

# GLOBAL PRISON TRENDS 2018



## **SPECIAL FOCUS**

### **Pull-out section**

**The rehabilitation and reintegration of offenders in the era of sustainable development**

## Global Prison Trends 2018

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We promote alternatives to prison that 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.

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One of the primary objectives of the TIJ is to promote and support the implementation of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

In addition, the TIJ strives to serve as a bridge that transports global ideas to local practices with an emphasis on fundamental issues including interconnections between the rule of law and sustainable development, human rights, peace and security.

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CENTREFOLD

Special Focus 2018 (pull-out section)

**The rehabilitation and reintegration  
of offenders in the era of sustainable  
development**

[The] trend of over-incarceration and punishment of people who use drugs is seen on every continent



# Foreword

Every year, *Global Prison Trends* by Penal Reform International (in collaboration with the Thailand Institute of Justice) provides us with a global view on the state of prisons. And, every year, this report is, unfortunately, hardly a surprise – we read about the degrading conditions in which people are imprisoned, and about their growing number. Yet the level of crime in most societies is constantly decreasing. The question that remains unanswered, therefore, is why our societies focus their response to unlawful behaviours so often on prison? Where is the proportionality in sentencing when we punish non-violent offences with lengthy prison sentences? Is this the only response we can offer?

The chapter on drugs and imprisonment in this report highlights that a high number of prisons in the world are overcrowded due to the incarceration of people for drug-related offences, in particular non-violent offences involving use and possession for personal use. This directly reflects our contemporary addiction to punishment and showcases the disproportionality of punishment in relation to the offence. The use of harsh prison sentences for people who use drugs or for those who play a minor role in the drug trade also shows the inefficiency, limitations and perverse effects of current drug control policies. Not only are punishment and incarceration becoming the sole instruments used to enforce the law, but also they are serving to implement moral norms which have no link with the reality of the offence that they are supposed to punish.

This trend of over-incarceration and punishment of people who use drugs is seen on every continent. The deep impact it has on prison systems and on people in prison and their communities has sparked the current global debate on drug policy reform. In recent years, more and more countries have been introducing amendments to their drug laws; for example, by decriminalising the use of drugs in Norway and Colombia, and by replacing prison terms with monetary fines in Ghana and Tunisia or with community service, as envisaged in Senegal. Other countries have gone even further. Ecuador gave an amnesty to drug couriers and released thousands of prisoners. Countries that have traditionally adopted harsh stances on drugs, such as Malaysia and Iran, are reviewing their death penalty policies for drug offences, and removing people from death row.

These changes and reforms are being discussed and implemented in a global environment that remains highly stigmatising, where drugs are still considered ‘evil’ and prohibition approaches prevail. They are therefore born out of a real need – the need for societies to stop exposing their citizens to greater risks from arrests related to drug use than come from the act of using drugs.

The need for reforms was also highlighted at the UN General Assembly Special Session on Drugs held in 2016. In their decisions there, member states called for more proportionate sentencing and for alternatives to incarceration. At the Global Commission on Drug Policy,

we call for these commitments to be implemented, taking account of the fact that over-incarceration as a result of out-of-date drug policies stalls progress on implementing the Sustainable Development Goals, notably for Goal 3 on health, Goal 5 on gender equality, Goal 10 on reducing inequality, and Goal 16 on peaceful societies.

Drug policies need reforms, and there are two urgent ones to enact. First, we need to accept that behaviours and actions of others that are not aligned with our own moral perspectives do not need to be turned into criminal offences. Second, we need to introduce proportionate sentencing and alternatives to imprisonment for minor drug supply-related offences. This will ease pressure on prison systems so that they can fulfil their purpose as set down in the UN Nelson Mandela Rules: to play a rehabilitative role and focus on social reintegration, and to distance from the criminal justice system those who should not be subject to it, including people who use drugs.

## **Rt Hon Helen Clark**

*Member of the Global Commission on Drug Policy; Former Prime Minister of New Zealand, 1999–2008; Former Administrator of the United Nations Development Programme (UNDP), 2009–2017.*

# Introduction

*Global Prison Trends 2018* is the fourth edition in Penal Reform International's annual series, published in collaboration with the Thailand Institute of Justice. The report analyses trends in criminal justice and the use of imprisonment and, as in previous years, these show that while overall crime rates around the world have declined, the number of people in prison on any given day is rising.

This continuing increase demonstrates that pre-trial detention is not being used as a last resort, as required by international standards, and prison remains the automatic response to criminal offending in most countries around the globe. Minor, petty offences continue to attract prison sentences, including poverty-related crimes like theft or drug use and possession. Overall, sentences are becoming longer, with mandatory minimum sentencing policies restricting access to justice. With few exceptions, the principle of proportionality in sentencing remains aspirational.

People from minority groups and Indigenous communities continue to be caught up in criminal justice systems at disproportionate levels, which often reflects the social and economic exclusion of such groups.

All of these factors have contributed to prison overcrowding at crisis levels, and although some countries have made efforts to reduce their prison populations, many have resorted to unsustainable 'quick fixes' such as amnesties or building new prisons.

Criminal justice policies affect nearly every aspect of the 2030 Sustainable Development Goals (SDGs), including poverty, food security, human rights, health and well-being, education, social inclusion, gender equality, employment, environmental issues, human security, access to justice, inclusive political processes, and governance and the rule of law. Yet they have often been developed without full consideration of the costs of such policies for sustainable development.

As the Special Focus section on *The rehabilitation and reintegration of offenders in the era of sustainable development* argues, our leaders need to rethink criminal justice policy to overcome these enormous problems and ensure that 'no one is left behind' – a commitment made by states in adopting the SDGs. A system based on rehabilitation and sustainable development can see people in prison rebuild their lives and contribute to safer societies, free from poverty.

In addition to chapters on sentencing, prison populations, prison management, the role and use of technologies and alternatives to imprisonment, this year's report takes a closer look at pre-trial justice issues. Part two covers developments in safeguarding rights for people arrested and suspected of a criminal offence, as well as new research on sentencing practices, such as the increasing use of plea bargaining and life imprisonment.

By providing an overview of trends and challenges in penal policy and the use of imprisonment globally, we hope that *Global Prison Trends 2018* provides a useful tool for policymakers and other actors working towards fair and effective criminal justice systems.

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## PART ONE

# Crime and imprisonment

## Crime rates and the use of imprisonment

Accurately measuring levels of crime is not possible, although general trends suggest that crime rates have continued downwards in recent years for homicide and other violent crimes, as well as for property crimes. Prosecutions for drug possession offences, on the other hand, increased between 2003 and 2013, while drug trafficking prosecutions remained stable.<sup>1</sup> Cybercrime, such as internet-based theft, fraud and exploitation, is increasingly recognised as a major concern.<sup>2</sup>

The crime of homicide is generally regarded as a proxy indicator for violent crime overall. The United Nations Office on Drugs and Crime found an overall decline in intentional homicide between 2009 and 2015 but noted marked variants across different regions.<sup>3</sup> Large increases in homicide were seen in South America until 2014, in Northern Africa between 2009 and 2011, and in Southern Africa between 2011 and 2015, although in the latter there has been a significant decline over the past 25 years. A common feature of several countries with high homicide rates is inequality in income distribution.<sup>4</sup>

Globally, men are overrepresented as both victims and perpetrators when it comes to homicide. However, women make up the majority of victims of homicide by intimate partners and family members, and there is limited regional differentiation in this pattern.<sup>5</sup>

Despite the global downward trends in crime, between 2000 and 2015 prison populations rose unrelentingly by almost 20 per cent – a rate slightly higher than the world population growth over the same period.<sup>6</sup> The number of women and girls in prison worldwide increased by 53 per cent between 2000 and 2017.<sup>7</sup>

The Institute for Criminal Policy Research estimates that there were over 10.35 million prisoners living in prisons around the world in 2016, either in pre-trial detention or having been convicted and sentenced. The true figure may be in excess of 11 million, since the data is not complete and, for example, does not include figures from countries such as Eritrea, Somalia and North Korea, nor people in police detention.<sup>8</sup>

There are diverging trends in the use of imprisonment at the regional level. Between 2000 and 2015, the total prison population in Oceania increased by almost 60 per cent, and in the Americas it increased by over 40 per cent overall – 14 per cent in the US, over 80 per cent in Central American countries, and by 145 per cent in South American countries.<sup>9</sup>

In Europe, by contrast, the use of imprisonment decreased by 21 per cent in the same period.<sup>10</sup> Russia's prison population decline is striking (a 37 per cent reduction between 2000 and 2015) and the explanation for this is not clear. One study suggested that the jurisprudence of the European Court of Human Rights might have had

an impact;<sup>11</sup> since 1998, the Court has delivered more than 600 judgments finding inhuman and degrading treatment of individuals in Russia's detention facilities.<sup>12</sup> The Netherlands saw a decrease of 46 per cent in its prison population between 2006 and 2016. Again, the causes of this are unclear, but contributing factors are a renewed focus on crime prevention, a drop in registered violent crime, and expansion of the scope of suspended sentences and in the use of electronic monitoring.<sup>13</sup> The country has such a surplus of unused cells that it has rented some of its prisons to Belgium and Norway.<sup>14</sup>

Although the female prison population is rising, women and girls still remain a small minority, constituting 6.9 per cent of the global prison population.<sup>15</sup> In Africa, the proportion – at 3.4 per cent – is much lower than elsewhere. In the Americas, women and girls make up 8.4 per cent of the total prison population, while in Asia the proportion is 6.7 per cent; in Europe, 6.1 per cent; and in Oceania, 7.4 per cent.<sup>16</sup>

The drivers behind the increasing rates of imprisonment globally are many and varied, and can be linked to changes in criminal justice policies and practices such as mandatory sentencing and stringent bail conditions, as well as social, cultural and economic factors such as levels of inequality, substance abuse, unemployment and social and community cohesion. Any relationship between rates of imprisonment and levels of criminal activity remains contested.

Some countries continue to have a ‘tough on crime’ approach founded on a belief that higher rates of imprisonment and longer sentences will act as a deterrent and incapacitate offenders from committing crime whilst in prison. However, there is clear evidence that tougher sentences of imprisonment do not in fact deter offenders from committing crime. A 2017 report by the Open Philanthropy Project reviewed 35 international

studies that examined this link, and concluded that ‘the crux of the matter is that tougher sentences hardly deter crime, and that while imprisoning people temporarily stops them from committing crime outside prison walls, it also tends to increase their criminality after release. As a result, “tough on crime” initiatives can reduce crime in the short run but cause off-setting harm in the long run’.<sup>17</sup>

## RECOMMENDATION 01

**States should introduce a range of law and policy changes to reduce rates of imprisonment, such as crime prevention measures, the expansion of alternative measures, and a renewed focus on rehabilitation in both prisons and community settings.**

## Prison overcrowding

The growth of the world prison population has exceeded the rate of general population growth since 2000, and, in many countries, this increase has led to more overcrowded prisons. Data suggests that the number of prisoners exceeds official prison capacity in at least 120 countries.<sup>18</sup> This is an underestimate, as some systems base their calculations on minimal space per prisoner. Prison overcrowding is largely a consequence of dysfunctional criminal justice systems and punitive responses to crime. (See Pre-trial detention, page 11; Sentencing, page 11).

Overcrowding also occurs in transportation of detainees; for instance, a recent report by Amnesty International found that prisoners in Russia can spend up to 60 hours in a space of just 0.29 square metres while being transferred between facilities.<sup>19</sup>

A small number of countries have seen a drop in their prison populations in recent years, including Russia and Mexico.<sup>20</sup> But the general trend of over-incarceration and prison overcrowding continues.

A report issued by the UN High Commissioner for Human Rights in 2017<sup>21</sup> detailed the causes and effects of over-incarceration and prison overcrowding, citing violence and abuse as ‘by-products’ of the latter. It also pointed out links between overcrowding and inadequate healthcare and facilities for training, as well as a lack of opportunity to enjoy the right to freedom of religion or belief. The report detailed how vulnerable groups are impacted differently and more severely by

overcrowding. While there is a great deal of evidence that the mental health of prisoners is affected by prison overcrowding, including from the UN,<sup>22</sup> a new academic study that assessed 4,000 prison suicides in 24 countries found no link between suicides and overcrowding.<sup>23</sup>

The long-term solution to prison overcrowding lies in the reform of policies and laws and the use of alternatives to imprisonment, as required by the UN Tokyo Rules.<sup>24</sup> However, more immediate responses, such as amnesties and pardons, continue to be implemented.

Amnesties were recently announced in Macedonia and Kuwait, and, in The Gambia, more than 250 prisoners received a pardon.<sup>25</sup> In Kenya, the President directed the release of petty offenders, citing huge costs as the reason for decongestion, and a decongestion initiative began in 2017 in Nigeria, led by a newly established national committee on prison reform.<sup>26</sup>

While amnesties and pardons produce short-term relief, they are not a sustainable solution and can also erode public confidence in the criminal justice system. In the Czech Republic, approximately 2,000 of the 6,500 people released in a 2013 amnesty subsequently returned to prison.<sup>27</sup> In Burundi, a pardon to release around a third of the prison population in early 2017 was criticised as only making space for political prisoners.<sup>28</sup>

Some countries look to the construction of new prisons to reduce overcrowding. Turkey has announced plans to build 228 prisons over the next five years, after its

Justice Ministry admitted to a ‘severe’ overcrowding problem.<sup>29</sup> The extra prisons will increase the total prison capacity by 137,000 beds.<sup>30</sup> In Slovakia, a new prison is planned to house a further 832 prisoners,<sup>31</sup> and Nigeria announced that six ‘ultra-modern’ prisons will be opened across the country.<sup>32</sup> A European Parliament report which deplored prison overcrowding in EU member states noted that ‘increasing prison capacity is not the sole solution to overcrowding, as the prison population tends to rise at the same rate as increases in prison capacity’.<sup>33</sup>

The use of non-custodial measures at the pre-trial stage and post-conviction is increasingly understood to be an effective way to reduce overcrowding. Several countries struggling with overstretched prisons took steps to keep people out of prison. For example, following a European Court of Human Rights ruling that it take steps to address prison overcrowding, Romania planned to introduce early release and electronic monitoring for certain categories of prisoners.<sup>34</sup> (See Pre-trial detention, page 11; Alternatives to imprisonment, page 36; and for electronic monitoring, page 33).

## RECOMMENDATION 02

**Strategies to address prison overcrowding should focus on crime prevention, expanding the use of alternatives to imprisonment and social interventions that promote sustainable development and reduce poverty and inequality. (SDGs 1, 10 and 16)**



**The long-term solution to prison overcrowding lies in the reform of policies and laws and the use of alternatives to imprisonment**



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## PART TWO

# Trends in the use of imprisonment

## Pre-trial justice

Everyone has rights, from the moment they first come into contact with the criminal justice system. These include protection from the unnecessary use of force by the police, from summary or arbitrary arrest, and from incommunicado detention. People have the right to be told of the reason for their arrest, have access to legal representation and medical care, and to be charged and brought promptly before a judge.<sup>35</sup>

Police detention and investigation can be a time of great vulnerability for detainees, with many of these rights being flouted. For instance, in India state-funded legal aid is not always provided at the time of arrest or when the accused person is first brought before a magistrate, which discriminates against people who cannot afford private lawyers in the critical pre-charge stage.<sup>36</sup> Research from Mexico found that 83 per cent of Indigenous prisoners were not shown an arrest warrant and 77 per cent did not understand why they were being detained, and there were only 24 public defenders who spoke Indigenous languages available for 7,433 Indigenous suspects.<sup>37</sup> In Brazil, judges in only about 40 per cent of jurisdictions see detainees promptly after arrest at ‘custody hearings’ (where rulings are made on pre-trial detention), and many wait months to see a judge. In response, the Brazilian

Congress has been considering legislation that would make custody hearings mandatory nationwide.<sup>38</sup>

Some other positive measures have been adopted to protect suspects, such as in Japan, where a revised law requires mandatory video recording of interrogations with suspects to be implemented by June 2019.<sup>39</sup>

A pilot project in Fiji to introduce video recording of police interviews was extended for another year.<sup>40</sup> In Paraguay, it is now mandatory to use detention registries in all police stations, which can improve transparency.<sup>41</sup>

Abusive and coercive interrogation practices have long been criticised, not least because they are ineffective in achieving the aim of fact-finding to solve crimes. The UN High Commissioner for Human Rights reiterated recently that coercive methods, including the use of torture, are unreliable, counterproductive and ‘deeply wrong’.<sup>42</sup> In 2016, a report by the UN Special Rapporteur on torture urged states to develop an international protocol on non-coercive interviewing methods to counter widespread patterns of torture and ill-treatment to extract confessions of guilt. This has led anti-torture advocates to promote ‘investigative interviewing’ – a non-coercive method of interviewing criminal suspects, and

work has commenced to develop a set of universal standards for non-coercive interviewing and procedural safeguards.<sup>43</sup> The Convention against Torture Initiative has published a training tool on the method,<sup>44</sup> and the UN has announced the publication of a Manual on Investigative Interviewing for UN police officers.<sup>45</sup>

Investigative interviewing has its origins in the ‘PEACE’ model developed in England and Wales in the 1990s,<sup>46</sup> which has since influenced other law enforcement agencies, including in Norway, New Zealand and China.<sup>47</sup>

### RECOMMENDATION 03

**States should respect, protect and fulfil the full range of human rights and procedural safeguards guaranteed for people arrested. To prevent torture or ill-treatment of suspects, investigative interviewing that is non-coercive should be adopted. (SDG 16)**

## Pre-trial detention

Pre-trial detention is one of the main causes of over-incarceration and overcrowding and it remains an enormous challenge for prison systems. Around 30 per cent of prison populations have not been convicted. While global pre-trial rates have decreased slightly over the past 10 years, in some countries over 60 per cent of people in prison are in pre-trial detention.<sup>48</sup> The total number and percentage of pre-trial detainees is an indicator of access to justice under Goal 16 of the Sustainable Development Goals.<sup>49</sup>

A lack of access to legal representation is a major factor contributing to high rates of pre-trial detention. For example, a survey in Nigeria found that 56 per cent of pre-trial detainees did not have active legal representation primarily due to lack of funds to engage a lawyer.<sup>50</sup> Barriers to appearing in court are another factor, such as in India, where there was a reported 82,334 cases across 154 prisons in a six-month period where pre-trial detainees did not appear in court for their trial, due to a shortage of police escorts.<sup>51</sup>

High rates of pre-trial detention are also a result of unaffordable amounts of monetary bail being set

by courts, which particularly impacts on poor people caught up in criminal justice systems. The problem is well-documented in the US, where, in the state of Hawaii during the first half of 2017, almost half of the jail population were in pre-trial detention because bail amounts were set at excessive levels; the average amount for the lowest-level felony was over USD\$20,000 in Honolulu.<sup>52</sup> Steps were taken in several US states to reform bail systems to address the issue, including in Connecticut, Alabama and recently in New York City, where cash bail for non-felony cases is to be abolished.<sup>53</sup>

Efforts to reduce levels of pre-trial detention have been seen in a number of countries. In Thailand, a pilot project across 12 courts successfully introduced flight-risk assessment when determining if pre-trial detention is necessary. Around 66,000 people are imprisoned each year in Thailand because they do not have enough cash or assets to post bail before and during their trials.<sup>54</sup> In Liberia, where it is estimated that 69 per cent of prisoners are in pre-trial detention, a special judiciary task force has been established to review cases.<sup>55</sup>

Other measures to address the excessive use of pre-trial detention included legal limits on its length and application. For example, in Bolivia, where 68 per cent of the prison population are in pre-trial detention, reforms are being considered to shorten the maximum time of pre-trial detention and limit the number of cases that it can be applied to.<sup>56</sup> In Colombia, a new law came into effect in response to a Supreme Court ruling to expedite low-level criminal cases where the suspects are in pre-trial detention.<sup>57</sup> The Egyptian Parliament is currently drafting a bill to put a six-month ceiling on pre-trial detention, although there is some scepticism as to whether it would be fully implemented.<sup>58</sup>

### RECOMMENDATION 04

**Pre-trial detention should only be used as a means of last resort, and decisions to detain should be based on the presumption of innocence and the principles of necessity and proportionality. Monetary bail policies should be reviewed to ensure they do not discriminate against poor people. (SDGs 1, 10 and 16)**

## Sentencing

Levels of severity in sentencing vary considerably between countries, and identifying trends in the proportionality and length of sentences is not straightforward. However, available data suggests that prison sentences are getting longer generally, particularly for serious offences. For example, whilst the number of custodial prison sentences handed down by courts in Finland decreased overall by 42 per cent between 2004 and 2016, the average duration of life-term sentences rose from just over 10 years in the 1990s to 14.5 years in 2016.<sup>59</sup> A similar trend was seen in Scotland, where the average tariff for those receiving a life sentence increased from 10 years in 2000 to

over 18 years in 2012.<sup>60</sup> (See Life imprisonment, page 12). In England and Wales, 141 offenders had their sentences increased in 2016 as a result of a referral scheme where anyone can ask the Attorney General to consider whether a sentence should be referred for review at the Court of Appeal for being unduly lenient. The scheme is only possible for more serious offences, and in 2017 was extended to include 19 terrorism-related offences.<sup>61</sup>

Wide variation has also been observed in sentencing practice between courts and individual judges; for example, in Ireland, where there are no sentencing guidelines, analysis of sentencing for

burglary revealed that offenders are far less likely to receive a custodial sentence in Limerick than in Dublin.<sup>62</sup>

Elsewhere there have been positive sentencing reforms. In New Zealand, a new government set out plans to remove the 'three strikes' law introduced in 2010, which removed the discretion of a judge when sentencing a third offence, requiring the maximum prison sentence available in law, without the possibility of parole.<sup>63</sup> The Nepalese Parliament passed a Bill that permits courts to sentence prisoners to 'open jails' and, if sentenced to less than two months, the court may order them to serve their sentence in a rehabilitation centre.<sup>64</sup>

In the US, the Sentencing Commission considered an amendment to the federal sentencing guidelines to increase the availability of ‘alternative to incarceration’ sentences.<sup>65</sup>

A significant trend in relation to sentencing is a growth in plea bargaining or trial waiver systems. Plea bargains are a negotiated process by which the prosecution puts forward reduced charges or requests a lighter sentence, and in return a defendant pleads guilty or incriminates others.

A 2017 study on 90 countries by the NGO Fair Trials found that there was a 300 per cent increase in plea bargains worldwide since 1990.<sup>66</sup> For example, in Georgia, where plea bargaining was introduced in 2004, the share rose from 13 per cent in 2005 to 88 per cent in 2012. The US is the jurisdiction with the most extensive use – over

95 per cent of criminal cases are now resolved through plea bargains, with little regulation (there are no legal limits on what can be negotiated between individual prosecutors and defendants). In Australia, England and Russia, more than 60 per cent of cases are resolved with plea bargains.<sup>67</sup>

Supporters of plea bargaining assert that it can reduce court waiting times, help to reduce pre-trial detention, save money, and can protect vulnerable victims from the ordeal of testifying in trial. In India, for instance, it was introduced explicitly to address overcrowding.<sup>68</sup> However, without adequate procedural safeguards, there are considerable concerns about its use and expansion, not least that defendants lack the procedural safeguards that should be available

to them during a trial. Also, innocent people can be persuaded to plead guilty; easier convictions can encourage over-criminalisation and drive harsher sentences; there can be an inequality between the negotiating partners and a lack of transparency where ‘deals’ are done by prosecutors behind closed doors; and public trust in justice can be undermined.<sup>69</sup>

#### RECOMMENDATION 05

**Sentencing practice should be guided by international law, including the UN Tokyo and Bangkok Rules, and should be based on the principle of proportionality. Plea bargaining systems should be fully regulated to ensure access to justice is preserved and rights of suspects are upheld. (SDG 16)**

## Life imprisonment

The actual time served when someone is sentenced to ‘life imprisonment’ varies from country to country. In some jurisdictions, life sentences are handed down for a determinate number of years, after which the prisoner is released with or without conditions. In others, a prisoner must serve a minimum number of years, at the end of which they will be considered for release. Life without parole sentences (LWOP) are where the prisoner has no possibility of having the sentence reviewed, so will be imprisoned until his or her death.

It is now estimated that almost half a million people are serving life sentences around the world, according to a ground-breaking study that will be published in 2018.<sup>70</sup> Data from the study shows that there has been a steady growth in the number of life-sentenced prisoners around the world over recent decades. Out of a total of 216 countries and territories, 183 allow for life imprisonment in law, often as the ultimate penalty for the most serious crimes. Sixty-five countries impose LWOP sentences.

Explanations for the rise in life imprisonment include ‘tough on crime’ policies and long sentences handed down as part of punitive drug policies.

Some countries impose mandatory sentences, and in the US, for instance, ‘three strikes’ legislation insists on automatic life sentences after a third offence. The gradual abolition of the death penalty is another cause, with life imprisonment replacing capital punishment as the ultimate penalty.

Where disaggregated data is available, it suggests that women comprise just under 4 per cent of life-sentenced prisoners.<sup>71</sup> Although they constitute a minority, analysis from the US found that the rise in life sentences for women surpassed that for men. A possible reason offered – given the relatively stable and low level of women’s involvement in violent crime which life sentences are usually imposed for – was that men may be benefitting from parole release more frequently than women.<sup>72</sup> Research published in 2017 found that for women, serving life sentences was ‘more acutely painful and problematic than [for] their more numerous male counterparts’.<sup>73</sup> Much of this was because of their role as carers, and because of previous victimisation.

Data from 2015 showed that 73 countries allow life sentences for offences committed while under the age of 18,<sup>74</sup> despite the UN Human

Rights Council urging its prohibition.<sup>75</sup> The only country to allow LWOP sentences for crimes committed by children is the US.<sup>76</sup> Although a 2016 Supreme Court ruling required the re-sentencing or consideration of parole for people currently serving life sentences for offences they committed as children, states have been slow to do so and little progress has been made.<sup>77</sup> Twenty-five states and Washington, D.C. now ban the sentence, up from five states just five years ago.<sup>78</sup> In four other states it exists in law, but is never imposed in practice.<sup>79</sup> (See Children, page 18).

Conditions for life-sentenced prisoners continue to fall below minimum standards, and restrictions on access to rehabilitation programmes and contact with the outside world are common. Reports show that several countries systematically handcuff and/or strip-search life-sentenced prisoners whenever they leave their cells, regardless of actual risk.<sup>80</sup> This is the case in Kyrgyzstan for example, although a new facility has been opened to accommodate prisoners serving sentences longer than 20 years, where prisoners will be permitted to move inside the facility without escorts or handcuffs.<sup>81</sup>

Although life imprisonment is a major contributor to the problem of prison overcrowding, it continues to be excluded from discussions on penal reform. For instance, a 2017 study in the US found that although the number of people serving life sentences in the country's prisons is at an all-time high (representing one in seven people in prison), the 'evaluation of the appropriateness of lifelong prison sentences is typically either omitted from policy discussions or deliberately excluded from reforms'.<sup>82</sup>

There have been efforts by courts to limit the application of life imprisonment. In Kenya, the Supreme

Court encouraged the government to avoid LWOP by introducing non-mandatory life sentences with the possibility of release, instead of capital punishment.<sup>83</sup> In another significant judgment, the Supreme Court of Namibia ruled in early 2018 that very long fixed-term sentences, which in practice would keep offenders in prison for longer than life sentences, are unconstitutional, as they violate the right to dignity.<sup>84</sup> These judgments follow the European Court of Human Rights' (ECtHR) 'right to hope' jurisprudence. In its most recent judgment on the issue in May 2017, the ECtHR ruled that whole-life sentences in Lithuania offering

no genuine prospects of release violated the prohibition of inhuman or degrading treatment.<sup>85</sup>

#### RECOMMENDATION 06

**States should reduce the use of life imprisonment, taking account of the principle of proportionality and the negative impact of such sentences. Life sentences without any possibility of parole should be abolished. Conditions for life-sentenced prisoners should adhere to the minimum standards set out in the Nelson Mandela Rules. (SDGs 8, 10 and 16)**

## Death penalty

In general, the use of the death penalty is decreasing globally and the trend towards abolition of the death penalty continues. Following a spike in executions in 2015, global figures show that the number of people executed fell by 37 per cent in 2016; Amnesty International recorded that at least 1,032 people were executed in 2016, compared to at least 1,634 in 2015.<sup>86</sup> However, it also recorded an increase in the number of death sentences handed down globally in 2016 (which totalled 3,117), representing the highest total ever recorded.<sup>87</sup>

As of March 2018, 141 countries have abolished the death penalty completely in law or practice, the latter meaning countries that have not had any executions during the past 10 years and which are believed to have a policy or established practice of not carrying out executions. There are now 105 countries that have abolished the death penalty for all crimes and a further seven for ordinary crimes (i.e. laws only permit the death penalty for exceptional crimes such as crimes under military law or crimes committed in exceptional circumstances).<sup>88</sup> During 2017, Mongolia abolished the death penalty for all crimes in a new criminal code, and Guatemala abolished the death penalty for ordinary crimes.<sup>89</sup> Furthermore, The Gambia signed the Second Optional Protocol to the International Covenant on Civil and

Political Rights, committing to abolish the death penalty, and announced a moratorium in early 2018.<sup>90</sup>

There are at least 33 countries that allow for the death penalty for drug offences in law, and at least nine countries retain it as a mandatory sanction (although three of these countries are abolitionist in practice). Excluding China where statistics are unreliable, at least 1,320 people are known to have been executed for drug-related offences between January 2015 and December 2017, although the number of executions has steadily declined from 718 in 2015 to 280 in 2017.<sup>91</sup>

There were positive signs of countries moving towards abolition over the past year, including in Kenya where mandatory death sentences were declared unconstitutional by the Supreme Court in December 2017.<sup>92</sup> In Thailand, the government announced moves to remove mandatory death sentences for certain offences.<sup>93</sup> In early 2018, Iran abolished capital punishment for some drug trafficking offences, which affects 5,000 prisoners on death row;<sup>94</sup> Iran accounted for nearly 90 per cent of all reported drug-related executions between January 2015 and December 2017, with at least 1,176 executions carried out in that period.<sup>95</sup> Malaysia moved to remove mandatory death sentences for drug trafficking

offences.<sup>96</sup> New laws proposed in Indonesia would see a 10-year stay on executions.<sup>97</sup>

In the US, death sentences and executions remained at a historic low, with only eight states carrying out executions in 2017.<sup>98</sup> The Supreme Court enforced the prohibition of the execution of intellectually disabled defendants, by ruling against the state of Texas' outdated methods of assessing intellectual disabilities – which were found to be based on 'stereotypes, fears, or myths'.<sup>99</sup>

However, a few countries that have retained the death penalty in law considered reintroducing its use, including Israel and the Philippines.<sup>100</sup> The President of Turkey spoke in favour of reintroducing the death penalty ahead of a referendum to extend his political powers, and there are plans to resume use of the death penalty in the Maldives after a 60-year moratorium, which have attracted international condemnation.<sup>101</sup>

There was increasing concern about the imposition of the death penalty on foreign nationals in Iraq, including nationals from regions such as Central Asia and Europe. Many have been prosecuted for terrorism-related offences such as membership of or providing support to so-called Islamic State (IS), as well as for killings and other acts enshrined in counterterrorism legislation that carry the death penalty.<sup>102</sup>

In many jurisdictions, people on death row live in conditions that fall well below minimum standards, which in many cases amounts to inhuman or degrading treatment. Mandatory solitary confinement and total bans on 'open' or 'contact' visits are common, and are in violation of the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). One 2017 study explained that every prisoner on death row in Texas, US, spent about 23 hours a day in an 8-by-12-foot cell for the duration of

their time on death row, which, on average, lasts more than a decade.<sup>103</sup> Harsh physical conditions which 'almost act as a separate sentence' for death row prisoners in India are detailed in a 2016 study, which found 'extremely cramped spaces, cells with very little light and air, unacceptable standards of hygiene, abysmal quality of food in flagrant violation of prison manuals, poor standards of medical services and almost non-existent mental health services'.<sup>104</sup>

## RECOMMENDATION 07

**States that retain the death penalty should move towards abolition and establish a moratorium as a first step. States that have abolished the death penalty should support the abolition movement politically and financially. Conditions for prisoners on death row must meet minimum standards. (SDGs 3, 10 and 16)**

## Drugs and imprisonment

The enforcement of punitive drug laws continues to have significant implications for the use and practice of imprisonment. Harsh criminal justice responses to drugs are a major contributor to prison overcrowding, and the 'war on drugs' persists in some countries with disastrous consequences.

The debate at the international level on how to address the world drug problem is ongoing. 2019 marks the end of the 10-year-long 2009 UN Political Declaration and Plan of Action<sup>105</sup> on drug policy, which aimed at enhancing international cooperation and reducing the supply and demand for illicit drugs. There is growing agreement that the 2009 goals are not only unattainable, but policies adopted under them have led to significant harm. UN bodies, international leaders and an increasing number of member states have rejected such a punitive approach to drug policy.<sup>106</sup> This broken consensus on the direction of international drug policy was reflected in the lead-up to and outcome of the UN General Assembly Special Session (UNGASS) on drugs in 2016.<sup>107</sup>

The UN Human Rights Council adopted a Resolution on drugs and human rights in March 2018, reaffirming the role of human rights in the international drug policy debate and requesting a report on the implementation of the UNGASS Outcome Document with regards to human rights.<sup>108</sup> One issue that has

become prominent in the debate is how to measure the impact of drug policies on human rights, public health and development, which isn't captured in traditional metrics of drug policy.<sup>109</sup>

The large majority of drug-related offences that people in prison are charged with or convicted of are minor. According to available UN data, 83 per cent of drug offences recorded by law enforcement and criminal justice systems are possession offences.<sup>110</sup> To reduce the use of imprisonment for minor drug offences, all UN member states at the 2016 UNGASS committed to the 'development, adoption and implementation...of alternative or additional measures with regard to conviction or punishment' for minor drug offences.<sup>111</sup>

Many governments have taken steps towards a less punitive approach to drug cultivation and possession for use. New reforms have been proposed or adopted over the past year – including decriminalising cannabis or reducing sentences for minor offences – in countries such as France, Georgia, Norway and Canada, and in several US states.<sup>112</sup>

In Myanmar, where approximately 48 per cent of the prison population are held under drug-related offences,<sup>113</sup> the National Narcotic Drug Control Policy was issued in February 2018 after years of deliberations, shifting policy towards a less punitive approach.<sup>114</sup> Furthermore, the Tunisian Parliament amended a drug

law that had imposed a mandatory prison sentence for narcotics use or possession, giving judges new discretion to take account of mitigating factors.<sup>115</sup> In Thailand, where 73 per cent of prisoners are detained on drug-related offences,<sup>116</sup> reforms have reduced the overall length of sentences for drug offences and further relaxation of the country's drug laws are anticipated in 2018 through the proposed Narcotics Control Bill.<sup>117</sup> Ghana will become the first African country to decriminalise the personal possession and use of illicit drugs if the progressive Narcotics Control Commission Bill currently under consideration is adopted.<sup>118</sup>

There was an expansion in the use of 'drug courts'<sup>119</sup> – designed to offer drug treatment programmes under judicial supervision – particularly in Latin America, which follow a model from the US where there are around 3,100 drug courts.<sup>120</sup> However, there are significant concerns about this expansion, including from the Inter-American Commission on Human Rights (IACHR). The Commission has criticised the lack of available data and monitoring mechanisms demonstrating effectiveness and noted that some drug courts have been used to criminalise non-problematic drug possession or use, rather than the stated intention of providing a public health alternative.<sup>121</sup>

Conversely, many countries remain dedicated to a prohibitionist and punitive approach adopted as part of the so-called ‘war on drugs’; this has serious consequences, including the spread of infectious diseases, ever-increasing prison populations, and discrimination against minorities and Indigenous populations as well as women.<sup>122</sup>

In the Philippines, President Rodrigo Duterte continued to wage a war on drugs which has led to more than an estimated 12,000 people being killed since it began in mid-2016.<sup>123</sup> In February 2018, the International Criminal Court announced it would be investigating the ‘extra-judicial killings in the course of police anti-drug operations’.<sup>124</sup> A month later, the President responded by announcing the country would withdraw from the International Criminal Court’s Rome Statute.<sup>125</sup>

US President Donald Trump responded to the country’s opioid crisis, which has seen more than two million people become dependent on prescription pain relief drugs,<sup>126</sup> by signalling an intent to re-escalate the ‘war on drugs’.<sup>127</sup> Furthermore, early 2018 saw the US Attorney General rollback a policy legalising marijuana by giving federal prosecutors discretion on enforcing a federal prohibition – causing confusion in states such as California, which legalised

marijuana on 1 January 2018.<sup>128</sup> The IACHR expressed concern that minor drug-related offences are characterised as ‘grave offences’ in a number of states, leading to automatic pre-trial detention.<sup>129</sup>

Women are disproportionately affected by harsh drug laws. In the Americas and Asia, significant increases in the female prison population are largely due to an increase in drug prosecutions. In a 2017 report, the IACHR details how pre-trial detention for drug-related offences has an excessive impact on women and their families. It notes the lack of gender awareness in drug policies, which do not take into account that women usually participate at a low level of the drug business chain and trafficking, and that their imprisonment has a significantly negative impact on their children.<sup>130</sup> (See Women, page 16).

In some countries drug users are detained in compulsory ‘drug rehabilitation centres’ without oversight, and there are reports of serious human rights violations. For instance, in Vietnam there are up to 11,317 people held in such centres in Ho Chi Minh City alone, including children. Detainees are forced to perform menial work and violations of rules or failure to meet work quotas are punished by beatings and deprivation of food and water.<sup>131</sup>

Drug use in prison remains prevalent. The UN reported that 20 per cent of the world’s prison population use drugs, compared to an estimated 5.3 per cent in the community. Cannabis is the most common drug used in prison, followed by heroin.<sup>132</sup> Furthermore, the use of new psychoactive substances by prisoners has become common in English prisons, as well as in the US and in police detention centres in New Zealand.<sup>133</sup> Harm reduction measures, a key measure to preventing harms associated with drug use – including the transmission of HIV – are rarely provided in prisons.<sup>134</sup> (See Health, page 25).

## RECOMMENDATION 08

**States should review their drug policies in order to adopt evidence-based policies that include decriminalisation of minor offences, proportionality of sentencing, and non-custodial alternatives to imprisonment. Treatment as an alternative to imprisonment must be voluntary and human-rights compliant. Metrics to measure the outcomes of drug policies should include their impact on human rights, health and development. (SDGs 3, 5 and 16)**

## PART THREE

# Prison populations

Of the approximately 10.35 million people held in penal facilities globally, the majority are adult men<sup>135</sup> who tend to be from impoverished backgrounds.<sup>136</sup>

People from national, ethnic, religious or linguistic minority groups continue to be discriminated against in many criminal justice systems.

As a result, minorities are more likely to be arrested, prosecuted and imprisoned for longer terms than members of the majority population in a significant number of countries.<sup>137</sup>

For example, in Denmark, there are plans to double the penalties for crimes committed in deprived 'ghetto' areas, where immigrant numbers are above-average.<sup>138</sup>

In several countries, people from Indigenous communities are also disproportionately represented in criminal justice systems, with high imprisonment rates.<sup>139</sup>

Foreign national prisoners (FNPs) make up a quarter of prison populations in 39 countries. In the United Arab Emirates, Qatar and Switzerland, FNPs constitute over 70 per cent of the prison population.<sup>140</sup>

## Women

Women and girls remain a minority in prison populations, constituting around 7 per cent of the global prison population. In November 2017, new data published showed that there are now more than 714,000 women and girls in prison globally.<sup>141</sup> It is noteworthy that the world's female prison population has increased by 53 per cent since 2000. This represents a significant rise compared to male prison population rates, which have risen by 20 per cent in the same period.

Female prison rates have risen sharply over the past couple of years in Brazil, Indonesia, the Philippines and Turkey, whereas substantial decreases were reported in Mexico, Russia, Thailand and Vietnam. Africa continued to have the smallest increase in the female prison population, whereas the Americas, Asia and Oceania saw sharp rises overall.<sup>142</sup>

The US, China, Russia and Brazil hold the highest number of women and girls in detention. Proportionally the highest female prison population is in Hong Kong (at 20.8 per cent of the total prison population), where the majority of women prisoners are foreign nationals sentenced for drug-related offences (as drug 'mules') or immigration violations.<sup>143</sup>

Sharp rises in female prison numbers across the Americas are also a result of harsh drug laws<sup>144</sup> that continue to impact women disproportionately, as reported on by the Inter-American Commission on Human Rights.<sup>145</sup>

Further evidence has emerged confirming that women are also frequently imprisoned for non-violent minor offences committed in the context of poverty and discrimination, and they have often been victims of violence themselves. A 2017 UN report highlighted links between poverty, family roles and drug-related offences committed by women, raising concerns at their 'overincarceration' for 'transporting drugs (as mules), having a secondary role in the commission of crimes or performing low-level high-risk tasks, often at the request of their partners'.<sup>146</sup> Poverty was also highlighted as the root cause of the high number of women in pre-trial detention in US jails which, research found, was most likely due to their inability to afford cash bail.<sup>147</sup> In the UK, a new report provided evidence of domestic abuse and 'coercive relationships' being a driver to women's offending, citing that at least 57 per cent of women in prison had been victims of domestic violence.<sup>148</sup>

Women from Indigenous communities and ethnic minorities face significant disadvantages in the criminal justice system. For instance, Aboriginal and Torres Strait Islander women comprise 34 per cent of women in prison in Australia but only 2 per cent of the adult female population.<sup>149</sup> The UN Special Rapporteur on violence against women visited the country in 2017, which prompted a review of the policy of incarceration for unpaid fines, given the disproportionate impact it has on Aboriginal women.<sup>150</sup> In the UK it was reported that black women are 25 per cent more likely than white women to receive a custodial sentence.<sup>151</sup>

Various initiatives sought to address the soaring rates of female imprisonment through non-custodial measures and sanctions in line with the 2010 UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

In February 2018, the Brazilian Federal Supreme Court decided that pregnant women and mothers with children under the age of 12 who are accused of non-violent crimes will be placed under house arrest instead of in pre-trial detention.<sup>152</sup> The judgment gave authorities 60 days to apply the order, which will affect at least 4,500 women who are currently detained.<sup>153</sup>





**New data published showed that there are now more than 714,000 women and girls in prison globally**

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The probation service in Kenya, together with PRI, implemented a project to ensure that community service and probation are improved for women. (See New approach to probation and community service for women, page 36).<sup>154</sup> In Costa Rica, several reforms have been implemented to address the vulnerability of women offenders. Following a sentencing reform, approved in November 2013, to reduce the imprisonment of women who smuggle drugs into prison,<sup>155</sup> a new reform in January 2017 provides for the possibility to wipe criminal records in cases where offences were committed in 'situations of vulnerability'.<sup>156</sup>

Some prison reforms to implement the UN Bangkok Rules were reported during 2017, although these were exceptional. For instance, in the US, the Federal Bureau of Prisons

improved access to sanitary products for women prisoners.<sup>157</sup> In Chiang Mai, Thailand, a centre for women was set up to offer employment for women released from prison who had graduated from the prison's massage training programme.

However, reports confirmed that the UN Bangkok Rules have still not been implemented in many countries. The European Parliament noted difficulties for women prisoners in accessing activities, sports grounds, libraries, etc., due to being housed in wings of male prisons, and concluded that the Bangkok Rules are 'seldom adhered to' in the EU member states.<sup>158</sup> In Uganda, women are mostly excluded from formal education opportunities offered in prison, as evidenced in the 2017 O-Level examinations where there were no female prisoner candidates.<sup>159</sup> With many authorities failing to set up

gender-sensitive rehabilitation, civil society organisations often fill the gap. For example, a social enterprise in Mexico, La Cana, facilitates craftwork for women prisoners and sells the products on their behalf with positive outcomes: 92 per cent of the women prisoners involved said that they earned more money in prison than they did before being imprisoned.<sup>160</sup> (See Rehabilitation and reintegration, page 28).

## RECOMMENDATION 09

**The UN Bangkok Rules should guide states in criminal justice reform to ensure systems meet the needs of women. Sentencing of women should take account of any victimisation, caretaking responsibilities and context of the criminal conduct, giving preference to non-custodial sanctions. (SDG 1, 5, 10 and 16)**

## Children

The total number of children in detention – those under 18 years of age – was estimated to be about a million in 2010. The UN Global Study on Children Deprived of Liberty has been long in the planning and seeks to document the full extent of children in detention. The study took a step forward with the appointment of an Independent Expert and, amid concerns about a lack of funding,<sup>161</sup> research commenced in 2017. The Study will be published in 2019.

Developments in the treatment of children in criminal justice systems were mixed. The minimum age of criminal responsibility was reviewed in a number of countries. Controversial proposals to lower the minimum age of criminal responsibility from 15 to nine years were dropped in the Philippines,<sup>162</sup> and the governor of New York signed a new bill raising the age of criminal responsibility to 18 years of age for those charged with non-violent crimes. This will bring New York into line with 48 other US states that allow children to be moved from adult prisons to juvenile detention centres.<sup>163</sup> In Sri Lanka, amendments to relevant legislation are being prepared for Parliament's approval that will raise the minimum age of criminal responsibility from eight to 12 years

old. There will also be a new clause stating that children between the ages of 12 and 14 can only be held liable for an offence if the magistrate can determine the child had the necessary maturity or knowledge to form the intent to commit a crime.<sup>164</sup>

Brazil, on the other hand, has a controversial bill under consideration to treat 16 to 18-year-olds charged with specific offences as adults. In Japan, the age of criminal responsibility is currently 20, but the Justice Minister has consulted an advisory panel about the possibility of lowering it to 18.<sup>165</sup>

Several countries took steps towards establishing a separate justice system for children, such as Cambodia where there are plans to construct a new facility for children<sup>166</sup> following a new juvenile justice law in 2016. In Trinidad and Tobago three specialised Children's Courts were planned,<sup>167</sup> and in Italy, a proposal to abolish Youth Courts and Youth Public Prosecutors was dropped in the face of widespread public concern.<sup>168</sup>

New data from England and Wales showed that arrests of children have fallen by as much as 64 per cent in the last six years.<sup>169</sup> There are diverse drivers for this, including an

increased focus by police on serious offences (which tend to be committed by adults), an increase in the use of diversion, and an overall reduction in youth crime.<sup>170</sup> The role of social media in offences by children was also reported on in the UK: social media was used in one in four cases where a child had committed a serious violent offence, and is increasingly being used by young people to incite and plan crime.<sup>171</sup>

Cases of systemic abuse of children in detention, commonly exposed by independent monitoring bodies, confirm that children in detention experience high levels of violence as a matter of routine. For example, in Australia a Royal Commission delivered its final report<sup>172</sup> looking at 10 years of youth detention and welfare in the Northern Territories. It revealed shocking and systemic failures resulting in widespread mistreatment, primarily of Aboriginal and Torres Strait Islander children who are 25 times more likely to end up in the justice system than non-Indigenous children.

The situation of children held at a detention facility in Macedonia was deemed 'totally unacceptable' by the European Committee for the

Prevention of Torture in response to allegations of physical ill-treatment and the lack of response to them.<sup>173</sup> In New Zealand, the Children's Commission reported that teenage boys at a youth prison had told them how staff hit them 'on the body where it won't mark' during fight clubs held away from CCTV cameras.<sup>174</sup> In Brazil four children were found dead after a group of men broke into a detention facility, capturing six children;<sup>175</sup> in addition, a bill was proposed that would permit staff at detention facilities for children to use electric shock weapons, riot control equipment and firearms in certain situations, which is incompatible with various international standards including the UN Rules for the protection of Juveniles Deprived of their Liberty (the UN Havana Rules).<sup>176</sup>

Practices of detaining children with adults and in deplorable conditions also continue. Zambia's Human Rights Commission found that children being

detained alongside adults is common practice,<sup>177</sup> and in Kenya children were also often held alongside adults at police stations.<sup>178</sup> Staffing shortages led to boys in the UK being held in cells nearly all day, according to the Prison Inspectorate.<sup>179</sup>

A small number of countries retained the death penalty for crimes committed by children, which is prohibited by international law.<sup>180</sup> During 2017, its use fell for the second year running, although Iran executed at least four people who were children at the time of the alleged offence and many more remain at risk of execution.<sup>181</sup> Authorities in the Puntland region of Somalia are reported to have executed five boys aged 14 to 17 in April 2017.<sup>182</sup> A man in Japan was hanged for a crime committed when he was 19 years old (the age of criminal responsibility in Japan is 20).<sup>183</sup>

Other countries backtracked on plans to reintroduce capital punishment for children, including Kuwait, which in March 2017 rapidly repealed the death penalty and life imprisonment after they were introduced for offences committed while aged over 16.<sup>184</sup> Also, in the Philippines, a proposal to introduce the death penalty for children was withdrawn.<sup>185</sup> (See Death Penalty, page 13).

#### RECOMMENDATION 10

**Detention of children should be used as a very last resort, and the death penalty and life imprisonment should be prohibited for children. States should adopt child-friendly justice systems and protect children from violence and ill-treatment. (SDGs 3, 4, 5, 10 and 16)**

## Elderly people

Healthcare professionals normally use the age of 65 as the point at which someone is termed as elderly. In prisons, the demarcation is often younger, sometimes at 50 years, since so many prisoners have health conditions, histories of substance dependence and limited access to healthcare.

In many countries, the proportion of elderly prisoners has continued to rise. Singapore saw the number of prisoners aged over 60 double between 2012 and 2016,<sup>186</sup> and in Australia, the number of prisoners over the age of 50 has grown by a third in just five years.<sup>187</sup> In the UK, the number of prisoners over 60 has tripled in 15 years.<sup>188</sup>

Elderly prisoners are a diverse and complex population. Challenges for prison authorities include responding to chronic illnesses and disabilities common among elderly people, such as dementia. Rehabilitation, work and release programmes are generally

tailored towards younger prisoners and fail to address the specific needs of older prisoners.

Elderly prisoners have higher than average rates of recidivism in Japan, for example, which has been attributed to their unique difficulties in obtaining employment on release as well as to isolation and poverty.<sup>189</sup>

One response to the growing population of elderly prisoners has been to facilitate early release on compassionate grounds, like in the US.<sup>190</sup> In the Philippines, 127 prisoners were released on the basis of their age and illness in 2017, and in Argentina, courts can order people older than 70 years to be held under house arrest.<sup>191</sup>

Recent studies show that there is a need for clear and explicit strategies to respond to the challenges posed by this growing group of the prison population.<sup>192</sup> In Japan, a pilot is ongoing to assess all prisoners aged over 60 for dementia, with

the objective of early detection and providing needed support; it is estimated that 14 per cent of the country's over-60 prison population has dementia.<sup>193</sup> In the UK, a unit was opened specifically for older prisoners, although it has been suggested that older prisoners can be a stabilising force and age-segregated units can break constructive relationships between younger and older prisoners.<sup>194</sup>

#### RECOMMENDATION 11

**States should assess the needs of elderly prisoners, including for rehabilitation, reintegration and healthcare, to inform prison regimes. Early release mechanisms should be adopted for elderly prisoners. (SDGs 10 and 16)**

## Lesbian, gay, bisexual, transgender and intersex (LGBTI) people

In more than 70 countries, same-sex relations are criminalised,<sup>195</sup> and the death penalty can still be applied for same-sex relations in a number of countries in Africa and Asia. There are also laws that specifically criminalise transgender persons based on their gender identity or expression.<sup>196</sup> Overall, there are no clear trends regarding the de-criminalisation of same-sex relations, with some countries becoming increasingly tolerant, including in Latin America, North America and Europe, and others more repressive.<sup>197</sup>

LGBTI people continue to be arrested and imprisoned because of their identity. Whilst in detention, they are also frequently discriminated against, harassed, and face serious violence and even torture. In Chechnya, there were widespread arrests of gay men, who were held in unofficial detention facilities for days, humiliated, starved, and tortured.<sup>198</sup> In Azerbaijan, reports emerged of the torture of gay men and transgender women because of their sexual identity,<sup>199</sup> and in Egypt, 2017 was marked by extensive arrests and ill-treatment of LGBTI people on charges of 'debauchery'.<sup>200</sup> A 2017 study from Costa Rica showed that transgender people in prison lack access to hormonal treatment and face verbal and physical violence.<sup>201</sup>

A report in the US found that LGBTI youth were over-represented in the criminal justice system, faced bias in court decisions regarding pre-trial detention and sentencing, and were at higher risk of being placed in solitary confinement or segregated units.<sup>202</sup> In another finding, women who identified as lesbian or bisexual represented approximately a third of imprisoned women in the US, a proportion that is eight to 10 times higher than the 3.4 per cent in the general population.<sup>203</sup>

### New protection for LGBTI people in detention

A new set of principles were adopted in November 2017 to supplement the original 2006 Yogyakarta Principles on international human rights law relating to sexual orientation, gender identity and expression, and sex characteristics. A key addition was Principle 9, relating to the treatment of LGBTI people in detention.

Principle 9 calls upon states to ensure that placement in detention avoids further marginalisation and that LGBTI people have access to the healthcare and counselling that they need, including hormone therapy and gender reassignment. It also calls for protective measures to be in place that do not involve restriction of rights, the provision of conjugal visits regardless of the gender of the partner, and training and awareness-raising of prison staff.

Some positive policies were put in place to protect LGBTI people in detention, but they were not always effectively implemented. New rules were introduced in California, US, for hundreds of transgender prisoners regarding clothing, medical care and the prisons they are assigned to, but authorities reported challenges in implementation.<sup>204</sup> In Thailand, the Department of Corrections announced plans to separate LGBTI prisoners in different 'zones' within prisons to ensure their safety and security.<sup>205</sup> In Canada, the federal prison service adopted a new policy on transgender prisoners<sup>206</sup> and approved the first-ever transfer of a transgender prisoner to an institution based on their gender identity, rather than physical anatomy.<sup>207</sup> An Israeli prison agreed to allow a homosexual conjugal visit for the first time, following a court ruling that it was discriminatory not to allow this.<sup>208</sup>

The UN increasingly raised the rights of LGBTI prisoners during 2017<sup>209</sup> and the 'Yogyakarta Principles' – Principles on the application of international human rights law in relation to sexual orientation and gender identity – were updated and strengthened. They now include an

additional principle specifically on the right to treatment with humanity while in detention.<sup>210</sup> (See New protection for LGBTI people in detention, above).

### RECOMMENDATION 12

**States should take measures to protect LGBTI people in detention, in line with the Yogyakarta Principles. Protection from violence and stigmatisation should be ensured, without restricting rights, and adequate healthcare must be provided, including hormone therapy and gender reassignment. (SDGs 5, 10 and 16)**

## People with disabilities

Aside from country-specific reports, there is little data on the number of people in prison with disabilities, although trends suggest that the growing prison population in most countries and the significant increase of older prisoners in some countries have led to an increase in the number of people with disabilities in prisons. For example, people with disabilities are over-represented in Australian prisons, where they represent 18 per cent of the country's population but almost 50 per cent of people entering prison.<sup>211</sup>

Prisoners with physical disabilities confront numerous challenges, such as not having access to the healthcare they require to manage their disability; not receiving the support they need with daily activities such as eating, dressing and washing; and being denied hearing aids, Braille documents and interpreters, which makes it impossible to participate in rehabilitative activities.<sup>212</sup> In a significant ruling against Latvia, the European Court of Human Rights found that the anguish a deaf and mute prisoner had suffered – from not being able to communicate that he lacked the necessary amount of personal space in his cell – constituted inhuman or degrading treatment.<sup>213</sup>

In the US there were several reports on the failings of authorities to provide for prisoners with disabilities. The technology for deaf prisoners to communicate with family and friends

by telephone was exposed as being faulty and outdated,<sup>214</sup> and a report revealed the devastating harm caused by placing prisoners with physical disabilities in solitary confinement, which is frequently imposed owing to a lack of cells designed for their needs.<sup>215</sup> In Florida, more than 30 prisoners who are deaf, blind or in wheelchairs claimed in court they were not allowed to participate in jobs, services and programmes available to others.<sup>216</sup>

People in prison are disproportionately affected by mental illness and prisons frequently fail in providing adequate mental health provision. Ill-treatment of prisoners with mental illness is also commonly reported. In Australia, research indicated that half of all adult prisoners have been diagnosed or treated for a mental health problem and 87 per cent of young people in custody have a past or present psychological disorder.<sup>217</sup> The report found that prisoners with mental health disorders are at risk of spending days, weeks, months and sometimes even years locked up alone in detention or safety units.<sup>218</sup> A report by the US Justice Department's Inspector General found that prisoners with mental illnesses in federal prison also spend, on average, more time in solitary confinement or restrictive housing than prisoners without documented mental illnesses.<sup>219</sup> In Belgium, hundreds of people with mental disabilities continued to be detained in inadequate prison wards.<sup>220</sup>

There is growing awareness of this challenge, and there have been some moves towards diverting people with mental illness away from prison. A ground-breaking law was passed in South Africa that stops the automatic imprisonment of accused persons who are mentally ill or intellectually disabled.<sup>221</sup> In early 2018, the Supreme Court in Brazil ruled that persons with disabilities should not be put into pre-trial detention.<sup>222</sup> The Canadian Correctional Ombudsperson highlighted that women with serious mental illness need to be placed in psychiatric facilities outside of prison.<sup>223</sup>

A new report was published on international good principles for operational and design consideration of prison facilities, in order to mitigate the detrimental impact prisons have on people with mental illness.<sup>224</sup>

### RECOMMENDATION 13

**States should collect data on the number of people in prison with disabilities, and review their needs in order to inform policy and practice, in line with international standards. This should include training of staff and policies to protect discriminatory treatment and abuse, as well as architectural measures. (SDGs 10 and 16)**

## PART FOUR

# Prison management

## Security and violence

A dynamic security approach to prison management, which is based on positive prisoner-staff relations and prison intelligence, has become more widely respected. There is also greater appreciation for security as an important precondition to effective rehabilitation, although many prison systems struggle to reduce excessive levels of violence and deaths and to address torture.

Deaths in custody due to inter-prisoner violence or abuse and neglect by prison staff continued to be commonplace in many countries. There was outrage in Guatemala after 41 adolescent girls were killed in a fire in a state-run institution in March 2017. Officials and police officers were charged with manslaughter, among other charges, after the girls, allegedly locked inside a room, died as a result of burns and smoke inhalation.<sup>225</sup> In Argentina, the National Penitentiary Office recorded eight 'violent deaths' of federal prisoners in the first half of 2017.<sup>226</sup> Correction services in Papua New Guinea called for an inquiry after 17 escapees were shot and killed by prison guards in March 2017, although the investigation has not yet started due to a lack of funding.<sup>227</sup> In the US state of Alabama, eight people were killed in prison during 2017, representing the highest number of prison homicides in the state to date.<sup>228</sup>

Record levels of prisoner violence were also reported in a number of other prison systems such as in New Zealand, where the Chief Ombudsperson found 'unacceptable' rates of violence, after half of the prisoners surveyed in one visit said they had been assaulted.<sup>229</sup> England and Wales has witnessed a steady

decline in safety in prisons since 2012 and statistics from September 2017 show a record high in the number of self-harm and assault incidents. This is attributed to reductions in staffing and difficulties in retaining staff, high levels of drug use (particularly new psychoactive substances),<sup>230</sup> overcrowding, and long-term shifts in the nature of the prison population.<sup>231</sup>

Prison riots led to deaths in several countries during 2017, including the Philippines, Indonesia, Nigeria, Congo and South Africa.<sup>232</sup> There were also riots – fuelled by gang disputes – in Latin American countries including Guatemala, the Dominican Republic, Mexico, Venezuela and Colombia.<sup>233</sup> In Brazil, riots continued unabated during 2017 with authorities struggling to gain control of prisons. The Rio state government released figures that showed a 26 per cent rise in killings in 2017 compared to 2015.<sup>234</sup> Fifty-six people died in a riot in the Amazonas city of Manaus and officials reported some bodies were decapitated and burned.<sup>235</sup>

Gangs continued to control many prisons in Latin America; for example, as many as 65 per cent of Mexico's state prisons are thought to be controlled by organised crime groups. Different measures to manage gangs in prisons were tried in the region. The El Salvadorian government extended 'extraordinary measures' to reduce the control of the MS13 and Barrio 18 gangs, classified as terrorist groups by the government, in the country's prisons. Honduras closed a prison known to be a 'criminal hub' in October 2017, opening a new maximum-security prison in its place.<sup>236</sup>

While reliable statistics on the scale of the use of torture remain scarce – not least due to under-reporting by the many victims<sup>237</sup> – there are indications that torture is on the rise. UN anti-torture experts noted in 2017 that the absolute prohibition of torture is 'challenged in the name of national security across the globe'.<sup>238</sup>

Reports of the use of torture reflect a common pattern: that it is commonly used by law enforcement agencies in the pre-trial stage to extract confessions. (See Pre-trial justice, page 10). For instance, the UN Committee against Torture noted that in Sri Lanka 'in numerous documented cases of torture, the accused persons alleged that they were forced to sign blank sheets of paper or self-incriminatory statements written in a language they did not understand'.<sup>239</sup> Furthermore, Amnesty International has reported on torture by authorities to extract 'confessions' in a number of countries, including Egypt, United Arab Emirates, Iraq, Kuwait, Nepal, Saudi Arabia and Turkmenistan.<sup>240</sup>

### RECOMMENDATION 14

**States should ensure the safety of prisoners, including through dynamic security and safeguards to uphold the absolute prohibition of torture. There should be adequate staff-prisoner ratios to guarantee the exercise of effective control of prison facilities. (SDGs 10 and 16)**

## Hunger strikes in prison

Hunger strikes have long been employed by prisoners – both individuals and large groups – as a form of protest and as an attempt to make their voices heard regarding poor conditions, violence and mistreatment in detention, or injustice in trial processes.

In August 2017, more than 500 prisoners went on hunger strike in Argentina protesting overcrowded conditions, lack of access to healthcare and poor hygiene, as well as the treatment of a prisoner who was wounded by rubber bullets and chained to a wall for three days.<sup>241</sup>

In South Africa, the start of 2018 saw 96 life-sentenced prisoners go on hunger strike to protest against unfair delays in the parole process, with one prisoner hospitalised.<sup>242</sup>

The UN Special Rapporteur on the human rights situation in Iran expressed deep concern in 2017<sup>243</sup> about the situation of a number of prisoners on prolonged

hunger strike following their transfer to a high-security section of Rajai-Shar prison, where they were reportedly held in cells with windows covered by metal sheets and denied basic needs.<sup>244</sup>

Responses to hunger strikes by prison authorities vary but are frequently in violation of international standards. Some force-feed prisoners or deny them medical treatment and others take punishment measures. In Cuba, prisoners on hunger strike 'endure extended solitary confinement, beatings, restrictions on family visits, and are denied medical care'.<sup>245</sup> Free medical care has been refused to prisoners on hunger strike in Russia,<sup>246</sup> and in August 2017, a prisoner in Iran was refused hospitalisation by prison authorities for digestive complications following his long-term hunger strike.<sup>247</sup>

In 2017 the Israeli Prison Service punished around 1,500 Palestinian prisoners on hunger strike with solitary confinement and denial of family visits.<sup>248</sup> In the military prison

in Guantánamo Bay, the US continued to force-feed hunger strikers, and a recent change in policy means that their declining health is no longer monitored.<sup>249</sup>

The UN Committee against Torture has stated that force-feeding of prisoners on hunger strike constitutes ill-treatment and that measures, including legislation, should be in place to ensure that it is prevented.<sup>250</sup> Furthermore, the World Medical Association is clear that individuals 'capable of forming an unimpaired rational judgment concerning the consequences...[of refusing food] shall not be fed artificially'.<sup>251</sup> It further states that force-feeding is 'never ethically acceptable' and hunger strikers in prisons must be advised on the effects of their actions, while the decision to hunger strike must not prejudice any other aspect of medical care.<sup>252</sup> The International Committee of the Red Cross is similarly opposed to force-feeding on grounds of human dignity.<sup>253</sup>

## Prison staff

On the one hand, there is growing recognition of the importance of investing in staff, and of the fact that selection, recruitment and training of staff is critical to effective prison management and safety. On the other hand, poor working conditions persist. In June 2017, the Council of Europe Conference of Directors of Prison and Probation Services called for new European standards on the 'recruitment and selection criteria of different levels of staff working in prison and probation services, as well as regarding their education, training and professional development',<sup>254</sup> and a handbook will be developed during 2018–19.<sup>255</sup>

Reports continued to emerge of prison staff being attacked. For example, in Scotland, data showed that a prison staff member was attacked every two days in 2016–17.<sup>256</sup> In recent years serious attacks against staff have been reported in a large number of prison systems, including in India, Canada and the US.<sup>257</sup>

In many cases, assaults against staff were linked to budget cuts or staff shortages. In South Africa, where the prison population of over 160,000 is

reported to be looked after by 26,000 prison officials, several major violent incidents that led to serious injuries of both corrections officials and prisoners were blamed on staff shortages and overcrowding.<sup>258</sup>

Prison staff continue to strike in response to violence, staff shortages and working conditions. For instance, in early 2018, prison staff in France went on strike in response to a series of attacks, one of which involved a prisoner convicted for terrorist-related offences who attacked four staff members with scissors and a razor blade. After a series of strikes by prison staff in England and Wales and amid damning reports of the impacts of budget cuts and staff shortages, the UK Government succeeded in obtaining a permanent ban on industrial strikes from the High Court.<sup>259</sup>

Female prison officers are a minority in the sector and face distinct challenges in their work. In the US a class-action lawsuit involved more than 500 women employed at the largest male federal prison. They alleged harassment from both co-workers and prisoners, sex discrimination, and a hostile work

environment. The federal government agreed to a settlement of USD\$20 million, along with commitments to reforms that would improve employees' safety.<sup>260</sup> A female prison officer in Northern Ireland received compensation from the prison service for discrimination, bullying and harassment resulting from failure to accommodate the fact that she was breastfeeding on her return to work after maternity leave.<sup>261</sup>

Positively, Rwanda has had success in increasing the proportion of female prison guards from 8 per cent in 2011 to 24 per cent in 2017, and there are calls to increase numbers further still to reach the country's labour law quota of 30 per cent.<sup>262</sup>

### RECOMMENDATION 15

**States should protect prison staff from discrimination and violence, including gender-based violence. Remuneration and working conditions should reflect the challenging nature of prison work and encourage recruitment of female correctional staff. (SDGs 5, 8 and 16)**



**A shortage of qualified healthcare staff continues to act as a barrier to health provision in prison**

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## Health

People in prison frequently have complex health needs. There are high rates of premature mortality and mental health illness, as well as disease resulting from unhygienic prison conditions. The rates for HIV, tuberculosis and other infectious diseases among prisoners remain much higher than in the general community. The Joint United Nations Programme on HIV/AIDS (UNAIDS) estimates that people in prison are on average five times more likely to be living with HIV compared with adults outside prisons,<sup>263</sup> although a higher estimate of 15 per cent is given by the World Health Organization.<sup>264</sup>

A shortage of qualified healthcare staff continues to act as a barrier to health provision in prison. For example, in Uganda, only 56 of 448 prison units across the country have provision for health clinics.<sup>265</sup> Similarly, in Bangladesh, there are 63 jails without doctors.<sup>266</sup> In Scotland, a government report found that prisoners were not receiving the healthcare they needed because there were not enough prison staff to transfer them to health centres – 50 per cent of clinical time was wasted due to missed appointments.<sup>267</sup>

Serious outbreaks of disease in prisons in 2017 were seen in several countries. In Yemen, PRI provided medicines to treat the cholera outbreak in a prison in the capital Sana'a; the International Committee of the Red Cross estimated that the cholera epidemic in the country reached one million suspected cases in December 2017.<sup>268</sup> A cholera outbreak at a Kisumu prison in Kenya was also reported in July 2017,<sup>269</sup> and in Zimbabwe, a typhoid outbreak in the capital Harare spread to two prisons in early 2017, leading to an unconfirmed number of prisoners' deaths.<sup>270</sup>

One area where there has been increasing attention at the international level is in the prevention of HIV/AIDS in prisons. The international community has made various commitments, notably in Goal 3 of the Sustainable Development Goals which commits to end the HIV/AIDS epidemic by 2030. In May 2017, the UN Commission on Crime Prevention and Criminal Justice adopted a resolution on ensuring access to measures for the prevention of mother-to-child transmission of HIV in prisons, urging states to ensure

comprehensive health services in female prisons aimed at HIV prevention and treatment.<sup>271</sup> In 2017, UNAIDS published a roadmap to accelerate HIV prevention in 24 focus countries, identifying restrictions on health services in prisons as one reason for insufficient progress towards Goal 3. Significant funding to boost efforts towards the target has been dedicated by both governments and foundations,<sup>272</sup> although US President Donald Trump proposed budget cuts to HIV/AIDS programmes in 2018 totalling USD\$800 million.<sup>273</sup>

Despite such commitments and the identification by UNAIDS of prisoners as a key population left behind in responses to the HIV/AIDS epidemic, treatment provision and prevention measures in prisons are non-existent in some countries, and remain wholly inadequate in many others. For example, in Uganda only 33 of 448 prison facilities are accredited to provide anti-retroviral treatment (ART), and pre-trial detainees in Zimbabwe have claimed that the acute shortage of ART in prisons is life-threatening.<sup>274</sup>

The implementation of harm reduction measures – evidence-based interventions to prevent

the transmission of HIV – remains politicised in states that adopt a prohibitionist stance towards drug use. In 2016, only eight countries implemented Needle and Syringe Programmes in at least one prison, and they were entirely unavailable to prisoners in seven out of the nine regions reviewed by Harm Reduction International.<sup>275</sup>

However, some positive moves have been seen recently to reduce high rates of drug overdose in the immediate post-release period, including provision of naloxone kits (naloxone is used to treat narcotic overdoses) upon release in Canada,<sup>276</sup> and overdose prevention training in Moldova and Ireland.<sup>277</sup>

### RECOMMENDATION 16

**Drug prevention and treatment and HIV prevention, treatment and care should be available to people in prison at the same level as that provided in the community. Efforts to recruit sufficient healthcare staff in prisons should be doubled. (SDGs 3 and 10)**

### Smoking bans in prison

A large majority of people in prison smoke tobacco, with prevalence rates ranging from 64 to 90 per cent.<sup>278</sup> Statistics indicate that more female prisoners smoke, compared with their male counterparts.<sup>279</sup> In nearly all countries, smoking is a normal part of prison culture for a variety of reasons, including boredom and the stresses of being detained.

Aside from the direct impact on health of smoking tobacco, prisoners and staff face an 'elevated probability' of being exposed to second-hand smoke, due to the large number of smokers in small spaces that often have poor ventilation.<sup>280</sup> Some prison systems have imposed partial or full smoking bans in prisons, although smoking bans are mostly found in Europe, North America and Australasia.<sup>281</sup> Of 32 European countries where data was collected, 25 have smoke-free cells in some or all prisons.<sup>282</sup> Smoking bans have been the subject of legal battles,

including in Missouri, US where an asthmatic prisoner succeeded in a decade-long battle when a legal settlement was reached in 2017 requiring the state's prisons to go smoke-free.<sup>283</sup>

Prison systems often fail to provide cessation programmes alongside smoking bans, leading to withdrawal and increased levels of anxiety, boredom and violence. Prisoners rioted in Victoria, Australia when a ban was introduced in 2015, and last year a smoking ban across England and Wales led to a rise in the use of psychoactive substances and a rise in violence.<sup>284</sup> Smoking bans have also led to cigarettes and nicotine patches becoming sought-after contraband or tradable commodities.<sup>285</sup>

The World Health Organization warns that while smoking bans in prisons have shown improvements in air quality, there is limited available evidence of their impact on stopping people from smoking. Therefore it recommends a comprehensive strategy to change behaviour.<sup>286</sup>

## Solitary confinement

Solitary confinement – often also labelled ‘segregation’, ‘isolation’, ‘lockdown’ or ‘supermax’ – is defined by the Nelson Mandela Rules as the ‘confinement of prisoners for 22 hours or more a day without meaningful human contact’. With some notable exceptions, it continues to be used across the globe – including for vulnerable groups such as prisoners with disabilities and children – in contravention of international standards.<sup>287</sup> This is despite increasing recognition of its detrimental psychological and physiological effects,<sup>288</sup> and of the economic costs – one study found that solitary confinement cells cost three times as much to run as ordinary prison cells.<sup>289</sup>

New Zealand, for instance, saw a 151 per cent rise<sup>290</sup> in the use of solitary confinement over the five-year period up until 2016, compared to a 16 per cent rise in the prison population.<sup>291</sup> Around 8 per cent of cases had been isolated for longer than the 15-day limit imposed by the Nelson Mandela Rules, and a disproportionate number (62 per cent) of prisoners placed in solitary confinement were of Indigenous Māori or Pacific Island descent.<sup>292</sup>

Prisoners with mental or physical health issues continue to be placed in solitary confinement. In the US, a report detailed how blind and deaf prisoners in solitary confinement experience a heightened form of sensory deprivation as a result of

their disability, and prisoners with mobility disabilities are denied access to necessary physical therapy and prescription medications.<sup>293</sup> In Japan, where the overall use of solitary confinement is falling, the number of individuals in solitary confinement for longer than 10 years increased by over 50 per cent between the years 2012 and 2016, and almost half of these individuals were mentally disabled.<sup>294</sup> In Bahrain, concern has been expressed about a human rights defender and opposition leader who has reportedly been kept in solitary confinement for nine months, despite having medical conditions that required hospitalisation.<sup>295</sup> The UN Committee against Torture also observed in Afghanistan that solitary confinement is applied to persons with infectious diseases and mental illness.<sup>296</sup>

However, in a positive contrast, an alleged hacker successfully appealed against extradition to the US from the UK, partly on the basis that he would likely be kept in solitary confinement, where his physical and mental conditions would be exacerbated.<sup>297</sup>

A disproportionate number of suicides continued to occur in solitary confinement.<sup>297</sup> For example, a quarter of prison suicides occurred in segregation cells in the US state of Texas, which hold only 2.7 per cent of the prison population.<sup>299</sup> In South Africa, an investigation by the Judicial Inspectorate for correctional services was triggered after two prisoners

committed suicide while in solitary confinement within three months of one another.<sup>300</sup>

A number of countries segregated individuals suspected or convicted of terrorism-related offences. This included the Netherlands, where such individuals were held in prolonged solitary confinement in ‘special terrorism prisons’, a practice that was rebuked in a 2017 report by Amnesty International and the Open Society Justice Initiative.<sup>301</sup> (See also Violent extremism, page 28).

Prolonged solitary confinement also continued to be used in several countries such as Lebanon<sup>302</sup> and South Korea.<sup>303</sup> In both countries, prisoners can be segregated for up to 30 consecutive days as a disciplinary measure, a practice criticised by the UN Committee against Torture, which recalled the Nelson Mandela Rules prohibition on prolonged solitary confinement.<sup>304</sup>

The use of solitary confinement for children continued, despite a prohibition in international standards.<sup>305</sup> In Australia, authorities defended the placement of two teenagers in solitary confinement for over 250 days each,<sup>306</sup> and the case of a child held in solitary confinement for over 100 days in the UK was found, in court, not to constitute inhuman or degrading treatment.<sup>307</sup> Armenia’s retention of the practice as a disciplinary measure for juveniles was criticised by the UN Committee against Torture.<sup>308</sup> In the US however, there were significant moves towards the elimination of solitary confinement for juveniles, following a ban on its use in federal prisons.<sup>309</sup>

Some countries saw limits being imposed on or a reduction in the use of solitary confinement. There was a substantial overall drop in the use of ‘administrative segregation’ in Canadian prisons: in August 2017 approximately 300 prisoners were segregated, a decrease from 800 in 2014.<sup>310</sup> This coincided with a significant judgment from the Supreme Court of British Columbia declaring the use of both prolonged and indefinite solitary confinement unconstitutional,

### Canadian court rules prolonged and indefinite solitary confinement unconstitutional

The British Columbia Supreme Court of Canada ruled in January 2018 that ‘administrative segregation’ used by Canadian federal prisons constituted solitary confinement, as defined by Rule 44 of the Nelson Mandela Rules.<sup>311</sup>

Significantly, the Court found that prolonged segregation – defined by the Nelson Mandela Rules as more

than 15 days – was unconstitutional, noting that this was ‘a generous standard given the overwhelming evidence that even within that space of time an individual can suffer severe psychological harm’.<sup>312</sup> In August 2017 there were roughly 300 prisoners segregated in federal prisons.<sup>313</sup>

The decision was hailed by the British Columbia Civil Liberties Association as ‘the most significant trial court decision in the prison context that we’ve seen in Canadian history’.<sup>314</sup> In February 2018, the federal government announced they would appeal the decision.<sup>315</sup>

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**GLOBAL PRISON TRENDS  
SPECIAL FOCUS 2018**



# **THE REHABILITATION AND REINTEGRATION OF OFFENDERS IN THE ERA OF SUSTAINABLE DEVELOPMENT**

**Pull-out section**



**THE GLOBAL GOALS**  
For Sustainable Development

# The rehabilitation and reintegration of offenders in the era of sustainable development

Fair and effective criminal justice systems can play a vital role in ensuring sustainable and inclusive development for all. This section builds on the Special Focus of *Global Prison Trends 2017*, 'The Sustainable Development Goals and Criminal Justice'. It explores how the rehabilitation and reintegration of offenders back into their communities can incorporate a broader developmental perspective, contributing to the goals set out in the 2030 Agenda for Sustainable Development.

## Reviewing criminal justice policy through the development lens<sup>1</sup>

With the adoption of the 2030 Agenda for Sustainable Development by the United Nations General Assembly in 2015, UN member states renewed their commitment to making the world a better place for generations to come. Through Goal 16, which promotes peace, justice and the rule of law, the Sustainable Development Goals (SDGs) recognise that development efforts are closely linked with the justice sector.

The rehabilitation and reintegration of offenders, a primary aim of criminal justice systems, has traditionally focused on changing the behaviour of the individual and improving their situation, for example through providing housing or helping them to find employment.

A development-led approach can bring a wider perspective to this work by looking not only at the impact of rehabilitation on the individual offender but also the impact on their community and on wider society. By applying a development 'lens' to the rehabilitation and reintegration of offenders, including through targeted interventions for specific vulnerable groups, the scope of criminal justice interventions is broadened beyond their traditional boundaries.

Development and justice organisations have tended to operate in isolation from each other. For states to fulfil their commitment to 'leave no one behind', there needs to be improved integration and cooperation, so that criminal

justice actors can work together with other sectors, including the private sector and civil society, as well as with authorities working in areas such as health, housing and education.

In many parts of the world, programmes and measures are already in place that follow the basic principles of this kind of integrated approach. This Special Focus outlines four promising practices, and it is hoped that these will inspire those working in criminal justice systems to support the achievement of the SDGs, and to take advantage of an integrated multi-agency approach to improve their work in the effective rehabilitation and reintegration of offenders.

## Promising practices guided by development-led perspectives

The following four initiatives illustrate how targeted criminal justice interventions can contribute to sustainable development.

The initiatives have some common elements, notably a willingness to take into consideration the

needs of vulnerable groups and to address discrimination and social exclusion.

### Integrated support for the reintegration of women offenders in Thailand

In recent years, the Thai prison system has explored how development-led approaches can be used in the rehabilitation and reintegration of prisoners. These approaches have largely sought to overcome unemployment, which is a key barrier to reintegration for women when leaving prison, given their high levels of poverty and the stigmatisation and discrimination they face.

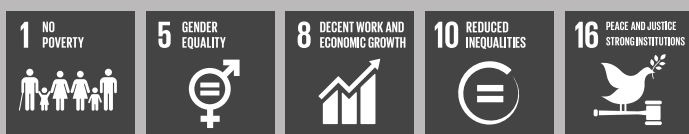
Initiatives have included the establishment of the 'Lila Thai Massage Ex-Inmate Employment and Skill Development Centre', set up in Chiang Mai in 2014, which offers employment upon release for graduates from the Chiang Mai women prison's massage training programme. The women earn the equivalent of USD\$950 per month, which is more than twice the average monthly income in Thailand (about USD\$450).<sup>2</sup> The Centre, in response to the increasing demand, has now expanded its service to cover six locations in the city of Chiang Mai.

A more recent initiative from 2017 is a training course for women prisoners on how to work within small and medium-size enterprises (SMEs).<sup>3</sup> The course equips them with skills to start their own business, leading to sustainable employment opportunities. The Thailand Institute of Justice (TIJ) is working in collaboration with the SME Promotion and Development Trade Association on this initiative.

In 2018, the 'Model Prison Plus (+)' project<sup>4</sup> was developed in Thailand to promote comprehensive rehabilitation programmes. The aim of the project is to build the knowledge and skills of prisoners through intensive courses on financial planning and debt literacy programmes, and to provide comprehensive psychological support to help them return to society and to the job market. The SME training course mentioned above has been integrated into this project; for example, new opportunities

are identified by prisoners and staff, with the help from the SME instructors and the SME Promotion and Development Trade Association.

The aim of these rehabilitative programmes is to reduce rates of reoffending and combat the discrimination that women prisoners often experience on release. At the same time, they address underlying issues and barriers to development, notably gender inequality and poverty, whilst promoting sustained and inclusive economic growth and decent work.



## Improving reintegration services for youth offenders in Jamaica to tackle developmental impacts of youth violence

The issues around Caribbean youth and their involvement in crime and violence are complex, and include high levels of youth unemployment, poor educational opportunities, 'feelings of voicelessness', and exclusion from national and regional governance processes.<sup>5</sup> In many cases, youth violence is a response to the threat and fear of victimisation and has its roots in endemic community violence. The UN Development Programme has concluded that 'youth violence is more than a security concern. It is a major human development problem'.<sup>6</sup>

The project 'A New Path' in Jamaica has sought to address this complex mix of societal, community, inter-personal and individual factors leading to widespread youth violence, by improving the availability and quality of reintegration services, technical training and psychosocial support services for convicted youth.

This development-led approach involves a range of bodies, including the Organization of American States, the Ministry of National Security, the Department of Correctional Services of Jamaica, civil society, and the private sector. Youth in detention facilities are trained on marketable technical skills and life skills, and given individualised psychosocial support to enable their successful reintegration into society. The project assists them upon release in accessing educational, vocational and internship or employment opportunities, while providing comprehensive case management for six to 12 months after release.

Approximately 950 young people have received assistance through the project, and 385 girls and boys have successfully completed educational, recreational and vocational courses that ranged from classical music and life skills to crafts and yoga. Post-release support has been

provided by 17 social workers across the country to 580 boys and girls released from two institutions. Under the scheme, 42 young people have been offered apprenticeships or jobs through partnerships with the private sector. An additional 51 benefitted from extensive training in entrepreneurship during a one-week residence programme, with 21 awarded micro-grants to start their own business. In 2018, the activities of the project will be expanded from two facilities to all four institutions for youth offenders in the country.

The objective of the project is to address the developmental impacts of youth violence by responding to the protection needs of these marginalised young people. The project mitigates the damage caused by contact with the criminal justice system by providing decent work and targeted support with reintegration.



## Reform to erase criminal records of offenders with vulnerabilities in Costa Rica<sup>7</sup>

Criminal records often constitute a significant barrier for offenders to gaining employment and living law-abiding lives after release from prison. The primary purpose of criminal records is to provide criminal justice practitioners, such as law enforcement officers, prosecutors, probation officers and judges, with information on the past criminal activity of an individual – information that may affect decisions on bail and sentence. However, criminal records are widely used for other purposes, in particular in the employment sector, as well as in the provision of public housing and for the right to vote and the right to receive welfare. Employers may request to review a criminal record during the recruitment process, which can result in exclusion from obtaining employment in the formal economy. This can have particularly serious consequences for women, their families and dependents, as women already suffer from labour market exclusion and social discrimination.

A legislative reform in Costa Rica since January 2017 has sought to overcome these difficulties by incorporating a development-led approach. Policymakers have reconsidered how decisions taken within the criminal justice system can also have an impact on the possibility of productive and decent work for all. It seeks to address systemic issues leading to unemployment and labour discrimination in private and public sectors.

The new law permits courts to erase a criminal record. The law outlines criteria for the court to take into account, which include the length of the sentence, the offence committed and, when relevant, the ‘situation of vulnerability’ of the offender. While the reform does not specifically target women, they are likely to benefit as the majority of non-violent female offenders are imprisoned for property crimes or small-scale drug-related offences, often committed in a context of vulnerability and poverty. In the past, such women struggled to

gain employment because of their criminal record, despite having relevant work experience and skills; this in turn perpetuates cycles of poverty and recidivism.

The law is applicable for people imprisoned for minor offences (carrying a penalty of five years of imprisonment or less) who have served their sentence. The offender must have been in a situation of vulnerability (such as poverty, social exclusion and discrimination) at the time that the offence was committed. The record may be erased immediately or between three to five years after their release, which is significantly less than the previous 10-year requirement.

It remains to be seen what situation would constitute ‘vulnerability’ under the reform, and currently this is at the full discretion of the judge in each case. Thus, while the initiative is an illustration of good emerging practice, its successful implementation remains to be seen.



## Economic empowerment of offenders serving community service sentences in Kenya<sup>8</sup>

Together with the Kenya Probation and Aftercare Service, Penal Reform International implemented an innovative project to disrupt the poverty-prison cycle through improving and increasing the use of community service – a humane and effective alternative to custodial sentences. The initiative adopted a development-led approach by tackling poverty, inequality and gender disempowerment. It sought to reduce the unnecessary use of imprisonment in recognition of its negative and long-lasting effects for both the imprisoned individual and their family. Imprisonment leads to hidden impacts for family and communities, including being unable to buy food or afford school fees, as well as stigmatisation. For women in prison, there are greater chances of them losing their home, livelihood, partner and access to their children. Therefore, efforts were focused on increasing the use of community service orders which allow for prison to be avoided, and ensuring that offenders are economically empowered to lift them and their families out of poverty. Poverty is frequently cited as the reason for minor offending in the country and

this was therefore a key challenge to overcome in the rehabilitation of offenders.

One outcome of this project, which was implemented between 2014–2016 in Kenya, was economic empowerment opportunities for former offenders who completed their community service sanction. Entrepreneurial training was provided alongside a small investment to allow individuals to open a basic business, so that they could support themselves and their families, thereby reducing reoffending. Probation officers worked closely with individuals to identify what kind of investment would help to prevent their previous poverty-related offending. The most popular option was to receive initial resources for the selling of cereals and groceries, and other businesses included poultry farming and carpentry.

The transformational impact of this development-led approach is illustrated in the case of one offender, who benefitted from an empowerment grant which saw him receive a toolbox kit that helped him secure employment as a mason. Probation staff witnessed

him being fully accepted by his community because he was financially stable and more able to take care of his dependents.

In order to address the stigma faced by offenders, this project also improved the public awareness and understanding of community service. For example, court open days were held for the public to visit and find out about the work of the criminal justice system, while engagement with the media increased positive coverage of community-based sentences in the press.

This initiative demonstrates the potential of alternatives to imprisonment, such as community service, to support the achievement of the Sustainable Development Goals – including the reduction of poverty and gender inequality – in a way that supports both desistance and sustainable community development.





## Conclusion

Many offenders are locked in a vicious cycle of poverty and crime. To break this, criminal justice actors and those working on development issues need to work more closely together to address the vulnerabilities and disadvantages of the most at-risk groups. Reviewing the policy objectives of crime prevention and the treatment of offenders through a sustainable development lens can open up a space for stronger alignment of objectives and programming between development and criminal policy, and could change the way many crime and violence prevention strategies are oriented and implemented in practice.

The large majority of people in prison come from low-income urban neighbourhoods and poor

rural communities, and they are not empowered to achieve their true potential. A development-led approach seeks to put people at the centre and promote human security and development.

Depending on the needs of the individuals and local communities, the development-led approach can involve initiatives that foster skills training to improve employment opportunities, promote gender equality, allow children to grow up in safe environments in stable and nurturing relationships, reduce violence against women and children, and shift damaging cultural and social norms.

There is no one-size-fits-all or quick-win solution, but successful initiatives in one country and in one context can spark consideration of whether some of the underlying

ideas can be adapted elsewhere. Much can be achieved by rethinking the challenges and by investing our efforts in tackling difficult issues now, thus working for a sustainable future.

### RECOMMENDATION 17

States should develop criminal justice and prison policies with full consideration of their relevance and importance for achieving the Sustainable Development Goals of the 2030 Agenda, so that 'no one is left behind' and criminal justice systems play their part to contribute to a just, equitable, tolerant, open and socially inclusive world, in which the needs of the most vulnerable are met.

## Endnotes

All website links cited were accurate at the time of going to press in April 2018.

- 1 This Special Focus is based partly on discussions at the regional colloquium, 'Empowering Vulnerable Communities and Women for Sustainable Development', organised by the Thailand Institute of Justice in partnership with the UN Office on Drugs and Crime, 25–26 January 2018, [www.tijthailand.org/main/en/content/569.html](http://www.tijthailand.org/main/en/content/569.html).
- 2 'Thailand average monthly wages', *Trading Economics*, 2017, [tradingeconomics.com/thailand/wages](http://tradingeconomics.com/thailand/wages).
- 3 Thailand Institute of Justice, *Summary report: The Bangkok Rules 7th Anniversary Conference: "Beyond the Prison Walls: Multi-stakeholder Perspectives on Prisoner Rehabilitation and Reintegration"*, (only available in Thai), held in Bangkok, Thailand, 21 December 2017, [www.tijthailand.org/useruploads/files/2018/MAR/IBR\\_7anni\\_Summary\\_Report.pdf](http://www.tijthailand.org/useruploads/files/2018/MAR/IBR_7anni_Summary_Report.pdf).
- 4 Ibid.
- 5 UNDP, *Caribbean Human Development Report 2012, Human Development and the Shift to Better Citizen Security*, 2012, p45.
- 6 Ibid.
- 7 Ernesto Cortés and Zhuyem Molina, *Criminal Record Reform in Costa Rica: A Step toward Proportionality and Improved Prospects For Women's Lives after Prison*, Costa Rican Association for Research and Intervention in Drugs (Asociación Costarricense para el Estudio e Intervención en Drogas, ACEID) and Washington Office on Latin America, 29 June 2017, [www.wola.org/analysis/criminal-record-reform-costa-rica-step-toward-proportionality-improved-prospects-womens-lives-prison/](http://www.wola.org/analysis/criminal-record-reform-costa-rica-step-toward-proportionality-improved-prospects-womens-lives-prison/).
- 8 Penal Reform International, *Excellence in Training on Rehabilitation in Africa (ExTRA) Project, Community service as an alternative to imprisonment: Pilot project final evaluation*, 2016.

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**GLOBAL PRISON TRENDS  
SPECIAL FOCUS 2018**

**The rehabilitation  
and reintegration  
of offenders in the  
era of sustainable  
development**

**Pull-out section**



**Penal Reform International**  
[www.penalreform.org](http://www.penalreform.org)  
Twitter: @PenalReformInt



**Thailand Institute of Justice**  
[www.tijthailand.org](http://www.tijthailand.org)  
Email: [info@tijthailand.org](mailto:info@tijthailand.org)



**THE GLOBAL GOALS**  
For Sustainable Development

citing the Nelson Mandela Rules<sup>316</sup> and the effects of the practice. (See Canadian court rules prolonged and indefinite solitary confinement unconstitutional, page 26).

In Ireland, new data has shown that the number of prisoners in 22 and 23-hour 'restricted regimes' fell to nine in October 2017, from 211 in July 2013.<sup>317</sup> Factors in this shift included an amendment to the Irish Prison Rules, entitling all prisoners to two hours out-of-cell time, with opportunity for meaningful human

contact,<sup>318</sup> as well as the introduction of a policy on the elimination of solitary confinement by the Irish Prison Service.<sup>319</sup> Finally, in the US, Texas prisons ended the use of solitary confinement as a disciplinary measure, citing its lack of rehabilitative impact,<sup>320</sup> although the practice is retained as a measure to remove prisoners deemed problematic or potentially dangerous and nearly 4,000 prisoners remain in solitary confinement.<sup>321</sup>

## RECOMMENDATION 18

**In line with the Nelson Mandela Rules and the Bangkok Rules, states should prohibit both indefinite and prolonged solitary confinement, as well as for certain groups, as stipulated in international standards. It should only be used as a last resort in exceptional cases, and then should only be applied for the shortest time possible and be subject to regular, independent review. (SDG 16)**

## Contact with the outside world

The availability and forms of contact with the outside world by prisoners varies greatly from country to country. Evidence has shown that prison visits and contact with family and friends helps reduce recidivism. For example, a 2017 review by the UK's Ministry of Justice found that prisoners who receive visits from families or partners have a 39 per cent lower reoffending rate than those who have no visits.<sup>322</sup>

Some innovative schemes for enhancing family visits have been adopted recently. In Singapore, prisoners were encouraged to develop a closer relationship with their families during a four-hour-long 'Family Day', where they mixed freely instead of being separated by glass.<sup>323</sup> Similarly, in Zimbabwe, 'Family Weeks' have been introduced to promote closer relationships between prisoners and families.<sup>324</sup> An NGO in Italy organised football matches inside prisons for prisoners and their children, to promote more normal and enjoyable visits.<sup>325</sup> For the first time, open visits will be possible for women with children and pregnant women in Cambodia, following a new Ministerial regulation.<sup>326</sup>

A privately-run prison in Wales expanded a successful scheme in which prisoners meet regularly with their child's teacher to discuss their school work. This allows parents to be informed of their child's progress at school and can also reduce the risk of reoffending.<sup>327</sup> Based on this same model of focusing directly on parents' relationships with their children, a

prison in the Netherlands has built a wing which includes a family room where fathers and children can play or do homework together unsupervised. They will also have the possibility to use Skype to talk to their children at home.<sup>328</sup>

The allocation of prisoners far from their communities remains an issue. The European Court of Human Rights delivered a verdict that imprisoning prisoners thousands of miles away from their relatives in Russia violated their right to family life.<sup>329</sup> The Court held that the distance between the penal facilities and the homes of the prisoners' families – ranging from 2,000 to 8,000 kilometres – was so great that it had inflicted hardship.

Technology is increasingly used to facilitate contact with family and friends. A pilot in Bangladesh will allow prisoners to make calls to two phone numbers twice a month,<sup>330</sup> and France has announced that landline phones will be installed in prison cells, in recognition that contact with family and particularly children is an important component of rehabilitation.<sup>331</sup>

In the UK, a voicemail system for prisoners to regularly exchange messages with family and friends was evaluated – prisoners and families alike said that it had a positive effect on health and wellbeing, relationships and social ties, and the solving of practical problems.<sup>332</sup> Video visitation continued to be rolled out in the US. At least 600 facilities have it in place, although there are concerns about the quality of the sound and picture,<sup>333</sup> as well as the

growing trend for video visits to replace face-to-face contact visits with family and friends entirely.<sup>334</sup>

The costly expense of making phone calls was another area of concern in the US. Following outrage from prisoners and their advocates, a price cap was introduced in 2015 by a Federal Commission; however, in 2017 a court ruled that price limits for in-state calls (not out-of-state calls) could not be imposed by the Commission.<sup>335</sup> In Germany, by contrast, the Constitutional Court ruled against the overpricing of phone calls made by prisoners, saying that disregarding the economic interests of prisoners violates their constitutional right to rehabilitation and that private providers must offer phone services at fair market prices.<sup>336</sup>

## RECOMMENDATION 19

**States should facilitate contact between prisoners and their family and friends through regular, affordable and easy access to mail, telephones and other communications, as well as through visits in a clean, respectful and safe environment.**

## Rehabilitation and reintegration

In recent years, fulfilling the rehabilitative purpose of prisons has become a higher priority. This is demonstrated in political commitments, such as the Doha Declaration adopted at the UN Crime Congress in 2015,<sup>337</sup> and a number of creative measures adopted to assist in prisoners' rehabilitation.

For instance, in the Indian state of Haryana, 600 cows will be provided to six jails where prisoners will be responsible for their upkeep. The programme seeks to use the cows (holy in the Hindu religion) to assist in improving both the psychological and physical health of prisoners involved.<sup>338</sup> Psychotherapy (using theatrical drama) has been introduced across China's prisons to boost rehabilitation efforts.<sup>339</sup> There is also a growing trend in prison university partnerships,<sup>340</sup> which provide important education opportunities for people in prison and support better reintegration.

Research demonstrates that unemployment and low pay are key barriers to reintegration for people released from prison, and challenges include criminal records and a lack of marketable skills.

A study that analysed data on nearly six million prisoners in the US found that by raising the minimum wage, recidivism rates decreased.<sup>341</sup> Another report showed that criminal records from offences committed more than 10 years ago – many irrelevant to the job applied for – were preventing former offenders from getting jobs.<sup>342</sup>

There remains an issue with providing the right vocational and skills training that will help prisoners gain employment. For instance, in Canada, the Correctional Investigator criticised the type of skills training available to prisoners as it did not match labour market demands, preventing meaningful employment on release.<sup>343</sup> It was also pointed out by the European Committee on the Prevention of Torture that all too often 'female prisoners are offered activities deemed "appropriate" for them (such as sewing or handicrafts), and are excluded from far more vocational training reserved for men'.<sup>344</sup>

The UN Office on Drugs and Crime has developed a new manual to assist prisons in developing effective rehabilitation programmes.<sup>345</sup>

It outlines the benefits of such programmes, citing research findings that link education and vocational opportunities in prison with a reduction in recidivism and an increase in employment post-release. The manual includes a set of checklists for prison administrations to use in developing, implementing and monitoring rehabilitation programmes.

### RECOMMENDATION 20

**States should develop and implement individualised rehabilitation and reintegration programmes that address root causes of offending and key barriers. Any skills and vocational training should take account of the employment market to boost chances of employment post-release. Programmes for women should not reinforce gender stereotypes. (SDGs 1, 4, 5, 8, 10 and 16) (See Special Focus section)**

## Violent extremism in prison

At national, regional and international levels, there is a continued interest in the management of violent extremist prisoners, as well as policies to prevent the radicalisation of prisoners and interventions to disengage violent extremist prisoners and ensure their social reintegration. Prisons are seen as places where prisoners are at risk of radicalisation, but they are also recognised as environments where there are significant opportunities for disengagement.

A 2017 review of current research concluded that there are still glaring gaps in the understanding of violent extremism in prisons.<sup>346</sup> The study identified specific aspects that need further analysis,

including the underlying social and psychological dynamics behind prisoner radicalisation, the dynamics of disengagement from violence by violent extremist prisoner groups or gangs, and children who are violent extremist offenders. It also found that there is a lack of evaluation of prison and probation programmes aimed at extremist offenders and scarce understanding of challenges that such prisoners face upon release from prison.

To address the relatively new challenges faced in this area, prison systems have exchanged information about interventions, and guidance continues to be developed. The *Handbook on the Management of*

*Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons*<sup>347</sup> from the UN Office on Drugs and Crime (UNODC) identifies three crucial areas: prison staff training, risk management and rehabilitation efforts, and concludes that full implementation of the Nelson Mandela Rules is the strongest approach. This was also echoed by the Organization for Security and Co-operation in Europe (OSCE), which states that one of the 'principal – and near-universal – lessons is that prison overcrowding makes the situation worse, because it provides terrorists and radicalisers with opportunities to spread their messages. Long before thinking

**There remains an issue with providing the right vocational and skills training that will help prisoners gain employment**



about more ambitious schemes, safe and orderly prisons should be every government's first priority'.<sup>348</sup>

Other guidance that is underway includes a guide for detention monitors outlining how to address issues related to responses to violent extremism and radicalisation in monitoring work. This will be published in 2018 by the OSCE and PRI.<sup>349</sup>

One of the main challenges in this area is how prison staff can accurately identify violent extremist prisoners or those at risk of being radicalised by others. The European Organisation of Prison and Correctional Services has compiled a list of existing training materials for front-line staff and is finalising a screening tool that seeks to assist prison staff of different levels to detect so-called 'vulnerable' and 'radicalised' prisoners as part of a regional project.<sup>350</sup>

There are a number of specific risk assessment tools that are in use in some countries for violent extremist offenders and those suspected of being radicalised or of influencing others.<sup>351</sup> It is generally accepted that each individual has to be assessed according to their particular

circumstances, and there is no 'one-size-fits-all' solution for decisions around classification, segregation or dispersal, and rehabilitation requirements. Furthermore, the UNODC Handbook stresses the importance of being gender sensitive when undertaking risk assessments, given the complexity of women's involvement in violent extremism.

Difficult decisions have to be made as to whether prisoners categorised as 'violent extremist' or 'radicalised' and those deemed 'at risk' of being radicalised should be integrated into the mainstream prison population or segregated. Some countries moved towards increased segregation, despite criticisms that this can over-estimate the risks and under-estimate the moderating effects of exposure to other prisoners for extremist prisoners. The Netherlands faced serious criticism for its policy of concentrating extremist prisoners in units where they were found to face inhuman conditions and were held in *de facto* solitary confinement.<sup>352</sup> France announced that 1,500 places in separate prison wings will be set up for what the government termed 'radicalised' prisoners.<sup>353</sup> In the UK,

following a Ministry of Justice review in 2016 which found that extremism is a growing problem in prison,<sup>354</sup> there were plans to establish three specialist 'separation centres' to hold prisoners charged or convicted of terrorist-related offences, and a taskforce of counter-terrorism experts was formed to advise and train prison staff.<sup>355</sup> In Australia, plans were announced to upgrade an existing prison to create a 'Supermax II' facility for 'radicalised' prisoners.<sup>356</sup>

Programmes on de-radicalisation, disengagement and rehabilitation were developed in many countries, and the UNODC emphasised that these should not have a negative impact on the delivery of rehabilitation programmes to the 'regular' prison population.<sup>357</sup> A multi-disciplinary approach to rehabilitation has proved effective in many contexts. Theologians and psychologists were deployed in Kyrgyzstan to work with radicalised prisoners,<sup>358</sup> and in Italy, an agreement was made with the Union of Italian Islamic Communities whereby Imams make regular visits to prisons and train prison staff on how to accommodate the needs of Muslim prisoners.<sup>359</sup> The UN Mission in Somalia supported

## What happens to prisoners during natural disasters?

Prisoners are entirely dependent on authorities to ensure their health and safety during natural disasters such as tropical storms, earthquakes, floods and landslides. By virtue of their detention they are unable to evacuate to safer areas or access basic supplies, and without adequate preparedness and planning they can be at considerable risk. Their inherent vulnerability can be heightened when prisons are badly constructed, have poor sanitation, are overcrowded, and have high proportions of ill, elderly, disabled and illiterate prisoners.

Fatalities and injuries have occurred as a result of negligence/inaction and abuse during emergencies. For example, during and after Hurricane Katrina in 2015, thousands of men, women and children were abandoned at the main prison in the US city of New Orleans. Power was lost, and prison staff left whilst prisoners were stuck in locked cells with rising water levels.<sup>360</sup> In the aftermath of the 2015 earthquake in

Nepal, 16 prisoners were killed and more than 90 injured when a prison collapsed.<sup>361</sup> In Haiti, during the chaos following the earthquake in 2010, eight police officers were found guilty of murdering at least 20 prisoners they said were attempting to escape.<sup>362</sup>

Some countries have made progress in adopting disaster risk reduction<sup>363</sup> policies in prisons. These have included a focus on preventing hazards, reducing vulnerability, and building upon the capacity and resilience of prisoners themselves to respond to disasters. For instance, a prison in Taiwan is self-sufficient on renewable energy,<sup>364</sup> and in South Africa, prisons have access to aquifers during droughts.<sup>365</sup> In the Philippines, new jails have been built on embankments to prevent flooding, and in a women's prison in a flood-prone area, prisoners have been prepared through emergency drills to respond rapidly in the event of an evacuation.<sup>366</sup> In New Zealand, beds are reserved in one prison in case they are needed after a natural disaster, although recently the Department of Corrections was forced to use these due to increasing prisoner numbers.<sup>367</sup>

Prison authorities commonly respond to natural disasters in an ad-hoc manner however, and further attention should be paid to building the capacity of prisoners to act when disasters strike and to preventing risks. For example, hazards should be taken into account when building prison facilities and the allocation of keys should ensure prisoners can be evacuated in a natural disaster.<sup>368</sup> Prisons should also be systematically integrated into disaster risk reduction policies at local and national levels.

There are some initiatives to involve prisoners in assistance during natural disasters, or in their aftermath. For years, California's prison system in the US has operated 'conservation camps', in which prisoners volunteer to undertake manual labour like clearing brush to prevent forest fires or fighting the fires themselves both inside of the prison and in communities.<sup>369</sup> This initiative allows prisoners to learn new skills and spend time outside prison, and saves the state considerable spend.<sup>370</sup> Following an earthquake in New Zealand in 2010, prisoners were involved in repairing, restoring and rebuilding houses, thereby learning employable skills and contributing to reconstruction efforts.<sup>371</sup>

prison authorities with the rehabilitation and reintegration of convicted former Al-Shabaab or associated fighters through psycho-social intervention and increased community engagement in both the pre-release and post-release phases.<sup>372</sup> In the US, there was reported success with an innovative programme for the rehabilitation of those convicted of violent extremist offences in Boston, Los Angeles and Minneapolis. The programme is intensive and individualised, and consists of counselling, philosophy, literature and writing essays and poetry, as well as close monitoring by authorities and restricted internet use.<sup>373</sup>

There was growing interest in the treatment of children who are involved in violent extremism. Following publication of the Neuchâtel Memorandum on Juvenile Justice in 2016,<sup>374</sup> which sets out key standards and good practices in responding to children in a counter-terrorism context, further guidelines were issued by the Global Counterterrorism Forum focusing specifically on rehabilitating children in detention convicted of violent extremist offences.<sup>375</sup> In 2017, the UNODC published a comprehensive handbook on the treatment of children in the context of violent extremism that reaffirmed the importance of

applying international standards regarding children in conflict with the law, regardless of the severity of the offence.<sup>376</sup>

#### RECOMMENDATION 21

**Implementation of the Nelson Mandela Rules should be prioritised in any strategy to prevent radicalisation and violent extremism in prison. States should adopt individual risk and needs assessments that are grounded in human rights. Further research should be done on women-specific aspects of radicalisation and violent extremism. (SDGs 5, 10 and 16)**

## Fragile and conflict-affected states

Fragile and conflict-affected states continue to experience formidable challenges in administering effective criminal justice and prison systems, including inadequate resources, a lack of political support, outdated legislation, weak infrastructure, overcrowding, corruption, the inability to prevent and respond to violent incidents, and insufficiently trained staff.

Overcrowding – which is demonstrative of failing justice systems – is a common feature in many states and can lead to fatalities. In Haiti, the country with the highest prison occupancy rate in the world<sup>377</sup> and an estimated 80 per cent of prisoners in pre-trial detention, it was reported in early 2017 that many prisoners were dying of malnutrition and mass funerals were being held.<sup>378</sup> During a riot in a prison in Papua New Guinea, 17 prisoners were shot dead amid allegations of overcrowding and severe shortages of food and resources.<sup>379</sup>

In South Sudan a four-month-long strike by judges that paralysed the criminal justice system resulted in severe congestion in prisons, leading to the main prison in the capital, Juba, holding three times the number of people than its official capacity.<sup>380</sup> In Côte d'Ivoire, which has a prison occupancy level of over 200 per cent,<sup>381</sup> 100 prisoners escaped from a prison.<sup>382</sup> The Independent National Commission on Human Rights of

Liberia reported deteriorating prison conditions, and prisoners reported overcrowding, no proper medication, inadequate food, limited toilet facilities and a lack of access to courts.<sup>383</sup>

Prisons in conflict settings continued to be used for arbitrary detention and torture in breach of international law. There were reports from Human Rights Watch that the United Arab Emirates (UAE) had supported Yemeni forces in the arbitrary detention, forced disappearance and torture of dozens of people during security operations, and that the UAE also runs at least two informal detention facilities.<sup>384</sup> There were further accounts of atrocities in Syria's prisons, including against women specifically,<sup>385</sup> and Amnesty International reported that nearly 18,000 people had died in custody since the crisis began in 2011.<sup>386</sup>

In Libya, the criminal justice system has all but collapsed and prisoners are held in government-run and militia-run facilities, often for long periods of time without charge.<sup>387</sup> UN reports on the militia-run detention, which largely house migrants, exposed a systematic pattern of human rights abuses,<sup>388</sup> and harsh conditions were also found in government-run detention centres.<sup>389</sup> In Iraq, hundreds of so-called Islamic State suspects, including children, were held in overcrowded jails without charge and foreign nationals were in legal limbo.<sup>390</sup>

In 2017, the UN Department of Peacekeeping Operations provided support to national prison authorities in countries including the Central African Republic, Haiti, Darfur, Liberia and Somalia. In Libya, the UN mission established joint committees in prisons with high pre-trial rates in order to reduce the pre-trial population, which stands at 75 per cent.<sup>391</sup> In 2017, PRI embarked on a programme in the Central African Republic to develop a strategy for demilitarisation of the prison service in collaboration with the UN mission.<sup>392</sup> In Somalia, the UN Mission has worked since 2016 to assist with reintegrating convicted high-risk prisoners through disengagement programmes.<sup>393</sup> (See Violent extremism in prisons, page 28).

#### RECOMMENDATION 22

**International assistance, including through UN peacekeeping missions, should give enhanced priority to the building of human rights-based criminal justice systems. Priority should also be given to reducing prison populations through effective reforms of legislation and judicial processes. (SDGs 5, 10 and 16)**

## Corruption in prison

Corruption<sup>394</sup> within prison systems has a whole range of negative consequences, not least on the human rights of prisoners and on effective prison management. It can prevent prisoners from accessing basic services and divert public funds from their intended purpose, and poses a severe security risk to prisoners, prison staff and prison management alike.

Corruption in prisons takes many forms. Families may be required to pay bribes to prison staff merely for their relative to receive basic provisions such as food or access to showers. A recent survey of 64,000 prisoners by Mexico's statistics agency found that as many as 87 per cent had paid bribes to guards for food, for making phone calls, or for getting a blanket or mattress.<sup>395</sup> Furthermore, a 2017 study in Armenia found that bribes were paid to prison officers by relatives of prisoners to ensure extra showers, time outdoors for recreation, and less thorough searches. The study found that such payments had increased significantly over the past few years.<sup>396</sup>

There are also cases of staff covering up violations by their colleagues and shielding them from investigation and prosecution, and reports of prison staff participating in the trafficking of drugs and mobile phones, embezzlement, theft and assisting escapes. For instance, in Western Australia, the Corruption and Crime Commission found that prison staff were colluding to smuggle drugs into prisons.<sup>397</sup>

Corruption perpetrated by prison staff tends to be common where they are poorly paid and looking for supplemental income, and it flourishes where there are inadequate oversight and accountability mechanisms.<sup>398</sup> Poor conditions of detention, particularly in overcrowded facilities, make it more likely that corrupt prison officers can extort payment from prisoners for basic services. The UN Subcommittee on the Prevention of Torture reported on this issue and recognised a correlation between corruption and torture, stating: 'corruption breeds ill-treatment, and disregard for human rights contributes to the prevalence of corruption'.<sup>399</sup>

In 2017, the UN Office on Drugs and Crime produced a Handbook on Anti-Corruption Measures in Prisons which highlighted '[t]he inexorable link between sound prison management and the prevention of corruption'.<sup>400</sup> It sets out a range of anti-corruption measures which include clearly acknowledging the issue, conducting a corruption risk assessment, and developing a mitigation plan. Measures should include improving the integrity of staff (training, codes of conduct, etc.), strengthening accountability (detection, investigation and sanctions) and building transparency and oversight (independent monitoring, awareness and consultation).

A range of strategies has been adopted to prevent corrupt practices in prisons at the national level, although it is still rife. In Jamaica, there

are plans to use metal detectors, CCTV and telephone jamming equipment to prevent contraband entering prisons, as well as for staff to be subject to polygraphs (lie detector tests).<sup>401</sup> In Kazakhstan, the prison service has adopted a multi-pronged strategy to address corruption, which includes improvements to the system for electronic documentation and establishing a telephone 'hotline' for people to report corruption in prisons.<sup>402</sup> A similar 'hotline' initiative has been set up in the Indian state of Hyderabad, which also offers financial rewards for information.<sup>403</sup>

### RECOMMENDATION 23

**States should prioritise efforts to prevent and combat corruption in prisons, starting with recognising the problem, adopting a zero-tolerance policy and undertaking a full corruption risk assessment. Prison staff should be carefully selected and their remuneration and working conditions should be adequate. (SDG 16)**

## Independent monitoring of prisons

The independent monitoring of prisons was given a significant boost when Sri Lanka and Australia ratified the UN Optional Protocol to the Convention against Torture (OPCAT) in December 2017, bringing the number of ratifications to a total of 87 countries by the end of 2017.<sup>404</sup> This opens up places of detention to visits from the UN Subcommittee on Prevention of Torture (SPT) and establishes National Preventive Mechanisms (NPMs) – torture

prevention monitoring bodies mandated to conduct regular visits to all types of places where persons are deprived of liberty. Furthermore, the Nelson Mandela Rules provide for a twofold system for regular inspections: an internal inspection by prison administrations, and external inspections conducted by a body independent of the prison administration.<sup>405</sup>

As of February 2018, 66 countries had designated NPMs<sup>406</sup> and several countries moved towards the full functioning of their NPMs. Argentina confirmed designation of the last

six members of its future NPM in December 2017, after a lengthy process;<sup>407</sup> Chile signed a bill to establish an NPM;<sup>408</sup> and Panama approved legislation creating their NPM.<sup>409</sup> However, progress on setting up an NPM remained stalled in the Philippines<sup>410</sup> and in Brazil, where only two out of 27 states have established their own local mechanism required by federal law.<sup>411</sup> Resources remain a barrier in detention monitoring work; in 2017, the SPT noted that a fund it uses to strengthen NPMs was significantly low, stressing how critical it was that the fund remain operational and well-resourced.<sup>412</sup>



## PART FIVE

# Role and use of technologies

In recent years, criminal justice and prison systems around the world have expanded their use of different kinds of technology to enhance community and prison-based surveillance of alleged and convicted offenders. Technology is also used increasingly for different aspects of prison management, such as facilitating access to online education and contact with family and friends.

Concerns continued to be raised about the growing use of technology, including the risk of privacy breaches and the unreliability of the technology itself. There are also concerns about whether enabling prisoners to have remote contact with family, friends or health providers via screens – often on the grounds of cost-savings – will replace human contact, a crucial aspect of rehabilitation and reintegration. (See *Contact with the outside world*, page 27).

Prisons in the US, for example, are increasingly turning to ‘telemedicine’ to provide mental healthcare and treatment.<sup>413</sup> In a context of increasing staff shortages, this can make mental health support more accessible but has also been criticised by practitioners for inhibiting the quality of care, not least because the technology itself is not sufficiently reliable.<sup>414</sup>

The use of electronic monitoring (EM) continued to increase, not just in Europe and North America but in other countries such as Kenya, Kazakhstan, South Africa, the Maldives, El Salvador

and Thailand. In August 2017, Romania announced that EM was being looked at to resolve prison overcrowding.<sup>415</sup> Latvia adopted EM for prisoners on parole in 2015 and is planning to use EM as an alternative sentence to imprisonment.<sup>416</sup>

There are concerns that EM use is being expanded, despite a lack of sufficient evaluation. A study in the US found that its use had increased nearly 140 per cent between 2006 and 2016, and gave a warning that this has occurred ‘largely in the absence of data demonstrating their effectiveness for various types of offenders’.<sup>417</sup> In the UK, academics concluded that ‘the evidence base does not match the ambitions for electronic monitoring’.<sup>418</sup>

Technology was also increasingly used for surveillance inside prisons. South Korea began a six-month trial in three prisons using unmanned drones to patrol inside and outside of the prisons, in order to monitor prisoners’ movements and to trace fugitives.<sup>419</sup> Drones have also been used to drop contraband inside prisons and, in a world first, the UK is trialling the use of a device that can detect and deflect the packages that are dropped,<sup>420</sup> as well as technology that can block signals from mobile phones being used in prisons.<sup>421</sup>

In high-income countries, there has been a rise in access to online education and training for prisoners. In Australia, prisoners have been given notebook computers that allow them

to conduct self-paced learning,<sup>422</sup> and in New Zealand, all prisons now have secure computer suites that allow access to online learning tools for education, life skills, employment and reintegration-focused training.<sup>423</sup> In Colorado, people who were convicted when they were children and who have served at least 20 years of their sentence are being prepared for release using virtual reality, in order to practise skills they have never learned, such as doing the laundry and food shopping.<sup>424</sup>

Online access is also being used to allow prisoners to take control of different aspects of their lives directly from their cells. Belgium has invested in a comprehensive digital service called ‘Prison Cloud’, which is installed in prison cells and allows prisoners to access television, film and education provisions, to call family and friends, and to book family visits.<sup>425</sup> The Singapore Prison Service began a trial for prisoners to share tablets in their cells that are connected to a secure internal network, in order to communicate with family, participate in online courses and read news and books.<sup>426</sup>

One study<sup>427</sup> found that prisons with such ‘self-service’ technology had positive results. There was a reduction in prison disciplinary offences, and reoffending in the first year after release was reduced by 5.36 per cent, compared to a 0.78 per cent reduction in comparative prisons.

There is concern that remote contact with family or friends via screens will replace human contact



The prisoner survey and usage data suggested that prisoners felt more in control of their lives and more confident in coping with technology in the outside world. Combating prisoners' digital exclusion is important, but concerns expressed included the fact that placing computers in cells can transform the dynamic of prisons, leading to more isolation and fewer opportunities to build constructive relationships with prison staff.<sup>428</sup>

The criminal justice process has also been affected by the introduction of new technologies. In Malawi, an NGO introduced an application for smartphones and tablets called 'Open Trial' that has information about fair trial and detention rights, a checklist that people can use to determine whether their friends, family members or

detainees have been detained legally, and a reporting function to notify the NGO of violations or concerns.<sup>429</sup> In China, a court in Shanghai has developed an online platform allowing judges to review information sent directly from prisons when dealing with parole or commuting of sentences, thereby reducing the need to visit jails in person.<sup>430</sup>

Although it is common practice for child and vulnerable witnesses to give evidence in court over video link in certain countries, the use of video links has expanded to include defendants 'attending' court from police stations and prisons, and for confidential consultations with lawyers. A women's prison in Chiang Mai in Thailand, for example, uses video-conferencing for court appearances which, it claims, has saved time and resources.<sup>431</sup>

Although such video links may increase court efficiency, critics have urged caution and studies have found that communication with courts or lawyers via video links can reduce understanding and participation, which is worsened by inadequate audio and visual quality.<sup>432</sup>

#### RECOMMENDATION 24

**States should leverage technology to improve prisoners' opportunities for education, skill-building and communication, and to promote the efficiency of criminal justice systems. However, such initiatives should not reduce or replace face-to-face interaction for prisoners. (SDGs 4, 10 and 16)**

## PART SIX

# Alternatives to imprisonment

Overall, the use of non-custodial measures and sanctions has expanded in recent years, particularly for low-level offending. This expansion has been driven by the recognition of the importance of alternatives to prison in reducing overcrowding and their effectiveness in rehabilitating offenders, particularly those who are convicted of non-violent and low-level drug-related offences.

A number of countries with prison overcrowding sought to decongest prisons by introducing or expanding

non-custodial options. For example, in Cambodia – where 25,000 prisoners are in facilities designed to hold 8,500, and there were almost 18,000 arrests of suspected drug traffickers and drug users in 2017<sup>433</sup> – the Justice Ministry announced a pilot programme of community service.<sup>434</sup> This is an example of a trend to move towards alternative sanctions for drug-related offending, in line with commitments made at the 2016 UN

General Assembly Special Session on the world drug problem. (See Drugs and imprisonment, page 14).

In Rwanda, community service was previously only available to people convicted for crimes relating to the genocide; however, in 2017 the Government extended its use for offenders convicted of petty offences.<sup>435</sup> In Morocco, where the prison population is growing, a new Code of Criminal Procedure under consideration will include alternatives to prison at both pre-trial and post-conviction stages.<sup>436</sup> In Ireland, there was a drop of almost 40 per cent in the numbers of people being sent to prison in 2017, which was nearly entirely caused by the introduction of non-custodial sanctions for non-payment of court-ordered fines.<sup>437</sup>

While there is no reliable data on the use of community sanctions at a global level, evidence shows that there is not necessarily a correlation between reducing prison population rates and increasing community sanctions. This is seen in European countries and the US, where there is a trend towards ‘mass supervision’ of offenders.

For instance, in the US there are nearly five million people under a criminal justice supervision (parole or probation), a fourfold increase since 1980.<sup>438</sup> A study explains: ‘Probation and parole populations mushroomed alongside prison and jail populations, signalling that, with some exceptions, community corrections was serving as an add-on, rather than alternative to, incarceration’.<sup>439</sup>

## New approach to probation and community service for women

Between 2015–17, Penal Reform International, together with the Kenya Probation and Aftercare Service, developed a new approach to probation and community service for women, in a project funded by the Thailand Institute of Justice. This project recognised the negative consequences of imprisonment experienced by women and their families, and the need to improve and expand the use of community sanctions. The different needs of women serving non-custodial alternatives have largely been overlooked until now.

Within the project, the specificities faced by women in serving probation and community service were assessed through research. Based on the UN Bangkok Rules on women offenders, tools used by probation officers were adapted and tested,

with probation officers adopting a more gender-sensitive approach.<sup>440</sup> While the project was implemented in Kenya, a model was developed so that the approach can be replicated in other countries.

A set of resources to assist stakeholders in adapting their policy and practice with women serving community sanctions include:

- A model for reform that lays out 10 key steps to take in order to introduce a gender-sensitive approach to community service and probation
- Lessons and recommendations based on the study in Kenya on experiences of women offenders and other stakeholders, and other international research

In addition, a short documentary film, a training module for probation officers, and guidelines for social investigations and pre-sentence reports were produced, to facilitate sustainable change to Kenya’s treatment of women offenders.<sup>441</sup>

A number of countries with prison overcrowding sought to decongest prisons by introducing or expanding non-custodial options



In Europe, the number of people under some form of supervision has also grown significantly in almost all jurisdictions in recent years. Research found that of 29 European countries, 17 have more people under supervision than in prison, and that the increase has not led to a reduction in prison populations.<sup>442</sup>

Furthermore, in some countries, offenders are sent to prison for breach of the terms of their non-custodial sanction, rather than for reoffending.<sup>443</sup>

The importance of non-custodial sanctions in promoting rehabilitation and reform was evidenced in a study from Australia, which found that there was a reduction of between 11 and 31 per cent in the odds of reoffending for an offender who had been given a non-custodial sanction, compared to an offender who received a sentence of up to two years.<sup>444</sup> In Northern Ireland, a pilot programme which combined community service, restorative justice and supervision also had positive results. There was a 40 per cent reduction in the reoffending rate for those who completed the order, leading to the pilot being considered for expansion.<sup>445</sup>

Recently there has been consideration of how alternatives could be more effective and appropriate for women, in line with the UN Bangkok Rules. For example, in Kenya a PRI project involved adapting tools used by the country's probation service to improve investigations into gender-relevant aspects of women offenders. (See 'New approach to probation and community service for women', page 36).

At the international level, the Third World Congress on Probation was held in Japan in September 2017. It represented a positive sign of widening recognition of the value of probation and the necessity to cooperate and share experience. Furthermore, a UN resolution called for greater use of alternatives to imprisonment,<sup>446</sup> acknowledging the links between non-custodial sanctions and a reduction in prison overcrowding, and the contribution they make to building safer communities in support of efforts towards the Sustainable Development Goals. Notably, member states reaffirmed the importance of proportionate sentences, in which the severity of penalties for offenders is proportionate to the gravity of the offences, and mitigating and aggravating circumstances are taken into account.<sup>447</sup>

The use of restorative justice is a growing trend, whether as part of sentencing or initiated at other points of criminal justice proceedings. Restorative justice programmes include mediation, conciliation, conferencing and sentencing circles, and are defined as any process in which the victim, offender and other relevant individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.<sup>448</sup> Potential outcomes include protection of the victims' rights and interests, unburdening the criminal justice system, lower rates of recidivism, and better reintegration of offenders.

A 2017 survey by the UN Office on Drugs and Crime in 31 countries found that victim-offender mediation was the most commonly used type of restorative justice, and more than half of the countries surveyed used restorative justice in cases involving children in conflict with the law.<sup>449</sup> However, it concluded that restorative justice is 'under-used or not well-known in many parts of the world'.

The Academy of Criminal Justice Science has pointed out increasing interest in understanding how restorative justice processes might be used to respond to sexual harms and domestic violence. It has also noted that 'there continues to be barriers to the uptake of restorative justice which are related to net-widening effects, concerns about due process, lack of clarity about the identity of restorative justice, lack of appropriate messaging to those interested in retribution especially with respect to accountability expectations in restorative justice'.<sup>450</sup>

#### RECOMMENDATION 25

**States should develop and implement alternatives to imprisonment, including restorative justice processes. A focus should be on addressing root causes of crime, including poverty and inequality, to support efforts to achieving the Sustainable Development Goals. Non-custodial sanctions should replace the use of prison, rather than widening the net of criminal justice control. (SDGs 1, 3, 4, 8, 10 and 16)**

# 25 Key recommendations

**01** States should introduce a range of law and policy changes to reduce rates of imprisonment, such as crime prevention measures, the expansion of alternative measures, and a renewed focus on rehabilitation in both prisons and community settings.

**02** Strategies to address prison overcrowding should focus on crime prevention, expanding the use of alternatives to imprisonment and social interventions that promote sustainable development and reduce poverty and inequality. (SDGs 1, 10 and 16)

**03** States should respect, protect and fulfil the full range of human rights and procedural safeguards guaranteed for people arrested. To prevent torture or ill-treatment of suspects, investigative interviewing that is non-coercive should be adopted. (SDG 16)

**04** Pre-trial detention should only be used as a means of last resort, and decisions to detain should be based on the presumption of innocence and the principles of necessity and proportionality. Monetary bail policies should be reviewed to ensure they do not discriminate against poor people. (SDGs 1, 10 and 16)

**05** Sentencing practice should be guided by international law, including the UN Tokyo and Bangkok Rules, and should be based on the principle of proportionality. Plea bargaining systems should be fully regulated to ensure access to justice is preserved and rights of suspects are upheld. (SDG 16)

**06** States should reduce the use of life imprisonment, taking account of the principle of proportionality and the negative impact of such sentences. Life sentences without any possibility of parole should be abolished. Conditions for life-sentenced prisoners should adhere to the minimum standards set out in the Nelson Mandela Rules. (SDGs 8, 10 and 16)

**07** States that retain the death penalty should move towards abolition and establish a moratorium as a first step. States that have abolished the death penalty should support the abolition movement politically and financially. Conditions for prisoners on death row must meet minimum standards. (SDGs 3, 10 and 16)

**08** States should review their drug policies in order to adopt evidence-based policies that include decriminalisation of minor offences, proportionality of sentencing, and non-custodial alternatives to imprisonment. Treatment as an alternative to imprisonment must be voluntary and human-rights compliant. Metrics to measure the outcomes of drug policies should include their impact on human rights, health and development. (SDGs 3, 5 and 16)

**09** The UN Bangkok Rules should guide states in criminal justice reform to ensure systems meet the needs of women. Sentencing of women should take account of any victimisation, caretaking responsibilities and context of the criminal conduct, giving preference to non-custodial sanctions. (SDG 1, 5, 10 and 16)

**10** Detention of children should be used as a very last resort, and the death penalty and life imprisonment should be prohibited for children. States should adopt child-friendly justice systems and protect children from violence and ill-treatment. (SDGs 3, 4, 5, 10 and 16)

**11** States should assess the needs of elderly prisoners, including for rehabilitation, reintegration and healthcare, to inform prison regimes. Early release mechanisms should be adopted for elderly prisoners. **(SDGs 10 and 16)**

**12** States should take measures to protect LGBTI people in detention, in line with the Yogyakarta Principles. Protection from violence and stigmatisation should be ensured, without restricting rights, and adequate healthcare must be provided, including hormone therapy and gender reassignment. **(SDGs 5, 10 and 16)**

**13** States should collect data on the number of people in prison with disabilities, and review their needs in order to inform policy and practice, in line with international standards. This should include training of staff and policies to protect discriminatory treatment and abuse, as well as architectural measures. **(SDGs 10 and 16)**

**14** States should ensure the safety of prisoners, including through dynamic security and safeguards to uphold the absolute prohibition of torture. There should be adequate staff-prisoner ratios to guarantee the exercise of effective control of prison facilities. **(SDGs 10 and 16)**

**15** States should protect prison staff from discrimination and violence, including gender-based violence. Remuneration and working conditions should reflect the challenging nature of prison work and encourage recruitment of female correctional staff. **(SDGs 5, 8 and 16)**

**16** Drug prevention and treatment and HIV prevention, treatment and care should be available to people in prison at the same level as that provided in the community. Efforts to recruit sufficient healthcare staff in prisons should be doubled. **(SDGs 3 and 10)**

**17** States should develop criminal justice and prison policies with full consideration of their relevance and importance for achieving the Sustainable Development Goals of the 2030 Agenda, so that 'no one is left behind' and criminal justice systems play their part to contribute to a just, equitable, tolerant, open and socially inclusive world, in which the needs of the most vulnerable are met.

**18** In line with the Nelson Mandela Rules and the Bangkok Rules, states should prohibit both indefinite and prolonged solitary confinement, as well as for certain groups, as stipulated in international standards. It should only be used as a last resort in exceptional cases, and then should only be applied for the shortest time possible and be subject to regular, independent review. **(SDG 16)**

**19** States should facilitate contact between prisoners and their family and friends through regular, affordable and easy access to mail, telephones and other communications, as well as through visits in a clean, respectful and safe environment.

**20** States should develop and implement individualised rehabilitation and reintegration programmes that address root causes of offending and key barriers. Any skills and vocational training should take account of the employment market to boost chances of employment post-release. Programmes for women should not reinforce gender stereotypes. **(SDGs 1, 4, 5, 8, 10 and 16)** **(See Special Focus section)**

**21** Implementation of the Nelson Mandela Rules should be prioritised in any strategy to prevent radicalisation and violent extremism in prison. States should adopt individual risk and needs assessments that are grounded in human rights. Further research should be done on women-specific aspects of radicalisation and violent extremism. **(SDGs 5, 10 and 16)**

**22** International assistance, including through UN peacekeeping missions, should give enhanced priority to the building of human rights-based criminal justice systems. Priority should also be given to reducing prison populations through effective reforms of legislation and judicial processes. **(SDGs 5, 10 and 16)**

**23** States should prioritise efforts to prevent and combat corruption in prisons, starting with recognising the problem, adopting a zero-tolerance policy and undertaking a full corruption risk assessment. Prison staff should be carefully selected and their remuneration and working conditions should be adequate. **(SDG 16)**

**24** States should leverage technology to improve prisoners' opportunities for education, skill-building and communication, and to promote the efficiency of criminal justice systems. However, such initiatives should not reduce or replace face-to-face interaction for prisoners. **(SDGs 4, 10 and 16)**

**25** States should develop and implement alternatives to imprisonment, including restorative justice processes. A focus should be on addressing root causes of crime, including poverty and inequality, to support efforts to achieving the Sustainable Development Goals. Non-custodial sanctions should replace the use of prison, rather than widening the net of criminal justice control. **(SDGs 1, 3, 4, 8, 10 and 16)**



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## PART 3

## Prison populations

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## PART 4:

## Prison management

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## PART 5

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