

Current trends and practices in the use of imprisonment

Andrew Coyle, Catherine Heard and Helen Fair

Andrew Coyle is Emeritus Professor of Prison Studies at King's College, University of London, and was founding Director of the International Centre for Prison Studies, which merged with the Institute for Criminal Policy Research (ICPR) at Birkbeck, University of London, in 2014.

Catherine Heard is Director of the World Prison Research Programme at the ICPR.

Helen Fair is a Research Fellow at the ICPR working on the World Prison Research Programme and the World Prison Brief website.

Abstract

This article charts the rapid rise in the use of imprisonment in recent decades before considering some of the most pressing issues of concern in the use of imprisonment today. First among these is prison overcrowding, which continues to blight the record of many countries in their treatment of prisoners. To illustrate the potentially dire consequences of overcrowding – a problem common to many other countries and regions – an account is given of a recent visit to a prison in El Salvador. The article then provides an overview of the relevant regional and international standards on the treatment of prisoners, referring also to the role of judicial bodies in ensuring implementation.

Keywords: prison, overcrowding, conditions of detention, prison populations, women prisoners, use of imprisonment, criminal justice policy.



Introduction

Imprisonment is used as a tool of criminal justice policy in every country of the modern world. The World Prison Brief online database¹ holds statistics on the prison populations of 223 independent countries and dependent territories.²

Levels of imprisonment have risen rapidly in the post-war period, though more dramatically in some jurisdictions and regions than in others. There is striking diversity – in terms of geographic location, national population size and levels of development – among States at the highest and lowest ends of the incarceration scale. This makes it difficult to provide clear-cut explanations for trends and variations. Several interrelated socio-political and economic pressures – variously operating at national, regional and global levels – have contributed to today’s diverse picture of global imprisonment.

This article begins by charting the rapid rise in the use of imprisonment in recent decades – a rise more dramatic in some jurisdictions and regions than in others. First, a brief account is given of prison populations worldwide. Information is broken down by continent and region to provide a general picture of geographic spread for the general global prisoner population, remand prisoners and female prisoners. Trends in prisoner population growth since 2000 are then discussed. The final section is devoted to consideration of some of the most pressing issues of concern in the use of imprisonment today, many of these being particularly relevant to the work carried out by the International Committee of the Red Cross (ICRC) to uphold international standards and promote humanitarian principles in the treatment of detainees.

Imprisonment worldwide: A diverse and changing picture

In this section, the authors give a brief account of prison populations worldwide and outline important recent statistical trends. The authors draw on data held on the World Prison Brief online database, which holds statistics on the prison populations of 223 independent countries and dependent territories.

The authors use the terms “prisoners” and “prisons” in a broad sense. The word “prisoners” is used to refer to individuals who have been placed in custody by a

1 Available at: www.prisonstudies.org (unless otherwise stated, all internet references were accessed in July 2017). The World Prison Brief was established by Roy Walmsley and launched by the International Centre for Prison Studies in September 2000. Since November 2014, the Brief has been hosted by the Institute for Criminal Policy Research at Birkbeck, University of London. Prison statistics derive largely from national prison administrations or responsible ministries.

2 This article draws from comparative data compiled for the book *Imprisonment Worldwide*, which was published in June 2016 using data accessed from the World Prison Brief in November 2015. Unless otherwise stated, this article uses the same data. See Andrew Coyle, Helen Fair, Jessica Jacobson and Roy Walmsley, *Imprisonment Worldwide: The Current Situation and an Alternative Future*, Policy Press, Bristol, 2016. Data on the World Prison Brief are updated monthly, and we would encourage readers to check the site for the most recent information available. See “World Prison Brief Data”, available at: www.prisonstudies.org/world-prison-brief-data.

competent judicial or legal authority, having been convicted of one (or more) offence(s) and sentenced to custody or, alternatively, where a criminal case against them is being pursued but they have not yet been tried and convicted or definitively sentenced. It should be noted that this generic definition of “prisoners” differs from the practice in some jurisdictions in which the word usually translated as “prisoner” is used to refer only to those in custody after sentencing, while another word such as “detainee” denotes those being held pretrial and/or pre-sentence. In the present context our use of the terms “detainee” and “detention” similarly refers to custodial deprivation of liberty in this criminal justice context, whatever stage the proceedings have reached.

Clearly there are many contexts in which individuals can be detained by the State *outside* the criminal justice system or on a borderline where distinctions are blurred. Detention might relate to a person’s immigration status, their pending deportation, or a risk that they are deemed to pose to national security or military interests.³ In some countries, notably China,⁴ relatively minor criminal offences and certain social, moral or political infractions are commonly dealt with through “administrative detention”, a system separate from mainstream criminal justice.⁵ In some States, detention is used for “treatment” for drug dependency, or “protection” due to some perceived vulnerability. All these categories of detention engage important fundamental rights questions, but are beyond the scope of the World Prison Brief database and are not addressed here.

Numbers incarcerated

Today, there are well over 10 million prisoners worldwide, of whom around half are in the United States, China, Russia and Brazil. The number is likely to be closer to 11 million, given that the World Prison Brief (a) holds no prisoner statistics for Eritrea, North Korea or Somalia, because of the difficulty of accessing data on these States,

3 It should be noted, however, that small numbers of non-criminal justice detainees are counted in prison statistics in some jurisdictions.

4 China’s system of “Re-education Through Labour”, which saw large numbers of offenders administratively detained, was formally abolished in December 2013. However, it is widely reported that various forms of (non-prison) detention of offenders remain in place – for example, in Amnesty International, *Amnesty International Report 2016/17: The State of the World’s Human Rights*, London, 2017, p. 119; UN Office of the High Commissioner for Human Rights (OHCHR), “Concluding Observations on the Fifth Periodic Report of China, Geneva, 2016, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrCAqhKb7yhslEE2YuVt8GA5WKG3GEX%2BZEXqjnsVnWP%2BkQ6f9cmzWcEPJYdF WEXvIFmDTE3WtKbKZXAkr5OVTwnh86Q4GNZXSmrqMf55xyaMPMcFusW3o2>; US State Department, *Country Reports on Human Rights Practices for 2016: China* (includes Tibet, Hong Kong and Macau), Washington, DC, 2017, available at: www.state.gov/documents/organization/265540.pdf.”

5 Administrative detention is usually understood to mean detention “ordered by the executive” in which “the power of the decision rests solely with the administrative or ministerial authority, even if a remedy *a posteriori* (after the event) does exist in the courts against such a decision”. Louis Joinet, Rapporteur of the Sub-Commission on the Fight against Discriminatory Measures and Protection of Minorities, Report on the Practice of Administrative Detention, UN Doc. E/CN.4/sub.2/1989/27, 1989, cited in Open Society Justice Initiative, *Presumption of Guilt: The Global Overuse of Pretrial Detention*, Open Society Foundations, New York, 2014, p. 13, available at: www.opensocietyfoundations.org/publications/presumption-guilt-global-overuse-pretrial-detention.

and (b) holds no data on some States' remand or pretrial detainees – most significantly China's – as these data are not published.

This estimated 10 to 11 million does not include people detained in police or other administrative detention where there has been no formal decision to charge or prosecute. Time limits for police detention vary between jurisdictions, as do levels of compliance with them; there is often no routine recording of how many people are held in such circumstances. In view of the limited available data on this category of detainee, reporting on such data is beyond the scope of the World Prison Brief.

Breakdown by continent and region

Asia holds around 3.9 million of the world's prisoners, and the Americas about 3.8 million. In Europe there are around 1.6 million prisoners, and Africa has around 1 million. The far smaller continent of Oceania has a total prison population of about 55,000.⁶

While these numbers give a sense of how unevenly distributed prison populations are globally, greater insight can be gained from prison population rates, usually measured by the number of prisoners per 100,000 of the national population.⁷ The median rate worldwide is 142. A comparison of the median rates of geographic regions reveals that five regions have a rate of over 200: namely, Northern America, Central America, South America, the Caribbean, and Europe/Asia (encompassing Russia, Turkey, Armenia, Azerbaijan and Georgia). By contrast, the regions of Central Africa, Western Africa, Southern Asia, Northern Europe and Western Europe all have median rates of under 100.

Remand prisoners

Over a quarter of the world's prisoners are on "remand", which describes those held in detention at any of the following stages:

- Pre-court: a decision has been made to proceed but investigations are continuing or the case is awaiting trial or other court process.
- Trial: the case is being heard at court to determine guilt.
- Pre-sentence: the offender has been convicted but awaits sentence.
- Awaiting final sentence: the offender has been provisionally sentenced but the sentence and resulting custodial term will only become definitive when appeal periods have expired.

The World Prison Brief holds data on the remand populations of 216 jurisdictions. Remand data are unavailable for China and Rwanda (as well as for Eritrea, North

6 Roy Walmsley, *World Prison Population List*, 11th ed., Institute for Criminal Policy Research, London, 2016, p. 14.

7 The prison population rates calculated for the World Prison Brief – and reported in this article – are based on estimated national populations as of the date to which the latest prison population figures refer.

Table 1: *Countries with highest prison population rates*

Country	Total prison population*	National population*	Prison population rate
1. Seychelles	735	92,000	799
2. United States	2,217,000	317.8 million	698
3. St Kitts and Nevis	334	55,000	607
4. Turkmenistan	30,568	5.24 million	583
5. US Virgin Islands	577	106,700	542
6. Cuba	57,337	11.25 million	510
7. El Salvador	31,686	6.44 million	492
8. Guam	797	170,000	469
9. Thailand	311,036	67.45 million	461
10. Belize	1,545	344,000	449
11. Russia	642,470	144.4 million	445
12. Rwanda	54,279	12.5 million	434
13. UK Virgin Islands	119	28,000	425
14. Grenada	424	106,500	398
15. Panama	15,508	3.96 million	392
16. American Samoa	214	56,000	382
17. St Vincent and Grenadines	412	109,000	378
18. Cayman Islands	205	54,600	375
19. Antigua and Barbuda	343	92,000	373
20. Bahamas	1,396	385,000	363

* Figures for total prison population and estimated national population are based on data available in November 2015. See A. Coyle *et al.*, above note 2.

Korea and Somalia, in relation to which no prisons statistics are available at all, and some other very small jurisdictions). Taking into account the missing data, particularly from China, it is likely that the total worldwide remand population is around 3 million.

Among the States with the highest proportions of remand prisoners, those that have recently experienced war and conflict feature highly, notably Libya, where the available data suggest that up to 90% of the prison population are on remand.

Liberia and the Democratic Republic of the Congo have exceptionally high proportions of prisoners on remand. Another feature common among States with high remand figures is widespread poverty and inequality, often combined with overstretched and under-resourced justice systems: examples include Paraguay, Haiti, Benin and Bangladesh, which all have proportions over 70%. In India, where 67% of prisoners are on remand, Dalits, Adivasis and Muslims are disproportionately represented.⁸

In many countries, remand prisoners make up a large proportion of the total prison population. Regions with strikingly high remand figures include Central Africa (60%), Western Africa (56%) and Southern Asia (55%). The numbers are also high in the Caribbean, South America, Central America and Western Asia, regions with remand proportions of 40–50%. In contrast, in Central Asia, Eastern Asia, Northern Europe, Europe/Asia and Central and Eastern Europe, less than one fifth of prisoners are on remand. The worldwide median is 27%.

Unfortunately, data showing the lengths of time for which people are held on remand are generally not collected or published in any systematic way. Research suggests that remand prisoners are typically detained for excessive periods (often out of all proportion to the sentence they would receive if found guilty) in countries with larger proportions of remand prisoners. In India, the proportion of prisoners who have spent more than three years on remand is estimated to have doubled since 2000.⁹ In Nigeria (where nearly 70% of prisoners are awaiting trial), half the country's pretrial detainees had been detained for between five and seventeen years in 2010, with some detained for up to twenty years.

Female prisoners

The World Prison Brief has information on female prisoner numbers for all countries on which it has national prison population data except Cuba and Uzbekistan. The total number of women in prison currently stands at about 700,000, meaning that women make up less than 7% of the total worldwide prison population. The proportion grew from 5.4% in the year 2000 to 6.8% in 2015.

Of the States with the biggest proportions of women prisoners, Eastern and Southeast Asian States predominate. Hong Kong tops the list with around 21%. Also high on the list are Qatar (15%), Kuwait (14%) and the United Arab Emirates (11%). One major factor here is these States' harsh enforcement and sentencing policies for drug offences – particularly the harsh sentencing for low-level trafficking offences, which has a disproportionate impact on women offenders.¹⁰

8 Amnesty International, *Amnesty International Report 2015/16: The State of the World's Human Rights*, London, 2016, p. 185.

9 Indian National Crime Records Bureau, *Prison Statistics India 2000* and *Prison Statistics India 2015*, New Delhi, 2002 and 2016.

10 Increasingly punitive sentencing of drug offences, and particularly lower-level drug offences, is widely seen as a major driver of women's imprisonment. See United Nations Office on Drugs and Crime (UNODC), *Handbook on Women and Imprisonment*, 2nd ed., Vienna, 2014; Penal Reform International, *Penal Reform International 1989–2014: 25 Years of Promoting Fair and Effective Criminal Justice Worldwide*, London, 2015.

Trends

Between the years 2000 and 2015 the world prison population increased by almost 20%, slightly above the estimated 18% increase in the general population over that period. Europe is the only continent whose total prison population fell during this period (though Europe's share of women prisoners increased). The world's female prison population increased by 50% over this period, and its male prison population by 18%.¹¹

There are considerable differences between trends across continents, and much variation within continents, over this fifteen-year period. Some key points are discussed below.

Africa

Africa's overall prison population has increased by 15% since 2000, while its general population has increased by 44%. While having the lowest median prison population rate of all continents, 77, Africa displays great variation across its regions: by way of the starkest examples, the median rate is 52 in Western Africa and 188 in Southern Africa. The picture for Africa as a whole is complicated by the effect of Rwanda's genocide prosecutions, which pushed the number of prisoners to a peak of 145,000 in 1998 and the prison population rate to 1,947. Despite having since adopted measures to reduce prisoner numbers, Rwanda still has the second-highest prison population rate in Africa (434), after the small island nation of the Seychelles. Notable among African States for reducing prisoner numbers is Botswana, which adopted alternatives to custody in order to relieve severe prison overcrowding. Botswana's prison population rate dropped from 325 in 2008 to 190 in 2015 – its lowest recorded level in thirty years.

The Americas

The Americas have 3.8 million prisoners – nearly 40% of the world's total prison population, despite having only 14% of its general population. Since 2000, prison populations have sharply increased across the continent, most dramatically in South America.

The United States remains the starkest example of this continent's disproportionate use of prison: it has 4.3% of the world's general population but 21% of its prisoners. The upward trend started in the 1970s, and became more marked over the 1980s and early 1990s. This was followed by a period of slower growth up to 2008, when the prison population peaked at over 2.3 million. Since then the numbers have fallen year on year in the face of mounting evidence of the harms of mass incarceration and their disproportionate impact on America's black population. On 31 December 2014, 6% (or one in seventeen) of all 30- to 39-year-old black men were in prison, compared to 2% of Hispanic and 1% of white men in the same age group. Underlying the growth in levels of

11 R. Walmsley, above note 6, p. 15.

incarceration were ever tougher sentencing policies, leading to prison being used more frequently; terms becoming longer, notably for drug offences; mandatory minimum terms; and reduced opportunities for parole. Driven in part by fiscal constraints, steps have been taken towards reform over the past fifteen years. These include a loosening of mandatory sentencing provisions and the expansion of community-based alternatives to custody. Recent falls in the US prison population rate reflect large declines in prisoner numbers in the populous states of New York (from 1999), California (from 2006) and Texas (from 2010).

The total prison population of Central American countries has risen by more than 80% since 2000, led by El Salvador, whose prison population rate is now the seventh-highest in the world. The country has a very high homicide rate and significant gang-related conflict. The authors will discuss El Salvador in greater detail in the following section.

In South America, the biggest contributor to the region's increased prison population is Brazil. Now at over 600,000 (up from 230,000 in 2000), Brazil's is the world's fourth-largest total prison population. Its prison population rate has more than doubled, driven mainly by tougher drug laws. Numbers incarcerated for drug trafficking increased fourfold between 2005 and 2013 and are estimated to represent about 25% of all Brazil's prisoners.¹² The country's judicial and prisons systems exhibit various problems (by no means exclusive to Brazil): racial disparity in numbers prosecuted and sentenced, prison overcrowding, and inefficiencies in the judicial process.¹³

Asia

With around 3.9 million prisoners across the continent, Asia is on a par with the Americas, but its general population is more than four times greater. The median prison population rate of Asian jurisdictions is comparatively low, at 121. One striking feature is the high proportion of women prisoners.

The trend across most Asian States has been upwards since the 1980s. Most notably, Thailand's prison population of nearly 290,000 is the sixth-largest in the world and its prison population rate is the tenth-highest, at 428. Again, tough drugs policies underlie this, including extremely long sentences for more serious drug offences. Thailand's high proportion of female prisoners, at 13.6%, is one consequence – 85% of Thailand's women prisoners are held for drug offences.¹⁴ Thailand has recently tried to curb prisoner numbers by controlling numbers held on remand, granting royal pardons and expanding available alternatives to imprisonment.

India has the lowest prisoner population rate in Asia and this has remained fairly stable, having risen from 21 in 1993 to 33 in 2015. The country still has nearly 420,000 prisoners, though the majority are held on remand, as discussed above.

12 “Brazil's Supreme Court to Discuss Drug Decriminalization”, *Telesur*, 19 June 2015.

13 US State Department, *Country Reports on Human Rights Practices for 2016: Brazil*, Washington, DC, 2017. Further discussion on the overuse of imprisonment in Brazil and in Latin America more widely can be found in Paul Hathazy and Markus-Michael Müller's contribution to this issue of the *Review*.

14 Penal Reform International, above note 10.

Europe

Europe has 15% of the world's prisoners, and 12% of the world's general population. This is the only continent whose total prison population has fallen since 2000, with the most significant reduction having been in Russia. There, criminal justice reforms were introduced in the 1990s to reduce the use of imprisonment and promote alternatives. Russia's prison population rate remains high, however, at 436. Finland, too, has brought its prison population down significantly (from a high of 187 in the 1950s to 55 today). This was the result of reforms designed to make greater use of community and suspended sentences and reduce custodial terms.

In Turkey, an increasingly punitive justice system has seen the opposite trend since 2000, leading to a threefold increase in the prison rate. In England and Wales, the years 1993 to 2012 saw the total prison population almost double from under 45,000 to almost 87,000, while the prison population rate steadily climbed to a high of 153, due largely to more convicted offenders being sentenced to immediate custody, to custodial terms growing longer and to a reduced use of early conditional release. Several European States have greatly reduced their remand populations since the 1990s, including by greater use of electronic monitoring, bail and other conditions. This has helped drive Europe's overall prison rates down.

Oceania

Oceania has approximately 55,000 prisoners, 0.5% of the world's total prison population, two thirds of whom are in Australia. However, the median prison population rate of Oceania is relatively high, at 155. Australia's prison rate has grown rapidly since 2000, due largely to "tough on crime" policies exemplified by mandatory sentencing, "three strikes" laws, longer sentences, more stringent bail conditions and reduced access to parole. Aboriginal people and Torres Strait Islanders represent over a quarter of all prisoners, but just 2% of the general population.¹⁵ In New Zealand, similarly, while only making up around 15% of the general population, Maori ethnic groups constitute almost 51% of the prison population, with another 11.3% of prisoners being Pacific People.

Current and emerging issues of concern

Having presented the data on changes in the use of imprisonment worldwide since 2000, the authors now turn to consider some of the most pressing issues of concern. Some of these are long-standing and affect many prisoners, notably overcrowding

15 Australian Bureau of Statistics, *Prisoners in Australia, 2015*, Canberra, 2015.

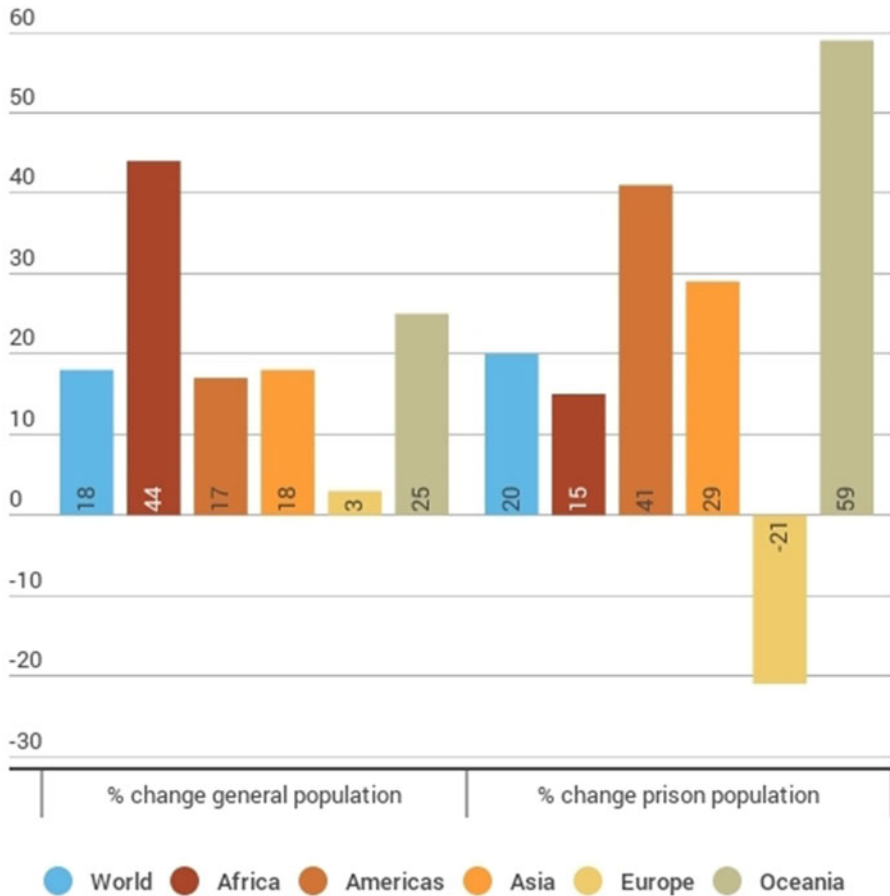


Figure 1. Percentage change in general population and prison population totals, 2000–2015: entire world and continents. Source: see A. Coyle *et al.*, above note 2.

and the resultant poor conditions and health risks, while others are more recent and affect specific groups of prisoners. These issues include the over-representation of foreign nationals and other minority groups in prison populations, and concerns about how to manage higher-risk prisoners and the need to prevent violent extremism from spreading in prisons.

We devote our attention here principally to the problem of prison overcrowding, the consequences of which are graphically illustrated by a case study describing conditions in a Salvadoran prison visited by one of us in 2016. Overcrowding continues to be a severe blight on the record of many countries in their treatment of prisoners, with 116 countries having prison occupancy rates of over 100%. Particularly concerning are Haiti, which has over 400% overcrowding, and the Philippines and El Salvador, which have over 300%.

Occupancy levels and overcrowding

Most national administrations publish details of the official capacity of their prison systems, though in many cases the figures provided are difficult to verify independently. In some countries there is a tradition of placing prisoners in single cells and the given capacity is therefore based on the number of cells available. In other countries, a number of prisoners are held in each cell and the administration will decide what it considers to be an appropriate number, based on a variety of disparate factors such as the number of sleeping spaces which can be provided in the space available. Multiple occupancy can vary from situations in which two persons share one room to conditions in which a hundred or more prisoners are held in large dormitories.

For the purposes of this article it is important to point out that while official occupancy figures may give some indication as to whether a prison is overcrowded, they are unlikely to provide a definitive measure. It is probable that a prison which holds more prisoners than its official capacity will be overcrowded. The World Prison Brief details occupancy levels for national prison systems. A prison system may have an overall occupancy rate below 100% but might include individual prisons that exceed their capacity, some of which are severely overcrowded. Similarly, a system in which the overall occupancy rate exceeds the spaces available may well include individual prisons that do not exceed their official capacity.

For the most part the official capacity of each prison system is set according to criteria determined by the country concerned, and in many instances this will not be dictated by the amount of living space available for each prisoner. There is no internationally accepted minimum standard for the physical space that each prisoner should have for living accommodation, but in recent years a number of international bodies have specified the minimum living space that should be provided for each prisoner. For example, the Council of Europe's Committee for the Prevention of Torture has published standards on "living space per prisoner in prison establishments":¹⁶ these are 6 square metres for a single-occupancy cell and 4 square metres per prisoner in a multi-occupancy cell. The ICRC has recommended that prisons should provide 5.4 square metres per person in single-cell accommodation and 3.4 square metres per person in shared or dormitory accommodation, including where bunk beds are used.¹⁷

Allowing for all these nuances, in broad terms it is generally safe to conclude that there is likely to be overcrowding in any prison system which has an occupancy rate of over 100%, and the higher the rate, the greater the level of overcrowding. According to the latest data available in the World Prison Brief,¹⁸ a

16 Committee for the Prevention of Torture, *Living Space per Prisoner in Prison Establishments: CPT Standards*, Council of Europe, Strasbourg, 2015, p. 1.

17 ICRC, *Water, Sanitation, Hygiene and Habitat in Prisons: Supplementary Guidance*, Geneva, 2012, p. 33.

18 World Prison Brief, "Highest to Lowest – Occupancy Level (Based on Official Capacity)", available at: www.prisonstudies.org/highest-to-lowest/occupancy-level?field_region_taxonomy_tid=All.

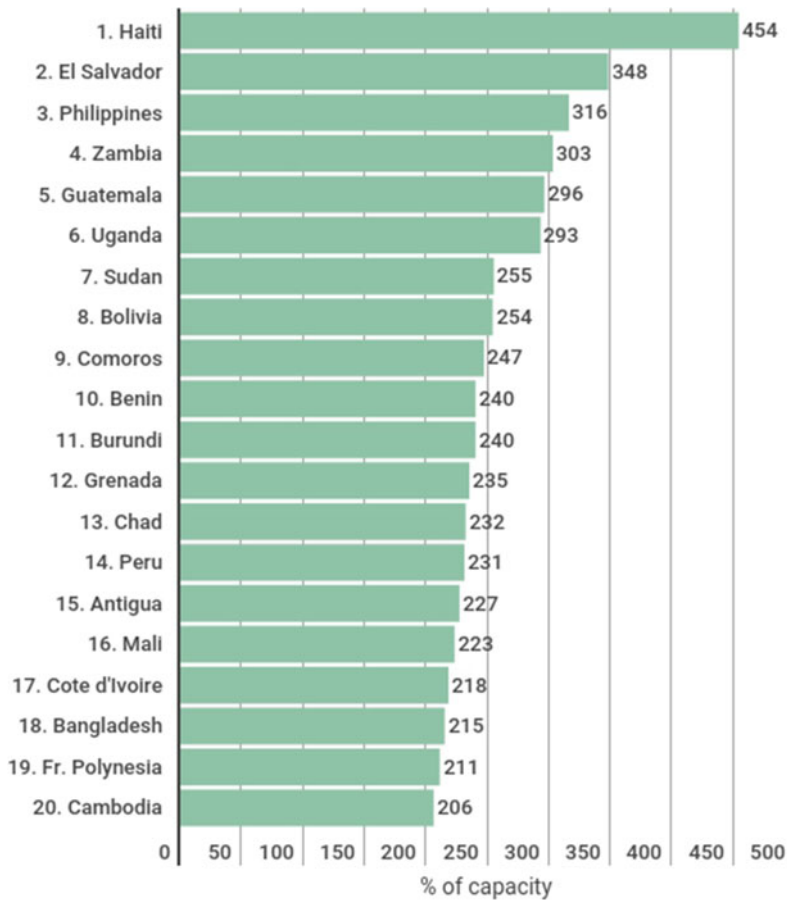


Figure 2. Countries with highest occupancy rates. Source: figures from World Prison Brief, “Highest to Lowest – Occupancy Level (Based on Official Capacity)”, available at: www.prisonstudies.org/highest-to-lowest/occupancy-level?field_region_taxonomy_tid=All#tabletop.

total of 116 countries have prison occupancy rates of over 100%. Haiti has the highest rate of overcrowding in the world at 454%, followed by El Salvador at 348%, the Philippines at 316% and Zambia at 303%. A further eighteen countries have over 200%, and an additional ninety-seven have over 100% overcrowding.¹⁹

19 *Ibid.*

The consequences of overcrowding: A case study

One example of what overcrowding can mean in practice is to be found in the prisons of El Salvador. El Salvador was chosen as an example because, as noted above, it now has the second-highest occupancy rate in the world, and the shocking consequences of this are clear from this case study. One of the authors of this article visited El Salvador in 1999 and again in 2016 and was therefore able to observe first-hand some of the consequences of the overcrowding and shortage of resources in the country's prisons.

In 1999 there were 7,500 prisoners in El Salvador. According to the Directorate-General of Prisons, at the end of January 2017 the number of prisoners was over 37,000, almost a fivefold increase.²⁰ None of the financial, personnel or accommodation resources in the prison system has had anything approaching a comparable increase.

As a result of the overpopulation, significant numbers of prisoners are accommodated in very large factory-like buildings with minimal facilities. Few beds are provided, and many prisoners sleep on makeshift bedding on the floor. The roof struts and upper fencing are festooned with rudimentary hammocks where prisoners perch perilously. The staff presence in the accommodation units is minimal, meaning that the gang leaders in each unit exercise their own authority over other prisoners.²¹ Prisoners have to pay for many of the basic necessities of life, including space to sleep.

For two years, the government has imposed what it terms “exceptional measures” in prisons, part of the official policy of using a “heavy hand” (*mano dura*) in its efforts to control the influence of gang members both in the prisons and in civil society.²² These measures involve holding some prisoners in particularly repressive conditions. In a prison that the author visited in 2016, one section included a number of small cells with very little natural light provided through the grilled gates onto the corridor which fronted the cells. Each cell held up to twenty prisoners, who were obliged to stand or crouch most of the day because of shortage of space. Pieces of cloth and rope were strung from the ceiling to provide makeshift hammocks. According to the prisoners, they were allowed out of the cells for a short period once every one or two weeks to walk in a tiny yard area abutting the living accommodation. Visits were not allowed.

The conditions in these cells were reminiscent of what the UN Special Rapporteur on Torture found when he paid his first visit to Russian prisons in 1994 and observed graphically that he “would need the poetic skills of a Dante or the artistic skills of a Bosch adequately to describe the infernal conditions he

20 Figures from: www.dgcp.gob.sv/index.php?option=com_content&view=article&id=123.

21 See Sonja Wolf, “Central American Street Gangs: Their Role in Communities and Prisons”, *European Review of Latin American and Caribbean Studies*, No. 96, April 2014; Chris Van der Borgh and Wim Savenije, “De-securitising and Re-securitising Gang Policies: The Funes Government and Gangs in El Salvador”, *Journal of Latin American Studies*, Vol. 47, No. 1, 2015.

22 See, for example: <https://sustainablesecurity.org/2011/03/01/mano-dura-gang-suppression-in-el-salvador/>.

found in these cells”.²³ Conditions such as these carry other serious dangers, not least as regards the health of the prisoners, and one of the greatest of these risks is the inevitability of infectious diseases. It is no surprise that this danger is now being realized in the prisons of El Salvador – there are indications that there has been a dramatic increase in the prevalence of tuberculosis in these prisons.²⁴ Infectious disease is not a respecter of prison walls, and if this epidemic is not halted urgently there will be a real danger to public health outside the prisons, as was the case with a number of prisons in countries of the former Soviet Union throughout the 1990s.

The shocking conditions in Salvadoran prisons are by no means unique. In Latin America there are similarly drastic environments to be found in prisons in Brazil,²⁵ Venezuela²⁶ and Honduras.²⁷ In Africa, inhuman detention conditions exist in countries such as South Africa,²⁸ Nigeria²⁹ and Malawi.³⁰ In Asia, there has been severe criticism of prisons in several countries. In relative terms physical conditions in European prisons are generally not so extreme, yet there can be no room for complacency, as can be seen from even a cursory study of the judgments of the European Court of Human Rights on violations of the European Convention of Human Rights in prisons in the forty-seven member States of the Council of Europe.³¹ When giving evidence to a UK parliamentary committee in January 2017, the independent chief inspector of prisons for England and Wales was asked, “What is wrong with our prisons?” His reply was trenchant: “Basically, they are unsafe; they are full of drugs; we have an ageing population; the physical environment is appalling; and there are far too many people in our prisons who are suffering from mental health issues.”³²

23 United Nations Economic and Social Council, *Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, in Particular: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Report Of The Special Rapporteur*, E/CN.4/1995/34, 12 January 1995.

24 Gilberto Ayala, Julio Garay, Miguel Aragon, Tom Decroo and Rony Zachariah, “Trends in Tuberculosis Notification and Treatment Outcomes in Prisons: A Country-Wide Assessment in El Salvador from 2009–2014”, *Pan American Journal of Public Health*, Vol. 39, No. 1, 2016; Ministerio de Salud, *Situación epidemiológica de la tuberculosis en El Salvador, 2015*, available at: www.salud.gob.sv/archivos/pdf/TUBERCULOSIS_DOC/Vigilancia_epidemiologica/Situacion_epidemiologica_de_la_tuberculosis_en_el_salvador_2015.pdf; Ministerio de Salud, *Plan estratégico nacional multisectorial para el control de la tuberculosis en El Salvador, 2016–2020*, April 2015, available at: www.salud.gob.sv/archivos/pdf/TUBERCULOSIS_DOC/Planes_Estrategicos/plan_estrategico_nacional_multisectorial_para_control_de_la_tb_en_el_salvador_2016_2020.pdf.

25 See, for example: www.washingtonpost.com/news/morning-mix/wp/2017/01/18/grisly-gang-massacres-sweep-brazils-prisons-100-inmates-killed-in-recent-weeks/.

26 See, for example: www.mirror.co.uk/news/world-news/prisoners-left-die-concentration-camp-9016760.

27 See, for example: www.insightcrime.org/news-analysis/honduras-prisons-put-inmates-at-risk-fuel-gang-violence-oas.

28 See, for example: www.iol.co.za/capetimes/pollsmoor-prison-conditions-declared-unconstitutional-2095712.

29 See, for example: <http://allafrica.com/stories/201609010902.html>.

30 See, for example: www.news24.com/Africa/News/hunger-reduces-prisoners-to-living-skeletons-in-malawi-20160912.

31 Available at: <http://hudoc.echr.coe.int>.

32 House of Commons Justice Committee, “Oral Evidence: Prison Reform”, HC 548, 31 January 2017, available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/prison-reform/oral/46581.html>.

Other critical and topical issues

In respect of the way that imprisonment is used today in many countries, there are a number of issues which have become particularly critical in recent years.

Race and ethnicity

In virtually every country of the world, minority groups are over-represented within prison walls. One obvious example of this is in respect of race and ethnicity. The situation in Australasia is illustrative: in Australia, for example, Aboriginal people and Torres Strait Islanders make up 27% of the prison population despite the fact that they constitute only 2% of the adult population.³³ This proportion varies from state to state, at 8% in Victoria in contrast to 84% in the Northern Territory.³⁴ In New Zealand, 15% of the country's population identify with Maori ethnic groups, but these individuals constitute almost 51% of the prison population, with another 11.3% of prisoners being Pacific People.³⁵ A similar disproportion is to be found in Canada, where indigenous people account for only 3% of the adult population but make up 24% of admissions to provincial and territorial correctional services and 20% of sentenced admissions to federal institutions.³⁶

Similar disparities exist in the United States. The overall rate of imprisonment in the United States is 698 per 100,000 of the population; however, within this total figure there is a considerable racial disparity. The rate of imprisonment for white males is 465 per 100,000, while that of black males is 2,724 and that of Hispanic males 1,090 per 100,000. In addition, official figures show that black females are significantly more likely to be imprisoned than white females.³⁷ In total, 13% of the national population is African-American, but 37% of the male prison population comes from this ethnic grouping. A similar phenomenon exists in England and Wales, where black, Asian and minority ethnic individuals make up 14% of the national population but account for over a quarter of all prisoners. In 2010, the UK Equality and Human Rights Commission reported that the disproportion of black people in prison in the United Kingdom is higher than that seen in the United States.³⁸

There is insufficient space in this article to analyze in detail the reasons for these striking disparities, but it is important to point out that answers will not be found solely within the world's criminal justice systems. Rather, the disparities

33 Australian Bureau of Statistics, above note 16.

34 *Ibid.*

35 OHCHR, "Statement at the Conclusion of Its Visit to New Zealand (24 March–7 April 2014) by the United Nations Working Group on Arbitrary Detention", available at: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14563&LangID=E.

36 Statistics Canada, "Adult Correctional Statistics in Canada, 2013/2014", available at: www.statcan.gc.ca/pub/85-002-x/2015001/article/14163-eng.htm.

37 US Department of Justice, "Prisoners in 2014", available at: www.bjs.gov/content/pub/pdf/p14.pdf.

38 Equality and Human Rights Commission, *How Fair is Britain? Equality, Human Rights and Good Relations in 2010*, London, 2010.

underline a wider reality, which is that in many countries prisons are populated largely by men and women who are at the margins of society – socially, economically, culturally and, in this case, racially and ethnically.

Foreign nationals

Given the globalized nature of the modern world and the increasing international movement of people, it is unsurprising that these phenomena are increasingly reflected in prison populations, with many countries now having a significant proportion of foreign national prisoners. Available data from the World Prison Brief show that prisoners of foreign nationality now make up over 10% of the prison population in sixty-three jurisdictions, with twenty-nine of these in the greater European region.³⁹ The term “foreign national” covers a wide range of different circumstances. It may apply to those who have come from their home country and are then convicted and imprisoned in another country. It can also apply to those who have had a long relationship with the country in which they are imprisoned and may even be permanently resident but do not have citizenship of that country. It may apply to those who are imprisoned for immigration or other civil reasons rather than under criminal law.

Special provision may have to be made for foreign national prisoners in a variety of matters. In terms of legal safeguards, they may require access to their home country’s diplomatic representatives as set out in the Vienna Convention on Consular Relations.⁴⁰ If they do not speak or understand the language of the country in which they are being held, both they and the prison administration may need assistance from interpreters. If their families remain in their country of citizenship, there may have to be special arrangements to enable them to keep in contact.

There is a variation of this issue in several countries; in Central America, for example, there are cases where prisoners have never lived in their country of citizenship but have been brought up and perhaps even born in another country, such as the United States. Having been imprisoned initially in the second country, they are then deported back to their country of citizenship even though their social and family links with that country may be tenuous at best.

Violent extremism

For the last two decades, there has been concern in a number of jurisdictions about the danger of violent extremism spreading in prisons. In recent years the focus of attention, particularly in Europe, has been on so-called Islamist extremism. In other countries there has been concern about far-right extremism, while

39 World Prison Brief, “Highest to Lowest – Foreign Prisoners (Percentage of Prison Population)”, available at: www.prisonstudies.org/highest-to-lowest/foreign-prisoners?field_region_taxonomy_tid=All (accessed in February 2017).

40 Vienna Convention on Consular Relations, 596 UNTS 561, 24 April 1963 (entered into force 19 March 1967), Art. 36.

elsewhere the concern has been for prisoners who hold political views which are at odds with the governing authorities. For centuries prisons have been used to detain persons who have been convicted of violent extremist behaviour based on political opinions or religious beliefs, and prison administrations have managed the detention of these prisoners in a variety of ways. Some of the official responses to violent extremist prisoners have themselves violated international and domestic law.

Some countries use the description “violent extremism” in preference to “radicalization”, since the latter term can be subject to different interpretations. A violent extremist is someone allied to a group which spreads radical views and justifies the use of violence or illegal conduct in pursuit of its objectives. This definition is a generic one and needs to be further distilled. At the top end it is likely to include a small number of key plotters and planners, including those whose ambition is to radicalize other prisoners. At the next level down there will be a group that includes those who facilitate the work of other extremists, who may provide or have access to finance or who are dedicated followers. A third level spreads out to include followers in the wider prison population, who may be less committed. After them come those who are on the margins of the group but open to being attracted to it. Finally, there will be some who are vulnerable, either psychologically or for other personal reasons, and who may seek companionship in the group. The distinction among these groups needs to be recognized, and different tactics need to be developed to deal with them. It is important to avoid regarding all of these groups in the same light and dealing with them as a homogenous category.

There is now extensive case law, a raft of reports from international inspection bodies and rigorous academic studies on how States and other official parties can deal with violent extremism in prisons in an efficient and humane manner.⁴¹

Increasing use of very high-security imprisonment for particular groups of prisoners

A small number of prisoners may be so dangerous and disruptive that they have to be held apart from the general prison population, even in high-security prisons. The care and control of these prisoners needs to be carefully structured in a way that observes the general principles of good prison management. Solitary confinement should be used only as a last resort and only in extreme cases. Where its use is deemed necessary it should be used for short periods and managed within established guidelines and strict safeguards.⁴² There is a growing international

41 See, for example, UNODC, *Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons*, New York, 2016; International Centre for the Study of Radicalisation and Political Violence, *Prisons and Terrorism: Radicalisation and De-radicalisation in 15 Countries*, London, 2010; Tinka Veldhuis, *Prisoner Radicalization and Terrorism Detention Policy: Institutionalized Fear or Evidence-Based Policy-Making?*, Routledge, London, 2016.

42 Sharon Shalev, *A Sourcebook on Solitary Confinement*, London School of Economics and Political Science, London, 2008, available at: http://solitaryconfinement.org/uploads/sourcebook_web.pdf.

consensus that the isolation of individuals in conditions of solitary confinement should not be imposed for longer than fifteen days.⁴³ There are generally other options for the management of prisoners, even highly dangerous ones.

As a general rule, high-security conditions should only be used where a prisoner's behaviour means that a less restrictive regime would be inappropriate and would pose a direct threat to safety and security. Time spent in such restrictive conditions should be the minimum possible and should be subject to continuous review.

In well-managed prisons there will be a balance between security, control and justice. The premise that treating prisoners in a humane and just manner will lead to a reduction in security and control is quite wrong. On the contrary, prevention of escapes and the maintenance of control and good order can best be achieved within a well-ordered environment. Prison systems which restrict the use of very high-security conditions to the minimum necessary are likely to be safer for both prisoners and staff.

In recent years it has been suggested in some quarters that there is a new type of prisoner who is so dangerous and such a threat to society that they will need to be held in isolation for a lengthy period of time, in some cases for the rest of their natural life. This is a dangerous assumption. Jurisdictions across the globe have been faced with the issue of how to deal with individuals who present a serious and continuing threat to the State over long periods of time, and they have always been required to do so within the parameters of domestic and international law. The way in which such prisoners are held and treated is one of the greatest tests of a professional prison system. Failure to treat them decently and humanely is wrong on a number of levels. It is wrong as a matter of principle and in respect of the way a professional prison administration should conduct itself. It also breaches the requirements of a democratic State.

International and regional standards

Over the last fifty or more years, a comprehensive set of standards has been established defining what is required to ensure that prisoners and other detained persons are held in conditions which are decent and humane. These standards are grounded in a set of clear principles which can be applied in all countries and which have been agreed by the international community, usually through the United Nations (UN). Key among them are the International Covenant on Civil and Political Rights⁴⁴ and the International Covenant on Economic, Social and Cultural Rights.⁴⁵ States that have ratified or acceded to these treaties are legally bound by them.

43 See, for example, "Solitary Confinement Should Be Banned in Most Cases, UN Expert Says", *UN News Centre*, 18 October 2011, available at: www.un.org/apps/news/story.asp?NewsID=40097#.WkYUJnko-M8; "Liberal Government to Impose 15-Day Limits on Solitary Confinement", *Globe and Mail*, 19 June 2017, available at: www.theglobeandmail.com/news/national/liberal-government-to-impose-15-day-limits-on-solitary-confinement/article35369982/.

44 Available at: www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx.

45 Available at: www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx.

In addition to the overarching international human rights standards, there are a number of instruments that deal specifically with prisoners and the conditions in which they are held. Key among these are the UN Standard Minimum Rules for the Treatment of Prisoners (1957), updated as the Nelson Mandela Rules (2015),⁴⁶ and the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (known as the Bangkok Rules, 2010).⁴⁷ The international standards are supported by regional instruments such as the European Prison Rules (2006).⁴⁸

The extent to which individual States implement the international standards can be seen through the work of regional judicial bodies such as the European Court of Human Rights and the Inter-American Court of Human Rights. In addition, conditions of detention in the member States of the Council of Europe are monitored by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,⁴⁹ and in 1997 the African Commission on Human and People's Rights appointed a Special Rapporteur on Prison Conditions.⁵⁰

In 2002, the UN adopted the Optional Protocol to the Convention against Torture.⁵¹ This entered into force in 2006 and established a system of regular visits to places of detention by a sub-committee appointed by the UN Committee against Torture, complemented by sustained regular visits conducted by national independent inspection groups known as National Preventive Mechanisms.

A full list of the international and regional human rights standards relating to prisons and the use of imprisonment can be found in the recent Institute for Criminal Policy Research publication *Imprisonment Worldwide: The Current Situation and an Alternative Future*.⁵² Further details on how the standards can be practically applied in the prison setting can be found in the handbook *A Human Rights Approach to Prison Management*,⁵³ a third edition of which will be published in early 2018.

While the international and regional standards form a broad framework on how prisoners should be treated and the conditions in which they should be kept, the extent to which States comply with these standards varies widely. Pressures which can undermine a State's compliance include a lack of resources, the overuse of imprisonment, a lack of political will, outdated legislation and weak monitoring systems. The UN Office on Drugs and Crime (UNODC) notes that "[p]rison authorities have a responsibility to ensure that the supervision and

46 Available at: www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

47 Available at: www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf.

48 Available at: <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>.

49 Available at: www.coe.int/mk/web/cpt/home.

50 See: www.achpr.org/mechanisms/prisons-and-conditions-of-detention/.

51 Available at: www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx.

52 A. Coyle *et al*, above note 2.

53 Andrew Coyle, *A Human Rights Approach to Prison Management: Handbook for Prison Staff*, 2nd ed., International Centre for Prison Studies, 2009, available at: www.prisonstudies.org/sites/default/files/resources/downloads/handbook_2nd_ed_eng_8.pdf.

treatment of prisoners is in line with the rule of law, with respect to individuals' human rights, and that the period of imprisonment is used to prepare individuals for life outside prison following release", and makes it clear that the pressures detailed above are not justifications for non-compliance.⁵⁴

Concluding remarks

In many countries, prison conditions are inhuman and degrading. Despite all the efforts of intergovernmental and governmental bodies, as well as those of well-intentioned individuals and non-governmental bodies, the prison as an institution remains stubbornly resistant to reform. Nonetheless, in many countries courts continue to send more people to prison for longer periods of time, taking no account of the fact that one of the surest predictors that someone is likely to end up in prison is that he or she has been there previously, particularly if first sent there at a young age.⁵⁵

We appear to be a long way away from a world in which the practice of imprisonment becomes as unthinkable as, for example, sending people to the workhouse. It remains difficult to imagine a time when the prison will have ceased to exist, replaced by some other form of response to crime. This is so despite mounting evidence that non-custodial alternatives offer better prospects of rehabilitation, carry less risk of recidivism and provide better value for money. Perhaps there really is no alternative to prison, at least none that could provide the necessary response to – and protection from – crimes of the most serious kind.

Yet in the world's prisons today, only a minority of prisoners who are serving a custodial sentence have been convicted of a serious crime and/or present an appreciable risk to public safety.⁵⁶ As for the majority, a high proportion of them will have come to prison from lives largely spent at the margins of society as a result of poverty, abuse, neglect, mental illness, alcohol or drug dependency, or a combination of all these factors.⁵⁷ We are, it seems, just as ready as we were in the nineteenth and twentieth centuries to shut away from

54 UNODC, "Why Promote Prison Reform?", available at: www.unodc.org/unodc/en/justice-and-prison-reform/prison-reform-and-alternatives-to-imprisonment.html.

55 See, for example, Anna Aizer and Joseph J. Doyle Jr, *Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges*, National Bureau of Economic Research, Cambridge, MA, 2013.

56 13th UN Congress on Crime Prevention and Criminal Justice, *The State of Crime and Criminal Justice Worldwide*, 2015.

57 See, for example, Loïc Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity*, Duke University Press, Durham, NC, 2009. Wacquant argues that America's neoliberal policies have replaced poor relief programmes, workhouses and debtors' prisons with modern variants – prison, probation and surveillance – which work to "regulate" (or socially exclude) populations that have become economically redundant.

view those people who represent “the other” – who appear different in some way from the majority.⁵⁸

“The increased use of imprisonment in many countries is a reflection of new insecurities in a changing world order.”⁵⁹ In looking to the future, it is likely that any hope of increased security will come only if there is a move away from seeking criminal justice solutions to deep and underlying political, social and economic problems. That is a debate which will take us beyond the parameters of this article.⁶⁰

58 As discussed in James M. Byrne, April Pattavina and Faye S. Taxman, “International Trends in Prison Upsizing and Downsizing: In Search of Evidence of a Global Rehabilitation Revolution”, *Victims and Offenders: An International Journal of Evidence-Based Research, Policy, and Practice*, Vol. 10, No. 4, 2015.

59 Andrew Coyle, “Prisons in Context”, in Yvonne Jewkes, Ben Crewe and Jamie Bennett (eds), *Handbook on Prisons*, 2nd ed., Routledge, New York, 2016.

60 Mauer reviews research literature on this topic, much of which has emerged from the United States in response to that country’s surge in incarceration rates over recent decades. See Marc Mauer, “Incarceration Rates in an International Perspective”, *Oxford Research Encyclopaedia of Criminology*, 2017, available at: <http://criminology.oxfordre.com/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-233?rskey=fyAxAq&result=1>.

