour to improve conditions in detention, consistent with the Nelson Mandela Rules and all other relevant and applicable United Nations standards and norms.¹⁷⁹ It also invited the Commission on Crime Prevention and Criminal Justice (the 'Crime Commission') to consider reconvening the open-ended intergovernmental Expert Group 'to exchange good practices and the challenges faced in the implementation of the Nelson Mandela Rules'.

The 2015 Resolution of the Human Rights Council on human rights in the administration of justice 'invites States to assess their national legislation and practice in accordance with those standards, including the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)'.¹⁸⁰

Privatisation and use of resources

Trends in the privatisation of prisons are hard to identify. A number of privately run prisons have suffered problems – for example in New Zealand, where the government imposed new management on Mt Eden prison after video footage of prisoners fighting was posted to YouTube and prisoners appeared to be in possession of mobile phones.¹⁸¹ There has been a debate in the USA about the proper role of private companies following the publication of a study which showed that private prisons keep prisoners longer without reducing future crime.¹⁸² Covert filming of staff violence towards young people in a privately run secure training centre has recently re-ignited the debate in the UK.¹⁸³

2015 saw the privatisation of the majority of probation services in England and Wales¹⁸⁴ and the collection of fines is also set to be privatised. There have been mixed results from so-called 'payment by results' programmes, which seek to incentivise positive outcomes from prison and probation providers through financial rewards. The US has also seen experiments with payment by results approaches, which offer a particular model of financing prevention and rehabilitation activities. A recent analysis by the Brookings Institute of 48 Social Impact Bonds (SIBs) worldwide (four of which funded work to reduce recidivism) found mixed results. The Bonds involve private investors funding an intervention through an intermediary organisation – the government repaying the funder only if the programme achieves certain specified goals according to an independent assessment.¹⁸⁵ Apart from attracting resources into prevention, Brookings found the mechanisms were often successful in focusing on outcomes, building a culture of evaluation, driving performance management and fostering collaboration. But they were less successful in achieving scale, fostering innovation or sustaining impact. Moreover, the way many have been designed has not reduced risk to government and may not in the

long term attract new money (since government pays if the outcomes are achieved). There are also risks that rewarding success may only incentivise efforts to rehabilitate those prisoners who are easiest to influence while offenders with complex needs may be neglected.

One substantial and high profile Social Impact Bond in New York City's Rikers Island jail attempted to reduce the cycle of incarceration among young offenders. The project was ended early for a variety of reasons, including a decline in numbers of eligible young people and the withdrawal of key partners.¹⁸⁶ An evaluation found that the intervention (Moral Reconciliation Therapy – a form of cognitive behavioural treatment) did not reduce re-offending.¹⁸⁷ While this may be seen as a failure, the City paid nothing for the initiative – and would have done so only if the programme had achieved its outcomes.

The USA has also seen more radical proposals for using financial incentives to curb the use of prison. These include charging counties for how many people they send to state prison; another involves limiting the number of days in state prison which are made available for residents from each county annually.¹⁸⁸ Several 'justice reinvestment'¹⁸⁹ initiatives have focused on removing a 'perverse incentive' – if county probation officers report a breach of someone they supervise, the offender is sent to a state prison, which the county doesn't have to pay for.

RECOMMENDATION 15

Where appropriate, approaches should be considered in which resources are shifted from imprisonment to community-based measures for preventing crime and managing offenders, such as justice reinvestment initiatives in the USA and UK.

Security issues and violence

Violence continues to be a problem in many prisons all over the world. A study commissioned by the Council of Europe confirmed, 'that violence in institutions for juvenile offenders is prevalent and that it can be considered an issue of serious concern. Half of the responding Member States have indicated they consider violence in institutions of 'serious' or 'very serious' concern'.¹⁹⁰ The research found that, 'causes of violence in institutions for juvenile offenders are various and can roughly be distinguished between causes related to importation factors, such as the mental health of juveniles and their background, and causes related to deprivation factors, including the capability to adjust to life in an institution, the regime, conditions in institutions and the presence of justice mechanisms'. In the UK, the National Preventive Mechanism reported that, in 2014-15, 'the emerging phenomenon of new psychoactive substances in prisons contributed to problems of violence among prisoners'.¹⁹¹

Assaults by prisoners on other prisoners and on staff have been increasing, for example, in England and Wales, and Denmark. Denmark is looking to tackle this by spreading gang members out among the country's prisons. In a number of countries, prisoners can take advantage of tattoo removal schemes to assist them in giving up gang

affiliation. In New Zealand, a clinic visits prisons and removes visible tattoos on faces, necks and lower arms, at a cost of \$NZ30 a session.¹⁹²

More orchestrated incidents of violence have been reported in almost all regions. Riots have become relatively commonplace in Latin America, in the worst cases leading to deaths and serious injuries, escapes and destruction of prison capacity. Brazil,¹⁹³ Mexico,¹⁹⁴ Colombia,¹⁹⁵ Venezuela,¹⁹⁶ Honduras,¹⁹⁷ and El Salvador¹⁹⁸ experienced serious episodes of disorder in 2014-15 but other regions have not been immune: in Russia, there have been violent protests over restrictive detention conditions¹⁹⁹ and, in Thailand, riots followed drug checks in the living quarters.²⁰⁰ Prisoners demanding Wi-Fi and cell phones rioted for several hours inside Roumieh Prison in Lebanon, days after videos were leaked online showing members of Lebanon's Internal Security Forces torturing inmates in the prison.²⁰¹ After a riot broke out in an Iraqi prison, up to 50 prisoners and 12 police officers were killed and dozens of prisoners escaped, including several convicted terrorists.²⁰² Riots have also taken place in the USA,²⁰³ Australia (reportedly in response to a smoking ban),²⁰⁴ Canada,²⁰⁵ Ireland,²⁰⁶ Afghanistan,²⁰⁷ Nigeria²⁰⁸ and Greece.²⁰⁹

Reports of officials assaulting prisoners in South Africa's prisons have increased, according to the Judicial Inspectorate of Prison's latest report, which shows that the number of complaints it received in the last quarter of 2014 was more than triple the number recorded for the same period in 2013.²¹⁰ 2015 saw five Argentine guards sentenced to life in prison for beating a prisoner to death in 2012.²¹¹

More positively, the Jamaican Minister of National Security is reporting a significant reduction in violent incidents at the St Catherine Adult Correctional Centre, which he attributes to strong leadership and a number of rehabilitation programmes being undertaken at the facility.²¹² Following an upturn of violence in New York's Rikers Island jail, there are plans to provide a minimum of five hours non-school activities per day for teenage prisoners, to reduce boredom and increase opportunities for rehabilitation.²¹³

RECOMMENDATION 16

Reducing violence should be a priority for prison systems, with plans put in place for ensuring that, as far as possible, prisoners, staff and visitors are kept safe while in custody.

Fragile and conflict-affected states

Challenges facing criminal justice and prison systems in fragile and conflict-affected states remained formidable. It is increasingly accepted that experiences in detention have been instrumental in the development of ISIS,²¹⁴ although there is disagreement about the extent to which prisons have become 'universities of terror' in other parts of the world.²¹⁵

Conflict-affected states in many parts of the world have seen prisons targeted by insurgent groups. Thirty prisoners and ten guards were killed in a prison near Baghdad,²¹⁶ while dozens were freed from a notorious prison at Palmyra.²¹⁷ A detention centre in Tripoli was attacked by ISIS in September 2015 with a view to freeing prisoners.²¹⁸

Attacks have also been reported in Niger²¹⁹ and Nigeria has closed prisons because of threats from Boko Haram.²²⁰ In the Central African Republic, hundreds of prisoners escaped from Bangui's central jail in September 2015.²²¹

As well as becoming sites of military clashes, prisons in conflict-affected areas can be used for arbitrary

detention and torture in breach of international law. Such breaches have, for example, been documented in Libya.²²²

Once active conflicts have been brought to a close, the importance of creating a system of justice has been increasingly recognised, for example by the UN Secretary-General in respect of South Sudan. He noted that, 'the collapse of already-weak rule of law institutions in the context of the national crisis, the resulting absence of an effective police force and functioning judiciary, and a weakened formal and customary justice system are likely to become one of the most daunting challenges to overcome, and risk contributing to a relapse into conflict if impunity remains entrenched and basic law and order services are not restored'.²²³

The UN Department of Peacekeeping Operations (UN DPKO) has found that, 'very often prisons take the lowest priority in post-conflict environments. As a result, they typically suffer from extreme overcrowding, lack of food, absence of adequate medical care and poor sanitation, poor management and security. In addition, political interference is often rampant and oversight mechanisms non-existent or biased. Many people are subject to prolonged pre-trial detention'.²²⁴

There have been some examples of improvements, however. Liberia reduced the proportion of prisoners in pre-trial detention from 90 per cent in 2009 to 74 per cent in 2014.²²⁵ Human Rights Watch reported that in Côte d'Ivoire, while enormous challenges exist, the Ministry of Justice's Directorate of Prison Administration

(DAP) has acknowledged these and in 2015 drew up a Plan to Improve Prison Conditions (Plan d'Amélioration des Conditions de Detention) to address overcrowding, improve hygiene, healthcare, and nutrition, and increase access to legal and social services. The DAP has also said that it will regularly convene a workshop with civil society organisations to discuss progress.²²⁶

RECOMMENDATION 17

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

Radicalisation

Concern has grown about the risks of radicalisation of prisoners by extremists, with international, regional and national authorities all trying to prevent and counter it. The Council of Europe has adopted guidelines and principles for prison and probation staff to assist them to prevent radicalisation.²²⁷ The guidelines emphasise the importance of individualised assessment of prisoners, regular review of those placed in conditions of high security, and the value of using mentors (including former extremists who have renounced their views).

Two risk assessment tools that seek to identify prisoners who have been radicalised or are at risk of radicalisation are VERA 2 (used in Australia, Indonesia and elsewhere) and ERG22+ (developed by the National Offender Management Service in the UK); however, their effectiveness in different regional settings has been questioned.

UK research has found significant differences between prisons in levels of anger and alienation among prisoners – both factors which make radicalisation more likely. The differences are explained by the nature and quality of staff-prisoner relationships, degrees of trust, and the perceived legitimacy

of the regime, including access to meaningful activities. Prisoners in these establishments feel more recognised by the staff as individual people.²²⁸

Different states adopt different approaches to the question of whether radicalised and at-risk prisoners should be kept separate from other prisoners so as not to risk radicalising a larger population, or dispersed among the general prison population so as to expose at-risk prisoners to other attitudes. Belgium,²²⁹ France²³⁰ and Saudi Arabia²³¹ are among states that segregate such prisoners, while Morocco²³² and most European countries²³³ disperse them. It is so far unclear which approach is more successful, and this is further complicated by differences at the individual, prison and national level (such as if prisoners are held in individual cells or in collective dormitories).

There is a wide variety of measures in use aimed at deradicalisation and rehabilitation. These include the inclusion of radicalised or at-risk prisoners in general rehabilitation efforts, but also new programmes specifically tailored at deradicalisation. These can include counselling, deprogramming, dialogue, religious teaching and disengagement. Intensive post-imprisonment support has

been provided by Saudi Arabia since 2005, and includes help with finding work, involvement of participants' families and countering religious ideas that justify violence. Belgium also intends to recruit psycho-social workers and specialised Muslim staff to try to re-educate prisoners who are already radicalised or on the path of radicalisation.²³⁴ A Nigerian prison has been using sport to reform Boko Haram members.²³⁵

The issue of prisoner radicalisation is new for many countries and a key recommendation from the Council of Europe guidelines is to collect knowledge and best practices and share these internationally. Very few people actually go on to commit violent extremist acts even though they may be radicalised, and there are recognised risks that overly repressive measures may increase the likelihood of radicalisation.²³⁶

RECOMMENDATION 18

In countries where there is a risk of radicalisation in prisons, measures should be developed which are both relevant to the particular risks faced and maintain a balance between security and rehabilitation.

Food in prisons

The revised UN Standard Minimum Rules require that, '[e]very prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served' (Rule 22 (1)). In addition, certain prisoners, for example those who are sick or pregnant and breastfeeding mothers, will have special dietary requirements.

A World Health Organization report has stated that, '[f]ood is a central component of life in correctional institutions. An understanding of the ways in which food is acquired, prepared, distributed and consumed builds knowledge about the lives of incarcerated people and the impact of the prison experience on health outcomes'.²³⁷ The UN Special Rapporteur on violence against women has written that, 'inadequate quantities and poor nutritional value of foods (...) can result in starvation and malnourishment, including for pregnant or nursing women; it can become a commodity traded for sex; denial of food can be used as a form of punishment; because of limited quantities, it can lead to fights; and the poor quality and nutritional value may endanger the health of inmates, including impacting the ability of mothers to breastfeed babies'.²³⁸

In many countries, even high-income countries, prison systems fail to provide enough food. The Chief Inspector of Prisons in England and Wales reported in 2015 that, '[p]rovision for prisoners' food was inadequate'. The allocated food budget in 2014-15 was an estimated £2.02 or USD\$3.14 per prisoner per day – a reduction from £2.20 (USD\$3.41) in 2012. Less than a quarter of prisoners reported that food was good.²³⁹ The funds available for food for prisoners are often much lower than the average amount spent in the general population. The table on page 29 gives some examples.

In the most extreme cases, prisoners have died through lack of food and water. In Zimbabwe in 2013, at least 100 prisoners were reported to have

died from malnutrition, amid reports that they were receiving less than one meal a day.²⁴¹ Some of the almost 2,000 people who have died in Syrian prisons in 2014 starved to death, according to the Syrian Observatory for Human Rights.²⁴² In Malawi, the lack of food at Maula Prison meant that 18 inmates were treated for moderate to severe malnutrition.²⁴³ A prison doctor wrote that, '[we] are struggling with prisoners on totally inadequate rations here, and although our hospital has raised funds for therapeutic feeding for prisoners with severe malnutrition (BMI <16) unless the government provides a little more, more and more prisoners will slide into this category'.²⁴⁴ The Central African Republic allowed the International Committee of the Red Cross to visit 300 detainees in Bangui and distribute food daily where there were severe shortages.²⁴⁵ In Gabon, the UN Subcommittee for the Prevention of Torture found that the poor diet led directly to different kinds of illnesses among the detainees.²⁴⁶ The Special Rapporteur on torture received testimonies that food rations in Gambia were inadequate, of poor quality and often infested with unwanted particles.²⁴⁷

In many of the poorest countries, prisoners rely on their families to bring in food. Prisoners without this source of food are required to perform services in order to get enough to eat. Payment may be required for food²⁴⁸ or for the right for food to be brought in, as happens in Mali.²⁴⁹

Serious problems with food are not confined to the lowest income or conflict-ridden countries. During a visit to Bulgaria in 2014, the European Committee for the Prevention of Torture (CPT) delegation was 'inundated with complaints about the poor quality and insufficient quantity of the food offered to prisoners', and called upon the Bulgarian authorities to take steps to review the quality and quantity of the food.²⁵⁰ In the USA, a Georgia County Jail has been accused of failing to provide adequate nutrition.²⁵¹

A 2014 prison report by Armenia's ombudsman noted the presence of mice in refrigerated rooms²⁵² used to store perishable foodstuffs.

In Mexico, the UN Special Rapporteur on torture received generalised complaints about the small quantities and poor quality of food, a situation that is not helped by the fact that prisoners are not generally allowed to receive food from family members.²⁵³ Prisoners in Mexico have also complained that they find worms in their food.²⁵⁴

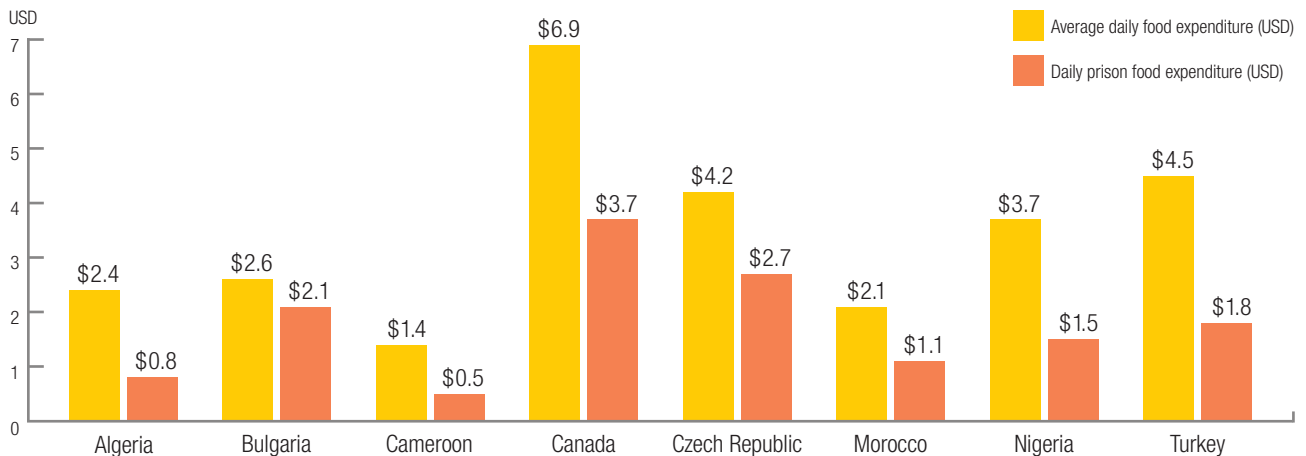
Problems with food and water can lead to protests and violence. A month-long water shortage at Cambodia's Prey Sar Prison led to ill health and fighting among prisoners, as prices rose to £15 per month.²⁵⁵ Better food was among the inmates' demands in at least one Brazilian mutiny.²⁵⁶

Recommendations have been made that healthcare staff should also play a more active role in monitoring the quality and quantity of food in prisons²⁵⁷ and that farming programmes should be established in prisons to offset food costs and provide better variety and nutrition. A programme to improve food safety has been introduced in Uganda, looking to apply the five principles of keeping clean, separating raw and cooked food, cooking food thoroughly, keeping food at safe temperatures, and using safe water and raw materials.²⁵⁸

RECOMMENDATION 19

Prison systems should review the resources available for food in prisons so that the nutritional needs of prisoners are properly met, including those with special needs such as sick prisoners, pregnant or breastfeeding women. Food safety and hygiene should be vigorously monitored, and innovative food programmes should encourage positive social interactions and healthy outcomes.

The amount spent on prisoners' food per day, versus consumer expenditure on food at home in selected countries²⁴⁰



Corruption

There has been growing recognition of the problem of corruption within prison settings, although it is not possible to say whether its incidence is increasing. The UN Subcommittee on Prevention of Torture (SPT) has found that, '[w]here the general conditions of detention fall below minimum acceptable standards, it is more likely that corrupt prison officers may extort money from inmates with financial means in order for those detainees to have access to certain privileges, services or benefits'. This is particularly true when prison staff are not adequately paid or where lack of staff means that trusted inmates can take advantage of their privileged position to extort money or favours from other, more vulnerable, inmates.²⁵⁹ The Subcommittee believes that petty corruption perpetrated by underpaid public officials is widespread in many places of detention, and particularly in prisons, for both pre-trial and sentenced prisoners. Its 2015 annual report points out that corruption has a disproportionate impact on the poorest detainees and prisoners, 'since they may be unable to pay bribes, for example to secure access to legal representation, family members, medical professionals or other persons, to avoid further detention, to be transferred to another place of detention or to otherwise secure better conditions and treatment'.²⁶⁰

Examples of alleged corruption which have come to light in recent times include: in Zimbabwe, where 30 Justice Ministry officials (including 24 from the prison service) were accused of stealing USD\$700,000 intended for the upkeep of prisoners;²⁶¹ sexual favours being given to staff in return for better treatment (Philippines, Zambia);²⁶² and improper business activities using prison labour (Cambodia).²⁶³ In Brazil, it has been reported that prisoners, known as *chaveiros* or 'keyholders', are given the keys to cells and pavilions and use their power to charge a weekly tax, sell places to sleep or sell drugs.²⁶⁴ The UN Subcommittee on Prevention of Torture has expressed concern about a similar system of *chefs de cellules* which it observed in Gabon.²⁶⁵ In Mali, where the regime was found to be 'riddled' with corruption, 'detainees who do not pay never leave their cell, sometimes for several years, except to use the toilet once or twice a day, which constitutes cruel, inhuman and degrading treatment'.²⁶⁶

Dependence on prison staff for access to their basic needs has been shown to increase the vulnerability of women prisoners to sexual exploitation, as it drives them to 'willingly' trade sex for 'favours' (including access to hygiene articles). In the Philippines, women have reported the increased status enjoyed by having a boyfriend

among the staff, which allowed them to obtain better accommodation.²⁶⁷ In December 2015, the *Miami Herald* newspaper detailed instances of corruption, coerced sex and trading sex for contraband at the USA's largest women's prison in Florida.²⁶⁸

RECOMMENDATION 20

Prison administrations should take measures to address corruption in prisons, which should include: increasing transparency, accountability and oversight; establishment of clear procedures for and record-keeping of decisions; and improvements in recruitment and training of staff.

Even in high-income countries, prisons may fail to provide enough food.



TB prison hospital, Kazakhstan.
Photo © Karla Nur 2014

Solitary confinement, isolation and segregation

Apart from the restrictions on the use of solitary confinement introduced by the Nelson Mandela Rules, which include the prohibition of its use by virtue of a prisoner's sentence, there is other evidence that attitudes and practices may be changing.²⁶⁹

In July 2015, President Obama ordered a Justice Department review of solitary confinement. A month later, the state of California settled a federal class action suit, effectively ending long-term solitary confinement in all state prisons and the Supreme Court is reportedly 'looking for a proper vehicle with which to rule on the constitutionality of the practice'. However, some US states continue to hold prisoners in disciplinary solitary confinement for up to ten years.²⁷⁰

In Canada, the new government (elected in October 2015) decided to end the practice of long-term solitary confinement and to implement the recommendations of an inquest into the death of Ashley Smith, the teenager who died by self-inflicted strangulation in 2007.²⁷¹ Canada's Correctional Investigator reported

on the scale of the problem. He found that, with an inmate population of just over 14,500 in 2014-15, the Correctional Service of Canada (CSC) made 8,300 placements in administrative segregation. He noted that, 'segregation is so frequently used that half (48 per cent) of the current inmate population has experienced segregation at least once during their present sentence'.²⁷²

In the UK, the National Preventive Mechanism focused on isolation and solitary confinement in its 2014-15 report. Inspectors were not convinced that segregation or use of special accommodation was always necessary or used as a last resort, finding that, 'the number of instances where prisoners are informally isolated, and in many cases in conditions that amount to solitary confinement, over long periods of time is of great concern'.²⁷³ In the UK, Inspectors were critical of a high-security prison where a prisoner was kept in segregation for two-and-a-half years,²⁷⁴ and the Prisons and Probation Ombudsman found that in 2013-14 eight prisoners –

four of whom had been assessed at risk of killing themselves or self-harming – took their own lives while in segregation units in England and Wales.²⁷⁵

A number of countries are continuing to introduce 'supermax' prisons, first introduced in the USA. Prisoners at Goulburn supermax prison in New South Wales, Australia, refused food for at least 16 days in protest against strict new conditions, which included only one visit a week, during which they would be required to speak English.²⁷⁶

RECOMMENDATION 21

Countries should restrict the use of solitary confinement to exceptional cases where absolutely necessary, for as short a time as possible, and subject to regular substantive review. Prolonged and indefinite solitary confinement and isolation of prisoners with special needs specified in Nelson Mandela Rule 45(2) should be prohibited.

Preparing prisoners for release

The 2015 Doha Declaration²⁷⁷ says that states should implement and enhance policies for prison inmates that focus on education, work, medical care, rehabilitation, social reintegration and the prevention of recidivism. It also calls for the strengthening of policies to support the families of inmates, as well as to promote and encourage the use of alternatives to imprisonment, where appropriate, and to review or reform restorative justice and other processes in support of successful reintegration. There appears to be

a growing recognition of the need to equip prisoners with the skills they need to obtain work on release.

In the USA, prisoners were made eligible to receive so-called 'Pell grants' to be used to fund educational courses.²⁷⁸ The new government in the UK (elected in May 2015) has pledged to strengthen education within prisons. The Head of Prisons in Makkah, Saudi Arabia, has announced the development of new regulations which would allow prisoners to reduce their sentence by five per cent if they

successfully pass a school year, or two equivalent training courses, rising to a maximum of 15 per cent of a prison sentence of one year or more.²⁷⁹

The Conference of Ministers of Justice of Ibero-American Countries agreed on the need for more educational and employment programmes within prisons in the region.²⁸⁰ Canadian prisoners will be trained to use chainsaws²⁸¹ and, in Western Australia, prisoners who complete a training course will be guaranteed a job by a metal work company.²⁸² In Ethiopia,

workshops in new federal prisons will include tourism and hospitality management.²⁸³

Practical measures to improve reintegration have also been introduced. Jamaica is looking to expunge minor drug-related convictions²⁸⁴ and Richard Branson (the British entrepreneur who founded the Virgin Companies) is among a number of business leaders heading a campaign to give prisoners a second

chance.²⁸⁵ In England and Wales, new arrangements for supervising and supporting short-term prisoners on release were implemented in 2015. An independent inspection concluded that, at year end, 'the present rather disjointed provision is a long way from the seamless Through the Gate service so essential to the challenge of reducing high reoffending rates for this group'.²⁸⁶

RECOMMENDATION 22

Initiatives to support prisoners' rehabilitation and reintegration upon release should be started as soon as possible after admission, address the root causes of offending, and include holistic measures, including education, vocational training, work, medical care, social and psychological services.

Independent monitoring and inspection

By January 2016, 80 countries had ratified the Optional Protocol to the Convention against Torture and 64 had established National Preventive Mechanisms (NPMs).²⁸⁷ This represents an increase of four ratifications and ten NPMs since the end of 2014.

However, in its 2014 annual report published in March 2015, the UN Subcommittee for Prevention of Torture (SPT) noted that, on 31 December 2014, 19 states parties had not complied with their obligations to create a National Preventive Mechanism (NPM) within a year of ratification, which it considers a matter of major concern, 'particularly since some States parties appear to be making little progress in fulfilling their obligations'.²⁸⁸

Monitors in some countries have not been able to gain access to all places of detention, or into certain locations within facilities inspected.

For example, the Subcommittee's 2014 annual report noted that its visit to Azerbaijan had to be suspended as a result of difficulties gaining unrestricted access to several places of detention and completing its work at others. During 2015, the UN Special Rapporteurs on Torture and on Extrajudicial, summary or arbitrary execution also reported the refusal of the government of the Gambia to allow them to visit the security wing of Mile 2 Central Prison during their visit in November 2014.²⁸⁹

Monitoring bodies dedicated more attention to discriminated against populations, communities and groups. For example, the UN Subcommittee's 2014 report highlighted the relationship between discrimination and the prevention of torture, with a focus on women and lesbian, gay, bisexual, transgender and intersex persons. It noted that, even though torture in detention

has been an area of great concern, 'gender-specific perspectives have not been adequately discussed, and the particular risks of ill-treatment and torture faced by women in detention have received limited attention'.²⁹⁰

RECOMMENDATION 23

Countries should establish independent, external monitoring of prisons in line with good prison management and international obligations, and to this end consider ratification of the Optional Protocol to the Convention Against Torture (OPCAT) if they have not yet done so.

PART 6

Role and use of technologies

In line with an increase in technological development in many societies, criminal justice and prison systems have continued to see a variety of applications of computerised and automated techniques, both to enhance community-based surveillance of alleged and convicted offenders and to improve aspects of prison management.

As an alternative to prison or detention, electronic monitoring has continued to spread. For example, it is now being piloted in the Maldives,²⁹¹ and was introduced in Kazakhstan at the start of 2015.²⁹² GPS tracking is increasingly available as a way of monitoring the whereabouts of high-risk offenders. Experience from South Korea (reported at the 2015 World Congress on Community Corrections²⁹³) found that such monitoring reduced recidivism. Before GPS was introduced the rate was 14.1 per cent and declined to 1.5 per cent after use of GPS – although there was no control group as GPS coverage is 100 per cent. Many offenders felt ashamed at being subject to electronic monitoring, leading to a rise in the number of suicides and tampering with equipment. There was also misguided public perception about tracking. The public saw it as a panacea to crime, which then led to a negative backlash when a re-offence occurred. Research on the use of electronic monitoring with juveniles in California found that in many cases it failed to save money, was extremely punitive, and often landed young people back behind bars.²⁹⁴

Other challenges relate to the technology itself, particularly limited battery life, which leads to false alerts. US experience suggests that the cost of electronic monitoring can inhibit its use. In North Carolina, offenders must pay USD\$4.50 a day towards the costs.²⁹⁵ This may reflect a growing trend for offenders to have to pay for their punishment, although in England and Wales a policy of charging

offenders for the costs of their court appearances was abandoned in December 2015 following a campaign against it.²⁹⁶

Community-based supervision is also reinforced by the use of: ‘sobriety bracelets’ which monitor whether an offender is drinking alcohol; ignition interlock, which prevents banned drivers from using their vehicles; and Field Search, technology which monitors computer use and blocks access to certain types of sites.

Within prisons, new technology is being used in a number of ways. Digital learning is increasingly common. In India, inmates are being given personal email accounts as part of an e-literacy programme.²⁹⁷ A US private corrections service has introduced a new tablet computer, the JP5mini tablet, made specifically for use by prisoners. The tablet allows prisoners to access music, email, video chat and more. The tablet runs a locked down version of Android and offers a censored experience designed to ensure that prisoners remain connected with the outside world and are able to fit back into community once they have served their time.²⁹⁸ In New Zealand, Secure Online Learning (SOL) will be implemented nationwide after a successful six-month pilot with young prisoners at Christchurch Men’s Prison. It allows carefully selected prisoners to securely access 12 educational websites.

There appears to be growing use of internet-based communications technology (such as Skype) to enable prisoners to maintain contact with their families. However, it has been reported that a pilot scheme was terminated early in the UK because of concerns about possible misuse, indicative of a broader tendency for security priorities (particularly relating to terrorism and extremism) to limit opportunities for rehabilitation.²⁹⁹ Concerns have been raised in the USA about the way that the for-profit video visitation industry has stimulated demand for their

low-quality product by working with jails to shut down traditional in-person visitation rooms and requiring families to pay up to USD\$1.50 per minute for visits via computer screen instead: ‘[w]ith some notable exceptions, video visitation technology is poorly designed, does not work well, and makes a trying time for families even more challenging’.³⁰⁰

Body worn cameras are being introduced in the UK with a view to reducing assaults both on and by staff.³⁰¹ Drones (small remotely piloted unmanned flying devices) have been discovered carrying drugs, blades, phones and cigars into one US prison.³⁰² Products are also being developed to counter the threat of contraband being dropped into prisons by drones in this way.³⁰³

In Canada, electronic tagging and facial recognition technology have helped to reduce the need for prisoners to be escorted around or even outside the prison by enabling their identity and location to be monitored remotely.³⁰⁴

RECOMMENDATION 24

Technological innovation should be encouraged within prison settings, but not to the extent that it results in a reduction in human contact for prisoners or infringes prisoners’ right to privacy.

PART 7

Alternatives to prison

The 2015 Doha Declaration calls for practical measures to enhance the use of non-custodial sanctions and there are a number of positive developments. In Georgia, the creation of a probation service has widened the range of community-based sentences available to the courts.³⁰⁵ This is the latest in a line of former Soviet Union countries which have established probation services in recent years. A new penal code in Kazakhstan is expected to increase the numbers of offenders on probation from 7,000 in 2013 to 50,000.³⁰⁶

In Thailand, there are plans to extend the maximum prison sentence eligible to be served on probation from three years to five. A number of US states have sought to strengthen supervision in the community and reduce the numbers returned to prison following a technical breach of probation. There seems to be a growing trend towards application of swift, certain punishments in response to such violations but the sanctions imposed tend to be milder.

Efforts are underway to improve the effectiveness of community service as an alternative to short prison sentences in East Africa. Community service has been introduced as a sentence in Algeria and Mozambique,

with plans in place in Lebanon and Jordan. Human Rights Watch has proposed that, in finalising a new prison law, the Ministry of Justice in Côte d'Ivoire should consider innovations, 'such as imposing probation as an alternative to custody – that would ease prison overcrowding'.³⁰⁷

There is increasing interest in using community resources to assist with supervision. In Japan, 48,000 Volunteer Probation Officers (VPOs) work with offenders' families and help offenders find jobs. (There are only 1,000 professional Probation Officers.) VPOs are local – they live in the same community – and are seen as neighbours rather than government officials. The relationship is a continuing one, even after the formal sentence has expired. Such an approach fits well with the emerging 'desistance paradigm'. This emphasises that helping offenders leave crime behind is often a long-term process based on a positive relationship rather than via a specific one-off treatment programme. Kenya, Uganda and Tanzania are piloting the use of volunteers to assist in the implementation of alternatives to prison.

There is growing evidence that while carefully targeted community sentences can act as alternatives to incarceration, placing increasing numbers of offenders on such sentences does not automatically shrink the prison population.³⁰⁸ Lessons from several countries also suggest that making probation and other community-based sentences more and more demanding does not necessarily increase public and judicial support for it. However, the perception that probation or community sanctions are easy on offenders is not necessarily accurate. Research in Romania, for example, has shown that probation leads to financial costs for offenders, imposes restrictions on their liberty, and gives rise to stigma, and finds that, 'there is also the strain of living under constant threat of recall if anything goes wrong'.³⁰⁹

RECOMMENDATION 25

Countries should develop community sentences, probation or equivalent services in such a way as to maximise the potential for replacing the use of prison rather than widening the net of criminal justice control.

Community service placement at a health centre in Uganda. Photo © Will Boase 2015



**SUPPORT
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The perception that probation or community sanctions are easy on offenders and a 'soft option' is not necessarily accurate.

Conclusions and recommendations

The adoption by the United Nations of the Nelson Mandela Rules at the end of 2015 signals an important commitment by the international community to give priority to prison reform.

While the particular reforms needed vary from country to country, this survey has identified a number

of trends and challenges which are common to many states. Overcrowding, excessive use of pre-trial detention, harsh sentencing and inadequately resourced prison systems, for example, can be found on all continents and in high-, medium- and low-income countries. So too can poor healthcare, lack of alternatives to custody and risks of radicalisation.

Drawing on the trends which have been identified, the recommendations below are intended to assist policy-makers, prison administrators and civil society organisations who want to improve the way prison is used, managed and monitored in their particular jurisdiction.

25 key recommendations

01 Countries should undertake reviews of their penal systems in light of the revised UN Standard Minimum Rules for the Treatment of Prisoners and the recommendations of the 2015 Doha Declaration. Donors should consider favourably requests for assistance both in carrying out such reviews and in reforming criminal justice systems.

02 Jurisdictions should review whether imprisonment is playing an appropriate role in addressing crime, and increase alternative strategies such as education, crime prevention and social interventions which have been shown to produce more effective results.

03 Countries should undertake detailed examination of both the numbers of admissions to prison and the size of their prison population to satisfy themselves that the rates of incarceration are in line with appropriate comparator countries.

04 Jurisdictions should review their pre-trial arrangements and ensure that remand is used as a last resort, only where necessary and proportionate. The use of non-custodial measures should be increased in light of the negative impact on the rights of defendants as well as the socio-economic cost for detainees, their families and society.

05 Where necessary, states should develop effective prisoner file management systems in accordance with the Nelson Mandela Rules, to help ensure that detainees and prisoners spend no longer in custody than is strictly required by law and in order to inform the planning and resourcing of criminal justice and penal institutions.

06 Countries should assess the proportionality of criminal sanctions and consider the possibility of reducing maximum sentence lengths, in particular for non-violent crimes.

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

08 In line with the UN Bangkok Rules, women should be diverted from prison if at all possible, with distinct arrangements made for those for whom prison is unavoidable, including design features in prisons which reflect the distinctive needs of women.

09 As well as seeking to ensure that children under 18 are kept out of institutions as far as possible, countries should put in place distinct arrangements for young people over the age of 18 who are still developing towards adult maturity, which is often not acquired until young people reach their mid-twenties.

- 10** Countries should collect data about the numbers of elderly prisoners and their needs as a precursor to developing appropriate placement options, including the possibility of compassionate release or alternative accommodation outside prison.
- 11** States must ensure that courts do not apply harsher punishments by reason of an accused person's membership of a minority ethnic group or status as a foreign national.
- 12** States should increase their attention to prison healthcare, in light of the negative impact of poor physical and mental health on rehabilitation prospects as well as the impact on public health, especially on the spread of infectious diseases.
- 13** States should assess the adequacy of prison staffing arrangements ensuring sufficient prisoner-staff ratios, pay levels and working conditions. They should ensure adequate training prior to and continuously during service and adopt a code of ethics for prison personnel. The awareness of the public should be increased as to the importance of the work of prison staff as a service to society.
- 14** Prison building should be undertaken only when options of reducing the demand for prison have been exhausted or when existing facilities cannot be refurbished. New prisons should be designed in accordance with principles of good practice, on a suitable scale, and those for women designed in a gender-sensitive manner.
- 15** Where appropriate, approaches should be considered in which resources are shifted from imprisonment to community-based measures for preventing crime and managing offenders, such as 'justice reinvestment' initiatives in the USA and UK.
- 16** Reducing violence should be a priority for prison systems, with plans put in place for ensuring that, as far as possible, prisoners, staff and visitors are kept safe while in custody.
- 17** The development of prisons which meet international standards should assume a greater priority in peacekeeping operations, alongside the development of fair and proportionate criminal justice systems.
- 18** In countries where there is a risk of radicalisation in prisons, measures should be developed which are both relevant to the particular risks faced and maintain a balance between security and rehabilitation.
- 19** Prison systems should review the resources available for food in prisons so that the nutritional needs of prisoners are properly met, including those with special needs such as sick prisoners, pregnant or breastfeeding women. Food safety and hygiene should be vigorously monitored, and innovative food programmes should encourage positive social interactions and healthy outcomes.
- 20** Prison administrations should take measures to address corruption in prisons, which should include: increasing transparency, accountability and oversight; establishment of clear procedures for and record-keeping of decisions; and improvements in recruitment and training of staff.
- 21** Countries should restrict the use of solitary confinement to exceptional cases where absolutely necessary, for as short a time as possible, and subject to regular substantive review. Prolonged and indefinite solitary confinement and isolation of prisoners with special needs specified in Nelson Mandela Rule 45(2) should be prohibited.
- 22** Initiatives to support prisoners' rehabilitation and reintegration upon release should be started as soon as possible after admission, address the root causes of offending, and include holistic measures, including education, vocational training, work, medical care, social and psychological services.
- 23** Countries should establish independent, external monitoring of prisons in line with good prison management and international obligations, and to this end consider ratification of the Optional Protocol to the Convention Against Torture (OPCAT) if they have not yet done so.
- 24** Technological innovation should be encouraged within prison settings, but not to the extent that it results in a reduction in human contact for prisoners or infringes prisoners' right to privacy.
- 25** Countries should develop community sentences, probation or equivalent services in such a way as to maximise the potential for replacing the use of prison rather than widening the net of criminal justice control.

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