

*THE INTERNATIONAL CENTRE FOR CRIMINAL LAW
REFORM AND CRIMINAL JUSTICE POLICY*

Strategies and Best Practices against Overcrowding in Correctional Institutions

February 2009

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This project was made possible by the funding and support received from the International Centre for Criminal Law Reform and Criminal Justice Policy and the Correctional Service of Canada. The views and opinions expressed herein are those of the authors and do not represent any overarching official policy or opinion on the part of either the International Centre or the Canadian government.



**INTERNATIONAL CENTRE FOR CRIMINAL LAW REFORM
AND CRIMINAL JUSTICE POLICY
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Strategies and Best Practices against Overcrowding in Correctional Institutions

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February 2009

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ISBN 978-0-9730432-8-0

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Printed and bound in Vancouver, British Columbia,
Canada

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INTRODUCTION

Prison Overcrowding: A Long-Standing Concern

Prison overcrowding can be most aptly defined as a situation in which the numbers of persons confined in a prison are greater than the capacity of the prison to provide adequately for the physical and psychological needs of the confined persons. Overcrowding in prisons is a feature of many systems of criminal justice throughout the world and has significant implications for governments, communities, prisoners, and their families. There are a variety of prisoners to be found in overcrowded facilities: persons who have been detained prior to a hearing or trial; convicted offenders serving sentences; convicted offenders awaiting an appeal of their sentence; asylum-seekers; illegal migrants and persons who have been arbitrarily detained for political or military purposes (c.f. reports of the Special Rapporteur on the Human Rights of Migrants). In some extreme circumstances, prison overcrowding creates conditions that have been found to constitute ill treatment of prisoners within the provisions of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture). The report of the African Commission on Human and People's Rights Special Rapporteur on Prisons and Conditions of Detention in Africa stated in the report on South Africa (2004:54) that prison overcrowding "is by itself a human rights violation and occasions further human rights violations."

This paper examines several facets of prison overcrowding. It provides an international snapshot of overcrowding; a discussion of UN instruments and other standards that must be considered in any examination of prison overcrowding; the identification of factors that contribute to prison overcrowding; strategies to reduce overcrowding; and, the challenges in addressing prison overcrowding.

An International Snapshot

A review of the extent of prison overcrowding reveals that it exists in developed countries that are well-resourced as well as in developing countries which are resource-challenged. An overview of prison occupancy rates in regions worldwide reveals the extent of overcrowding. Figures on prison occupancy rates (gathered by the King's College, London World Prison Brief on an ongoing basis since the year 2000), indicate that prisons in many jurisdictions are overcapacity: Zambia (330.6%); Pakistan (249.5%); El Salvador (199.2%); Bolivia (162.5%); United States (152.8 percent; federal prisons).¹ While these composite figures obscure variations in prison populations within each country, they nevertheless suggest that overcrowding is a significant issue around the globe.

In a report of the mission to Indonesia, the UN Special Rapporteur on torture identified overcrowding as constituting “inhuman and degrading treatment” (Nowak, 2008:24). Conditions in police lock-ups and holding cells are particularly problematic in many countries, and are characterized by overcrowding due to detainees being held for lengthy periods of time. In Togo, for example, the UN Special Rapporteur on torture documented numerous cases where the 48 hour limit for detention in police custody had been exceeded which meant that “many detainees spend prolonged periods in appalling conditions without any legal basis” (Nowak, 2007a:2).

In South America, authorities responsible for penitentiary and prison policies of Organization of American States (OAS) identified a number of challenges, including prison overcrowding, the failure to provide adequate detention facilities, and the high number of prisoners awaiting trial. There was general agreement of the need for alternatives to detention and for the development of community-based sentences (Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas, 2003a; 2003b). In Paraguay, an investigation found that “The maximum

¹ (<http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/>)

number of prisoners is exceeded in most facilities” and there was “severe overcrowding” in several prisons, including one prison with a capacity of 1200 that held 3000 prisoners. The conditions in these prisons were deemed by the UN Special Rapporteur on torture to fall short of the “minimum standards of human dignity as laid down in Article 10 of the International Covenant on Civil and Political Rights and the United Nations Standard Minimum Rules for the Treatment of Prisoners” (Nowak, cited in United Nations Office at Geneva News and Media, 2006:2).

Similar concerns have been expressed in the reports of the African Commission’s Special Rapporteur addressing prisons and conditions of detention in Africa. In Ethiopia, detention facilities, including police lock-ups, were found to be overcrowded, “some holding inmates more than twice their capacity” (Chirwa, 2004:24). In the regional Awasa Prison, more than 979 prisoners were being held in a facility with a capacity of 450 inmates. Prisons in Nigeria were described by the UN Special Rapporteur on torture as severely overcrowded and “The vast majority of detainees are held in detention awaiting trial or held without charge for lengthy periods, as long as 10 years” (Nowak, 2007b:2).

In Togo, two of the three prisons visited by the UN Special Rapporteur on torture were found to be seriously overcrowded. The majority of the prison population is composed of persons awaiting trial, often for lengthy periods of time. This situation was found by the Special Rapporteur to be “contrary to the presumption of innocence and to the exceptional rule of deprivation of liberty laid down by international law” (Nowak, 2007a). The factors contributing to overcrowding included a slow and inefficient judicial system which results in large numbers of persons being deprived of their liberty, often for years. The recommendations made to the government of Togo included taking steps to “strengthen alternatives to detention and imprisonment and render their use obligatory unless there are compelling reasons for detention” and to “introduce time limits on pre-trial detention.”

Western governments are also confronted with prison overcrowding. Prisons in Europe are, on average, 25 percent overcapacity and many provincial and federal correctional facilities in Canada are struggling with overcapacity issues (Griffiths, 2009). Prison overcrowding is an issue in the U.S., even though there has been a decrease in crime rates and the number of persons arrested (Federal Bureau of Investigation, 2009; Liptak, 2008; U.S. Department of Justice, 2009). In many States in the United States there is also overcrowding in the local jails, which hold a variety of offenders for relatively short periods of time. Numerous State task forces have been formed in an attempt to develop solutions to jail and prison overcrowding at the State level (c.f. Bingman, 2005; Hesaltine, 2008).

UN Instruments and Other Standards

Although prison overcrowding has not been the focus of UN international and regional instruments, it is addressed indirectly in a number of instances. Prison overcrowding may compromise the ability of jurisdictions to fulfil the requirements of UN instruments and other standards. The “Standard Minimum Rules for the Treatment of Prisoners”, adopted by the UN in 1955, focus on the conditions of detention and set out the requirements for prisoner accommodation and living conditions.²

Prison overcrowding may jeopardize the rights of prisoners, such as the right to health. Other provisions of the standard minimum rules, including those relating to accommodation, health care, and ventilation can be compromised by overcrowding.

Prison overcrowding may compromise the ability of a prison system to comply with the “Basic Principles for the Treatment of Prisoners”, adopted by the UN General Assembly in 1990. More specifically, Principle 1 states that “All prisoners shall be treated with respect due to their inherent dignity and value as human beings.” Investigations by the UN Special Rapporteur

² Standard Minimum Rules for the Treatment of Prisoners: http://www.unhchr.ch/html/menu3/b/h_comp34.htm.

on prisons and the conditions of detention in Africa have found that prison overcrowding may result in inhumane treatment of prisoners.

The conditions of detention resulting from prison overcrowding constitute a form of cruel punishment as defined by the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). Article 16.1 of that Convention states: “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”³

The International Covenant on Civil and Political Rights contains a number of provisions that are relevant to discussions of prison overcrowding.⁴ Article 7 states “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.” Article 14 of the Covenant includes the provision that “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law” (14.2), and “to be tried without undue delay” (3c).

The “Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment” (1988) contains a number of provisions relating to detention and imprisonment:

Principle 1: “All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.”

³ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. http://www.unhchr.ch/html/menu3/b/h_cat39.htm

⁴ International Covenant on Civil and Political Rights. http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

Principle 11.1: “A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.”⁵

There are also a number of UN instruments that encourage countries to develop non-custodial measures that could assist in reducing the numbers of persons sent to prison. The UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) set out a number of principles “to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment.”⁶ The rules also include:

1.5. Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.

2.5. Consideration shall be given to dealing with offenders in the community avoiding as far as possible resort to formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law

Article 5 of The Universal Declaration of Human Rights states that “No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.”⁷

⁵ “The Body of Principles for the Protection of All persons under Any form of Detention or Imprisonment.” http://www.unhchr.ch/html/menu3/b/h_comp36.htm

⁶ United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules). http://www.unhcr.ch/html/menu3/b/h_comp46.htm

⁷ The Universal Declaration of Human Rights. <http://www.un.org/Overview/rights.html>

Instruments Addressing Pretrial Detention

There are also a number of UN instruments that specifically address the issue of unnecessary or unnecessarily prolonged pretrial detention which is often a contributor to prison overcrowding. A fundamental principle of human rights is that persons have the right to trial within a “reasonable” period of time, thus reducing the length of pretrial detention. Article 11(1) of The Universal Declaration of Human Rights states that “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”⁸ Persons held in pretrial detention have not been found guilty of any offence and, therefore, should not be punished.

Another fundamental right found in both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights is the right not to be subjected to arbitrary detention. Article 9 of the International Covenant on Civil and Political Rights states:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in

⁸ The Universal Declaration of Human Rights. <http://www.un.org/Overview/rights.html>

custody, but release may be subject to guarantees to appear for trial, at any other state of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of an unlawful arrest or detention shall have an enforceable right to compensation.⁹

The U.N. Human Rights Committee has held that pretrial detention should only be used in circumstances where it is lawful, reasonable, and necessary. The UN Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) also contain a number of provisions designed to ensure that imprisonment and pretrial detention are used only as options of last resort.¹⁰ Rule 6 addresses the issue of the avoidance of pre-trial detention:

6.1 Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.

6.2 Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 5.1 and shall be administered humanely and with respect for the inherent dignity of human beings.

6.3 The offender shall have the right to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed.

⁹ International Covenant on Civil and Political Rights. http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

¹⁰ The UN Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules). http://www.unhchr.ch/html/menu3/b/h_comp46.htm

A number of regional instruments have also included reference to pretrial detention. The Kampala Declaration on Prison Conditions in Africa recommended that judicial investigations and proceedings ensure that prisoners are kept in remand detention for the shortest possible period, avoiding, for example, continual remands in custody by the court, and that there should be a system for regular review of the time detainees spend on remand.¹¹ As well, the African Charter on Human and People's Rights states that persons have a right to be tried within a "reasonable time."¹²

Instruments for Juveniles

There are also a number of international instruments that are directed exclusively toward children and juveniles in conflict with the law and which provide guidelines for the administration of juvenile justice and for institutions in which juveniles are confined. The Convention on the Rights of the Child (CRC) is a legally-binding instrument that sets out a number of state obligations with respect to the treatment of juveniles.¹³ And, among the rules of the UN Standard Minimum Rules for the Administration of Juvenile Justice are:

Rule 7. Rights of Juveniles

7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

¹¹ The Kampala Declaration on Prison Conditions in Africa. <http://www.penalreform.org/kampala-declaration-on-prison-conditions-in-africa.html>

¹² African Charter on Human and People's Rights. <http://www.hrcr.org/docs/Banjul/afhr.html>

¹³ Convention on the Rights of the Child. <http://www.unhchr.ch/html/menu3/b/k2crc.htm>

Rule 11. Diversion

11.1 Consideration shall be given, whenever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14 below.

11.2 The police, the prosecutor or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

Rule 13. Detention Pending Trial

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they require in view of their age, sex and personality.

The Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) identify the need for separate processes for juveniles, highlight the need for alternatives to custody and state that detention should only be used as a last resort. Rule 19.1 states: “The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.”¹⁴

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty set out minimum standards for the protection of juveniles in detention and include the principles that detention should be used only as a last resort and for a minimum period, if required.¹⁵

The lack of adequate facilities can often result in situations where convicted offenders are held together with pre-trial detainees, a violation of Article 10 of the International Covenant on Civil and Political Rights. Inadequate facilities may also result in juveniles being held in the same prison population as adults in contravention of Article 37(c) of the Convention on the Rights of the Child, which states:

¹⁴ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”). http://www.unhchr.ch/html/menu3/b/h_comp48.htm

¹⁵ United Nations Rules for the Protection of Juveniles Deprived of their Liberty. http://www.unhchr.ch/html/menu3/b/h_comp37.htm

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interests not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

Mixing juveniles and adults in the same prison population also contravenes Rule 13.4 of "The Beijing Rules" which states that juveniles in pre-trial detention are to be separated from adults, either in the same institution or in another facility.

CONTRIBUTORS TO PRISON OVERCROWDING

Prison overcrowding is a complex and multi-faceted issue and the specific contributors to situations of overcapacity in prisons will vary across jurisdictions. This requires that analyses be conducted on a jurisdiction-specific basis to ensure that the contributors of overcrowding are identified and that the strategies to address it are appropriate. Note that, in civil law jurisdictions, legislation provides for persons who have been formally "placed under investigation" but not been charged, to be detained for months or even years, after a suspect has been placed. This highlights the challenges in making cross-jurisdiction comparisons.

Prison overcrowding may be the result of both the appropriate and inappropriate use of prison. In the former, overcrowding may be a consequence of a lack of prison capacity, a result of a lack of proper planning by prison authorities and others to construct prison facilities or to replace facilities that may have been destroyed during conflicts. As well, there may have been an increase in the number of serious offenders receiving sentences involving lengthy periods of imprisonment and changes in the law that require judges to impose lengthier sentences. In Canada, for example, changes in judicial sentencing patterns, the absence of new correctional facilities, and an increase in the numbers

of convicted offenders serving long-term sentences have all contributed to some prisons operating at overcapacity. As well, the reluctance of parole boards to release offenders early into the community and a lack of programs and services to assist offenders to successfully reintegrate back into the community which may result in violations of conditions of release and/or new criminal offences and a return to prison have kept some federal and provincial prison populations high (Griffiths, 2009).

In the case of the inappropriate use of prison, overcrowding may be a consequence of an ineffective justice system in which large numbers of pre-trial detainees and persons who have been convicted but remain un-sentenced may wait years to be heard by a court. A report on prisons and detention in South Africa (Special Rapporteur, 2004:37) found that “At least 25 prisons hold more un-sentenced prisoners than sentenced prisoners.” As well, there may be an overreliance on the use of pretrial detention, a failure to enforce existing legislation relating to the criteria to be used in placing persons in pretrial detention and/or the failure to follow existing statutes that limit the time persons spend in pretrial detention (Nwapa, 2008).

There may be large numbers of persons who are detained due to an inability to pay a fine or compensation order and an absence of options that would allow these persons to remain in the community. As well, there may be an absence of mechanisms that would facilitate the resolution of minor conflicts, such as property disputes, in the community.

Antiquated or non-existent provisions in the criminal law for bail and other options for pre-trial release and non-custodial measures may increase the numbers of persons in prison. The absence or underutilization of mechanisms for early release from prison may result in prisoners spending longer periods of time in prison and an inadequate infrastructure of support to assist released offenders to successfully integrate into the community may all result in an increase in the numbers of offenders who return to prison.

The following discussion considers potential contributors to prison overcrowding in greater detail.

An Absence of, or Failure to Utilize Non-custodial Measures

Numerous UN documents have identified the importance of non-custodial measures, including Resolution 2006/22 of the United Nations Economic and Social Council (2006) which recognized “the serious problems posed by prison overcrowding and the potential threat to the rights of prisoners in many Member States, in particular many African States”, and that “providing for effective alternatives to imprisonment in policy and practice is a viable long-term solution to prison overcrowding.” The UN Eleventh Congress on Crime Prevention and Criminal Justice, held in Bangkok in 2005 recognized “the importance of further developing restorative justice policies, including alternatives to prosecution” (United Nations, 2005).

In many jurisdictions, there are few alternatives to prison as a criminal sanction and, where such alternatives exist; there may be a lack of capacity and insufficient resources to support non-custodial measures. There may also be a lack of capacity to supervise persons in the community prior to court appearance and upon conviction. In many jurisdictions, there is not a well-developed network of non-governmental organizations that could be a collaborative partner with governments to develop and implement non-custodial measures.

As well, there may be political and public resistance to the development and use of community-based alternatives. In South Africa, the absence of alternative placements was found to contribute to the number of juveniles in pretrial detention (South African Law Commission, 1997). The African Commission’s Special Rapporteur who examined prisons and detention in South Africa found that there had been an increase in the use of imprisonment, the imposition of long-term sentences, and “little use of non-custodial sentences” (2004:39) and attributed prison overcrowding, in part, to “the reluctance by judges

and magistrates to use non-custodial sentences, even for petty offences” (2004:38).

Where alternatives to prison exist, such as probation, there is often a need to expand capacity and improve the delivery of probation services. In the State of Texas, in the United States, for example, offenders who have their probation revoked represent as many as one-third of annual prison admissions (Texas Criminal Justice Coalition, 2007:2). The high level of revocations, in turn, has been attributed to inadequate supervision and lack of treatment programs for probationers.

The Prison Infrastructure

The condition of the prison infrastructure may contribute to prison overcrowding in both developed and developing nations. In many countries, prison facilities are antiquated and in need of replacement. In post-conflict and transitional societies, the prison system has often been destroyed or severely damaged. In Cameroon nearly all of the prisons were constructed during colonial times and were found by the African Commission Special Rapporteur to be “at an advanced stage of dilapidation.” It was found that the government did not have a general plan for prison construction (Chirwa, 2002:13-14).

The lack of planning and commitment of adequate resources has also resulted in situations where new prisons have not been constructed to adequately accommodate existing prison populations, nor increases in the numbers of persons being sent to prison. In some regions, such as Africa, there may be plans for prison construction but there may be more pressing demands on the government (Muntingh, 2008). In many jurisdictions, children/juveniles are held in detention centres pending disposition of their cases because there is simply no other alternative to house them and keep them safe. This is very often the case when street children are arrested; there are no other housing options.

Vulnerability of the Poor

Poor persons may be at a higher risk of being incarcerated, even in cases involving minor offences, and their numbers may contribute to prison overcrowding. This undermines the legitimacy of the justice system, Shaw (2008:2) observing, “When poor defendants are more likely to be detained, it can no longer be said that the criminal justice system is fair and equitable.”

The African Commission’s Special Rapporteur’s report on prisons in South Africa (2004:54) reported that “Most of those in prison have been detained for petty offences and other offences caused by their social conditions.” In many jurisdictions, poor persons do not have access to adequate legal counsel or paralegal assistance that would assist them in remaining in the community until the hearing or trial date. Studies by the Kenya Human Rights Commission (2008) found that many accused persons represented themselves in court and did not know they could request bail. In Ireland, a majority of prisoners serving sentences of six months or less are “mostly poor and often homeless” (Archdiocese of Dublin, 2008). There may also be a lack of capacity to supervise persons in the community prior to court appearance and upon conviction.

Poor persons may also be vulnerable to being confined for an inability to pay the amount of bail set by the court or a fine imposed by the court upon conviction for an offence. In Southern Sudan, the inability of minor offenders to pay a fine or comply with a compensation order too often results in nearly indeterminate periods of imprisonment (Dandurand, et al., 2008a). In Cameroon, many of the persons in prison lack the funds to pay for transportation to the Appeal Court (Chirwa, 2002:22). Others who are detained do not have the money to pay the bail set by the court. In South Africa, there has been an increase in the numbers of persons who are detained due to an inability to pay bail fees (Special Rapporteur, 2004:38). Many of these persons had bail fees as low as 50 Rand set by the court,

which indicates that they were deemed not to be a threat to the community.

To address this issue, many western jurisdictions have implemented fine option programs that are designed to reduce the numbers of persons being sent to prison for an inability to pay a fine. These programs provide an opportunity for the offender to work the fine off rather than being sent to prison (Griffiths, 2007).

Pre-Trial/Pre-Sentencing Detention

The excessive use and length of pretrial detention may contribute to prison overcrowding. In the forward to a special issue of *Justice Initiative* on pretrial detention, Shaw (2008:2) observes that “At any given moment, an estimated three million people worldwide are in pretrial detention...a practice that violates international norms, wastes public resources, undermines the rule of law, and endangers public health.” This includes cases such as the one described by the Special Rapporteur on torture in Paraguay (Nowak, cited in United Nations Office in Geneva News and Media, 2006:2) wherein a detainee “had spent one and a half years in pre-trial detention on suspicion of having stolen a bicycle.”

In many jurisdictions, pretrial detainees who have not been convicted of any crime compose a significant portion of prison populations and may contribute to prison overcrowding (Human Rights Watch, 2006; 2008). Overcrowding in Ethiopian prisons was found to be a result of “the large numbers of un-sentenced prisoners”, with the majority of prisoners in most prisons being detainees who are awaiting trial or sentencing (Chirwa, 2004:24). In the prison in Addis Ababa, nearly 70 percent of the prison population was found not to have been sentenced, while in the Awasa prison, 87 percent of the prisoners were awaiting trial or sentencing. In South Africa, an investigation by the African Commission’s Special Rapporteur found that a major contributor of prison overcrowding was the large numbers of

pretrial detainees. Seventy-one percent of the prison population in 2004 was composed of persons awaiting trial (Special Rapporteur, 2004:37).

As previously mentioned, a number of UN instruments speak to the issue of pretrial detention. The Tokyo Rules (1990:2) state that “Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regards for the investigation of the alleged offence and for the protection of society and the victim” (Rule 6.1) and that “Alternatives to pre-trial detention shall be employed at as early a stage as possible” (Rule 6.2).

Legislation and Government Policies

Legislation may result in the criminalization of behaviour, which increases the numbers of persons in prison and may make certain groups, such as the poor, more susceptible to being incarcerated. In the U.S. the “war on drugs” and “get tough” crime policies have been identified as major contributors to increases in prison populations and to overcrowding (Beck-Brown, 2006; The Connecticut General Assembly, 2000). Similarly, observers in Australia (Kinkade, Leone and Semond, 1995) have argued that “get tough” crime policies in that country had driven significant increases in prison populations that had resulted in some prisons being overcrowded. Various “truth in sentencing” policies and sentencing guidelines that require convicted offenders to serve more time in prison before being released have also been identified as contributors to prison overcrowding in the U.S. and Australia (Fox, 1998; The Connecticut General Assembly, 2000; Van Ness, 2001). The shift from indeterminate to determinate sentencing and the increase in the number of mandatory minimum sentences in a number of States in the United States have increased the numbers of persons sent to prison and the length of time prisoners must serve prior to release (Sloth-Nielsen and Ehlers, 2005). The elimination of the practice of awarding “good time” to prisoners, a key tool used by the prison system to manage the prison population and to provide early release for offenders, was identified as a contributor to prison

overcrowding in the State of Connecticut, United States (The Connecticut General Assembly, 2000).

Lengthy periods of incarceration may also be due to criminal procedures during the case investigation process. While suspects must generally be brought before the court within a specific time period, there may be no limit on the number of extensions that the police may obtain while completing their investigations. This results in persons being detained for lengthy periods of time without charge. The African Commission's Special Rapporteur on prisons has documented this situation in Ethiopia and Cameroon (Chiwa, 2002; 2004).

Community Pressure on the Justice System

For community residents concerned with safety and security, there may be de facto support for legislation and policies that contribute to prison overcrowding, including the extensive use of pretrial detention. As Sarkin (2008:2) has stated: "The pressure citizens exert on states to penalize offenders is part of the reason why prisons remain the primary instruments of punishment." In responding to concerns about excessive numbers of juveniles held in detention, Cambodian officials "reported that they were subject to pressure from society and government to detain suspects in prison pending their trials, regardless of the length of pre-trial detention" (Teeuwen, Chiva, and Neth, 2006).

In South Africa, efforts by the government to reduce prison overcrowding through the increased use of early release were met with resistance from the community, Sekhonyane (2002) notes that: "These early release schemes triggered a huge outcry among the South African public. The general sentiment seems to be that all people in prison are criminals who deserve lengthy sentences." Similarly, a report by the African Commission's Special Rapporteur (2004:38) found that increases in the prison population in South Africa could be ascribed, in part, to the justice system responding to public concerns about rising violent crime. This resulted in more arrests by the police, prosecutor's

focusing on detaining offenders for lengthy periods of time, and a “reluctance on the part of the judiciary to embrace alternatives to incarceration, such as community services.”

There may also be community resistance to prison reform efforts. The report on prisons in Cameroon by the African Commission’s Special Rapporteur documented pressures on the government: “Even if they wished to improve prison conditions, they are faced with the negative public opinion on prison reform” (Chirwa, 2002:13). Negative public perceptions may also hinder efforts to involve the community in non-custodial measures and in programs designed to reintegrate released offenders back into the community. The African Commission’s Special Rapporteur report on prisons in South Africa (2004:55) observed that

The public seems to regard prisoners as social outcasts and deserve whatever treatment is given to them. The public is therefore concerned about keeping prisoners locked up rather than about the conditions in which they are confined. As a result, it is reluctant to assist the department in its programme of rehabilitation and reintegration...It is therefore difficult for ex-offenders to be employed, to get loans, and to get meaningful support from their families and the community.

This highlights the importance of educating the community about the limitations of imprisonment as a response to persons in conflict with the law and the value, and effectiveness, of non-custodial measures. An enlightened community may be less susceptible to sensational media accounts and to political manipulation.

Ineffective Justice Systems and Processes

Underfunding, mismanagement, antiquated criminal procedure law and other factors may create inefficiencies that result in poor case flow management and an overreliance on incarceration, which, in turn, may contribute to prison overcrowding. Convicted offenders who have served their time sometimes continue to be

held in custody due to poor case flow management, while pretrial detainees may be incarcerated for years as the reasons for their detention get misplaced, simply forgotten, or due to a lack of court infrastructure. Similarly, distance is often a factor in the delay in hearing cases, as courts may not be available in remote locations and there may be few provisions for transporting prisoners to court.

A key issue surrounding the use of pretrial detention is the length of time that persons are held in prison. In addressing the impact of lengthy delays in prosecuting accused persons, the Kenya Human Rights Commission (2008) has stated,

In the interests of justice, trials must be speedy otherwise fairness is deemed to be eroded...The sum effect of the ramifications of delayed prosecutions is the erosion of faith in the law and the undermining of the rule of law. This state of affairs provides little or no incentive for the citizen to obey and respect the law as it is viewed as oppressive. Hence the urgent need to inspire confidence in our institutions, especially those charged with the administration of justice.

In Senegal, large backlogs in court cases and absentee judges have been identified as contributors to lengthy pretrial detention periods (United States Department of State, 2008a). In many jurisdictions there are challenges in managing case flow due to a lack of trained personnel and resources. This tends to result in cases not being resolved in a timely manner. The African Commission's Special Rapporteur's report on prisons in Cameroon identified a number of factors that contributed to increased numbers of persons being sent to prison, including lack of access to justice, ineffective case investigation, a disregard for an accused person's right to a fair trial and rights to bail, the slow processing of cases through the courts, the unchecked use of lengthy periods of remand, and the absence of an effective parole system (Chirwa, 2002:12-13; 22). In Haiti, an investigation revealed that the "severe lack of resources" had a significant impact on the administration of justice and contributed to large

numbers of persons in pretrial detention and extended pretrial detention:

Tiny, overcrowded offices make the rational organization of work difficult. The poor working environment, when combined with muted support from a remote Justice Ministry, encourages a noteworthy indifference to the problems of detainees and extended pretrial detention. This indifference, exacerbated by a scarcity of secure transportation to convey detainees between the police station, peace courts, and the offices of the prosecution, results in chronic case processing delays (Fuller, et al., 2002:16)

Inefficiencies in the justice system may also result in lengthy delays in resolving cases and to follow existing legislative guidelines designed to control the numbers of persons in pretrial detention. In addressing the issue of detention without trial, The Kenya Human Rights Commission (2008:2) has pointed out:

Section 72(5) of the Constitution provides that persons who are arrested or detained must be tried within a reasonable time or released unconditionally or with reasonable conditions. However, the Commission has noted: ‘In reality, this constitutional safeguard is often dispensed with. In some cases, suspects might never be brought to trial especially where the police have overstepped their powers and wrongfully arrested and falsely charged a person. The incarceration of such persons amounts to detention without trial.’

Similarly, the law in Rwanda requires that detainees be provided access to lawyers, although, as of 2007, there were only 273 lawyers in the entire country and most were located in the capital (United States Department of State, 2008b).

Absent or Underutilized Early Release Programs

In many jurisdictions, there are few provisions for early release from prison and, where such provisions exist, this mechanism is

often underutilized due to resource limitations or other factors. In the State of Texas, in the United States, for example, the limited use of parole release has been identified as contributing to prison overcrowding (Texas Criminal Justice Coalition, 2007:6). As of 2007, the parole grant rate in the State was 27 percent, which was below the minimum parole grant rate of 31 percent set by the Texas Board of Pardons and Parole. The reduced rate is due, in part, to an absence of community-based programs and facilities for offenders released on parole. In the province of Ontario in Canada, the provincial parole board in 2006/07 had a grant rate of 26 percent, a result that is generally attributed to “get tough” policies enacted by the provincial government (Griffiths, 2009).

Absent or Ineffective Reintegration Programs for Offenders Released from Prison

The large majority of persons who are sent to prison will eventually be released. Despite this fact, many criminal justice systems have given little attention to the development of programs to assist offenders to successfully reenter the community. This, in turn, increases the likelihood of reoffending, which may have a significant impact on prison populations:

The United States (U.S.) and England and Wales are experiencing a growing prison population due in part to the number of offenders released on license and violating the conditions of their release. Currently in the U.S., the fastest growing segment of the prison population is made up of offenders who have violated the terms of their parole or probation. The number of offenders being recalled back to prison in England and Wales has more than trebled between 2000 and 2005 ((Dandurand, et al, 2008b:3).

The rate of parole suspensions and revocations which, in turn, result in offenders being returned to prison, is due not only to their behaviour, but also, as Dandurand, et al. (2008b:4) suggest, to the manner in which offenders are supervised in the community and to the legislative framework within which such supervision is carried out (see also Thompson, 2007).

THE CONSEQUENCES OF PRISON OVERCROWDING

Prison overcrowding has consequences for incarcerated persons, prison systems and for the community.

Confined Persons

Overcrowding may hinder compliance with international standards and principles with resulting negative impacts on persons in prison:

Overcrowding undermines the ability of prison systems to meet the basic needs of prisons, such as healthcare, food, and accommodation. It also compromises the provision of rehabilitation programs, educational training, and recreational activities...Prison overcrowding endangers the basic rights of prisoners, including the right to an adequate standard of living and the right to the highest attainable standards of physical and mental health (Penal Reform International, 2007).

The consequences of prison overcrowding include poor health conditions, violence and victimization, increased safety risks to detainees and institution staff from fire hazards and accidents, and increased levels of suicide (Adwell, 1991; Heidensohn and Farrel, 1991). In 2005, for example, 136 prisoners in a Dominican Republic prison died in a prison fire. At the time of the fire, 426 prisoners were being held in a facility built to hold 80 prisoners (Kimer, 2005). Further, there is evidence that aggressive prisoners are more likely to commit assaults in prisons that are overcrowded (Lahm, 2008).

Figures indicate that the suicide rate of pretrial detainees is ten times that of persons in the outside community, a rate that is much higher than that for sentenced prisoners (and three times that of the community) (Schonteich, 2008:19). There are also higher rates of self-injury among pretrial detainees. Overcrowding creates conditions that place detainees at a high risk of contracting HIV/AIDS and infectious diseases, due to

poor hygiene, lack of staff supervision, and poor medical care (Walmsley, 2005). As well, “Detainees infected with HIV/AIDS, tuberculosis, or other communicable diseases are likely to pass these on to their families and communities after their release” (Schonteich, 2008:24). The death of a primary family provider due to disease or other affliction related to being confined in an overcrowded person is devastating emotionally and financially for families and increases the number of families requiring social assistance. Increased rates of disease and death may also have a significant impact on the levels of productivity, which, in turn, affect the economy (Egamberdi, 2007). The resources currently being expended on pretrial detainees could, in most jurisdictions, be more productively spent on building schools, health clinics, and other critical infrastructure that would improve the quality of life of citizens.

And, Haney (2006:272) has observed, “Overcrowding directly affects prisoners’ mental and physical health by increasing the level of uncertainty with which they regularly must cope.” For juveniles who are confined in facilities with adults, there is the added risk of sexual assault and exploitation (see Sloth-Nielsen, 2008).

In prisons that are overcrowded, there may be no space or staff available to allow prisoners to receive visits from their families. For spouses who are held in pretrial detention for lengthy periods of time, there is the risk of family breakdown and the impact of which appears to be particularly acute for children whose mothers are detained (Schonteich, 2008:22).

Prison Management

Overcrowding hinders the ability of prison authorities to effectively manage prisons. A cornerstone of prison management is the effective classification of prisoners, based on risk and needs (Griffiths, 2009). This contributes to a safe institutional environment, while at the same time providing the opportunity to address the treatment and vocational needs of prisoners.

Severe prison overcrowding may preclude an accurate census of prisoners, their history and status (pretrial detainee, convicted person, other type of detainee), much less the ability to address their needs. Similarly the conditions that exist in prisons that are operating at overcapacity may preclude prison officials from addressing the needs of special groups of prisoners, including the mentally ill and the elderly.

There may also be negative consequences for prison staff. Overcrowding contributes to unsafe working conditions due to a deterioration of prison safety, an increased likelihood of violence, fires, accidents and other hazards, and increased exposure to communicable diseases. This may contribute to a loss of staff morale and to high turnover of personnel. There may also be an increased likelihood of staff corruption and/or abuse of prisoners, including extortion, as prisoners attempt to obtain food, clothing, and accommodation. The report of the UN Special Rapporteur on torture (Nowak, cited in United Nations Office in Geneva News and Media, 2006:2) in Paraguay found that prisoners were often “obliged to pay money to prison staff in order to obtain basic services such as edible food, medical provisions and housing in acceptable facilities.”

Large numbers of prisoners in antiquated, overcrowded facilities makes it difficult for administrators to meet national and international standards. Administrators, working with meager fixed budgets provided by governments, are unable to provide for basic human needs, are challenged to protect prisoners from violence and exploitation by other prisoners, and staff, and have little ability to provide treatment and vocational programming for prisoners, as well other services, including health services. Overcrowding may significantly impact daily prison life by increasing tension among inmates and between inmates and correctional staff, compromising security and the integrity of treatment programs (Griffiths, 2009). The description of the impact of prison overcrowding contained in the report of the African Commission’s Special Rapporteur on prisons and conditions of detention in Cameroon is illustrative:

The delegation informed the authorities that overcrowding had adverse effects on prisons and their population, namely, on rehabilitation programmes the government might want to introduce, creation of unsafe conditions of detention (in terms of lack of beds, blankets, bathrooms, etc.), nurturing promiscuity and transmission of diseases; difficulty in keeping the premises clean, difficult working conditions for staff, and lack of exercise where space is limited, etc. (Chirwa, 2002:12).

Overcrowding may be particularly frustrating for professional administrators who have no control over the numbers of prisoners who are sent to their facilities, the budgets they are provided with to operate their institution, nor over how long the prisoners remain confined. However, observers have argued (Hill cited in Tkachuk and Walmsley, 2001:10) that, "...the truth is that directors of individual prisons and their staff must try to provide humane treatment for those they have been ordered to hold...one must be motivated, imaginative and creative to find appropriate solutions to the day to day problems confronting correctional managers."

The Community

Prison overcrowding may place the community at increased risk. Prisoners who do not have access to treatment and vocational programs while confined are at an increased risk to reoffend upon release (Haney, 2006; Van Ness, 2001). And Van Ness (2001:4) has issued the reminder that "...virtually all prisoners will be released one day. The conditions they experience in prison will contribute to their ability and inclination to make pro-social decisions when they are released." In a report on prison conditions in Georgia, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2007:25) cautioned that prisoners who experienced the "deplorable conditions" in Prison No. 5 in Tbilisi "will return to society psychologically shattered and physically diseased." With respect to pretrial detention, Shaw (2008:3)

points out: “Poor pretrial detention practices not in compliance with international standards consequently endanger persons and communities far removed from those actually detained.”

There is considerable potential for communities to become involved in participating in community-based alternatives to prison. This includes the development of non-custodial measures and various restorative justice approaches that would have a significant community component and which could, potentially, be premised on traditional dispute resolution practices (Dandurand and Griffiths, 2006).

STRATEGIES TO REDUCE PRISON OVERCROWDING

The strategies and policies that are developed to address prison overcrowding and pretrial detention will vary according to the specific needs of individual jurisdictions. Strategies to reduce overcrowding can be categorized as “front door strategies” or “back door strategies” (Snacken, 2006). Front door strategies include using decriminalization to reduce the numbers of persons being convicted and subsequently sent to prison, reducing the use and length of custody for persons on remand and on custodial sentences, as well as the development of non-custodial measures. This includes the creation of restorative justice approaches (see Dandurand and Griffiths, 2006). Back door strategies include the use of early release programs and services to provide support to released persons to facilitate successful reintegration into the community (Griffiths, Dandurand, and Murdoch, 2007).

Successful strategies to address prison overcrowding require a system-wide approach, rather than one centered only on the prison system alone. As Carranza (2001:17) has noted: “The challenge ahead of us is one that cannot be relegated to prisons alone. A comprehensive approach must be taken by the entire criminal justice system, since the prison system is only the recipient of prisoners sent to it by the police and the courts.”

Following are some of the important components of any effort to address prison overcrowding.

A Focus on Crime Prevention, Rehabilitation and Offender Reintegration

A key strategy in reducing the numbers of persons in prison is to provide effective crime prevention programs, treatment programs for prisoners, and programs that assist offenders released from prison to become law-abiding citizens in the community (Losel, 2007). There is an extensive literature on “what works” in community-based crime prevention, in prison-based treatment, and in assisting offenders who have been released from prison (see Griffiths, 2007; 2008; 2009).

Persons released from prison are faced with a myriad of challenges that may seriously hinder their ability to adjust successfully in the community and avoid re-offending. Most justice and prison systems give far more attention to convicting and incarcerating offenders than to developing strategies to reintegrate prisoners back into the community (Griffiths, 2009). Post-release programs designed to assist released prisoners and reduce re-offending are variously referred to as “‘aftercare’, ‘transitional care’, ‘reentry’, ‘reentry support’, reintegration or resettlement” (Griffiths, Dandurand, and Murdoch, 2007:3) and may involve the participation of justice personnel, non-governmental organizations (NGOs), and community volunteers.

Post-release programs for offenders may be a key component of a broader crime prevention effort. As Griffiths, Dandurand, and Murdoch (2007:39) point out: “Crime reduction strategies developed in the UK, the US and a few other countries for youth and adult offenders attempt to integrate the various elements of the criminal justice response to crime, develop partnerships with communities, and to integrate institutional interventions with community-based interventions in an unbroken continuum of intervention.”

Offender reintegration programs include institution-based

programs, surveillance-based transition programs, and assistance based transition programs (Griffiths, Dandurand, and Murdoch, 2007:5-6). Evaluations of these programs with respect to their effectiveness in reducing re-offending have produced mixed results (see Griffiths, Dandurand and Murdoch, 2007 for an in-depth discussion of specific programs and outcomes). This has prompted a number of jurisdictions, including several U.S. states and the UK to emphasize the concept of “throughcare” in recognition of the fact that prisoners need to be prepared for release while incarcerated and that there should be continuity of treatment interventions from the prison to the community (see Griffiths, Dandurand, and Murdoch, 2007). A number of observers have proposed strategies for improving the effectiveness of parole and other programs designed to facilitate the successful reintegration of released offenders back into the community (see Burke, Gelb and Horowitz, 2007).

Creating and Adequately Resourcing Non-custodial Measures

A key component of any efforts to address prison overcrowding is the creation, and adequate resourcing, of non-custodial measures for accused persons, particularly those persons accused of less serious offences. These measures, along with programs for offenders released from prison, are generally referred to as community corrections (Griffiths, 2009).

As previously discussed, a number of UN instruments have set forth the principle that imprisonment should only be used as a last resort. Regional declarations have also identified the importance of developing non-custodial alternatives to prison. The “Kampala Declaration on Prison Conditions in Africa” (1996:2) recommended:

- that the police, the prosecuting authorities and the judiciary should be aware of the problems caused by prison overcrowding and should join the prison administration in seeking solutions to reduce this

- that judicial investigations and proceedings should ensure that prisoners are kept in remand detention for the shortest possible period, avoiding, for example, continual remands in custody by the courts
- that there should be a system for regular review of the time detainees spend on remand

Among the recommendations were that “community service and other non-custodial measures should if possible be preferred to imprisonment”, “petty offences should be dealt with according to customary practice, provided this meets the requirements and that those involved so agree”, and that “there should be a study of the feasibility of adapting successful African models of non-custodial measures and applying them in countries where they are not yet being used” (p. 3).

The “Kadoma Declaration on Community Service Orders in Africa (1997) set out a number of recommendations, including:

6. The use of prison should be strictly limited as a measure of last resort. Prisons represent a waste of resources and human potential. The majority of prisoners who occupy them pose no actual threat to society.
7. The overcrowding in our prisons requires positive action through – *inter alia* – the introduction of community service.
8. Community Service is in conformity with African traditions of dealing with offenders and with healing the damage caused by crime within the community. Furthermore, it is a positive and cost-effective measure to be preferred whenever possible to a sentence of imprisonment (1997:5).¹⁶

¹⁶ International Conference on Community Service Orders in Africa. Kadoma, Zimbabwe. 24-28 November, 1997. <http://www.penalreform.org/kadoma-declaration-on-community-service-orders-in-africa.html>

These two declarations highlight the potential for creating community-based alternatives to imprisonment that incorporate elements of restorative justice and traditional African practices.

The need for countries to increase the use of non-custodial measures to reduce prison overcrowding has also been identified in the reports of African Commission's Special Rapporteur who have examined prisons and the conditions of detention in Cameroon, Ethiopia, and South Africa and of the UN Special Rapporteur on torture. This includes diversion programs, provisions for bail, community service order programs, house arrest, probation, and various restorative justice approaches, all of which are designed to provide non-custodial alternatives to prison. The Special Rapporteur's report on prisons and detention in Ethiopia, for example, recommended that the government explore the development of alternative sentences to incarceration, including community service. As well, it was suggested that the government consider creating small claims courts or courts to hear the cases of persons charged with minor offences (Chirwa, 2004).

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2006:21) has argued that it is more productive to develop alternatives to prison than to rely on building more prisons to reduce prison overcrowding:

[T]he CPT is far from convinced that providing additional accommodation will alone offer a lasting solution. Indeed a number of European States have embarked on extensive programmes of prison building, only to find their prison populations rising in tandem with the increased capacity acquired by their prison estates. By contrast, the existence of policies to limit or modulate the number of persons being sent to prison has in certain States made an important contribution to maintaining the prison population at a manageable level.

In North America, probation is the most widely used alternative to prison. The popularity of probation is due in large measure to its versatility. The length and conditions of a probation order can be tailored to the individual needs and circumstances of the offender and the level of supervision can be adapted to the specific needs and risks of the offender. In addition to providing supervision, probation officers may facilitate treatment programs for persons under community supervision. In the province of British Columbia, Canada, for example, probation officers facilitate a number of core programs including the Violence Prevention Program, Substance Abuse Management, Cognitive Skills, as well as a program for sex offenders. And, in the Republic of Latvia a national probation system for juveniles has been created in an attempt to reduce the number of juveniles sent to prison (Bell, et al., 2002).

There are also a number of approaches that fall between probation and incarceration. These are generally referred to as intermediate sanctions and include fines, community service, home detention with or without electronic monitoring, intensive probation supervision, and strict discipline camps (boot camps) (Caputo, 2004).

The development of non-custodial measures holds the potential for reducing the numbers of persons sent to prison. In Ireland, for example, more than 80 percent of committals to prison are for one year or less and 60 percent are for six months or less (Archdiocese of Dublin, 2008). In this jurisdiction, there would seem to be considerable potential to use non-custodial measures for these offenders, the majority of who have been convicted of non-violent, less-serious offences. A key concern with the development of alternatives to prison is that “net-widening” will occur, wherein additional numbers of persons are brought into the justice system (Griffiths, 2009). If this occurs, the net effect will be to increase the numbers of persons under supervision by the justice system and prison populations are unlikely to be reduced.

European countries have generally focused on the development of community based alternatives to prison, which have assisted in keeping prison populations at manageable levels. Iceland, for example, makes extensive use of community service as an alternative to custody, while Sweden uses electronic monitoring in lieu of a sentence of imprisonment (Hill, 2007). Similarly, in many European jurisdictions and in North America, there has been an expansion of electronic surveillance programs, including electronic monitoring and “tagging” that have increased the numbers of offenders who can be supervised in the community. As well, there has been an expansion of probation to include specialized units to provide community-based supervision for higher-risk offender groups, including sex offenders (Griffiths, 2009). Restorative justice programs have the potential to reduce court costs, case processing times and to provide community-based forums for the resolution of cases (Dandurand and Griffiths, 2006).

For accused persons, a number of jurisdictions have developed specialized courts that are designed to address the unique needs of specific offender groups and to provide an alternative to the use of imprisonment. Mentally ill offenders and drug-addicted offenders are often caught in a “revolving-door” of incarceration and release. Drug treatment courts and community courts in Canada have produced reduced rates of criminal offending while assisting offenders in addressing their addiction issues (Weekes, et al., 2007). In Toronto, a specialized “Aboriginal court” hears cases involving Aboriginal persons and all possible sentencing options and alternatives to imprisonment are explored (Griffiths, 2007). And, a number of best practices have been identified for the use of diversion for mentally ill persons who come into conflict with the law (Livingston, et al., 2008).

Developing Provisions for Early Release

Lengthy periods of pretrial detention and imprisonment may contribute to prison overcrowding. The expedient handling of cases of persons held in pretrial detention can assist in reducing this

segment of the prison population, while developing/enhancing and creating and utilizing mechanisms for early release from prison for convicted offenders can reduce populations as well. The latter initiatives require that sufficient supervisory resources and programs/facilities be developed in the community and that appropriate risk assessment instruments be utilized to identify those offenders who may be eligible for early release.

Amnesty is another strategy that has been used, with limited effectiveness, to reduce prison populations and the number of pretrial detainees. Russia has used amnesties as a mechanism to reduce overcrowding in prisons. During the years 1997-2000 there were several amnesties, the last of which “triggered the release of approximately 50,000 defendants from pre-trial detention centers and another 150,000 from prisons” without any appreciable impact on prison overcrowding (Foglesong, 2002).

The Tokyo Rules set out a number of principles relating to post-sentencing dispositions:

9.1 The competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and to assist offenders in their early reintegration into society.

9.2 Post-sentencing dispositions may include:

- (a) Furlough and half-way houses;
- (b) Work or education release;
- (c) Various forms of parole;
- (d) Remission;
- (e) Pardon.

To be successful, reintegration should involve continuity between the prisoner's participation in institutional programming and the services an offender receives on conditional release in the community. Upon release, the offender may face social, economic, and personal challenges such as mental illness, substance abuse/addiction issues, and HIV/AIDS that may make it difficult to avoid returning to criminal activity (Griffiths, Dandurand, and Murdoch, 2007). Among the recommendations of the African Commission's Special Rapporteur on prisons and detention in Cameroon were that there be an emphasis on the development of post-release programmes that provide training, education, and psychological support for offenders returning to the community (Chirwa, 2002:25).

Jehle, Miller, and Griffin (2006) have called for a "therapeutic jurisprudence" that would be designed to counter the negative impact of overcrowding on prisoners and focus on rehabilitation programs that would assist in their successful reintegration back into the community.

Considering Legislation

There is considerable potential to use legislation to reduce the numbers of persons sent to prison, the length of time that persons remain in pretrial detention, the length of time that convicted offenders serve in prison, and to provide a framework for supervising offenders released from prison. There may also be a need to review and rewrite the legislation on criminal procedure, evidence, and other laws relating to the processing of cases.

In Canada, for example, Section 718.2(e) of the Criminal Code requires judges to consider sentencing options other than prison, particularly for Aboriginal offenders, a group that is significantly over-represented in provincial and federal prison populations (see Griffiths, 2007).

Improving the Effectiveness of Criminal Justice Administration

Prison overcrowding in many jurisdictions is associated with ineffective and inefficient justice administration, including poor strategic planning and weak case management capacity. A system-wide review would identify practices that contribute to prison overcrowding. Successfully addressing these “gaps” in justice administration may require training sessions for police, judges, corrections personnel, and community-based NGOs and other agencies and organizations.

It is also important that justice systems have in place good information management systems that can provide current, accessible information on cases, accused persons, and convicted offenders. The UNODC Handbook on Prisoner File Management (Stokes, James, and Christian, 2008:2-3) highlights the importance of maintaining accurate prisoner files as a component of ensuring compliance with international treaties and standards:

The police, prison service and other State bodies responsible for detaining individuals therefore have a responsibility to ensure not only that the decision to detain an individual is lawful, but also that their treatment and care whilst in detention is both fair and compliant with human rights standards. Creating and maintaining prisoner and detainee files is an essential tool for protecting and upholding these standards...Creating and maintaining prisoner files is also an essential component of effective prison management and plays an important part in improving the transparency and accountability of prison administrations...For prisoners themselves, accurate and well-maintained files can mean they receive fair and timely access to justice...

Effective case flow management can ensure that the hearings of pretrial detainees are expedited, convicted persons who are eligible for early release are identified, and that adequate supervision and services are provided to persons released back

into the community. It can also facilitate disposition of the cases of illegal immigrants and undocumented migrants and, where possible, facilitate their repatriation in a timely fashion.

A strong defence bar, access to legal counsel and legal aid information also improve the administration of justice and may reduce the numbers of persons in prison. In Malawi, the introduction of paralegals in prisons to expedite trials, and, where possible, to secure the release of defendants from custody prior to trial, resulted in a decrease in the proportion and absolute numbers of inmates in detention (Msiska, 2008). A pilot bail information scheme designed to reduce the use of detention in South Africa for persons unable to pay bail money reduced the number of persons in pretrial detention and improved functioning of the courts at several of the pilot sites and there was a general view among persons involved in the project that the program had produced positive outcomes (Ehlers, 2008).

In India, a pilot project in several States that involved a prison visitors program and rights monitoring campaign designed to discourage the use of detention and to expedite trials resulted in lower numbers of persons detained while awaiting trial (Saxena, 2008). A project in Nigeria that involved deploying trained lawyers to selected States to facilitate interagency cooperation to monitor the use of pretrial detention and to provide assistance to suspects at police stations resulted in improved relations with the police, increases in the timely arraignment and prosecution of accused persons, and increases in the number of persons released or diverted from pretrial detention (Nwapa, 2008).

Improving the effectiveness of criminal justice administration also requires that there be training programs provided to justice system personnel. In many jurisdictions, the lack of training and expertise are major obstacles. Sarkin (2008:21) has pointed out, "Shortages of well-trained and competent staff exacerbate the problems facing prison administrations." In a report on prisons and conditions of detention in South Africa, the African Commission's Special Rapporteur observed (2004:3) that more

attention should be given to personnel who work in the justice and prison systems:

The lack of human rights understanding by all the law enforcement officers has a lot to do with the treatment of prisoners and other detainees. Prison authorities who spend most of the time with prisoners must be acquainted with the human rights instruments on the treatment of persons deprived of their liberty.

Regional and national conferences involving all of the justice stakeholders are useful in examining ways to improve the administration of justice and to develop interagency relationships.

Increasing Prison Capacity

A key component of any strategy to reduce prison overcrowding is a prison construction program that provides prison systems with the capacity to house offenders in safe and humane conditions. In many countries, these plans are either non-existent or have fallen victim to budget constraints or higher priority issues. A number of observers have cautioned, however, that it may be difficult for jurisdictions to “build” their way out of prison overcrowding, Lyon (2005) stating that for many jurisdictions, “It’s way too late in the day and it would cost too much.” The State of Texas, in the United States, for example, has tripled the capacity of its prisons since the early 1990’s, but it is projected that the State will exceed its current prison capacity by approximately 11,000 beds by the year 2010 (Texas Criminal Justice Coalition, 2007). The report of the African Commission’s Special Rapporteur on prisons and the conditions of detention in South Africa (2004:64) noted that while building additional prisons “might reduce the problem of overcrowding...without a simultaneous process of dealing with the causes of crime, the sentencing regime and favourable community support, overcrowding in prisons would be hard to contain.”

Increasing Community Participation

There is in every community resources that can be mobilized to assist persons who come into conflict with the law. This includes non-governmental organizations that can play a pivotal role in operating community-based alternatives to prison and providing assistance to offenders released from prison. The Tokyo Rules set out a number of principles relating to public participation in non-custodial measures for offenders. These include:

17.1 Public participation should be encouraged as it is a major resource and one of the most important factors in improving ties between offenders undergoing non-custodial measures and the family and the community. It should complement the efforts of the criminal justice administration.

17.2 Public participation should be regarded as an opportunity for members of the community to contribute to the protection of their society.

A challenge is to devise strategies to engage the community and to sustain community involvement as well as to overcome any community resistance to schemes that allow accused persons to remain in the community pending trial and to early release programs. Involving the community in alternative schemes designed to reduce prison overcrowding is not only cost-effective, but serves to legitimize reform efforts. There is also considerable potential to involve non-governmental organizations (NGOs) to collaborate in the development and implementation of strategies and policies to reduce overcrowding. Reducing public opposition to non-custodial measures and to the early release of offenders from prison also requires educating community residents about the benefits of these strategies and the negative consequences of relying on imprisonment. As previously noted, there is often considerable public resistance to reform efforts and negative perceptions of convicted persons.

Public education is a key component of any strategy designed to increase community involvement in community-based programs for offenders and ex-offenders. Among the principles set forth in the Tokyo Rules are:

Rule 18.2. “Conferences, seminars, symposia and other activities should be regularly organized to stimulate awareness of the needs for public participation in the application of non-custodial measures.”

Rule 18.3. “All forms of the mass media should be utilized to help create a constructive public attitude, leading to activities conducive to a broader application of non-custodial treatment and the social integration of offenders.”

Rule 18.4. “Every effort should be made to inform the public of the importance of its role in the implementation of non-custodial measures.”

Developing Information Systems for the Justice and Corrections Systems

A key component of efforts to address prison overcrowding is data and it is important that jurisdictions develop information systems to document case flow as well as procedures to gather information on persons held in prisons. These data, in turn, can provide the basis for evaluations of the effectiveness of initiatives designed to reduce prison overcrowding. Several UN instruments highlight the importance of research and evaluation. Rule 30 of the UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), for example, identifies “Research as a basis for planning, policy formulation and evaluation.” Rule 21.2 of “The Tokyo Rules” states that “Regular evaluations should be carried out with a view to implementing non-custodial measures more effectively” and Rule 21.3 states that “Periodic reviews should be conducted to assess the objectives, function and effectiveness of non-custodial measures.” Such evaluations will provide the basis for

the development of best practices that can be applied to strategies designed to address prison overcrowding. Developing networks to facilitate the sharing of information among jurisdictions will enhance reform initiatives.

THE CHALLENGES IN ADDRESSING PRISON OVERCROWDING

“The acid test of reform should not be what can be attained, but what can be sustained...There is much yet to be tried and learned.”

(Varenik, 2008:174; 181)

For reforms designed to reduce prison overcrowding to be implemented, and sustained, there are a number of key considerations. There is what Varenik (2008:173) has referred to as the “politics of reform”, which requires key decision makers to not only to have the “information, options, and incentives” but also “a set of political reasons to take action.” There is need for political champions who commit to the implementation of reforms and take the necessary actions to ensure that the reforms are sustained. Further, reform efforts must consider not just the issues surrounding prisons, but the overall administration of justice as well. The prison chaplains in Ireland have observed that “Getting to the heart of the issue of overcrowding must involve a co-ordination of all arms of the Criminal Justice System” (Archdiocese of Dublin, 2008). A key component should be the development of core capacities in the justice system – through legislation and policy, training, and the development of community-based programs and services – and in the community through collaborative partnerships with non-governmental organizations (NGOs) and other community-based organizations. There are also a variety of agencies and organizations that are able to provide technical assistance to jurisdictions attempting to address prison overcrowding. These include the Criminal Justice Reform Unit of UNODC, the International Centre for Criminal Law and Criminal Justice Policy, a UN-affiliated institute, UNICEF, and Penal Reform International, among others.

Amenability of Justice and Prison Systems to Reform

It can be anticipated that there will be resistance to reform, even though prison overcrowding has a number of negative consequences, including undermining the rule of law and harm to society, the community, families, and prisoners. Muntingh (2008:193) observes that, “the receptiveness of a criminal justice system to reform initiatives and its ability to sustain reform are highly dependent upon the integrity of that criminal justice system.” In spite of the resistance from some quarters, there are prison staff who will be receptive to reform efforts designed to reduce prison overcrowding. A study in South Africa (Potgieter, et al., 2005), for example, found that correctional officers believed that implementation of restorative justice approaches could function to reduce prison overcrowding.

Post-conflict states face unique challenges in addressing prison overcrowding. There are a number of competing priorities that confront post-conflict states, including reconciliation, reconstructing infrastructure, and reforming public sector institutions (Mussanhan, 2008). The efforts are both costly and time-consuming and the efforts required to reform legislation and the justice system and the development of alternatives to prison may not present the same sense of urgency as other demands (see Rausch, 2006; Sterland, 2006).

Planning, Implementing and Sustaining Reform Initiatives

The experience of many jurisdictions has been that it is difficult to implement and sustain initiatives designed to reduce prison overcrowding. To date, many reform efforts have been poorly planned and have been unable to withstand counter-reforms initiated by politicians and justice system personnel. Ungar (cited in Kimer, 2005) has identified the phenomenon of “institutional resistance to reform” that has hindered efforts to reduce overcrowding. In Latin American, reform attempts that have involved the introduction of new criminal codes and strategies to reduce prison populations have been compromised

by ineffective justice systems and poor policy implementation. As well, rising rates of crime have precipitated an expansion of police powers which has resulted in increased numbers of arrests and pretrial detention (Ungar, 2003).

In Chile, efforts to reform the legal system and to implement clear restrictions on the use of pretrial detention were reversed by “counter-reforms” which resulted in an increase in the numbers of persons placed in pretrial detention (Venegas and Vial, 2008). In Uganda, a community service order program that was developed in several districts as an alternative to imprisonment for sentences of up to two years resulted in a 40 to 70 percent reduction in the number of offenders serving custodial sentences. However, an expansion of the program failed due to lack of government and donor support (Muntingh, 2008).

Reforms undertaken on an ad hoc, intermittent basis are not sustainable and are unlikely to result in significant changes in practice (Nwapa, 2008:90). Experience has demonstrated, for example, that changes in pretrial detention practices and reforms designed to reduce pretrial detention populations can only be sustained with legal and institutional reform. This was illustrated in South Africa, where attempts to introduce pretrial legal services were not sustained, in part, because the project depended upon one champion in government who was subsequently replaced by a new minister (Ehlers, 2008). In discussing efforts to address prison overcrowding in Africa, for example, Muntingh (2008:199):

Reliable information on what works and what does not is virtually non-existent for Africa. In this regard, a distinction should also be made between, on the one hand, what reforms can be effectively implemented and support by governments and, on the other, the actual and proven effectiveness of those reforms to achieve the desired impact.

In reflecting on the difficulties encountered by efforts to introduce and expand the use of community service order programs in a

number of African countries, Muntingh (2008) notes:

Alternative sentencing options, such as community service orders, require a certain level of intersectoral cooperation for the purposes of planning, delivery and monitoring. They are inextricably linked to other components of the justice system and other support services and are frequently highly dependent on them for delivery.

The Political Will to Reform

Governments may not have the political will to undertake the necessary legislation and policy initiatives required to facilitate, and sustain reform that would reduce prison overcrowding. While pretrial detention is often a contributor to prison overcrowding, Mark Shaw of UNODC (2008:10) has stated: “Progress in pretrial detention is not a triumphant trend but rather an occasionally rewarded impulse.”

Successful strategies to address prison overcrowding must be mindful of past efforts and outcomes as well as cognizant of the potential for implementing legislation, policies, and practice that target the specific contributors to overcrowding that exist in each jurisdiction.

REFERENCES

Adwell, S. 1991. "A Case for Single Cell Occupancy." *Journal of Federal Probation*, 54, pp. 64-67.

Archdiocese of Dublin. 2008. *Prison Chaplains' Report 08*.
http://www.dublindiocese.ie/index.php?option=com_content&task=view&id=1372&Itemid=654

Beck-Brown, D. 2006. "The High Cost of Prison Overcrowding." *The San Diego Union-Tribune*, April 27.
http://www.davidbeck-brown.com/literaryarts_cost_of_prison_overcrowding.shtm

Bell, S., R. Corrado, Y. Dandurand, and C.T. Griffiths. 2002. *The Legal Reform Capacity Program Latvia. Report of the Advisory Panel*. Ottawa: Association of Universities and Colleges of Canada.

Bingman, T. (Chair). 2005. *Michigan Task Force on Jail and Prison Overcrowding. Final Report*. Lansing, MI.: Office of the Governor.
http://www.michigan.gov/documents/report_119595_7.pdf

Burke, P., A. Gelb, and J. Horowitz. 2007. "When Offenders Break the Rules. Smart Responses to Parole and Probation Violations." Public Safety Policy Brief, No. 3, November. Washington, D.C.: Pew Center on the States.
http://www.pewtrusts.org/uploadedfiles/wwwpewtrustsorg/Reports/sentencing_and_corrections/Condition-Violators-Briefing.pdf

Caputo, G.A. 2004. *Intermediate Sanctions in Corrections*. Denton, TX: University of North Texas Press. <http://web3.unt.edu/untpress/catalog/excerpt/press182.pdf>

Carranza, E. 2001. "Prison Overcrowding in Latin America and the Caribbean: Situation and Possible Responses." Paper presented at the United Nations Programme Network Institutes Technical Assistance Workshop, Vienna, Austria, May 10th.
http://www.unicri.it/wwk/related/pni/docs/2001/carranza_en.pdf

Chirwa, V. M. 2004. *Report of the Mission of the Special Rapporteur on Prisons and Conditions of Detention in Africa to the Federal Democratic Republic of Ethiopia, 15-29 March, 2004.*

http://www.arhpr.org/english/Mission_reports/ethopia/Special%20Rap%20Prisons_Ethopia.pdf

_____. 2002. *Prisons in Cameroon. Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa.*

http://www.achpr.org/english/Mission_reports/Cameroon/Special%20Rap_Prison_Cameroon.pdf

Dandurand, Y. and C.T. Griffiths. 2006. *Handbook on Restorative Justice Programmes.* Vienna: United Nations Office on Drugs and Crime.

http://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf

Dandurand, Y., M. LaLonde, A. Nyapola, M. Shaw, E. Skinnider and T. Waterhouse. 2008a. *Vulnerable Groups in South Sudan Prisons.* Abbotsford, BC: University of the Fraser Valley Press.

Dandurand, Y., J. Christian, D. Murdoch, R.E. Brown, and V. Chin. 2008b. *Conditional Release Violations, Suspensions and Revocations. A Comparative Analysis.* Vancouver: The International Centre for Criminal Law Reform and Criminal Justice Policy.

http://www.icclr.law.ubc.ca/files/books/Conditional%20Release%20final_English.pdf

Egamberdi, N. 2007. *HIV and Prisons in Sub-Saharan Africa: Opportunities for Action*.

Vienna: United Nations Office on Drugs and Crime.

http://www.data.unaids.org/pub/Report/2007/hiv_prison_paper_en.pdf

Ehlers, L. 2008. "Frustrated Potential: The Short and Long Term Impact of Pretrial Services in South Africa." In *Justice Initiatives: Pretrial Detention*. New York: Open Society Justice Initiative. pp. 121-140.

http://www.soros.org/initiatives/osji/articles_publications/publications/pretrial_20080513/Justice_Initiati.pdf

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. 2007a. *Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*. Strasbourg: Council of Europe. <http://www.cpt.coe.int/documents/geo/2007-42-inf-eng.pdf>

_____. 2006. *The CPT Standards*. Strasbourg: Council of Europe. <http://www.cpt.coe.int/en/documents/eng-standards-prn.pdf>

Federal Bureau of Investigation. 2009. "Crime in the United States." *Uniform Crime Reports, 2008*. Washington, D.C. <http://www.fbi.gov/ucr/ucr.htm>

Foglesong, T. 2002. *Pardons and Amnesties in Russia: Clarifying the Differences*. New York: Vera Institute of Justice. http://www.vera.org/publication_pdf/166_255.pdf

Fox, T.A. 1998. "Tougher Criminal Legislation Means Prison Overcrowding: The End of the Road for Prisons as Agents for Rehabilitation." Brisbane: Queensland University of Technology. <http://www.acea.org.au/Content/1998/FOX.pdf>

Fuller, A., P. Texier, M. Brosseau, D. Lemaire, and P. Pierre-Louis. 2002. *Prolonged Pretrial Detention in Haiti*. New York: Vera Institute of Justice.

http://haiticci/undg.org/uploads/Vera%20Institute_2002.pdf

Griffiths, C.T. 2007. *Canadian Criminal Justice: A Primer*. 3rd edition. Toronto: Nelson.

_____. 2008. *Canadian Police Work*. 2nd edition. Toronto: Nelson

_____. 2009. *Canadian Corrections*. 4th edition. Toronto: Nelson.

Griffiths, C.T., Y. Dandurand, and D. Murdoch. 2007. *The Social Reintegration of Offenders and Crime Prevention*. Ottawa: National Crime Prevention Centre. <http://www.publicsafety.gc.ca/res/cp/res/soc-reinteg.aspx>.

Haney, C. 2006. "The Wages of Prison Overcrowding: Harmful Psychological Consequences and Dysfunctional Correctional Reactions." *Journal of Law & Policy*, 22, pp. 265-293.

Heidensohn, T. and M. Farrel. 1991. *Crime in Europe*. London: Routledge Pty. Ltd.

Hesaltine, E.K., E.M. McElroy, C.E. Pyle, M.B. Shebi, V.R. Skinner, M.C. Smith, and K.P. White. 2008. "Community Criminal Justice Study: Simulation Analysis of Jail Overcrowding." *Systems and Information Engineering Design Symposium, 2008*, 25, pp. 147-51.

Hill, G. 2007. "Prison Populations in Europe – Looking at the Numbers." *Corrections Compendium*, 32(3), pp. 31-34.

Human Rights Watch. 2008. "Letter to the Prime Minister of Guinea." August 7th. <http://www.hrw.org/english/docs/2008/08/14/guinea19600.htm>

_____. 2006. *“The Perverse Side of Things”: Torture, Inadequate Detention Conditions, and Excessive Use of Force by Guinean Security Forces*. New York. <http://www.hrw.org/reports/2006/guinea0806/>

Jehle, A., M. Miller, and T. Griffin. 2006. “Policy Suggestions for Protecting Society from the Effects of Prison Overcrowding: Working Towards a Therapeutic Approach.” Paper presented at the annual meetings of the Law and Society Association, July 6th.

Kenya Human Rights Commission. 2008. *Prisons Reform Project*.
<http://www.khrc.or.ke/subsection.asp?ID=7>

Kimer, J.T. 2005. “DOMINICAN REPUBLIC: Prison Fire Highlights Abuses.” *NACLA Report on the Americas*. 38(6).

Kinkade, P., M. Leone, and S. Semond. 1995. “The Consequences of Jail Overcrowding.” *Crime and Delinquency*, 32(2), pp. 12-24.

Lahm, K.F. 2008. “Inmate-On-Inmate Assault: A Multilevel Examination of Prison Violence.” *Criminal Justice and Behavior*, 35(1), pp. 120-137.

Liptak, A. 2008. “U.S. Prison Population Dwarfs that of Other Nations.” *International Herald Tribune*, April 23. <http://www.globalresearch.ca/index.php?context=va&aid=8801>

Livingston, J. D., C. Weaver, N. Hall, and S. Verdun-Jones. 2008. *Criminal Justice Diversion for Persons with Mental Disorders. A Review of Best Practices*. Victoria: BC Division, Canadian Mental Health Association.
<http://www.cmha.bc.ca/files/DiversionBestPractices.pdf>

Losel, F. 2007. “COUNTERBLAST: The Prison Overcrowding Crisis and Some Constructive Perspectives for Crime Policy.” *Howard Journal of Criminal Justice*, 46(5), pp. 512-519.

Lyon, J. 2005. "Five Ways to Stem Prison Overcrowding." *Prison Reform Trust*, October. <http://www.prisonreformtrust.org.uk/subsection.asp?id=349>

Meeting of Ministers of Justice or of Ministers of Attorneys General of the Americas. 2003a. *Report of the First Meeting of Authorities Responsible for Penitentiary and Prison Policies of OAS Member States*. October 16-17. Washington, D.C. http://www.oas.org/juridico/english/gapeca_Irep.pdf

_____. 2003b. *Recommendations of the First Meeting of Officials Responsible for the Penitentiary and Prison Policies of the OAS Member States*. October 16-17. Washington, D.C. http://www.oas.org/juridico/english/gapecal_6.pdf

Msiska, C. 2008. "On the Front Lines: Insights from Malawi's Paralegal Advisory Service." In *Justice Initiatives: Pretrial Detention*. New York: Open Society Justice Initiative. pp. 70-85.

http://www.soros.org/initiatives/osji/articles_publications/publications/pretrial_20080513/Justice_Initiati.pdf

Muntingh, L. 2008. "Alternative Sentencing in Africa." In J. Sarkin, ed. *Human Rights in African Prisons*. Athens, Ohio: Ohio University Press. pp. 178-203.

Mussanhane, E. 2008. "Ad Hoc Expert Group Meeting on Lessons Learned in Post-Conflict State Capacity: Reconstructing Governance and Public Administration Capacities in Post-Conflict Societies."

<http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN032214.pdf>

Nowak, M. 2008. *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Addendum*. Mission to Indonesia.

<http://daccessdd.un.org/doc/UNDOC/GEN/G08/114/90/PDF/G0811490.pdf?OpenElement>

_____. 2007a. "Report on Torture in Togo." *Human Rights Tribune*. April 19. <http://www.humanrights-geneva.info/Report-on-Torture-in-Togo.1540>.

_____. 2007b. *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Mission to Nigeria. 4 to 10 March*. <http://www.unhcr.org/refworld/pdfid/4785d5042.pdf>

Nwapa, A. 2008. "Building and Sustaining Change: Pretrial Detention Reform in Nigeria." in *Justice Initiatives: Pretrial Detention*. New York: Open Society Justice Initiative. pp. 86-102.

http://www.soros.org/initiatives/osji/articles_publications/publications/pretrial_20080513/Justice_Initiati.pdf

Penal Reform International. 2007. "Prison Overcrowding." <http://www.penalreform.org/prison-overcrowding.html>

Potgieter, P.J., L.J. Mitchell, V.I. Khosa, and C.H. Cilliers. 2005. "Correctional Officers' Perceptions of Restorative Justice." *ACTA Criminologica*, 18(1), pp. 40-53.

Rausch, C. 2006. *Combating Serious Crimes in Postconflict Societies. A Handbook for Policymakers and Practitioners*. Washington, D.C.: United States Institute of Peace Press. http://www.usip.org/ruleofflaw/pubs/sc_intro.pdf

Sarkin, J. 2008. *Human Rights in Africa*. Athens, Ohio: Ohio University Press.

Saxena, R.K. 2008. "Catalyst for Change: The Effect of Prison Visits on Pretrial Detention in India." In *Justice Initiatives: Pretrial Detention*. New York: Open Society Justice Initiative. pp. 57-69.

http://www.soros.org/initiatives/osji/articles_publications/publications/pretrial_20080513/Justice_Initiati.pdf

Schonteich, M. 2008. "The Scale and Consequences of Pretrial Detention Around the World." In *Justice Initiatives: Pretrial Detention*. New York: Open Society Justice Initiative. pp. 44-56.

http://www.soros.org/initiatives/osji/articles_publications/publications/pretrial_20080513/Justice_Initiati.pdf

Sekhonyane, M. 2002. Emergency Measures: Early Release to Alleviate Prison Overcrowding." *SA Crime Quarterly*, 1.

http://www.iss.co.za/index.php?link_id=3&slink_id=1434&link_type=12&tmpl_id=3

Shaw, M. 2008. "Forward." In *Justice Initiatives: Pretrial Detention*. New York: Open Society Justice Initiative. pp. 1-3.

http://www.soros.org/initiatives/osji/articles_publications/publications/pretrial_20080513/Justice_Initiati.pdf

Sloth-Nielsen, J. and L. Ehlers. 2005. "Assessing the Impact: Mandatory and Minimum Sentences in South Africa." *SA Crime Quarterly*, 14, pp. 15-22.

Sloth-Nielsen, J. 2008. "Children in African Prisons." In J. Sarkin, ed. *Human Rights in African Prisons*. Athens, Ohio: Ohio University Press. pp. 117-133.

Snacken, S. 2006. "Reductionist Penal Policy and European Human Rights Standards." *European Journal on Criminal Policy and Research*, 12(2), pp. 143-164.

South African Law Commission. 1997. "Pre-Trial Detention and Release Policy." Chapter 6 in *Juvenile Justice. Issue Paper 9. Project 106*.

http://www.saflii.org.za/other/zalc/ip/9/9-6_.html

Special Rapporteur. African Commission on Human and People's Rights. 2004. *Report. Mission to the Republic of South Africa*.

http://www.achpr.org/english/Mission_reports/South%20Africa/Special%20Rap_Prisons_South%20Africa.pdf

Sterland, B. 2006. *Civil Society Capacity Building in Post-Conflict Societies: The Experience of Bosnia and Herzegovina and Kosovo*. Oxford, UK: International NGO Training and Research Centre. <http://www.intrac.org/pages/PraxisPaper9.html>.

Stokes, R., M. James, and J. Christian. 2008. *Handbook on Prisoner File Management*. Vienna: United Nations Office on Drugs and Crime. http://www.unodc.org/documents/justice-and-prison-reform/Prison_management_handbook.pdf

Teeuwen, A., T. Chiva, and T. Neth. 2006. "Securing Children's Rights in Cambodia: A Comparative Research on Juvenile Justice by Legal Aid Cambodia." *Children's Rights International Journal*. http://www.childjustice.org/html/issue503_pr.htm

Texas Criminal Justice Coalition. 2007. *2007 Texas' Criminal Justice Solutions. A Policy Guide*. Austin, TX. http://www.criminaljusticecoalition.org/files/userfiles/tx_criminal_justice_solutions.pdf

The Connecticut General Assembly. 2000. *Year 2000 Studies*. <http://www.cga.ct.gov/pri/archives/2000fireportchap4.htm>

Thompson, J. 2007. "The Recall and Re-release of Determinate Sentence Prisoners." In N. Padfield, ed. *Who to Release? Parole, Fairness and Criminal Justice*. Portland, OR: Willan Publishing. pp. 147-158.

Tkachuk, B. and R. Walmsley. 2001. *World Prison Population: Facts, Trends and Solutions*. Helsinki: The European Institute for Crime Prevention and Control. <http://www.heuni.fi/uploads/6mq2zlwaw3ut.pdf>

Ungar, M. 2003. "Prisons and Politics in Contemporary Latin America." *Human Rights Quarterly*, 25(4), pp. 909-934.

United Nations. 2005. 11th UN Congress on Crime Prevention and Criminal Justice. *Press Release*. April 25. <http://www.un.org/events/11thcongress/docs/bkkcp25e.pdf>

United Nations Economic and Social Council. 2006. "ECOSOC Resolution 2006/22. Providing technical assistance for prison reform in Africa and the development of viable alternatives to imprisonment." <http://www.un.org/ecosoc/docs/2006/Resolution%202006-22.pdf>

United Nations Office in Geneva News and Media. 2006. "Special Rapporteur on Torture Ends Mission to Paraguay." November 29. [http://www.un.org.ch/80256EDD006B9C2E\(httpNewsByYear_en\)/9FA604DARFA8D45C1257235005D9EF6?OpenDocument](http://www.un.org.ch/80256EDD006B9C2E(httpNewsByYear_en)/9FA604DARFA8D45C1257235005D9EF6?OpenDocument)

United States Department of Justice. 2009. *Corrections Statistics. Summary Findings*. Washington, D.C.: Office of Justice Programs, Bureau of Justice Statistics. <http://www.ojp.usdoj.gov/bjs/correct.htm>

United States Department of State. 2008a. *Senegal: Country Reports on Human Rights Practices – 2007*. <http://www.state.gov/g/drl/rls/hrrpt/2007/100501.htm>. 2008b. *Rwanda: Country Reports on Human Rights Practices – 2007*. <http://www.state.gov/g/drl/rls/hrrpt/2007/100499.htm>

Van Ness, D. 2001. "Trends in Prisons Around the World and in Latin America." Paper presented at Seminario-Taller: Analisis y Perspectivas del Sistema Penitenciario en Panama, Panama City, Panama, May 24. <http://www.restorativejustice.org/resources/docs/vanness4/view>

Varenik, R.O. 2008. "Mixing Politics, Data, and Detention: Reflections on Reform Efforts." In *Justice Initiatives: Pretrial Detention*. New York: Open Society Justice Initiative. pp. 172-183.

http://www.soros.org/initiatives/osji/articles_publications/publications/pretrial_20080513/Justice_Initiati.pdf

Venegas, V. and L. Vial. 2008. "Boomerang: Seeking to Reform Pretrial Detention Practices in Chile." In *Justice Initiatives: Pretrial Detention*. New York: Open Society Justice Initiative. pp. 44-56.

http://www.soros.org/initiatives/osji/articles_publications/publications/pretrial_20080513/Justice_Initiati.pdf

Walmsley, R. 2005. "Prison Health Care and the Extent of Prison Overcrowding." *International Journal of Prisoner Health*, 1(1), pp. 9-12.

Weekes, J., R. Mugford, G. Bourgon, and S. Price. 2007. *Drug Treatment Courts: FAQs*. Ottawa: Canadian Centre on Substance Abuse.

<http://www.ccsa.ca/CCSA/EN/Publications/>