

GLOBAL PRISON TRENDS 2020



Special Focus
Pull-out section

**Alternatives
to imprisonment**

Global Prison Trends 2020

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Special Focus 2020

Pull-out section

**Alternatives
to imprisonment**

The overwhelming majority of people in prison continue to come from disadvantaged backgrounds and are likely to have a history of abuse and neglect, often experienced as children.



Adults and children in a detention centre in the Philippines.

INTRODUCTION

This sixth edition of *Global Prison Trends* is jointly published by Penal Reform International (PRI) and the Thailand Institute of Justice (TIJ) at a crucial time, with prisons and justice systems facing unprecedented challenges, alongside their communities, brought by the COVID-19 global pandemic.

As detailed in *Global Prison Trends*, despite widely documented challenges in creating fair and effective criminal justice systems, there have been some positive steps taken towards the practical implementation of international human rights standards related to criminal justice, such as the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). As many prison and probation systems face common challenges, such efforts should be looked to for inspiration and replicated.

Many challenges are a result of the increasing number of people in prison and so 30 years on from the adoption of the UN Standard Minimum Rules on Non-custodial Measures (the Tokyo Rules) this year's *Special Focus* focuses on alternatives to imprisonment. We take a look at the implementation of alternatives to imprisonment used and some challenges facing governments. We also look at the barriers to their expansion, a cause and consequence of prison remaining a response to crime in many countries. It is clear that non-custodial measures and sanctions should be part of wider reforms to limit the reach of the criminal justice system. Crime prevention, decriminalisation of certain offences and diversion

schemes, all aim to limit the number of people coming into contact with the criminal justice system to begin with.

The *Special Focus* is even more relevant as we mark the 10th anniversary of the Bangkok Rules in December this year. We must reflect on measures taken to address the growing number of women entering criminal justice systems. The Bangkok Rules themselves recognise that prison is usually an ineffective, and often damaging, solution to offending by women, hindering their social reintegration and ability to live productive and law-abiding lives following release.

As we look forward, we must more generally interrogate ourselves on the continued growth of the overall prison population, documented again in this year's *Global Prison Trends*. The few countries that have low numbers of people in prison allow us to see that it is possible to prevent crime without using custodial sentences as the primary tool. These countries remain an exception, however, with too many states reporting incredibly high rates of prison overcrowding. Overcrowding can be life-threatening with major health issues arising due to the poor detention conditions in overburdened prison facilities – today's coronavirus pandemic is a grave reminder of these long-standing issues. Furthermore, overcrowding prevents prisons from fulfilling their proper function in the rehabilitation of offenders. Many governments have looked to reducing prison populations amid the COVID-19 pandemic. Such measures should be part of a long-term reform strategy to address overcrowding and the disproportionate numbers of marginalised people in detention.

At the end of this decade, states' commitment to improve the criminal justice system will be measured against the 2030 Agenda for Sustainable Development's commitment: 'No one will be left behind.' Given the trends highlighted in this year's report, it is crucial for member states to give special attention to populations, including women, children and others who are marginalised in justice systems, and often in the wider community.

We continue to publish *Global Prison Trends* as a tool for policy-makers, practitioners, a reference for academics, and an inspiration for penal reform activists and human rights defenders. Limited publicly available data remains a challenge for us—and for all stakeholders who rely on evidence-based policies—however thanks to PRI's research and operations in many parts of the globe and TIJ's expertise we are able to count on first-hand information informing the trends we document in this year's report.

Florian Irminger

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KEY MESSAGES

These key messages do not cover all of the trends identified in *Global Prison Trends 2020*, but they represent some of the most pertinent and pressing issues facing criminal justice systems that require urgent attention.

- 01 Record levels of people in prison**

Over 11 million people are imprisoned globally, the highest number yet. Around 102 countries reported prison occupancy levels of over 110 per cent. The magnitude of issues and associated human rights violations stemming from over-imprisonment became clear in efforts to prevent and contain outbreaks of COVID-19 in prisons.
- 02 Women face gender-based discrimination in prison and the wider criminal justice system**

Almost ten years since their adoption, the UN Bangkok Rules on women prisoners and non-custodial alternatives for women remain largely unimplemented. The global female prison population doubled in twenty years, yet justice systems and institutions remain largely designed for a homogeneous male population.
- 03 New data confirms children are not detained 'as a measure of last resort'**

While some countries have made strides towards child-specific justice legislation, child-friendly courts and specialised procedures, new data estimates that at least 410,000 children remain detained in remand centres and prisons every year, with an estimated 1 million children held every year in police custody.
- 04 Non-violent offences attract too many prison sentences**

A large majority of people caught in criminal justice systems are arrested for, charged with or convicted of non-violent offences. Some legal reforms, particularly in Africa, stemmed from efforts to decriminalise petty offences.
- 05 Pre-trial detention is too often the norm, not the exception**

People who have not been found guilty of a crime outnumber convicted people in prison in at least 46 countries. Minorities, foreign nationals, women and the poorest people of our societies are all more likely to be detained on remand.
- 06 Drug policies contribute to growing prison populations**

Prohibition-based drug policies have driven prison populations up. Over 2 million people are in prison for drug-related offences, 83 per cent of them serving a sentence for drug possession for personal use. A larger proportion of women than men are imprisoned for drug offences.
- 07 Imprisonment continues to be a discriminatory cycle that is hard to break**

Punitive systems contribute to rising prison populations by failing to fulfil the rehabilitative purpose of imprisonment and by further marginalising people from vulnerable groups. This, alongside a lack of individualised rehabilitation and sentencing plans for people in prison, results in high recidivism rates in many countries.
- 08 Massive use of life sentences leads to human rights violations**

Almost half a million people are serving a formal life imprisonment sentence, with many more effectively serving life *de facto*. Reform towards more proportionate sentences remains slow and several countries are looking to introduce life sentences, towing the 'tough on crime' line. People serving life usually face harsh regimes.
- 09 Abolition of the death penalty continues but with some setbacks**

While progress towards abolition of capital punishment continues to be seen, most notably in Africa, long-time abolitionists are seeing a resurgence of calls for the reinstatement of capital punishment. More than 20,000 people are detained on death row worldwide living in inhumane detention conditions and often following unfair trials.

- 10 Funding for penitentiary systems generally remains low**

A comparative overview of government expenditures on prisons across 54 countries shows that it usually amounts to less than 0.3 per cent of their gross domestic product (GDP). Staff and infrastructure appear to receive the greatest share of funds allocated, with many countries spending alarmingly low amounts on food and rehabilitation programmes.
- 11 Alternatives to imprisonment offer a solution to global challenges, including COVID-19**

A wide range of diversion and alternatives at the pre-trial and post-conviction stages are available. Alongside crime prevention initiatives and adequately funded rehabilitation programmes, they can help tackle key challenges. The political backing of alternatives to imprisonment as a response to the coronavirus pandemic need to be harnessed for longer-term reform.
- 12 There are a number of structural barriers to the expansion and implementation of alternatives to imprisonment**

The key barriers to the expansion of alternatives include inexistent or inadequate legal frameworks, lack of resources and infrastructure, and lack of trust in them from judicial authorities and the wider public. There are also certain groups that have unequal access to community-based measures, such as foreign nationals.
- 13 Marginalised people are over-represented and neglected in prison**

People belonging to marginalised groups, including foreign nationals, minorities, indigenous peoples, people with disabilities and LGBTQ people, are disproportionately arrested and imprisoned. They face greater risks of human rights violations at the hands of authorities.
- 14 Prison health is deprioritised despite the magnitude of negative impacts**

In a large number of countries there is inadequate healthcare provision in prisons due to underresourcing and a lack of healthcare staff. Various approaches were taken by authorities to prevent COVID-19 disease outbreaks in places of detention to protect both staff and people detained, but some have occurred.
- 15 Prison and probation systems lack adequate numbers of trained staff**

Low levels of job satisfaction among prison and probation staff, coupled with low pay, are common issues faced in recruiting and retaining sufficiently educated staff. Budget cuts, staffing shortages, and increasing prison populations often lead to deteriorating working conditions for staff that also affect the detention conditions of people in prison.
- 16 Violence in detention is on the rise**

High levels of prison overcrowding contribute to the increasing number of violent incidents in prisons globally, as does institutional impunity and a lack of transparency. In the past decade there has been an increase in the use of 'special intervention forces'—riot squads or 'emergency response teams'—being employed to respond to major incidents like riots.
- 17 Deaths in custody are common and preventable**

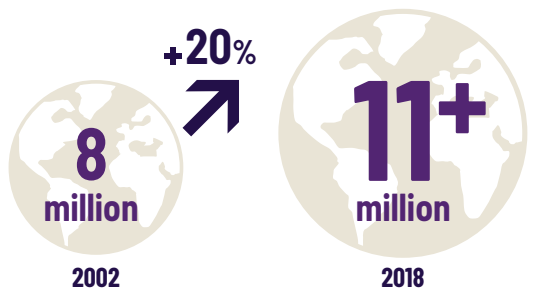
The mortality rate for people in prison is as much as 50 per cent higher than for people outside. The most common causes are suicide and fatal violent clashes, with other reasons being torture or ill-treatment, and infectious diseases and ill-health. Investigations into all deaths remain lacking and, where undertaken, fail to achieve reform.
- 18 New technologies and AI bring benefits and new challenges**

Technological innovation provides many opportunities in criminal justice systems, although a 'digital gap' excludes some countries, particularly in Africa. Tools using Artificial Intelligence (AI) technologies have led to calls for greater regulation and consideration of impacts before further expansion.

GLOBAL PRISON TRENDS

Prison populations

THE GLOBAL PRISON POPULATION IS INCREASING.



700,000+
WOMEN

+50%
SINCE 2000



19,000

CHILDREN
LIVING IN PRISON
WITH THEIR
MOTHERS

410,000+

CHILDREN IN
DETENTION
FACILITIES



1 million

CHILDREN IN
POLICE CUSTODY

PEOPLE IN
PRE-TRIAL
DETENTION



MORE RESEARCH AND DATA NEEDED ON:



LGBTQ persons
Foreign nationals
Ethnic and religious minorities
Poor and socially excluded populations
People in police custody

MANY CRIMINAL JUSTICE SYSTEMS
CONTINUE TO BE DISCRIMINATORY.

Sentencing trends

IMPRISONMENT IS OVERUSED AND SENTENCES ARE GETTING LONGER.

0.5

million
PEOPLE
SERVING
LIFE
SENTENCES



2000

+84%



2014

20,000+

PEOPLE ON DEATH ROW



OFFENCES
PEOPLE ARE
IN PRISON FOR:

Estimated
50+
NON-VIOLENT



7%

HOMICIDE



20%
DRUG-RELATED

83%

OF THESE FOR
POSSESSION FOR
PERSONAL USE

IMPRISONMENT IS A
CYCLE HARD TO BREAK



RECIDIVISM RATES
REMAIN HIGH



MASS IMPRISONMENT IS EXPENSIVE.

KEY FACTS & FIGURES

Funding

Detention conditions



FUNDING FOR MOST CRIMINAL JUSTICE SYSTEMS IS TOO LOW.



DETENTION CONDITIONS ARE SUBSTANDARD IN MANY COUNTRIES.

JUSTICE IS UNDERFUNDED



THIS IMPACTS:

Courts
Probation
Prisons
Police

MAJORITY OF PENITENTIARY BUDGET IS SPENT ON:



Infrastructure

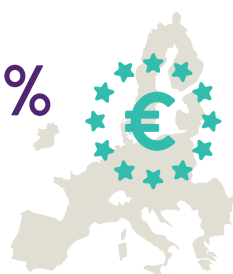


Staff



Security

0.2%
OF GDP



AVERAGE TOTAL EXPENDITURE ON PRISONS IN THE EUROPEAN UNION

FOOD BUDGET



AS LOW AS

€1

PER DAY PER PRISONER IN:

Cambodia
Central African Republic
Kazakhstan

LOW FUNDING LEADS TO POOR DETENTION CONDITIONS AND A LACK OF HEALTHCARE.

PRISONS IN

124+
countries

EXCEED THEIR MAXIMUM OCCUPANCY RATE



THIS LEADS TO:

Violence
Higher rates of death in custody
Lack of healthcare
Low rehabilitation opportunities

SUICIDE RATE IN PRISONS IS HIGH

25
per 100,000
PRISONERS

SUICIDE IN CUSTODY

SUICIDE IN THE COMMUNITY

11
per 100,000
PERSONS

USE OF FORCE IS A RISING TREND



Expanding involvement of the private security sector

Expanding use of special interventions

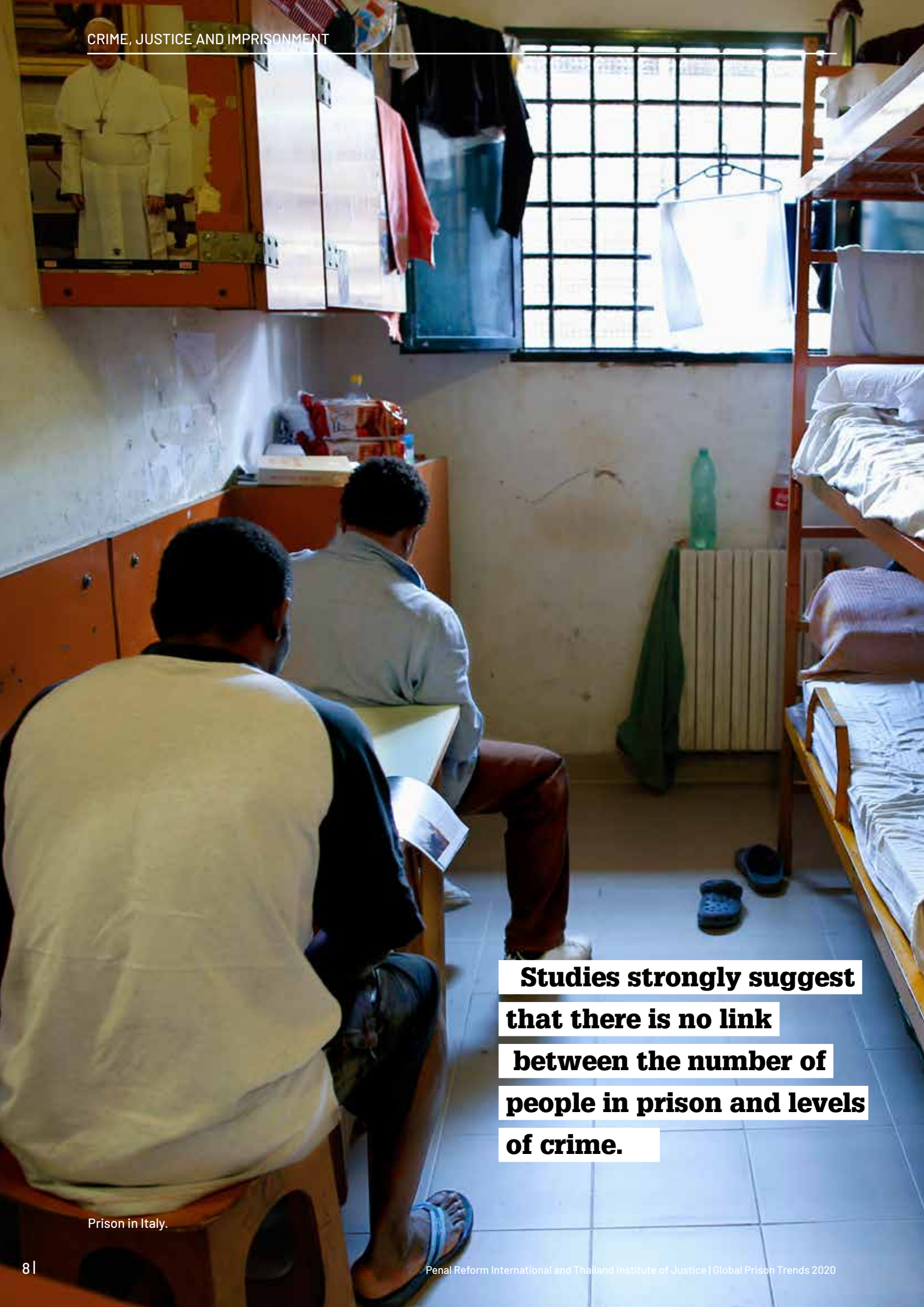
Increasing use of heavy equipment lethal weapons

POOR DETENTION CONDITIONS LEAD TO HUMAN RIGHTS VIOLATIONS.



ALTERNATIVES TO IMPRISONMENT PROVIDE A SOLUTION.

- THEY DO NOT SEPARATE FAMILIES
- THEY HELP REDUCE COSTS OF CRIMINAL JUSTICE SYSTEMS
- THEY BETTER ADDRESS INDIVIDUAL OFFENDING TRAJECTORIES
- THEY HELP REDUCE OVERCROWDING
- THEY AVOID THE DAMAGE OF IMPRISONMENT
- THEY BETTER REDUCE RECIDIVISM



Studies strongly suggest that there is no link between the number of people in prison and levels of crime.

Prison in Italy.

Part one

CRIME, JUSTICE AND IMPRISONMENT

Crime and imprisonment

There are more than 11 million people estimated to be in prison on any given day globally. This figure excludes police or administrative custody and also does not show the actual number of people that move in and out of prison in a given year, which remains undetermined. Global prison rates remain stable, although there have been 'substantial changes' in some countries and regions. The World Prison Population List of 2018 reports that prison population levels per head of population rose less than 1 per cent over three years between 2016–2018.¹

The United States has the highest absolute number of people in prison globally, with over 2.1 million people in prison at a rate of 655 people per 100,000 of the national population, yet rates of violent crime continue to fall.² The country has witnessed a 700 per cent imprisonment population increase since 1970, with a peak in 2009, and a small decline overall each year since then owing to reductions in some states and recently at the federal level.³ China has the second highest prison population globally, with an estimated 1.7 million people

imprisoned, followed by Brazil where, based on figures from June 2019, the prison population approaches 760,000.

Studies strongly suggest that there is no link between the number of people in prison and levels of crime. Some research has suggested that links can be made between reduced welfare systems and increased imprisonment rates, and correspondingly between levels of social inequality and increased imprisonment rates. There has also been a link made between inclusionary or exclusionary political frameworks and increased imprisonment rates.⁴ Low acquittal rates, including due to a lack of procedural rights, in some countries serve to consistently feed people into prison systems.

Data suggests that a significant proportion of people caught in criminal justice systems are arrested for, charged with or convicted of non-violent offences. In 2017, the estimated number of people arrested or suspected of drug possession globally was 1.9 million, with 860,000 of those people being convicted for drug possession for personal

use, resulting in just under half a million in prison for that offence.⁵ Conversely, data from 93 countries suggest that roughly one out of every 14 prisoners worldwide (7 per cent) had been convicted of homicide.⁶

Understanding and measuring levels of crime at the global level is complex and an ongoing area of research. One crime where comparisons are possible and undertaken is intentional homicide, which is used as an indicator on violent deaths and therefore can suggest levels of crime and violence in a society. In 2019, the UN published a new *Global Study on Homicide*, analysing data collected in 2017. While at the global level there is an ongoing decline in intentional homicide, in the Americas there was a historic high recorded in 2017 (since data collection began in 1990), with a rate of 17.2 victims of intentional homicide per 100,000 population.⁷

Cycles of imprisonment

International standards are clear that the purpose of a prison sentence, or a non-custodial sanction, should be primarily rehabilitative. The International Covenant on Civil and Political Rights, ratified by 172 UN member states, is explicit in its statement that the 'penitentiary system shall comprise treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation.' The UN Nelson Mandela Rules and UN Bangkok Rules set out how prison systems can fulfil this commitment including by the provision of a range of rehabilitation and reintegration opportunities.

In most parts of the world, however, imprisonment continues to be a cycle that is hard to break, not least due to punitive systems that fail to provide a rehabilitative approach. In El Salvador, the country with the second-highest prison population rate per capita globally, about one in five individuals in prison has been convicted of a criminal offence before.⁸ In Australia and the Canadian province of Quebec,

about 40 per cent of people released from prison are reimprisoned in the two years following their release. The reconviction rate after two years post-release from prison is higher than 60 per cent in such countries as Sweden, Denmark and New Zealand.⁹

There are many factors which influence whether a person will reoffend, but recidivism is invariably linked to difficulties people face in re-establishing themselves as law-abiding citizens after their release. This is often because they were not provided with adequate rehabilitation and reintegration opportunities in prison (sometimes due to prison overcrowding) or appropriate post-release support. Families and communities also need to be better prepared so they can assist in reintegration efforts.

Certain groups have higher reoffending rates than others, which may be linked to the lack of individualised treatment programmes, such as age-appropriate support. The Central Statistics Office of Ireland reported that young people had

a higher risk of reoffending after prison than adults;¹⁰ and in Japan, older persons have comparably higher reoffending rates than other adults.¹¹

Upon release, people who have been in prison are often left with few resources, no educational or employment prospects and sometimes nowhere to live; they also face discrimination when applying for jobs or seeking housing. Their marginalisation from society leads to a higher risk of antisocial behaviour and the likelihood of reoffending.

In England and Wales in 2016, two-thirds of homeless people who had previously been imprisoned reoffended within a year after their release.¹² In other countries, figures show that reoffending rates increase over time, as institutional support wanes. For instance, in Israel, reimprisonment increased from 18 per cent within one year to 41 per cent within five years.¹³ In the US, 83 per cent of released detainees are rearrested within nine years, compared to 44 per cent in the first year.¹⁴

European Court on Human Rights orders France to act on prison overcrowding and pay out compensation

In January 2020, the European Court of Human Rights (ECtHR) ruled that France violated people's rights for holding them in overcrowded prisons in conditions that constituted a violation of the prohibition of inhumane and degrading treatment. The Court ordered France to pay damages to 32 people from six prisons in France and its overseas territories in Martinique, French Polynesia and Guadeloupe.¹⁵ The damages payable range from EUR €4,000 to 25,000 each, totalling more than €500,000.¹⁶ The case built on the Court's rulings against Italy and Hungary, in which systemic overcrowding prompted the adoption of pilot judgements requiring the states to effectively address the underlying causes and impacts.

Prison overcrowding is described by the *Contrôleure générale des lieux de privation de liberté*—the French independent prison monitoring mechanism—as 'endemic'¹⁷ with an overall prison capacity at 116 per cent, one of the highest in Europe.¹⁸

Overcrowding levels are even higher in some facilities, with at least one prison in which the number of people held doubled the beds available.¹⁹ Several of the people who were part of this case had been detained for years in overcrowded cells, with an allocated personal space below the recommended desirable standard of 4 square metres set by the European Committee on the Prevention of Torture.²⁰

The court also noted a lack of privacy and inadequate facilities for hygiene—with toilets separated from the rest of the room by only a curtain, mattresses on the floor right next to the toilets, and pest infested buildings and cells. The situation was further aggravated by a lack of activities and out-of-cell time, with some people in prison locked in their cells for more than twenty hours a day.

Notably the European Court ruled that the inhumane and degrading conditions stemmed from the overall overcrowding situation in French prisons and made recommendations to eliminate such levels—a decision that was widely covered in the French media. In response, the Ministry of Justice reported the ongoing expansion of the prison estate and that an additional 7,000 prison places are currently under construction.²¹

The overuse of pre-trial detention (see Pre-trial detention) and short-term prison sentences also contribute to high recidivism rates. Due to their temporary and short-term nature, short prison sentences leave little space for rehabilitation and reintegration programmes, yet they can have long-lasting, detrimental consequences for people affected and their families. For instance, loss of employment, divorce, loss of custody or joint custody of children, and loss of national benefits are common.

The development of alternatives to pre-trial detention and non-custodial sentences are one of the most effective ways of reducing prison overcrowding and reducing recidivism, but it is not without potential setbacks and continues to require resources to ensure programmes are effectively monitored and evaluated. (See Special Focus: Alternatives to imprisonment)

Moves to reduce recidivism require a shift in perspective on criminal justice and prisons, from punitive to rehabilitative approaches. While on the one hand, some countries have increased the number of offences carrying the sentence of life imprisonment and there is a general lengthening of prison terms contributing to high prison occupancy levels. On the other hand, some countries have made significant steps towards a rehabilitative approach to sentences. Many states are providing more opportunities for probation and parole, and they provide educational, vocational and social programmes which take into account the plurality of detained individuals' profiles, such as their ages, previous convictions, socio-economic status and family backgrounds. Open prisons have also proven to be one such measure that improve rehabilitation prospects. For example, in 2019, the first open prison in the Czech

Republic reported record-low reoffending rates among people released from prison.²²

Some of these efforts are not new, and there is proof of their effectiveness in recidivism rates. For example, Norway underwent a series of penal reforms in the late 1990s, shifting the focus from punishment to rehabilitation, in order to 'plan [the detainees'] release on the first day they arrive'.²³ These reforms included well-kept infrastructure and improved living conditions; recreational, educational and professional activities and support; contact with the outside world, including work opportunities and more opportunities to spend time with their families. They contributed to bringing the overall reimprisonment rate two years after release to 20 per cent, one of the world's lowest.²⁴

Drug policies

Figures on the number of people who use drugs worldwide show that decades of policies to punish consumption have failed. In 2017, there were an estimated 271 million people, or 5.5 per cent of the global population aged 16-64, who had used drugs in the previous year—a 30 per cent rise from 2009. According to the *UN World Drug Report 2019*, the number of people who are thought to 'suffer from drug use disorders' is now estimated to be 35.5 million—15 per cent higher than the previous estimate of 30.5 million.²⁵

Prison remains a common response to drug use in many countries around the world, with crisis levels of overcrowding becoming the norm. Approximately one in five people in prison worldwide, totalling over 2 million people, are in prison for drug-related offences.

Approximately 83 per cent of them are serving sentences for drug possession for personal use. In some states, there is mandatory pre-trial detention for drug-related offences, regardless of their nature, including in Bolivia, Brazil and Ecuador.²⁶

Ruth Dreifuss, the former President of Switzerland and member of the Global Commission on Drugs, has written that: 'Prison is the most glaring expression of the failures of prohibition-based drug policies ... Above all, incarceration is the epitome of the human cost of these failed policies.'²⁷

Where prison has remained the norm for drug-related offences, there is an ever-increasing body of research demonstrating that, rather than imprisoning high-level figures in drug trafficking rings, such policies tend to imprison

drug users or the low-level dealers (micro-traffickers, i.e. people who move or deal drugs at a community level rather than internationally). Furthermore, there is evidence that people belonging to certain groups are disproportionately targeted, arrested and imprisoned under drug laws. For instance, racial discrimination and heavy policing of black neighbourhoods are factors given for the high number of black people in US prisons for drug-related offences. A research project in Texas found that the high proportion of arrests of black people for possession of small quantities of drugs was linked to the fact that traffic stops and searches targeted black drivers more frequently.²⁸

Women continue to be disproportionately impacted by drug policies, demonstrated by the fact that a larger proportion of women

(35 per cent) than men (19 per cent) are in prison for drug-related offences globally.²⁹ A number of countries are driving these numbers up, including Ecuador, for instance, where women convicted of drug-related offences accounted for 52.9 per cent of the female imprisoned population in 2018³⁰ and in Thailand, where the rate went as high as 84 per cent. On the other hand, PRI's research has shown that non-custodial sanctions are the most common sentences for women

convicted of low-level drug-related offences in England and Wales, Germany and New Zealand.

Drug offences remain punishable by death in at least 35 countries and territories worldwide. In January 2020, civil society groups called for international action in the cases of two Bahraini men convicted of drug trafficking and smuggling when their death sentences were upheld by the country's highest court. Elsewhere, in Singapore, data shows that 84 per cent of the total executions between 2014–mid-2019 were for drug cases.³¹

In the Philippines, 2019 represented the third year of President Duterte's 'war on drugs', which has resulted in thousands of deaths. Although the exact number is unknown, according to the Philippine National Police (PNP), there were 6,600 'drug personalities' killed between July 2016 and the end of May 2019.³² In 2019, the UN mandated an investigation into the human rights situation, joining the International Criminal Court's efforts to enhance accountability by documenting and investigating violations of human rights.

Responses to violent extremism and prevention of radicalisation

Responses to violent extremism and the prevention of radicalisation that leads to violence, including in prisons, remains a key priority for many governments and a major issue of discussion at the international level.

Defining what constitutes 'violent extremism' or 'radicalisation' continues to raise human rights concerns. In March 2020, the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism expressed 'grave concerns about the use of the terminology of "extremism" and its expanding ambit' and underlined that 'the category of "extremist" crimes is particularly vague and problematic' with abuse of 'extremism' law and practice potentially leading to sustained human rights violations.³³

Such issues were raised in 2016 by the UN Human Rights Committee who called on Kazakhstan to revise broad formulation of concepts of 'extremism', 'inciting social or class hatred' and 'religious hatred or enmity' contained in the country's legislation. The Committee was concerned that without a narrowing of such concepts they can be used to limit freedoms or target

individuals who are in fact not guilty of any 'violent extremism' or of acts of terrorism.³⁴

Vague and far-reaching definitions can also trigger criminal justice processes unnecessarily. They can lead to individuals sentenced for 'extremism'-related offences being allocated to detention facilities with people convicted and sentenced for terrorism and other violent offences. Such situations lead to legitimate risks of radicalisation that may lead to violence, in turn weakening counterterrorism efforts.

People convicted of terrorism-related offences or perceived to be at risk of radicalisation are commonly segregated from the general prison population. In Belgium, individual security regimes or measures, including the so-called 'D-Rad:Ex wings' used for people including those 'flagged' as showing signs of radicalisation, were criticised by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in March 2019. Concerns included the role of prison officers' evaluation in the radicalisation assessment process, especially since they often have

limited training in in human rights and radicalisation appraisal, among other features of the regime.³⁵

There have been several recent high-profile incidents in a few countries that sparked public debate about rehabilitation initiatives for people convicted of terrorist-related offences. In England, a participant in a prison-university partnership programme fatally attacked two people at a rehabilitation event in late 2019. In May 2019, 20 prisoners and 3 prison officers were killed in Tajikistan during a prison riot instigated by a group of so-called 'Islamic State of Iraq and the Levant' (ISIL) members, according to authorities. Two months earlier in France, a prisoner and his wife stabbed two prison officers in an attack that was labelled as 'terrorism' by the authorities.³⁶

One key issue that has received further attention is the situation of the estimated 4,640 children who travelled to Iraq or Syria, either alone or with their families, to join so-called ISIL. Around 1,460 children who were either born in Iraq or Syria to parents who left their home countries to join ISIL, or travelled with them to Iraq or Syria have since

returned to their parents' countries of origin (or their countries of origin).³⁷ There has been a mixed response by governments to this group of children, despite the basic requirement of international human rights law that they are responsible for their citizens, including to repatriate them.

Kazakhstan has worked to repatriate significant numbers; as of the end of 2019, 406 children had returned from Iraq and Syria to the country. A dramatically different policy has been adopted in other states, with litigation pending in several European countries over the repatriation of 'foreign fighters' and their children, including the Netherlands and Germany.³⁸ Switzerland and the United

Kingdom have sought to strip those involved in terrorist groups of their nationality.

Where countries do meet their obligations to repatriate children, the treatment upon their return similarly varies. Kazakhstan is working to support women and children returning with the Ministry of Education cooperating with two non-governmental organisations (NGOs) to open 17 regional rehabilitation and reintegration centres across the country. Denmark's model involves multi-sectoral cooperation and specialised psychological counselling, albeit alongside a policy of prosecution for any returnees suspected of having committed crimes.

The Council of Europe (CoE) Parliamentary Assembly adopted a resolution in January 2020 calling on States to ensure the immediate repatriation of children who are citizens of their member states.³⁹ PRI, together with the Child Justice Advocacy Group, published a position paper, *'Bringing Children Home: A children's rights approach to returning from ISIL'*,⁴⁰ which details key issues and recommendations to protect the human rights of children who remain in refugee camps in Iraq and Syria. As of May 2019, 90 per cent of the 73,000 people living in the al-Hol camp in Syria were women and children.

Prison cell in Honduras.

The data available shows penitentiary systems generally receive low levels of funding; it also suggests that amounts spent on food can be alarmingly low.



Part two

TRENDS IN THE USE OF IMPRISONMENT

Funding of penitentiary systems

Prison systems need to be adequately resourced if they are to run smoothly. In order to reduce recidivism and keep society safe, authorities need to meet costs for providing a conducive environment for rehabilitation and meet the wide-ranging needs of people detained. However, many prison systems have so few resources that they struggle to meet basic needs such as food, healthcare, clothing and even shelter in a safe, hygienic environment, let alone a rehabilitative-focused regime.

In many countries, authorities rely on families, NGOs or religious organisations to provide food, healthcare services and other essentials for people in prison. In Niger, no food is provided to people in pre-trial detention (representing more than half of the prison population) so they are entirely dependent on their family members to deliver food and water.⁴¹ In Yemen, PRI provided medicines to treat the cholera outbreak in a prison in 2017. The International Committee of the Red Cross (ICRC) often supports and sometimes supplements public authorities in providing basic food and healthcare in prisons all over the world, including for instance in Nigeria where it provided food supplies to 6,000 people in prison in 2018.⁴²

There are also significant financial costs associated with safety and security, from maintaining

necessary infrastructure and equipment to recruitment, training and salaries for staff.

It is difficult to quantify the amount of money spent on criminal justice systems, and specifically penitentiary systems, at the global level. One reason for this is the lack of transparency. Information is not always readily available or complete, and sometimes this is justified on the grounds that it is a national security matter.

Where data is available, it shows that, with a few exceptions, penitentiary systems generally receive low levels of funding, demonstrating that prisons remain a low political priority. A comparative overview of government expenditures on prisons across 54 countries shows that it usually amounts to less than 0.3 per cent of their gross domestic product (GDP).⁴³ For instance, in 2017 the European Union (EU) 28 member states' spending on prisons averaged 0.2 per cent of national GDP. Spending on police services averaged 0.9 per cent of national GDPs.⁴⁴

The general amount allocated per prisoner varies greatly across countries (see overleaf). In North Macedonia, about EUR €17 a day—the lowest amount in Europe—was spent on each prisoner in 2017, while at the other end of the spectrum, Sweden spent €380 a day per prisoner.⁴⁵ While differences

between countries and the common lack of transparency make it difficult to know what prison budgets cover, data suggests that amounts spent on food can be alarmingly low. In Kazakhstan, out of the total budget for 2019 of EUR €7.76 (KZT 3,314) allocated per person in prison per day, EUR €1.41 (KZT 603) is for food—although this amount has been almost doubled in recent years. In Cambodia, the amount allocated for food per prisoner per day was reported to be less than EUR €1 (KHR 3500) and about the same amount is planned in the Central African Republic for 2020.

Unsurprisingly staff and infrastructure appear to be the main costs for prisons. In France, around 41 per cent of the penitentiary administration's 2017 budget was dedicated to staff, administrative and operational costs. In Italy, the proportion is higher, with 76 per cent of the penitentiary administration's 2019 budget being allocated to personnel costs.⁴⁶ In South Africa, employee compensation and payment for buildings and other fixed structures amounted to 74 per cent of the Department of Correctional Services' 2018-19 budget.⁴⁷

Numerous countries have seen their prison budget as a proportion of GDP decrease over the last few years. Figures show that India's budget for prisons in absolute terms rose between 2014-18; however,

when the figures are taken as a proportion of the country's GDP, there is a decrease in the proportion allocated, despite an increase in the number of people in prison.⁴⁸ Similar trends are observed in Burkina Faso, South Africa and the Slovak Republic.⁴⁹

When penitentiary systems have their funding reduced, there is a wide range of consequences for

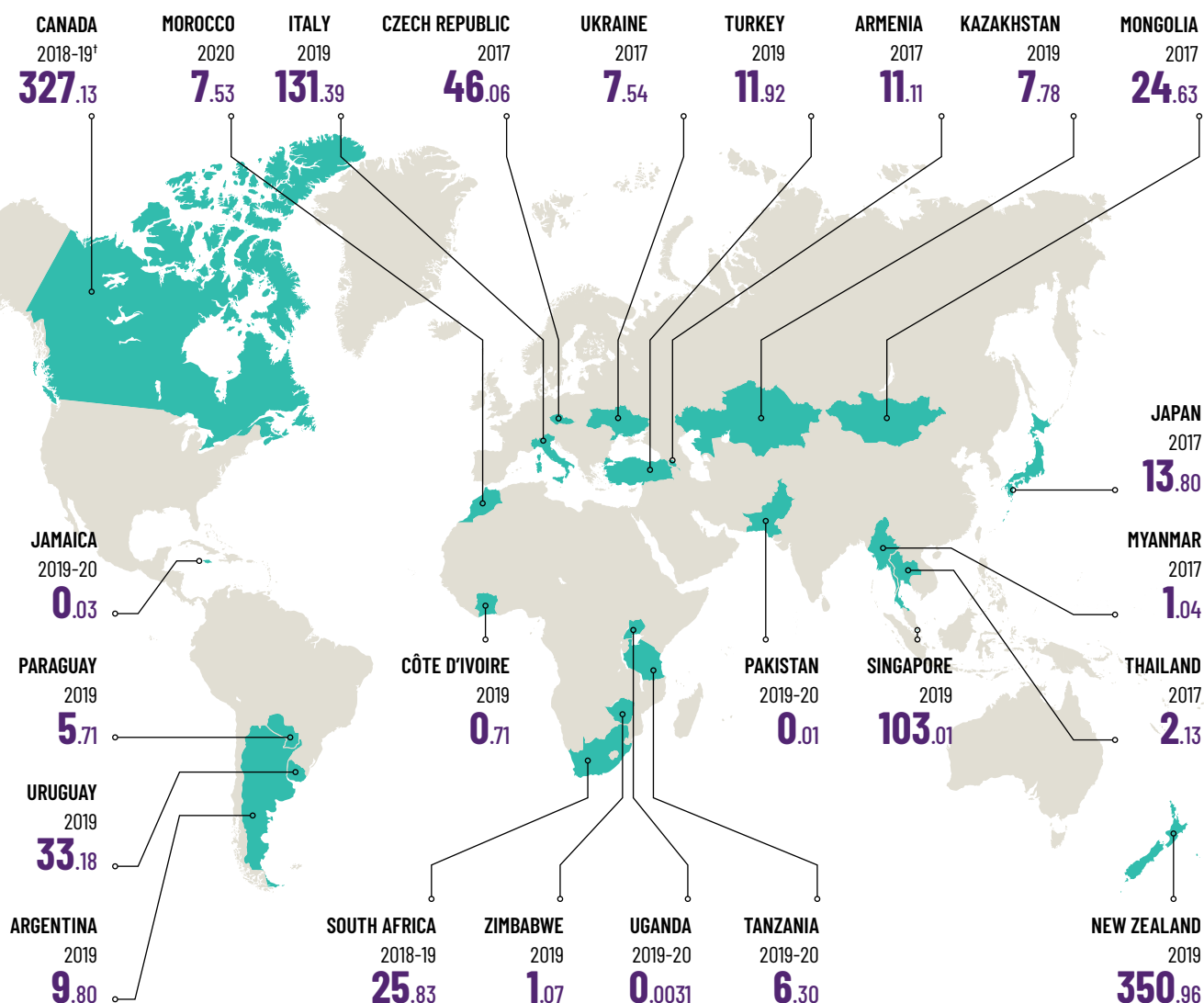
those in prison and their families, as well as for staff. Budget cuts have resulted in increased violence, including assaults against staff, a decrease or complete cut in available rehabilitation programmes, less opportunities for contact with the outside world and reductions in healthcare and other basic services. In England and Wales, civil society organisations have denounced the

diminishing funds allocated to the criminal justice system in recent years. The Moroccan penitentiary administration warned that the number of new staff posts to be created in 2020 was 'not sufficient to cover the imperious human resources needs'.⁵⁰

Increasing levels of self-harm, violence and suicide in prisons can be consequences of budgetary

BUDGET ALLOCATED PER PRISONER PER DAY (IN EUROS)

These figures are illustrative based on publicly available information.* Given the discrepancies on the details of data available, the figures in this visual are not intended to be used for a strict comparison. Rather they intend to illustrate the wide variance in funding of penitentiary systems. Figures were either calculated by PRI based on data gathered from national and international authorities; or taken directly from already aggregated data, where available.



* Sources include national financial authorities (budget and finance ministries); national prison services; international financial authorities (government expenditures on prisons – as gathered by Eurostat and the International Monetary Fund (IMF)); Council of Europe SPACE statistics; and civil society reports.

† Canada: figure applicable to people imprisoned at the federal level.

pressure.⁵¹ In Kenya, a series of prison visits by the National Commission on Human Rights found that issues such as overcrowding, poor sanitary conditions and lack of nutritionally adequate food were 'mainly linked to the limited budgetary allocations to the Kenya Prisons Service'.⁵²

Beyond the direct costs of imprisonment, such as those associated with infrastructure or operations, there are indirect costs including those incurred by families of people in prison. Such indirect costs 'are difficult to measure but ... are immense and long-term'.⁵³ Recently, the think-tank Prison Policy Initiative took up the challenge to quantify the real total cost of imprisonment in the US concluding that while public corrections agencies reported a total budget of US\$80.7 billion (EUR €74.5 billion) for the year 2017, the real total cost of imprisonment in the country amounted to US\$182 billion (EUR €168 billion) a year.⁵⁴ This figure took into account private facilities, policing costs, bail fees and the cost for families such as telephone calls or the price of prison visits, among others. The long-lasting impacts of imprisonment on peoples' lives, including with regard to health, personal finances, employment

changes, and broader societal costs, would push this estimate higher still.

One measure to save or limit public spending on prisons has been to involve the private sector in Public Private Partnerships (PPPs) to deliver some or all operations of facilities. Proponents maintain that privatising prisons reduces the burden of imprisonment on public expenditures, however several studies in recent years have shown that the value of private prisons was far from evident.⁵⁵ They pointed to further issues such as the risk of lower prison management standards and cost-cutting measures made at the expense of the welfare of people in prison, which can affect the prison system as a whole as public facilities try to align themselves; the risk of having operational limitations (e.g. contractual agreements against overcrowding in private prisons) fall back on public prison authorities with further direct costs; or the general risk of making imprisonment a for-profit investment. In December 2019, Malaysian rights groups and lawmakers reasserted these concerns, after their government announced that it was considering turning to private prisons to reduce overcrowding.⁵⁶

In other countries, increased funding for penitentiary systems to respond to overcrowding or

increased prison populations is earmarked for building or expanding prison estates. For example, in Morocco, MAD 160.7 million (EUR €15.2 million) will be allocated in 2020 to investments in the prison estate although only a tenth of that (MAD 10.3 million) will be put towards reintegration efforts.⁵⁷ A new plan to build 10,000 new prison places in England and Wales received GBP £2.5 billion (EUR €2.9 billion) in funding from the Government.⁵⁸ As a comparison, the total amount spent in 2018 on probation services was about GBP £824 million (EUR €917.5 million).⁵⁹

Most data available suggests that the costs of non-custodial measures or sanctions are lower than holding someone in detention. For instance, the US Bureau of Prisons estimated that in 2017, it cost US\$99 (EUR €91.38) a day per person in prison facilities, against \$89 (EUR €89.15) in residential re-entry centres. In France the average daily cost of imprisonment per person is about EUR €105 a day, compared with a daily cost of around €33 per day for someone serving probation.⁶⁰ Despite this, many countries continue to fund building and running of prisons over developing probation systems. (See Special Focus: Alternatives to imprisonment)

Pre-trial detention

Rates of pre-trial detention continue to increase around the world with people who have not been found guilty of a crime outnumbering convicted people in prison in at least 46 countries, with many of these facing seriously high levels of prison overcrowding.⁶¹ This is despite a global commitment to using pre-trial detention as a measure of last resort, as set

down in the UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules).

Niger is reported to have 60 per cent of the prison population awaiting trial, with similar figures in Liberia where at least 64.2 per cent of detainees were still awaiting trial in April 2019. The proportion of people on remand is even higher in Cambodia with 72 per cent of people in prison being held in

pre-trial detention as of November 2018. This phenomenon does not only impact low-income countries. In Canada, there were 50 per cent more adults in pre-trial detention than in sentenced custody from 2017-18.⁶²

One reason for the high rates of pre-trial detention is the fact that automatic pre-trial detention for certain crimes continues unchallenged. In February 2019,

Mexico expanded the list of crimes which are automatically subject to pre-trial detention for up to two years without bail,⁶³ a measure likely to further impact people who are poor and indigenous communities. Even prior to this legislative change, 97 per cent of people in prison belonging to indigenous communities were being detained pre-trial.⁶⁴

High numbers of people are held on remand on drug-related charges in a number of jurisdictions where prohibitionist drug policies have brought automatic pre-trial detention, even for possession and other low-level drug offences. (See Drug policies). Women are disproportionately affected by such policies because they are more likely than men to be arrested for drug-related crimes.

Statistics from the past few years show that in Peru, Ecuador, Argentina, Bolivia, and Chile around half of women are in pre-trial detention for drug-related offences.⁶⁵

More evidence has emerged that pre-trial detention also disproportionately affects the poorest members of society, foreign nationals, racial minorities, indigenous groups and those with mental health conditions. People from backgrounds of disadvantage are more likely to be arrested and to be detained pre-trial; they are less likely to have the means to pay bail or comply with other

conditions, or to be able to afford good legal representation.⁶⁶ In Madagascar, for instance, where pre-trial detainees make up 56 per cent of the prison population,⁶⁷ Amnesty International found that the majority of those surveyed were from poor, rural areas, lacked formal education and were underinformed of their rights.⁶⁸

Racial minorities are overrepresented in the pre-trial prison population in certain countries. In the US, there are clear racial disparities in decisions about who is detained before trial. The Prison Policy Initiative has reported that young black men are about 50 per cent more likely to be detained on remand than white defendants. Additionally, non-white defendants receive bail amounts that are twice as high as bail set for white defendants and are also less likely to be able to afford it.⁶⁹ Black and American Indian women are also overrepresented in US pre-trial facilities.

Studies point to it being 'virtually impossible' for foreign nationals to avoid pre-trial detention.⁷⁰ New data from Chile, for instance, shows that 73 per cent of foreign women in prison were yet to be convicted.⁷¹

The disproportionate number of people from poor and socially excluded populations in pre-trial detention is unsurprising when many countries operate systems of cash bail in lieu of pre-trial detention. In the US, there have

been moves by several states to limit or eliminate cash bail following California's 2018 reform. Most recently, New York State abolished cash bail payments for many misdemeanours and non-violent felonies, to be replaced with less restrictive measures such as supervised release, travel restriction or electronic monitoring. The Vera Institute of Justice has estimated that, if this new law is implemented correctly, it could lead to a 40 per cent reduction in New York State's pre-trial detention population.⁷² In Illinois, after a 2017 law limited the use of cash bail for non-violent and low-level offences, the State's Governor announced in January 2020 a move to end the practice altogether.⁷³

Pre-trial detention has a devastating effect on those subjected to it, their families and communities. A recent study in Kenya, Mozambique and Zambia showed a serious socio-economic impact on people in prison and their dependents. For example, in Zambia, more than half of families interviewed had to sell an asset such as land or livestock to mitigate the financial impact of detention.⁷⁴ In Pollsmoor prison, South Africa, where 60 per cent of pre-trial admissions are for non-violent offences, a new study shows almost half of survey respondents saying they had been forced to take out loans to cover their losses related to their detention.⁷⁵

Death penalty

The global movement towards universal abolition of the death penalty continued to progress in 2019. Angola ratified and Armenia signed the Second Optional Protocol to the International Covenant on Civil and Political Rights, the only binding global instrument on the abolition of the death penalty. The Gambia commuted the death sentences

of the last remaining 22 people on death row in the country to life imprisonment.⁷⁶ In Uganda, the mandatory death sentence was removed from a number of laws (including the Penal Code and the Anti-Terrorism Act),⁷⁷ ten years after the Supreme Court ruled that capital punishment should not be mandatory in murder cases. In Ghana in early 2020, the President

announced willingness to consider abolition of capital punishment, at least for five of the six offences for which it can be handed down for. The President of Kazakhstan also announced a move towards total abolition, in a country that still retains it for exceptional crimes even though a moratorium prevents executions.

Despite these positive trends, 90 countries in the world retain the death penalty in their legislation. As a result of the continued use of capital punishment in several countries, it is estimated that at least 690 people were executed in 2018 and that more than 20,000 people are detained on death row worldwide. These estimates are likely to be low because there is a lack of transparency about the use of the death penalty in many countries. A fact-finding mission in Democratic Republic of Congo (DRC), for example, found that there were more than 500 people on death row, double the amount previously estimated.⁷⁸ Japan executed three individuals in 2019, including a Chinese national. The number of executions in Iran, totalling at least 227 as of November 2019, has decreased over the past two years, most notably due to the 2017 amendment to the Anti-Narcotics Law which increased the threshold for imposing the death penalty for drug-related offences.⁷⁹ Iran, however, still remains the country with the most executions *per capita* in the world.

Iraq has sentenced more than 3,000 people to death on charges of terrorism since 2013, including foreign nationals. The Iraqi legislation applies a mandatory sentence of capital punishment for anyone convicted of being a member of a terrorist organisation, without any consideration of the nature or scope of their role. Death sentences are therefore being handed down with little to no distinction between high ranking officials, foreign fighters, cooks or nurses or people coerced into joining so-called ISIL. They follow expeditious, unfair trials based on confessions often obtained under torture and other degrading treatment.⁸⁰

In 2019, 11 French nationals alleged to have joined so-called ISIL were handed over to Iraq by the Syrian Democratic Forces and subsequently sentenced to death in June 2019. The lack of reaction from French authorities has led lawyers to denounce an 'extraterritorial application of the death penalty' contrary to the country's commitments under international law.⁸¹

Sri Lanka announced a plan to resume executions after a 43-year moratorium, and in the US, the federal government also stated its intention to resume executions, which had been suspended at the federal level since 2003. Brunei enacted legislation allowing capital punishment for same-sex sexual acts. (See LGBTQ people) The continued calls for reinstatement of capital punishment, even in long-time abolitionist countries, remains of concern. In South Africa, capital punishment will be part of the cabinet's discussions on the criminal justice system, following a public outcry in the wake of several high-profile crimes.⁸²

As the death penalty continues to be a divisive issue in retentionist and abolitionist countries, the Declaration adopted by the 7th World Congress Against the Death Penalty in 2019 committed to 'carry out more research (...) to demystify arguments used to retain the death penalty, including public opinion, deterrence, terrorism'. The OSCE's Office for Democratic Institutions and Human Rights (ODIHR) recalled that the application of the death penalty 'inevitably [led] to violations of the International Covenant on Civil and Political Rights (ICCPR) as an 'inherently cruel, inhumane and degrading treatment or punishment'.⁸³ It reiterated that the sentence is not a deterrent and that public support for capital punishment often stemmed from a lack of transparency from the authorities and a lack of public awareness about its implications.⁸⁴

In *de facto* abolitionist countries, people sentenced to death often remain in custody for an extended amount of time—sometimes indefinitely, effectively serving a life sentence often in isolated facilities. In Mauritania, most of the people on death row are allocated to a remote prison in the northern desert area of the country, effectively cut off from contact with families and lawyers.⁸⁵

Conditions on death row are generally harsh and have a long-lasting impact on physical and mental health. It can be common practice for people on death row to be isolated or held in solitary confinement, such as in the US or in Malaysia.⁸⁶ At the beginning of 2019, a new initiative was launched and supported by 50 bar associations from around the world to advocate for the drafting and adoption of additional international guidelines or standards on the detention conditions for people sentenced to death. More generally, the initiative seeks to have those sentenced to death recognised internationally as a 'specific legal category of persons deprived of liberty',⁸⁷ based on the unique nature of the sentence, the often-lacking respect of basic procedural rights, and the specific detention conditions they are often subjected to. The lack of procedural rights for people sentenced to death in Uganda led PRI to publish a *Guide for Defense Counsel* in 2019.⁸⁸

Life imprisonment

The most recent international research on the use of life imprisonment estimated that in 2014 there were 470,000 people serving formal life sentences around the world. This is compared to 261,000 in the year 2000, representing a rise of nearly 84 per cent in 14 years.⁸⁹ This figure is believed to be significantly higher, taking account of the fact that the number of formal life sentences handed down is increasing and that many countries also have informal life sentences on their books, which are not included in these figures.

The number of life-sentenced people in prison in the US has reached record levels, with 206,268 people serving life with parole, life without the possibility of parole or informal life sentences as of 2016. As the country with the most people sentenced to life imprisonment globally, the statistics now show that one of every seven people in US prisons is serving life.⁹⁰ There are a number of complex contributors to such rising numbers, including a shift away from death sentences. In 2019, it was revealed through an annual poll that, for the first time, the majority of Americans believe that life imprisonment is a better approach for punishing murder than the death penalty.⁹¹

2019 also saw several countries regress, with Serbia introducing life imprisonment without the possibility of parole as a formal sanction in May 2019, reversing their position as a country with no form of life imprisonment. Recent amendments to the penal code in Kyrgyzstan also introduced whole life sentences, eliminating existing concessions for people who had not violated prison rules or been involved in further crime. In Poland, a legal amendment depriving certain categories of people sentenced to life imprisonment of the eligibility to be released was adopted in May 2019, attracting criticism from the Council of Europe's Commissioner

for Human Rights. In Scotland, the Parliament debated the introduction of life sentences without parole in July 2019, although the proposal was rejected, and similar debates also emerged in Pakistan and Sweden. In Uganda, while still retaining the possibility of parole in some cases, a 2019 amendment to several legislative acts specifically redefined life imprisonment to 'imprisonment for the natural life of a person without the possibility of being released'.⁹²

Over the past year, the European Court of Human Rights built on their existing jurisprudence on sentencing, finding that whole life sentences in Ukraine and Italy infringed the European Convention on Human Rights (ECHR).⁹³

In the case against Ukraine, the Court decided that while the state had a clemency procedure in place allowing for the possibility of release, there was a violation of the ECHR, as reasons for the clemency decision did not have to be given. Furthermore, the persons serving a whole life sentence were not told from the outset of their sentence what they should or could do in order to be considered for release. As commonly found with life sentences, in this case the person was housed in segregation for 23 hours a day. The court decided this prolonged solitary confinement precluded any legitimate opportunity for the possibility of rehabilitation.

In the case against Italy, the Court held that national law excluded certain people from release—namely those who did not cooperate with authorities to enable them to investigate further crimes.

Some attention was paid recently to life imprisonment at the UN level—a welcomed move given that the issue has largely been overlooked for more than 20 years, with the last report on life imprisonment being published in 1994.⁹⁴ In September 2019, a report of the UN High

Commissioner for Human Rights on death and serious injury of persons deprived of liberty included some commentary on life sentences. The report noted the human rights impact of such sentences on the physical health of those affected and that they faced higher risk of ill-treatment and excessive use of force by prison officers.⁹⁵

Subsequently, the UN Human Rights Council adopted a resolution linking overincarceration and prison overcrowding with life imprisonment sentences. The resolution called for states to review sentencing policies, practices and guidelines to apply the principle of proportionality, specifically referencing life imprisonment sentences. The same resolution reiterated the call to ensure that life imprisonment is not imposed on children under the age of 18 years.⁹⁶

The number of imprisoned children serving a life sentence is unknown. However, the recent UN Global Study on Children Deprived of Liberty showed that two-thirds of the 67 states that allow for life sentences to be imposed on children are within the Commonwealth and come from the English legal tradition. Most of these systems carry life sentences with the possibility of parole, but some also allow for *de facto* or informal life sentences to be imposed.

Terrorist or national security-related offences can attract life sentences for children in some countries.⁹⁷ Some states, however, have specifically precluded children from the mandatory minimum sentences set down under terrorism laws, such as in Indonesia.

Part three

PRISON POPULATIONS

The overwhelming majority of people in prison continue to come from disadvantaged backgrounds and are likely to have a history of abuse and neglect, often experienced as children. It is also becoming increasingly clear that a large percentage of people in prison have mental health conditions or intellectual disabilities. These characteristics appear in all types of populations of people in prison, including men, women, children, foreign nationals and members of minority groups.

Data collected by the UN has found that in 108 countries between 2003 and 2016, men composed over

80 per cent of adults who have been convicted and over 90 per cent of those held in custody.⁹⁸ Therefore, while it is important to focus on the situation of certain groups who continue to be overrepresented and discriminated against, it is equally important to recognise and analyse the situation of majority groups, including men and young adults (those aged 18 to 22).

Young adults, and particularly young male adults, represent a significant proportion of the prison population in many countries, but their situation is not well understood. Some will have transitioned into adult prisons directly from detention

centres for children, and many are likely to reoffend. Additionally, many people serving long-term sentences began their prison sentences as young adults and have been in prison ever since.

Mental health and the risk of suicide and self-harm among imprisoned young adults are areas that warrant further attention. Violence and gang-culture are also prevalent among young males in prison. There has been a lack of attention and recognition of the scale and seriousness of violence, including sexual gender-based violence against men and young adults in prison.⁹⁹

Women

December 2020 will mark the 10th anniversary of the adoption of the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules). Since then there has been more analysis into the situation of women in prison and greater understanding of their backgrounds and the reasons for their imprisonment. While there have been some moves to improve conditions and rehabilitative opportunities for women, female prison populations continue to rise in many countries and regions.

In recent years there have been several significant research projects into the situation of women in prison, however it remains inadequate. At a 2018 international forum in Bogota, Colombia, for advocates of women in prison, the lack of research and data

was identified as one of the main barriers to effective advocacy and law reform to reverse the trend on women's imprisonment.

A 2019 Vance Center report on what is known about the treatment of women in prison in five African countries revealed that beyond basic data, there was little consistency in the types of data collection. There were also doubts about whether the available data was comprehensive and reliable.¹⁰⁰

Similarly, a recent scoping review to map available information about the unique prison healthcare needs and outcomes of women in prison in Sub-Saharan Africa revealed a limited evidence base, with literature found to be available in only 18 of the 49 countries in the region between 2000 and 2017.¹⁰¹ The Prison Policy Initiative in the

US has also noted that, while women continued to be the fastest growing segment of their prison population in 2019, data about their experiences behind bars is 'frustratingly hard to find' and that data on gender is often missing.¹⁰²

There has been a rise in the number of organisations working specifically on behalf of women in prison since the adoption of the Bangkok Rules. Significantly, the movement in support of the rights of women in prison has grown, especially at the grassroots level, often led by women in prison or those who have had the experience of living in prison. For example, the 2018 forum in Bogota brought together 45 advocates for the rights of women in prison from around the world to share information and facilitate the creation of a global movement for their work together.

Unfortunately, and with a few exceptions, these promising developments have not yet translated into significant, long-term practical improvements for women in prison. Women remain at high risk of physical and sexual abuse and compromised access to healthcare services. A new publication on places of deprivation of liberty and gender reiterates that, where places of deprivation of liberty have made provisions for women and girls, these continue to be applied within a male-oriented framework and do not integrate a gender perspective.¹⁰³

Foreign nationals continue to represent a large proportion of women in prison in many countries, particularly those with large migrant worker communities. In Macau in 2017, nearly 80 per cent of 193 women in prison were foreign

nationals, and the most common convictions were drug trafficking and immigration related offences.¹⁰⁴ In Bahrain, 75 per cent of women in prison in 2019 were foreign nationals;¹⁰⁵ in Portugal, foreign nationals made up 17 per cent of the total population of women in prison but represented only 4 per cent of the resident population of the country.¹⁰⁶

There is increasing evidence about the link between poverty, homelessness, mental health, substance use and female imprisonment. Recent studies from England and Wales show that the number of women recorded as homeless when they enter prison nearly doubled between 2015 and 2018.¹⁰⁷ Surveys also showed that half of women in prison in England had committed a crime to support another person's drug habit, mostly

men.¹⁰⁸ This suggests that in many cases women have been coerced into criminal offending, an issue that is common elsewhere, including in Latin America and South East Asia.

Research undertaken by Linklaters LLP for PRI, published in early 2020, surveys the legal framework and judicial practice across 18 countries to assess how women convicted of drug-related offences are sentenced.¹⁰⁹ The research findings show that while some countries generally impose non-custodial sentences in such cases, the complex reasons and pathways of women's confrontation with criminal justice systems for low level drug-related offences are not adequately reflected in legislation, sentencing guidelines (where existing), or sentencing practices.

Children

According to the UN Global Study on Children Deprived of Liberty, which was published in July 2019, there are at least 410,000 children detained in remand centres and prisons every year, with an estimated 1 million children held every year in police custody.¹¹⁰ This is despite the UN Convention on the Rights of the Child, adopted 30 years ago, being clear that deprivation of liberty of children shall be used only as a measure of last resort and for the shortest appropriate period of time.

The Global Study notes that children from poor and socioeconomically disadvantaged backgrounds, migrant and indigenous communities, ethnic and religious minorities and the LGBTQ community, as well as children with disabilities and, above all, boys, are overrepresented in detention and throughout judicial proceedings. In the US, one recent study found that black girls account for 35 per cent of girls in detention.¹¹¹ In England and Wales, the proportion of children convicted of a crime who are from black, Asian and minority

ethnic families is reported to have doubled in the past eight years.¹¹² Elsewhere, in Australia the Commission for Children and Young People in Victoria established an inquiry into the over-representation of Aboriginal children and young people in Victoria's youth justice system in 2019.¹¹³

International human rights standards are unequivocal that children in prison should be kept separately from adults and detained in a separate institution or separate part of an institution. Evidence shows these protections are being ignored in a number of countries and contexts from the Philippines, where a 2018 survey discovered 400 children held in adult prisons, to Madagascar, where only 24 of 42 prisons were found to have separate accommodation for children with 131 children being held with adults.¹¹⁴ In Australia, children as young as ten have been held for extended periods in maximum security police holding cells built for adults, and Human Rights Watch has expressed

concern about the situation of detained children in extremely overcrowded conditions in Iraq.¹¹⁵

Positively, child-specific justice legislation, child-friendly courts and specialised procedures continue to divert children away from the criminal justice system and contribute to a decrease in the number of children in prison in many countries.

In March 2018, the EU, the UN and Lebanese authorities jointly launched a new programme to advance justice for children and criminal justice in Lebanon with the aim to provide children in conflict with the law access to fair, transparent and child-sensitive justice systems in the best interests of the child.¹¹⁶

In May 2019, the government in Barbados approved a new juvenile justice bill with the reported intention to bring the child justice system in line with international standards. The new law increased the age of criminal responsibility to 12 and stipulates that children

Women's prison in Sierra Leone. © Boaz Riesel / AdvocAid.



**There has been little progress
in ensuring that the rights or best
interests of children are properly
considered when sentencing
a primary caregiver.**

Children in prison with a parent: new data

There were an estimated 19,000 children living in prison with a primary caregiver (usually their mother) in 2017 according to the UN Global Study on Children Deprived of their Liberty. The Study reiterated that children affected shall be treated as right holders and not merely circumstantial victims of their caregiver's encounter with the criminal justice system; that the detention of primary caregivers should be avoided as much as possible; and that the balancing of interests should be decided on a case-by-case basis.

The applicable rules and associated practices in relation to these children differ widely from country to country, and there has been no universal standard for how to administer and regulate

the practice.¹¹⁷ Most countries tend to remove children from their mothers in prison around the age of 2 or 3, although in some cases much older children continue to live in prison beyond this. In Afghanistan, it was reported in 2017 that among the 333 children imprisoned with their mothers, 103 were older than five.¹¹⁸ In Yemen, a 2018 assessment of the situation for the 37 children accompanying their mothers in prison found that many children were older than the legal age limit of two years. In Sanaa prison, a 16 year old girl was staying with her mother.

Despite an upturn in the attention paid to the situation of children in the last decade, the scope, extent, rationale, and possible benefits or adverse effects of allowing children to live in detention with a primary caregiver are not well documented. The continued rise in the number of women in prison globally

brings inevitable consequences for their dependents. However, there has been little progress in ensuring that impact assessments on the rights of the child or best interests of the child assessments are properly considered when sentencing a parent, even when they are the sole or primary caregiver.

The imprisonment of parents, and particularly mothers, can also have a profound effect on children separated from them by imprisonment. The Council of Europe has estimated that there were more than 2 million children in Europe with a parent in prison in 2019, with the majority of them facing emotional and material difficulties and many subjected to psychological stress and stigmatisation.¹¹⁹ In Scotland, it is estimated that more children are impacted by parental imprisonment than parental divorce.¹²⁰

between the ages of 12 and 14 will not be held in prison.¹²¹ In Jamaica, a new National Child Diversion Programme to reduce the number of children who are charged and exposed to the formal criminal justice system became formally operational in January 2020.¹²²

The UN Committee on the Rights of the Child (CRC) has revised its original 2007 General Comment on Juvenile Justice in which the Committee considered 12 to be the absolute minimum age of criminal responsibility. The Committee has now considered this to be too low and has encouraged states to increase their minimum age to at least 14 years of age, while commending States parties that have a higher minimum age.¹²³

This revision led to calls for some countries to raise the age of criminal responsibility. In May 2019, the Scottish Parliament voted to raise the age of criminal responsibility from 8 to 12 with

a new advisory group set up to determine whether it should be raised to 14. The Equalities and Human Rights Commission has urged for reform in England and Wales, where the current age of criminal responsibility is 10. The Australian Medical Association and the Law Council of Australia have also called on authorities to increase the minimum age from 10 to 14.

On the other hand, some countries have been considering lowering the age of criminal responsibility. For example, in January 2020 the South Korean government announced plans to lower the age from 14 to 13; in the Philippines, there have been renewed efforts to lower the age from 15 to as young as nine. The UN has stated that it would consider such a move to be an 'act of violence against children'.¹²⁴ The UN Special Rapporteur on the situation of human rights in Belarus has expressed concerns about children sentenced to disproportionately

long prison terms for drug-related offences since the age of criminal responsibility for certain crimes was reduced from 16 to 14 years in 2016.¹²⁵

Throughout the year concerns were raised about levels of self-harm and suicide among children in prison. For instance, official figures from New Zealand released in September 2019 revealed that there had been 135 incidents of self-harm in youth justice facilities in the last five years, mostly affecting detained girls who had been victims of sexual or physical violence.¹²⁶

Older persons

The proportion of older persons in prison continues to rise in many countries. In Singapore, the population of people in prison over the age of 60 jumped by 50 per cent from 2013 to 2018. Drug-related offences were the most common reason for their imprisonment, and the majority were repeat offenders. Singaporean courts heard criminal cases of 196 people above the age of 65 during 2018, the highest in at least three years.¹²⁷ In 2018, South Korea, which reportedly has the fastest ageing population in the world, recorded a 45 per cent increase over five years in crimes committed by people age 65 and over.¹²⁸

In Switzerland, the number of people in prison over the age of 50 has doubled between 2007 and 2017, totalling over 800 people.¹²⁹ Estimates for the US predict that by 2030 one-third of people in their prisons will be over the age of 55, amounting to a staggering 4,400 per cent increase over fifty years.¹³⁰

In Canada, where those aged over 50 now account for 25 per cent of the federal prison population, a new report found that prisons are increasingly required to fulfil the same functions as nursing homes, hospices or long-term care facilities—a common issue facing other countries with significant numbers of older people in prison. The mental health of older people in prison is a particular concern, with many experiencing social isolation and depression. The Canadian study found that people in prison over the age of 65 had high rates of depression, anxiety and personality disorder. Half of those over 50 were serving a life sentence.¹³¹

There are different explanations for ageing prison populations. In South Korea, the increase has been linked to the fact that people are living longer but are unable to support themselves financially.¹³² In the US, one of the reasons given is harsh sentencing laws with mandatory minimum sentences initiated in the 1980s.¹³³ In Japan, where repeat offending by the older population is on the rise, researchers have found that some see prison as a way to escape from poverty and social isolation.¹³⁴

There is growing recognition that keeping older people in prison is not always necessary, appropriate or cost-effective (due to healthcare costs and the need for specialised equipment and staff). The management of older people in prison, including those with chronic or terminal illnesses also puts a major strain on prison staff, who are often not trained to deal with their complex needs or to deal with the death of older people in prison.

Initiatives to manage this prison population include remodelling facilities so that they are suitable for the needs of older persons. Lenzburg prison in Switzerland, for instance, has a dedicated '60-plus' unit which aims to meet the specific needs of older persons.¹³⁵ Other countries have developed successful peer-to-peer support programmes to reduce the impact on staff and improve the quality of life for older and sick persons. Under the 'Gold Coats' programme in California, younger individuals in prison are trained to take care of fellow older prisoners, including those with dementia.

Under a new prison law, authorities in Sindh province, Pakistan, announced in 2019 that they would commute the sentences of older people in prison who had served half their sentence as well as those with life threatening illnesses.¹³⁶ Such early release mechanisms can provide an opportunity for older persons to live their final days and die in the community, but they are not common.

Prison authorities also face the challenge of providing appropriate rehabilitation and reintegration programmes for older persons in prison. Most rehabilitation programmes focus on work and vocational training which may not be relevant, and older people in prison may struggle to participate in recreational activities due to ill-health or mobility problems. Additionally, older people in prison have specific needs to prepare them for release which are often not met by existing programmes.

In Kasamatsu women's prison in Japan, authorities have introduced specific pre-release programmes to assist older persons (20 per cent of the people in prison at the facility are at least 65 years old). The programme includes providing physiotherapy and exercise classes. Younger women in prison also learn nursing care as part of their own vocational training so they can help others. Support centres to help people released from prison provide specific services for older people who live alone and have no family or friends to help them.¹³⁷

People with physical disabilities commonly encounter practical day-to-day challenges in prisons, thus being confined to a cell or having limited access to exercise.



Prison in the United States.

Persons with disabilities

A significant number of prison systems lack strategies or policies to meet the needs of persons in prison living with disabilities. Such lack of attention has meant there is also little data. One of the challenges in estimating the number of people with disabilities in prisons is insufficient understanding, recognition and underdiagnosis, particularly of sensory or intellectual disabilities and autism.

From the scant data available, it can be determined that a significant proportion of people in prison live with one or multiple disabilities. In Australia, for example, it has been estimated that people with disabilities, particularly cognitive or psychosocial disabilities, comprise around 18 per cent of the country's population, but almost 50 per cent of people aged 18–24 years entering prison.¹³⁸

In addition to being at risk of violence at the hands of other people in prison and staff, people with physical disabilities commonly

encounter practical day-to-day challenges in prisons. While recommendations from regional bodies in Europe are forthcoming, including the recommendation by the European Committee on the Prevention of Torture for the provision of larger prison cells for people with reduced mobility, there are major shortcomings in meeting the needs of such prisoners across Europe, and beyond.¹³⁹ Recent research from Ireland details how some people in prison living with disabilities were effectively confined to their cells due to the lack of accessibility in the prison environment.¹⁴⁰ In Armenia, many prisons have exercise areas on their roofs, making them inaccessible, and toilets in cells are mostly separated by steps with no ramps available.¹⁴¹

It is becoming increasingly clear that large proportions of people in prison have intellectual disabilities, including autism and acquired brain injury. In one prison in England, 64 per cent of women in a survey

had symptoms of a brain injury, while the symptoms of 96 per cent of the women suggested that these arose from physical trauma.¹⁴² In Canada, psychosocial disabilities among prisoners in the federal correctional system is up to three times as common as in the Canadian population at large.¹⁴³ Children with disabilities are also significantly overrepresented in the criminal justice system, particularly those with intellectual disabilities.¹⁴⁴

During 2019, cases of serious abuse and discrimination of people with disabilities in prison were widely reported in Australia, especially violence against Indigenous Aboriginal people. There have been some measures to divert people with mental health conditions from the formal criminal justice system and prisons, including through the establishment of specialised mental health courts in four of the country's states.

Lesbian, gay, bisexual, transgender and queer people

Where data exists, it shows that Lesbian, gay, bisexual, transgender and queer people (LGBTQ) people are overrepresented in prison populations. While not all LGBTQ people in prison are detained as a direct result of their sexual orientation, gender identity or expression, there is increasing evidence demonstrating the links between societal attitudes, discrimination and abuse against LGBTQ communities, criminality and imprisonment.

A recent study in the US revealed that a third of women in prison identify as lesbian or bisexual and

found that they are likely to receive longer sentences than heterosexual women. Additionally, 40 per cent of girls in the justice system identified as lesbian, bisexual, or questioning and gender non-conforming. The study also demonstrated that there is disproportionate mistreatment, harsh punishment and sexual victimisation of LGBTQ people in prison.¹⁴⁵

In its 2019 report on state sponsored homophobia, the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) noted that recent decades have seen the emergence of a clear international

norm against the criminalisation of consensual same-sex conduct. The global population living under such laws and facing imprisonment as a result has dropped in the past 50 years.¹⁴⁶ Most recently, Angola and Botswana decriminalized same-sex sexual conduct in 2019, as did India and Trinidad and Tobago in 2018.

However, there has been a recent reversal of this trend seen in some parts of the world. In March 2019, Chad enacted a new penal code with a specific provision criminalising consensual same-sex acts; in July, Gabon adopted a law

against same-sex sexual relations. A month later, Brunei announced the enactment of its Syariah Penal Code which allows for death by stoning for same-sex sexual acts.

There were several other setbacks for detention related to LGBTQ rights during 2019. In May, Kenya's High Court upheld the law criminalising consensual same-sex sexual activities. There has also been a continued rise in anti-gay rhetoric in Uganda, and in Chechnya, Russia at least 23 gay men were reported to have been arrested by the police between December 2018 and April 2019 because of their sexual orientation.¹⁴⁷

As of December 2019, there were 70 States criminalising consensual same sex sexual acts and 6 UN member states which imposed the death penalty. Another 26 impose penalties of between 10 years' and life imprisonment. In some countries, punishments can include corporal punishment such as caning or public flogging. In South Korea, internal rules allow for members of the military to be imprisoned for same-sex sexual acts.

At least 34 UN member states have legal provisions that restrict freedom of expression on the grounds of sexual orientation and gender identity, and at least 41 UN member states have legal provisions that prohibit the registration or operation of organisations that work on sexual orientation issues. Nineteen activists were charged in Turkey with 'participating in unlawful assembly' after attending a Pride march,¹⁴⁸ and other incidents involving arrests of people who are or believed to be LGBTQ occurred in a number of places from Cameroon to Cuba.

Even in countries where homosexuality and diverse gender identities are not explicitly criminalised, LGBTQ people are at high risk of arrest because other laws are used against them, such as laws prohibiting sex work which are disproportionately used to target transgender people. In April 2019, police in Azerbaijan arrested 14 gay men and transgender women, alleging they engaged in illegal sex work.¹⁴⁹

The majority of member states of the EU lack special rules, guidelines or measures for the treatment

and protection of LGBTQ people in prison, and they tend to deal with people on a case-by-case basis. Exceptions include Finland, Malta, Romania and the UK, all of which have comprehensive legislation, formal guidelines and policies in place.¹⁵⁰

In March 2019, England opened its first prison unit, a wing within a women's prison, for transgender people in prison, followed by a revised policy on the care and management of individuals who are transgender. Official statistics from 2018 stated there were 139 adults in prison identifying as transgender in England and Wales.

The safety of LGBTQ people in prison can be compromised by discriminatory rhetoric from politicians and senior officials. In Indonesia, for instance, a senior prison official is reported to have stated that LGBTQ prisoners would be separated from other prisoners by placing them in isolation rooms so that 'there is no transmission of sexual disorientation to other inmates.' This statement followed remarks by another official that overcrowded prisons were causing prisoners to become gay.¹⁵¹

Foreign nationals, minorities and indigenous peoples

From country specific data, it remains clear that people belonging to national, ethnic, religious and linguistic minorities are overrepresented in criminal justice systems.

In the US, the racial disparity between black and white people being sent to prison continues to decrease. However, a new study shows that black people are still imprisoned at five times the rate of white people and are spending longer terms in prison.¹⁵²

There is evidence that treatment of people belonging to minority groups, and their conditions of detention, are significantly impacted by their

minority status, either due to direct discrimination or because authorities lack the resources to cater for their particular needs. There is also an issue with ensuring diversity among staff. (See Prison staff)

Muslim people, who represent 9 per cent of the total state prison population in the US but only 1 per cent of the country's population as a whole, are regularly denied basic religious freedoms, such as access to halal food, the right to pray and celebrate religious festivals.¹⁵³

Indigenous peoples, including children, young adults and women, are still overrepresented in prison

populations in Australia, Canada and New Zealand, though some efforts have been made to understand and tackle the reasons for this.

In New Zealand, a Māori focused prison initiative, called the 'Pathway Initiative' is being introduced in two prisons. The initiative focuses on high security allocated Māori males with the aim to reduce reoffending. The model includes specialised trauma and mental health support, rehabilitation, housing support after release and the provision of support workers to help people in prison and their extended families.¹⁵⁴



**GLOBAL
PRISON
TRENDS**

Alternatives to imprisonment

Special Focus 2020
Pull-out section

ALTERNATIVES TO IMPRISONMENT

Commitments and aspirations

Thirty years ago, the UN Standard Minimum Rules on the use of Non-custodial Measures, known as the Tokyo Rules, were adopted, committing governments to use alternatives to imprisonment. The rationale of the Tokyo Rules is still as relevant today as ever. Governments wrote that they were convinced that alternatives to imprisonment can be effective and ‘to the best advantage of both the offenders and society.’ They also stated that ‘non-custodial measures should be part of the movement towards depenalisation and decriminalisation.’

The Tokyo Rules link increasing prison populations and prison overcrowding, which ‘create difficulties for the proper

implementation’ of the UN Nelson Mandela Rules. Those difficulties are even more apparent when places of detention are hit by disaster, seen recently with the COVID-19 global pandemic.

The Tokyo Rules should guide responses to the coronavirus pandemic to prevent the dire consequences of the disease ‘rampaging through places of detention’ as warned by the UN High Commissioner for Human Rights.¹ Some governments have released significant proportions of prison populations and brought prison admissions to a minimum through the use of alternatives. Such policies need to be swiftly replicated

and expanded.² (See Coronavirus pandemic and prisons, Global Prison Trends 2020)

Looking ahead, the political backing of alternatives to imprisonment in such a time of emergency need to be harnessed for longer-term reform. Implementation of the Tokyo Rules will prevent over-incarceration which puts people in prison and prison staff alike at high risk, in cases of disaster or the spread of an infectious disease.

In this Special Focus, we highlight why pre-trial detention and prison sentences remain the typical response to crime in many jurisdictions, detailing the barriers that need to be overcome both in the short- and long-term.

A solution to global penal policy challenges

Around 102 countries and territories are reported to have prison occupancy levels of over 110 per cent, and 22 operate at occupancy levels of over 200 per cent.³ Alternatives to imprisonment have been shown to be a **primary tool to lower prison populations, thereby reducing prison overcrowding.**

Jurisdictions which have successfully sustained lower prison occupancy rates through the use of non-custodial measures include Finland, Norway, Denmark and Sweden. Evidence shows that such measures need to be combined with

crime prevention initiatives and adequately financed rehabilitation and reintegration programmes.

It is widely recognised that alternatives to pre-trial detention better protect the human rights of people accused, but they also have been shown to **reduce the number of custodial sentences** subsequently. This correlation between the use (and length) of pre-trial detention and the imposition of a custodial sentence has been found in various studies, most recently in the Netherlands and the US.⁴

Evaluations of rehabilitation-focused alternatives to imprisonment prove that they can **reduce reoffending rates**, more so than prison sentences, by better addressing the reasons why people offend and making communities safer. An international review showed that recidivism rates are typically lower than those reported among people who had served prison time.⁵ Research from Victoria, Australia, has shown that a greater use of police diversion in recent years could have prevented tens of thousands of offences.⁶

The human rights and economic impact of imprisonment are widely documented and far reaching, affecting children, families, communities and wider society. At the individual level, the rights to liberty and security, health, to be

free from torture—even the right to life—are put at risk when someone is detained, particularly in overcrowded prisons. **Non-custodial measures and sanctions can eliminate these impacts and human rights violations.**

The **cost of imprisoning someone is generally far higher than the cost of a non-custodial sentence.** (See Funding of penitentiary systems, Global Prison Trends 2020).

Range and use

Alternatives to pre-trial detention

There is a wide variety of non-custodial options for the pre-trial stage, and the most common include bail (cash bail or bail guarantor), travel bans (including seizure of documents) and other geographic and residence limitations (including house arrest), judicial or police supervision, and electronic monitoring. Diversion strategies are also alternatives to detention, in that they avoid the formal processing of people by the criminal justice system altogether. Other conditions of liberty pre-trial may include agreeing to substance testing and treatment, restrictions on communication with

specific persons, or a ban on specific activities such as driving or carrying alcoholic beverages.

Many of these options are provided by law but remain underutilised, or simply ignored. One of the indicators for measuring progress against Goal 16 of the UN 2030 Sustainable Development Agenda is the proportion of pre-trial detainees in prison populations. As of 2019, the UN has confirmed little progress has been made.⁸ Three million people are in pre-trial detention globally, and at least 46 countries have more people (presumed innocent) in pre-trial detention than those convicted—mostly in Africa and southern and western Asia.

The Inter-American Commission on Human Rights has noted that for the last two decades, the use of pre-trial detention as a standard practice is one of the most serious and widespread problems in the region. It stated, ‘The fact that many criminal codes refer first to pre-trial detention and then provide what they call “alternatives to pre-trial detention” suggests and fosters an interpretation whereby pre-trial detention is the first measure deemed applicable.’⁹

Alternatives to prison sentences

Some initiatives have emerged in recent years to address the lack of comparative data on the number of people serving non-custodial sentences, as well as on their use by type of measure.¹⁰ From available data, huge national and regional variations can be seen in the proportion of people convicted and serving non-custodial sanctions compared to prison sentences.

Most countries in Europe, North America and Oceania have a higher proportion of people receiving non-custodial sanctions than prison sentences. For instance, across 36 member states of the Council of Europe, there were over 1.76 million persons under supervision of probation services in January 2018, representing an average rate of 202 people on probation per 100,000 inhabitants.¹¹ This is almost double the rate of people in prison at 102 per 100,000 inhabitants.¹²

Suspended sentences remain one of the most commonly used non-custodial sanctions globally, involving the dismissal of the sentence after a certain period if the person convicted successfully fulfils specific conditions and does not commit further crime. Such sentences are the most commonly employed non-custodial sanction in the Gambia, Kenya, Malawi, Nigeria, and Tanzania, and 15 of 28 European countries regularly suspend sentences for drug-related offences.¹³

Other common non-custodial sanctions include supervision by a probation officer, electronic monitoring, house arrest, verbal sanctions, economic sanctions and monetary penalties, confiscation of property, restitution to a victim, participation in rehabilitation programmes and community service orders. In Kenya, Uganda and Tanzania, PRI found that community service orders involving unpaid work make up the majority of non-custodial sanctions, followed by probation orders requiring supervision by a probation officer.

There is also a range of sanctions and diversion measures that take victims of crime into account,

Probation

The term ‘probation’ entails different things in different countries and ‘is not easy to define simply or precisely’.⁷ It is used as a term for a government body which executes sanctions, or pre-trial measures. It can also refer to the sentence itself (and may involve reporting to a ‘Probation Officer’). There are many organisational forms with varying levels of involvement—from the state at the executive level and different governmental agencies to non-governmental organisations and the private sector. Responsibilities of probation agencies vary widely but most commonly involve assessment of risk and needs and supervision of people subject to non-custodial measures or sanctions. In some regions, such as Europe, probation services also carry out responsibilities in relation to victims of crime.

such as restorative justice and victim-offender mediation programmes. In South Korea, victim-offender mediation was used to divert around 111,000 cases from court in 2016.¹⁴

Family group conferences are available in numerous jurisdictions, usually for children, based on the notion that communities and families can come up with solutions to address offending behaviour. Traditional tribal processes are also used in some countries, such as Malawi, Nigeria, and Tanzania.¹⁵

There are also some sanctions used to release people from prison before their term finishes, such as parole or conditional or early release. These systems often impose post-release conditions, and a breach of any condition can result in a return to prison.

Common barriers to the use of alternatives to imprisonment

Legal limitations

Even where multiple alternatives to imprisonment are available, the legal framework in many countries does not allow judges to consider alternatives or to exercise discretion at the pre-trial or sentencing stage. Mandatory prison sentences are often applied to specific offences, and they are not limited to violent crimes but can include non-violent offences. Drug laws in Mexico and Guatemala, for instance, make no distinction as to the nature of the offence, automatically imposing pre-trial detention for any drug-related offence.¹⁶ Such policies are a contributing factor to prison overcrowding and have a disproportionate impact on certain populations, including women.¹⁷

While legislative reform to allow for the use and implementation of alternatives to imprisonment is often required, the assumption that such alternatives always require complex resources and major legislative overhauls is regularly misplaced. Many significant reforms have taken place without any legal revisions, instead requiring slight adjustments to existing institutions and expansions of existing services.¹⁸

Wide discretionary powers of the judiciary can allow for a greater number of people avoiding prison through alternatives. For example, eliminating mandatory minimum sentences for drug crimes was one measure, among others, identified as a factor that led to the reduction in prison numbers in the state of Rhode Island in the US.¹⁹ However, discretion can also lead to bias and

a failure to engage with practical alternatives to pre-trial detention, as found in several European countries with judges being unable to properly elaborate why detention was necessary and alternatives were insufficient.²⁰ (See 'Tough on crime' and lack of trust in alternatives to imprisonment)

Lack of resources and institutional capacity

One of the primary challenges in the expansion and success of alternatives to imprisonment is a lack of resources. Low budgets for criminal justice also impact the ability to put infrastructure in place to implement a system with non-custodial measures and sanctions. The availability and the operation of rehabilitation programmes as part of alternative sanctions is reliant on financial support. Inadequate funding of drug treatment services, for instance, was found to be a common barrier to the use of non-custodial sanctions for drug-related offences across EU member states.²¹

Probation staff shortages are commonly reported due to financial restrictions, with some countries addressing this through schemes involving volunteer probation officers. Japan engages volunteer citizens, known as volunteering probation officers, to support the work of professional staff, aiming to bridge the gap between the community and offenders while addressing the needs of both. As of 2017, there were 47,909 volunteer probation officers in Japan.

Inadequate financing, slow and congested court systems and a general lack of operational capacity have been, among others, cited as factors for the prevalent use of pre-trial detention. Also in the Americas, a lack of operational capacity, independence, and resources among public defence offices are common issues in the use of alternatives to imprisonment.

'Tough on crime' and lack of trust in alternatives to imprisonment

Research has found that harsh political discourse—adopting 'tough on crime' stances—fuelled by sensationalist media approaches are contributing factors to prison sentences being favoured over non-custodial alternatives.²² These factors are closely linked to distrust in non-custodial alternatives among police and the judiciary, especially in countries where the independence of judicial officials is compromised. Decision-making can be shaped by prevailing public discourse and media pressure (some linked to populist or conservative rhetoric).²³

The use of alternative sanctions for drug-related offences could depend on the individual beliefs of prosecutors and judges as to drug treatment, the nature of, and motivations for drug use.²⁴ Disregard for the presumption of innocence, where judges presume that the accused is going to be found guilty, has also been found to influence court decisions. In Chile, 70 per cent of the judges interviewed in one

Mass supervision and net widening of criminal justice through alternatives to imprisonment

Warnings that mass supervision has not replaced, but supplemented 'mass incarceration', and the resulting detrimental effect on individuals and society continue unabated.²⁵ Data from most Western countries shows a growing number of people under supervision or criminal justice 'control', while prison population rates continue to rise as well. This 'net-widening' phenomenon can be explained by the fact that alternatives to imprisonment are being increasingly used in cases which would not have normally

attracted custodial sentences in the first place (such as warnings, fines or even recognisance). These measures further come with more severe compliance conditions that often lead to imprisonment when breached. As a consequence, because of the legislation or the judicial practice, alternatives to imprisonment can paradoxically bring more people into the criminal justice system and ultimately into prison.²⁶

The starkest example is in the US where the issue of mass supervision is becoming a political issue with civil society raising alarm at the findings from the statistics. At the end of 2015, there were more than 6.7 million people under 'correctional control' with more than 4.6 million of them on probation or parole (representing 1 in 37 adults).²⁷

Foreign nationals and minorities may not be able to prove 'their roots in the community (which is usually done by showing the existence of a stable job, owned property, formal family ties)' required for some alternatives.³¹

One study in Europe found that, in 2015, the percentage of foreign nationals placed on probation was much lower than those in prison.³² Another study concluded that minority children are often perceived as more dangerous than children from the majority population and face discrimination in accessing diversion and non-custodial measures.³³

Common alternatives to pre-trial detention and prison sentences often require defendants to secure financial means for bail or even electronic monitoring equipment, which excludes socially and economically disadvantaged people. In Western Australia, thousands of people have been imprisoned in the last decade for unpaid fines. This practice, which disproportionately affected people in a situation of vulnerability, was ended by a 2019 bill.³⁴ Efforts to make alternatives more accessible to disadvantaged communities were undertaken through Thailand's bail reform policy in 2019, which now stipulates that for sentences less than 10 years, no bail bonds would be required for release from remand.

study agreed that pre-trial detention is sometimes used as a form of anticipated sentence.²⁸

Although widespread community resistance to non-custodial alternatives has been reported, some studies suggest that this is not necessarily the case. Research in the UK found that victims of crime and the wider public are open to the use of community sentences in dealing with lower level offences, but they have doubts about how these sentences are implemented in practice.²⁹ In East Africa, an evaluation of a project by PRI noted

that local communities 'need(ed) to know that community service is happening around them and how they are benefiting from it.'³⁰

Bias and discrimination in criminal justice decision-making

Several studies reveal racial disparities and other discriminatory practices in pre-trial and sentencing decisions, which result in indigenous communities, black, and ethnic-minority defendants being more likely to receive a custodial rather than a community sentence.

Experiences of alternatives to imprisonment

While alternatives to imprisonment have brought a multitude of benefits, there has been a growing body of research looking at the negative impacts of such measures. This has been in recognition of the fact that supervision measures can place significant constraints on a person's life, infringe on privacy rights and entail considerable stigma and social isolation. One researcher has noted that, for the most marginalised, supervision is like a 'conveyor-belt', carrying them deeper and deeper

into the penal net.³⁵ There is also increasing concern that a lack of monitoring and oversight may conceal many detrimental impacts.

Some people on community service have reported that it comes at significant personal cost, impacts childcare responsibilities, and causes (further) financial hardship.

Rigid community sanctions have been found to impact people's abilities to find employment and housing in addition to disruption

to private and family life and to the right to freedom of association. In Kenya, women serving community service orders reported that the length and scheduling of community service work required them to give up critical casual jobs that brought income.³⁶ A report on community supervision in France found that the hours during which people were allowed to leave their home were too limited to socialise and that prohibition from frequenting certain areas limited employment opportunities.³⁷

There have also been criticisms that people ordered to perform community service could be subject to mistreatment and exploitation. One report from the US found that community service sentences often exacerbate the financial hardship of people already struggling to provide for themselves and their families, and that the work amounted to coerced, unpaid labour, with workers unprotected against job site dangers, harassment or discrimination.³⁸

In some contexts, people serving community sentences regularly report high levels of stigmatisation, although this can be avoided where community service work is not necessarily recognised as such.³⁹ Stigma has also been associated with electronic monitoring as it is a visible condition of their sentence.⁴⁰

Electronic monitoring

Many countries around the world already use electronic tags, or bracelets, on those accused or convicted, and such devices are becoming more widespread. Where Electronic Monitoring (EM) is used, the number of people subjected to it tend to rise year-on-year.⁴¹

Some authorities alongside private companies supplying the devices hail EM as an effective means to reduce prison populations, both at pre-trial and post-conviction stages. However, studies show that there is a need for risk assessments and systematic data collection as to the use and impact—particularly where private companies are involved. One recent report noted a lack of evidence from the perspective of people subject to EM, particularly from rural and minority populations, women, and people who did not comply with the conditions.⁴² Other research suggests that less extensive use of EM is associated with long-term reductions in prison populations.⁴³ Payment for the equipment by the person subjected to it is sometimes required, like in the vast majority of states in the US. Those who cannot afford it may be forced to choose between going into debt or going to prison.⁴⁴

Women

Given the harmful impact of imprisonment on women and their children and women's unique pathways into criminal justice systems, the UN Bangkok Rules seek to avoid their imprisonment wherever possible. However, the Rules are largely yet to be implemented, with female prison populations growing in many areas of the world. (See Women, Global Prison Trends 2020).

Many countries fail to take account of gender-specific issues in their laws, with the exception of limits on the detention of women who are pregnant or with young children. Provisions to this effect are found in the laws of Georgia, Germany, Poland or Colombia, among others. However, even where existing, they are not always utilised by the courts, as seen in Brazil and Cambodia where recent reforms have not yielded significant results to date.⁴⁵

Overall, there has been little effort dedicated to mainstreaming gender aspects in judicial decision-making or in the implementation of non-custodial measures. Courts tend to overlook the typical characteristics and backgrounds of women and their roles in the relevant crimes, demonstrated by the high rates of women in prison for minor offences committed in a context of poverty and vulnerability.⁴⁶ Gender bias has been particularly noted with regard to cases involving women in drug-related crimes.⁴⁷

It is widely understood that non-custodial measures enable women to better meet their caretaking obligations and address the root causes of their offending. However, many alternatives to imprisonment available are not suitable for women. For instance, many women cannot pay fines due to poverty and marginalisation. There have also been some common barriers identified for women in their ability to successfully fulfil alternatives with challenges in meeting such conditions and fulfil their role as sole or primary caregiver, including their ability to work.⁴⁸

Positive moves to adapt or establish specific programmes and support for women serving non-custodial sanctions have been documented in a number of countries, although they remain limited and are often under

pressure with budget cuts. One such example can be found in England where justice and health authorities work with civil society and social enterprises to divert women from prison towards a community-based sentence, which includes mental health treatment at a 'Women's Centre'.⁴⁹

Children

The UN Global Study on Children Deprived of Liberty published in 2019 estimated that approximately 410,000 children are held in detention facilities, with a further estimated 1 million children in police custody. (See Children, Global Prison Trends 2020). The Global Study also found that in the vast majority of these cases, non-custodial solutions would have been available. It concluded that children in many countries, and especially boys, have inadequate access to non-custodial alternatives.

This data shows that in many countries, detention is the first—not the last—resort for children. Where non-custodial measures do exist, in many countries their application often relies on civil society to build the infrastructure and the institutional capacity required.⁵⁰

Diversion schemes to prevent children from entering the formal system in the first instance—including restorative justice processes such as in Jordan—are becoming more common. Diversion schemes can be found in most of Europe, the Americas and 23 countries of the Asia-Pacific region.⁵¹ However, there is little information available concerning the frequency with which these alternatives are in fact used in the individual states.⁵²

Where non-custodial sentences are available for children, their implementation has not been without criticism. In many cases, they are not available for children in rural areas, and funding for programmes is inadequate. The Inter-American Commission on Human Rights has raised concern at programmes that risk children being put into vulnerable positions. This includes alternatives to imprisonment that require their participation in a programme that affects their schooling, health and well-being, or involving fines that may force children into work that could expose them to violence and exploitation.⁵³

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GLOBAL PRISON TRENDS

Special Focus 2020

Pull-out section

Alternatives to imprisonment

Penal Reform International
www.penalreform.org
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Thailand Institute of Justice
www.tijthailand.org
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In Canada, where Indigenous people make up less than five per cent of the adult population but account for about 30 per cent of those in prison, a new Indigenous court has been established focusing on a restorative justice approach to crime through peace-making and connecting people to their cultures and communities.¹⁵⁵

The numbers of foreign nationals in prison is on the rise in some countries. Germany reported a record high number of foreign-born prisoners in 2019 with foreign nationals composing more than 50 per cent of the prison populations in the cities of Hamburg and Berlin.¹⁵⁶ There have also been reports of increasing numbers

of foreign nationals entering the criminal justice system in Japan. This has caused particular challenges in the court system, where the increase in foreign national defendants has coincided with a decrease in available interpreters.¹⁵⁷

People in prison without proof of legal identity

There are more than 1.1 billion people worldwide who are unable to prove their identity, the majority living in Africa and Asia, and more than a third are children who are unregistered.¹⁵⁸ The number of people in prison without formal identification (ID) is likely to be high, although there is no global estimate available.

Lacking proof of ID is a problem faced by many people in prison, including people without proof of identity, stateless persons and ethnic minority groups, especially those which lack formal recognition in the country. People who have fled their homes due to conflict, natural disaster or persecution and who are subsequently arrested may also lack proper documentation.

There are a range of factors which prevent people from securing identity papers or cause them to lose their papers, including bureaucratic requirements. A recent survey of prisoners in Mashonaland West province of Zimbabwe found that many did not have documentation because they had been raised by a single parent and the requirements of the Registrar General's office had prevented them from getting registered as children. In one prison, 55 per cent of prisoners had neither a birth certificate nor an identity card.¹⁵⁹ The impact of lacking formal ID included disqualification from presidential pardons and exclusion from educational or professional examinations.

Poverty, homelessness, family breakdown and mental ill-health (sometimes as a result of being unable to access vital services), as well as chaotic lifestyles, may all be contributors to people without ID ending up in prison. People living on the streets often have no proof of identity and are at high risk of arrest. In Hungary, for example, specific legislation makes homelessness a crime punishable by imprisonment.¹⁶⁰ Children and young adults who are living on the streets are particularly vulnerable to drug traffickers, prostitution and related forms of victimisation. Status offences such as vagrancy, loitering and begging also disproportionately criminalise street children.¹⁶¹

In Nigeria, the UN Special Rapporteur on adequate housing has found that poor people walking in the streets can be arrested and ordered to pay a fine. Those who can show a company ID, have some money at hand, or are dressed in more expensive clothes, may be released while others can face imprisonment.¹⁶²

A lack of formal ID can also lead to criminal behaviour. Those without the necessary paperwork may be excluded from formal education as children and may later struggle to find employment, housing and social support. In Queensland, Australia, the Ombudsperson found that 15-18 per cent of Indigenous births were not registered. According to the NGO Sisters Inside, some Aboriginal and Torres Strait Islander people

have been given prison sentences as a direct result of being unable to obtain a driver's license as adults and then being arrested for driving-related offences.

There are many circumstances in which people come to prison without the necessary forms of ID, even if they have obtained the documentation. These include not having identity papers in their possession at arrest or facing difficulties in accessing these documents if they are arrested far from home.

The problems facing people in prison without identity papers vary from country to country. In some places the lack of identification may prevent them from participating in education and training programmes; in others it can lead to problems with family visits if authorities require proof of family connection. Access to free legal assistance and eligibility for early release, pardons and parole can also depend on the availability of identity papers.

The lack of valid ID papers such as a passport or driving license has also been identified as a critical barrier to resettlement and moving away from crime among people leaving prison. Analysis in the UK found that without valid ID, people leaving prison can face difficulties getting a job, receiving benefit payments, or securing a safe place to stay to avoid homelessness.¹⁶³

In Brazil, lack of an ID card required for accessing the health system and other essential services affects an estimated 80 per cent of prisoners, which totals approximately 800,000 people. The National Council of Justice is currently conducting a state-wide campaign on the penitentiary system that includes gathering biometric data to deliver official documents to people in prison that do not have any.¹⁶⁴ Lack of formal ID has impacted foreign nationals in Brazilian prison who were given the right to parole in 2014 providing they remain in Brazil for the duration of their sentences. The migration law of 2017 regranted these people the right to a residency permit valid for as long as their sentences last. However, when they leave prison,

people affected rarely have their passport or other documents with them, jeopardising and delaying access to a residency permit. As a result, they are often unable to access housing, employment or any form of support, and many end up in very vulnerable situations.¹⁶⁵ These types of common problems for imprisoned foreign nationals and stateless persons from a lack of formal paperwork can lead to significant delays in their release and/or deportation or affect parole. For children, a lack of ID can lead to uncertainty over their age and legal status, sometimes resulting in them being tried as adults, sent to prison even though they are below the age of criminal responsibility and imprisoned with the adult prison population.

There are also specific cases of children of children without birth certificates remaining in detention under anti-terrorism legislation. (See Violent extremism and prevention of radicalisation) In Niger, despite an agreement with the UN to ensure systematic release of children detained on the grounds they were involved with Boko Haram and other terrorist groups, in 2019 the UN Committee against Torture raised concerns that many of these children—especially those without birth certificates—remained in detention.

Part four

PRISON MANAGEMENT

Health in prison

The global coronavirus disease pandemic brings major challenges to prison health services (See Coronavirus pandemic and prisons), in a context where there is inadequate healthcare provision in prisons in many countries around the globe, typically due to under resourcing and a lack of healthcare staff. In Bangladesh there are a mere ten doctors for a total of 68 prisons across the country;¹⁶⁶ and worse still in Ghana, there are reported to be just two doctors providing medical services to over 15,000 people in 46 prisons.¹⁶⁷

In Europe there are shortages, too, impacting the human rights of people in prison. Ukraine reported that they had difficulties in recruiting and retaining prison healthcare staff because of low salaries.¹⁶⁸ In Latvia, unwillingness of practitioners to provide services to people in prison was the reason given for a lack of dentists in the country's detention facilities.¹⁶⁹ In Portugal, a shortage of healthcare personnel and mental healthcare services across all prison facilities was recently criticised by the UN Committee against Torture.

In an effort to address this issue the government is allowing and encouraging civil servants to work in various prisons to meet the shortfall.¹⁷⁰

Where there is a lack of healthcare staff, sometimes non-medical staff, or even people detained, undertake medical duties. At the Ibb prison in Yemen, for instance, an assessment in 2018 found that a prisoner who is a trained doctor was running the medical clinic in the absence of any healthcare staff.

Coronavirus pandemic and prisons

As the COVID-19 pandemic affects more people in an ever-increasing list of countries, there are legitimate concerns about outbreaks to places of detention, with hundreds of cases reported in prisons in China and Iran, and other countries reporting cases and deaths from Kenya, India to Belgium and Spain. The World Health Organization has warned that 'the global effort to tackle the spread of disease may fail without proper attention to infection control measures within prisons'.¹⁷¹

The difficulties in containing a large outbreak in detention facilities are clear. People in prison and the personnel who work with them are in close proximity and in many cases in overcrowded, cramped conditions with little fresh air.

People in detention also have common demographic characteristics with generally poorer health than the rest of the population, often with underlying health conditions. Hygiene standards and infrastructure are often below that found in the community, impeding the ability to follow recommended sanitary measures.

The most common measures taken by authorities to prevent cases of the disease in detention facilities relate to limiting contact with the outside world through stricter visiting rules or outright bans. Such measures have in some cases been accompanied by increased opportunities for phone calls and other means of contact like in France and several US States.

Authorities have quarantined wings or whole facilities and placed individuals into isolation. In China, where 500 reported cases of the virus affected people in prison, facilities were placed on 'lock-down' and prison leaders were dismissed where outbreaks had occurred.

There has also been a wave of urgent steps taken to reduce prison populations. In France, courts were asked to delay short-term prison sentences. Other states, such as Iran and Kenya, opted for the emergency release of people in prison.

There have been concerns that that access to justice will be limited by some measures. Quarantine can in effect prevent people from attending their court hearings, meeting with parole boards or their legal counsel. International bodies have called for monitoring bodies to have access to detention facilities, even where regular visits are prohibited, as is the case in Kazakhstan.

On 16 March 2020, PRI published a briefing, *Coronavirus: Healthcare and human rights of people in prison*, summarising the responses that criminal justice systems, including prisons and courts, have taken in response to COVID-19—and the impact of these in light of the UN Nelson Mandela Rules and other key standards.

Healthcare services in prisons are 'often taken by penal-oriented administrators instead of independent public-health actors' also impeding access, as noted the UN.¹⁷² There have been cases of people in prison being denied healthcare or access to medicines as punishment, including in Uzbekistan.¹⁷³

Generally, there is a lack of data on health provision and health outcomes for people in prison, bearing witness to the low priority it is afforded. A World Health Organization review found that only 2 per cent of 39 countries in the European region have data on overweight or obesity levels among people in prison. Moreover, only one-fifth or less of the 39 countries have data on hepatitis B/C or HIV rates.¹⁷⁴

Reports on serious health issues arising from overcrowded, poor and inhumane detention conditions continue. In October 2019, 45 deaths caused by malnutrition and lack of medical care were reported in the Bukavu central prison in the Democratic Republic of the Congo. The healthcare staff further reported that almost one-fifth of the people in prison suffered from acute malnutrition in a prison that exceeds its capacity by 528 per cent.¹⁷⁵ In Iran, a consistent pattern of denying appropriate healthcare to people in detention, alongside contaminated food and water, as well as rodent and insect infestation, brought calls for immediate action by the UN in 2019.¹⁷⁶ (See Coronavirus pandemic and prisons)

Infectious diseases including TB, HIV and hepatitis C remain a major challenge in many prisons, exacerbated by the fact that detention centres are largely neglected in the provision of treatment or harm reduction measures. The UN has expressed concern at such limited access to these critical harm reduction measures in prisons in their *World Drug Report 2019* given the impact

this can have on health of people in prison and the community.¹⁷⁷ (See Drugs in prison)

Globally, an estimated 2.8 per cent of prisoners are living with active tuberculosis (TB), a rate much higher than that among the general population, which is estimated at less than 0.2 per cent.¹⁷⁸ More specific research shows high prevalence in specific countries, like in Canada where recent data has found that TB is five times more common in prisons than in the general population and that the mortality rate of people in prison with TB is four times higher than among those with TB in the community.¹⁷⁹

While there have been some efforts to better meet mental healthcare needs for people in prison, statistics reveal that in many systems this is a critical challenge yet to be addressed. A 2018 study in Taiwanese prisons found that more than one in ten imprisoned individuals suffered from mental disorders.¹⁸⁰ In New Zealand, incidents of suicide and self-harm have increased in recent years, with people in prison being three times more likely than the general population to have been diagnosed with a mental health disorder. Two-thirds of female prisoners had suffered family violence, rape and/or sexual assault, more than a half had post-traumatic stress disorder and three-quarters had diagnosed mental health problems.¹⁸¹

There have been a few initiatives to mobilise and train both prison staff and prisoners to better protect and address mental health needs, many in a context where there are few professionals available. A mental wellness initiative in one prison in Delhi, India, involves a team of dedicated counsellors and a programme of staff training. The initiative is reported to have significantly reduced the number of prisoner suicides in the facility.¹⁸² In Ireland, the Community Based First Aid and Health Program, which trains prisoners to be peer health educators, has been credited with

Drugs in prison

As detailed in the *World Drug Report 2019*, the UN estimates that about one in three people in prison are estimated to have used drugs at least once while in prison, and 19 per cent in the last month. Cannabis is the most common drug used, followed by heroin. The regions with the highest prevalence of injecting drug use in prisons are Asia, the Pacific, Eastern Europe and Central Asia, where approximately one in five people have injected drugs at least once while in prison.

Despite the prevalence of drug use, the statistics on services and support for people in prison who are using drugs are bleak. There are only 56 countries implementing opioid-substitution therapy (OST), a mere 11 countries with needle-syringe programmes (NSP) in at least one prison and only 10 countries where both interventions are in place. The failure to provide access to such measures, treatment for infectious diseases, coupled with gaps in testing, contribute to disproportionate rates of hepatitis C and HIV among people in prison.¹⁸⁵

Human rights bodies have stated that inadequate prevention or treatment of HIV, hepatitis C, TB or drug dependence can constitute ill-treatment.¹⁸⁶

The *World Drug Report 2019* noted people in prison are among the population groups most affected by what is termed as the 'world drug problem'. Implementation of the 2030 Agenda on Sustainable Development, specifically the pledge to 'leave no one behind', was cited in the UN's call for action to address the shortfall in prevention and treatment of people in prison who use drugs.

a reduction in violence and improved health.¹⁸³ A recent publication by PRI and Prison Reform Trust provides practical guidance and information for staff to be able to recognise the signs of poor mental health and how best to respond among women in prison.¹⁸⁴

Army officers distribute protective face masks and gel to prisoners in Honduras.

There are widespread concerns about COVID-19 outbreaks in prisons, particularly where there is overcrowding and underfunded prison healthcare systems.



Security and violence

Recent reports suggest that the number of violent incidents is increasing in many countries across the globe. The systemic use of torture and ill-treatment remains a serious concern in police custody, pre-trial detention facilities and prisons. In Argentina, for instance, the National Penitentiary Office reported 558 alleged cases of torture or ill-treatment in federal prisons in 2018 and 232 cases from January through June 2019.¹⁸⁷ In Uzbekistan, widespread condemnation of systemic torture and ill-treatment in Jaslyk prison led to its closure in 2019, although the UN Committee against Torture had reports that the facility may be used for pre-trial detention by regional authorities.¹⁸⁸

Efforts to prevent torture and ill-treatment through preventive detention monitoring saw the establishment of a National Preventive Mechanism (NPM) in Iceland, bringing the number of countries with NPMs to 71. South Africa became the 90th country to have ratified the Optional Protocol to the Convention Against Torture (OPCAT), but it has not yet designated its NPM, as is the case in Mongolia, which ratified the OPCAT in 2015. In Uzbekistan, a law adopted in Parliament in November 2019 paves the way to establish an NPM under the authority of the Ombudsman, although the country has not yet ratified the OPCAT.

The UN reported in 2019 that violent, excessive and illegal use of force by officials is one of the main causes of serious injury and death in situations of deprivation of liberty.¹⁸⁹ Fatal clashes between prison or police officials and persons detained occurred in a range of countries and contexts in 2019, from Cameroon, where four people in prison were fatally shot by supervising soldiers in July, to

Afghanistan where a police search operation for drugs ended in deaths. (See Equipment in prisons)

It is well documented that excessive numbers of people in prison and overcrowding contribute to increasing levels of violence in prisons. Tolerant attitudes of staff towards inter-prisoner violence, alongside other institutional problems such as the failure to separate likely conflicting categories of people in prison, encourage violence. Such violence is frequently a consequence of organised crime groups, commonly seen across Latin America. (See Self-government)

In several countries, including Colombia, Brazil and Lebanon, measures brought in to fight COVID-19 outbreaks in prisons have led to unrest. In Italy, riots in March 2020 led to several casualties.¹⁹⁰ (See Coronavirus pandemic and prisons)

The excessive use of solitary confinement on the grounds of maintaining security is on the increase, with disregard to the extensive body of research showing the serious mental and physical damage the practice has on people. The most recent effort to regulate and limit the practice was seen with the World Medical Association's revision of their Statement on Solitary Confinement, bringing it into line with the UN Nelson Mandela Rules.¹⁹¹

In Argentina, 'disobedient' detainees are reported to be put in isolation cells without following correct procedures.¹⁹² In the United Arab Emirates prolonged solitary confinement is regularly used against people who have been arrested in relation to state security.¹⁹³ Debates continue in the US about the high rates of people in prison held in solitary confinement,

both by virtue of their sentence and under disciplinary regimes. A recent study showed that, in 2018, there were 40,000 solitary confinement sanctions in New York State prisons, sometimes for more than a year. Another study found that women were more likely than men to be subject to harsher disciplinary sanctions, including solitary confinement, for minor infractions; especially among black and LGBTQ groups.¹⁹⁴ In 2019, several States passed laws to limit the length of solitary confinement or its application to vulnerable groups such as young, pregnant or people with mental illness.¹⁹⁵

Italy was criticised by the European Committee on Prevention of Torture (CPT) for the policy of court-imposed placement of people sentenced to life imprisonment in solitary confinement as part of their sentence, numbering 272 people in March 2019.¹⁹⁶

There are continuing reports of serious cases of sexual and gender-based violence against women in detention. In Haiti, human rights groups reported that 10 female detainees, including a 15 year old girl and a 62 year old woman, had been gang raped during a riot in Gonaives Civil Prison in November.¹⁹⁷ The UN Global Study on Children Deprived of Liberty confirmed that girls are particularly vulnerable to violence, including sexual violence, noting higher risks in police custody and pre-trial detention where they are frequently not separated from adult women, and sometimes from men.¹⁹⁸ In 2019, the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) published new guidance to prevent and address sexual violence in detention after finding that it is a 'persistent problem' in many countries of its region.¹⁹⁹

Accountability for violence in detention facilities remains low, or non-existent, in a large number of countries. Where prisons remain closed to outside scrutiny, it can be difficult to ascertain causes of deaths or injuries of both people

detained or staff. (See Deaths in custody) For example, in a spate of fatalities from violence across prisons in Latin America in the middle of 2019, Venezuela saw one incident lead to the death of 29 people in prison. While officials

reported that police forces had faced gunfire and grenades from prisoners, human rights groups maintained that clashes had broken out when authorities entered the block to carry out searches and remove female visitors.²⁰⁰

Deaths in custody

There is an increasing number of people in police and prison custody dying around the world, with mortality rates as much as 50 per cent higher for people in prison than for people in the wider community.²⁰¹ The causes and fallout of serious injury and death in prisons were examined by the Office of the UN High Commissioner for Human Rights (OHCHR) 2019 report which detailed recommendations for states to prevent and address the growing number of deaths in custody.²⁰²

Suicide is often the single most common cause of death in custody, especially in Europe and Oceania.²⁰³ Across 42 European countries, there was an average of 10.8 deaths by suicide per 10,000 people in prison in 2017, constituting a median of 22.7 per cent of deaths in custody.²⁰⁴ This compares to an average of just over 1 suicide per 10,000 inhabitants in the community recorded in 2015 across EU member states.²⁰⁵ For children, the data is even more alarming; the recent UN Global Study found that children who are or have been in detention die by suicide at a rate more than four times greater than the general adolescent population.²⁰⁶

A University of Oxford study compared suicide rates in prison across 24 high-income countries, finding that the risk of suicide increased at least three-fold for men in prison compared to the general male population, and this risk increased for women who were at least nine times more likely to commit suicide, compared to the

general female population.²⁰⁷ The same study found that the reasons for rising rates of suicides in prison cannot be directly linked to any single factor such as overcrowding, because suicide involves a more complex combination of risk factors.

Data also suggests that the admission and initial period in custody is a time of greater vulnerability for self-harm or suicide. For instance, in the US state of Utah where at least 71 people died in jails over the past five years, half of the deaths were a result of suicide and most occurred within a week of the individual entering jail.²⁰⁸

The issue of assisted suicide for people in prison is an issue currently under discussion in Switzerland. It was triggered by the request of a man serving a life sentence with multiple illnesses. While assisted suicide is legal in the country, neither the Criminal Code nor the Code of Medical Ethics address access to this practice in prison. A report in October 2019 by the Swiss Center for Competence in Enforcement of Criminal Sanctions (CSCSP) concluded that it should be a possibility for people in prison based on the right to self-determination. The issue will be voted on in a national referendum in the first half of 2020. There are no cases of assisted suicide or euthanasia in prison in the countries where either or both are legal, although in Belgium at least 15 people in prison have requested euthanasia.²⁰⁹

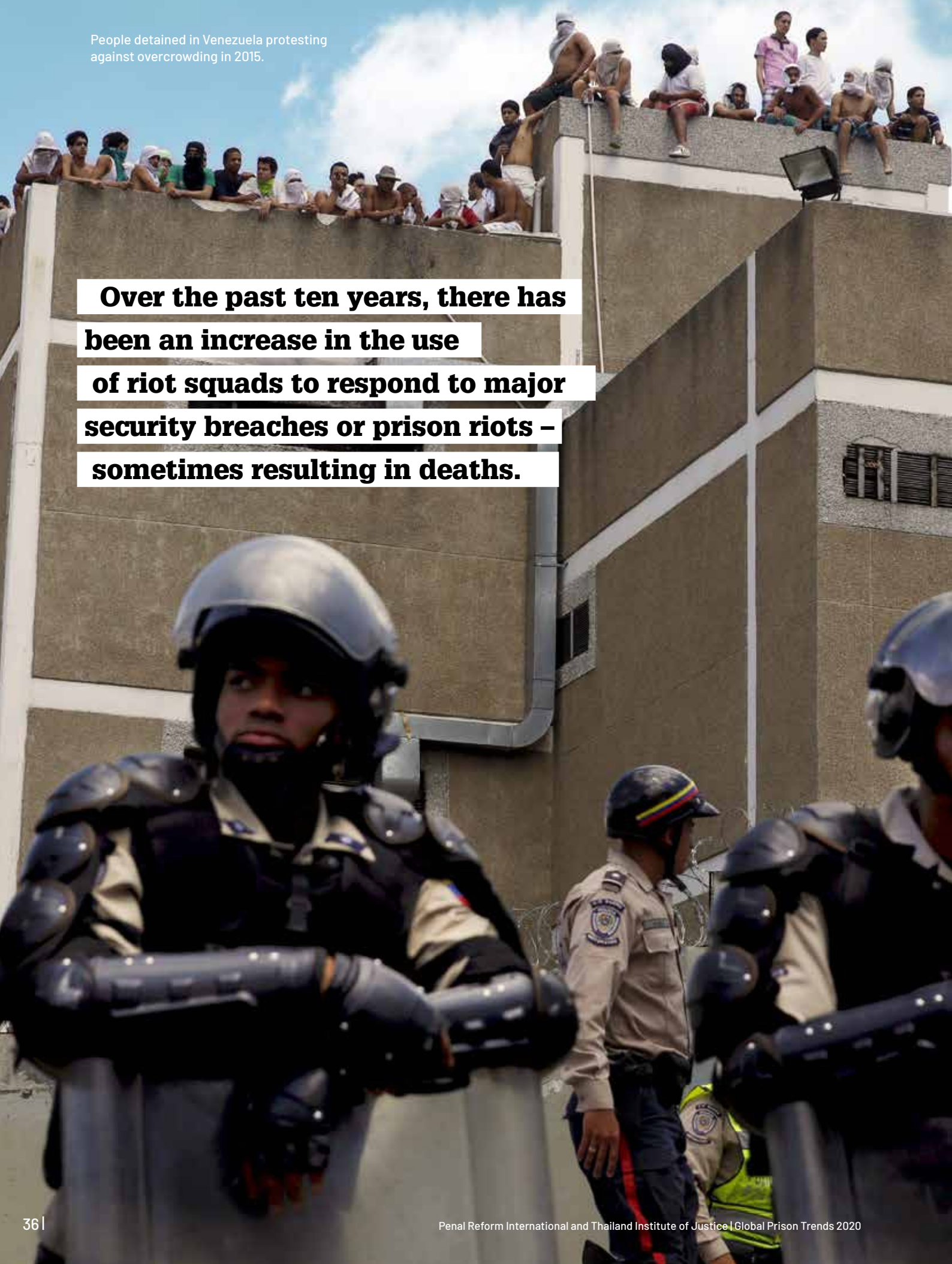
Many deaths in prison are reported as natural causes, normally referring to ill-health. These may be linked to the fact that prison is associated with an accelerated ageing process. Healthcare needs may go unaddressed, and, given the high level of pre-existing or exacerbated health conditions among people in prison and the poor conditions of detention, it is common for people's lives to be at risk, either immediately or on a long-term basis from detention.

Rates of infectious or communicable diseases are significantly high in places of detention and can be fatal, with reports of deaths particularly in Africa and Asia. In Niger, for example, the UN Committee against Torture cited recent reports that in Niamey remand prison the death rate due to malaria and other diseases is around 1 per cent, noting there is a lack of adequate medical care and treatment as prisons are equipped only with infirmaries. In the Philippines, a hospital chief claimed that the majority of the approximately 5,000 annual deaths of people in prison in Bilibid prison (comprising of 20 per cent of the population) were caused by TB or other infectious diseases.²¹⁰

Deaths in prison are also caused by acts of violence and the use of force by authorities or by violence among people in prison. Such violence constitutes an important cause of death and serious injury of persons deprived of their liberty, representing in some contexts over 17 per cent of deaths in custody.²¹¹

People detained in Venezuela protesting against overcrowding in 2015.

Over the past ten years, there has been an increase in the use of riot squads to respond to major security breaches or prison riots – sometimes resulting in deaths.



In Chile in 2016, 9 per cent of homicides reported nationally had occurred in prisons.²¹² Similarly, in Botswana, Argentina, Montenegro and Moldova, the homicide rate in prison was several times higher than the national homicide rate.²¹³ (See Security and violence)

Certain categories of detainees are more vulnerable to fatal violence or unexplained deaths in custody. Front Line Defenders documented 299 human rights defenders (HRDs) that were killed or died in detention in 2016. This marked an increase in the absolute number of HRDs' deaths from 2015 and also the number of countries where they occurred.²¹⁴

Deaths of indigenous people in prison and police custody remains a central issue in Australia. An investigation by a team of journalists found that more than 400 Indigenous Australians had died in custody since the end of the Royal Commission on Aboriginal Deaths in 1991,²¹⁵ including at least 153 since 2008, that for the most part involved negligence or violence.²¹⁶ Other cases involving violent deaths of indigenous people have also been reported in other countries, such as in India, where a tribal man from Rajahstan died at a police station due to alleged torture.²¹⁷

Many serious injuries, suicides and premature deaths in prisons are preventable and, in many cases, they are compounded by the lack

of investigations and accountability. Absent or inadequate data and records on deaths in custody remain a major barrier to transparency and the ability to carry out effective investigations. In Georgia, between 2006 and 2009 the number of deaths in prisons per year were reported to be between 89 and 101. However, in 2010, the NPM found there were 142 deaths during the year, noting there was contradictory information provided by the Ministry of Corrections compared with that of prison authorities. Furthermore, the country's Public Defender reported at the time that of the 140 people who died in Georgian prisons in 2011, traces of violence were detected in 40 cases.

Methods for recording the number and causes of deaths in custody differ across countries, making it difficult to draw general conclusions and comparisons. They may also be impacted by the authority collecting information on deaths in custody. In Kazakhstan, while records show an overall decrease in the number of deaths in prisons in recent years, the differences may be explained by the fact that the penitentiary system was transferred from the Ministry of Justice to the Ministry of Interior.

Human rights bodies continue to highlight failures to investigate instances of torture or ill-treatment that have led to deaths by police or prison authorities. In a large number of states, killings by police

or other law enforcement agencies are not even recorded in the official crime statistics unless charges are brought.²¹⁸ In some cases, political commitments were made but many led to inaction or slow, non-transparent investigations. For example, at least 11 people died in custody in Viet Nam during 2019, but Amnesty International reported that authorities prevented independent investigations into the deaths, bringing into question the official accounts of the causes.²¹⁹

Similar barriers to adequate investigation and accountability can be seen in cases where there is fatal violence among people in prison. The UN has noted that homicide cases involving victims from marginalised populations are more likely to remain unsolved.²²⁰ In prison, homicides rarely receive the adequate attention needed to solve or clear the case.

The high percentage of people who die after being released from prison is also a serious concern. One recent study found that solitary confinement may significantly increase the risk of death after release and that this could be linked to the psychological consequences of isolation. Analysis in Denmark found that people who had been held in solitary confinement, even for just a few days, had a higher risk of dying within five years of release from prison, mainly due to accidents, suicides and violence.²²¹

Equipment in prisons and use of force

The type of equipment used by law enforcement officials and those working in places of detention varies greatly from country to country. While it is common for police forces to carry firearms (with a few exceptions in Iceland, Ireland and New Zealand), prison staff do not tend to. The UN Nelson Mandela Rules stipulate that staff in direct

contact with people in prison should not be armed, except in special circumstances.

Over the past few years, however, lethal force has been used against prisoners mainly during major security breaches or prison riots, resulting in 'the killing of several dozen detainees' according to the

UN.²²² In a most recent example from May 2019, four people were fatally shot in a Myanmar prison riot.

Over the past ten years, there has been an increase in the use of 'special intervention forces'—riot squads or 'emergency response teams'—to respond to such major incidents. These forces are usually equipped with a wide range of

weapons. In Guatemala in June 2019, an alleged escalating altercation between prisoners led to the intervention of the heavily armed anti-riot police force—resulting in at least seven casualties among the detainees.²²³

Less lethal weapons such as chemical irritants (tear gas or pepper spray) have also been employed to quell prison riots and on other security grounds. In the UK, prison officers now carry pepper spray as a matter of routine in men's prisons,²²⁴ and there are calls for the officers to carry projectile electric shock weapons, often known by the brand name 'Taser'.²²⁵ In Brazil, where prison riots and violent incidents break records year-on-year, a wide range of weapons including pepper spray and electric shock weapons are routinely used by prison officers, and there

have been cases of less lethal weapons being used to carry out torture and other ill-treatment.²²⁶

The role of the private sector in equipping authorities with weapons for controlling prisons is expanding. Omega Research Foundation reports that there is a growing number of manufactures promoting a wide range of products directly to prison authorities. Specialist trade events sponsored by manufacturers exist; for instance, a 'Mock Prison Riot' tradeshow in the US is held in a decommissioned prison.²²⁷ The private sector has also been involved in some training for prison staff on restraint techniques, which in some cases has been condemned by the European Committee for Prevention of Torture.²²⁸

The use of equipment that is inherently abusive, such as weighted leg cuffs and electric

shock belts, is prohibited by the UN Nelson Mandela Rules. Advocacy efforts to regulate the trade in law enforcement equipment are making progress, with the EU 'Anti Torture Regulation', updated in 2019, forbidding EU companies from trading in 'prohibited goods' and regulating the trade in other law enforcement equipment.²²⁹ The international human rights community has praised the Regulation, and the Council of Europe is considering a similar approach.²³⁰ Following the launch of the global Alliance for Torture Free Trade in 2017, there has been further progress towards the development of common international standards on the trade of goods used for torture or ill-treatment with a resolution at the UN calling for such controls in 2019 being supported by over 50 states.²³¹

Self-government

People in prison continue to exercise a considerable amount of control over daily operations in many facilities around the world. In some countries, cell leaders have designated roles assigned to them by prison staff in return for receiving special privileges. In others, informal hierarchies of prisoners, otherwise known as criminal subcultures, exist throughout the prison system and exert different levels of authority.

At the most extreme end of the spectrum, leaders of organised crime groups or 'gangs' control entire facilities and act as *de facto* prison authorities, most notably in Latin America. A 2019 report by the National Human Rights Commission of Mexico (CNDH) found that a third of all facilities were operating under self-government or collaborative government with prison authorities.²³²

Self-government by prisoners is often the result of structural and systemic managerial failures. Gang-rule can be linked to the

growth in the size of prisons and prison populations; gangs are more able to exercise control in large, overcrowded and under-resourced prisons, particularly when prisoner to staff ratios are high, staff pay is low and staff turnover high.²³³ In Georgia, for instance, the criminal subculture is more prevalent in large facilities where there is high concentration of prisoners and at the same time a shortage of staff and lack of services.²³⁴ There are also reports elsewhere that self-government may be more widespread in facilities run by private companies.²³⁵

Corruption often appears in the same contexts as self-government in prisons,²³⁶ in parallel of, or as a consequence of it. Where there are high levels of corruption, it is also more likely that a group or groups of prisoners will be able to exert power over their peers or prison authorities. The Inter-American Commission on Human Rights noted that 'systems of "self-government"

or of "shared governance", in which some groups of prisoners and prison authorities share the power and profits were linked to 'dangerous circles of corruption'.²³⁷

Where criminal subcultures exist, people belonging to certain groups are more vulnerable to abuse. In Moldova, it has been noted that 'prisoner codes' (unwritten, informal rules and values developed among prisoners) enable domination and abuse of people referred to as the 'untouchables', such as LGBTQ individuals, those who have been sexually abused or those who have been accused or convicted of sex offences. In such cases, it is reported that an informal code of conduct requires them to avoid contact with others and to take their meals only at designated tables in the canteen.²³⁸ In Poland, authorities identified 43 examples of 'drastic manifestations of prison subculture' in 2017, including two rapes, 41 cases of bullying and over a thousand fights.²³⁹

In prisons which are largely controlled by gangs, there is little or no accountability, and it can be difficult to effectively monitor what is happening inside the facility. In November 2019, the UN Committee against Torture raised concerns about the hierarchy among people in prison and related inter-prisoner violence in Latvia, which has reportedly increased due to the lack of sufficiently effective investigations.²⁴⁰ In Georgia, the European Committee on Prevention of Torture has expressed concern about the pernicious influence of informal prison hierarchies and has noted that some people in prison were reluctant or afraid to speak to the delegation due to 'watchers' among the prison hierarchy.²⁴¹

When prison authorities are unable to exercise control, violence is rife. In gang-controlled facilities, there is large scale proliferation of drugs, weapons and other contraband, and gang-related riots and murders are common. As described in a report by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions which covered the issue of 'Prisoners running prisons': 'The

violent death of some inmates is an almost invariable consequence of the abdication of authority to prisoners'.²⁴²

In December 2019 alone, the press reported that at least 34 men in prison were killed in gang-related violence in two prisons in Honduras, 16 were reported killed in a Mexican prison riot, 12 were killed in a prison in Panama and 10 were killed in a Venezuelan prison. In Brazil, violence among people in prison resulted in 117 deaths across five prisons in Amazonas and Pará in less than three months in 2019. Brazilian media has reported that nobody has been tried for the killings of almost 300 people in prison in the past three years.²⁴³

Self-government of prisons impacts the daily life of staff and people's human rights and access to basic services. It also hampers rehabilitation and reintegration efforts. In Cambodia, the right to confidential and equal access to medical treatment can be compromised when requests for access to medical care have to be referred through cell leaders.²⁴⁴ Additionally, cell leaders and others

in the top hierarchies typically have more 'privileges' inside prisons, such as access to TV, family visits, out-of-cell time, education and training opportunities. In some countries cell leaders report to the authorities on the behaviour of other people in prison and make recommendations on how they should be treated.²⁴⁵

An alternative, more successful approach to self-governing prisons is facilities which are purposefully self-governing and run alongside the mainstream prison system. In Brazil, the NGO Brazilian Fraternity of Assistance to the Convicted (FBAC) runs APAC²⁴⁶ prisons, which are mainly administered and run by prisoners and volunteers. These non-traditional prisons hold people who have served part of their sentence in mainstream prisons, have a focus on rehabilitation and restorative justice and are characterised by the absence of prison guards and weapons. There are currently around 50 such prisons in Brazil, and similar methods are used in some prison wings in other countries, including Germany, Hungary and Costa Rica.²⁴⁷

Prison staff

The Council of Europe's newly adopted *Guidelines regarding recruitment, selection, education, training and professional development of prison and probation staff* reiterate that a prison service's 'tasks include ensuring safety and security and organising everyday life in prison, ensuring treatment, which does not infringe the human dignity of prisoners, offering meaningful occupational activities, interventions, thus preparing them for release and reintegration into society'.²⁴⁸ Nevertheless, in many parts of the world, prison and probation staff remain in positions which are underpaid and overburdened, with very few means to achieve that goal.

In many countries the deteriorating living conditions of people in prison correspond to the degrading working conditions of staff, often leading to rising tensions and violence within prisons. In the US state of Arizona, correctional officers are suing the state for 'security failure' after several attacks from people in prison on staff.²⁴⁹ Statistics from New Zealand show that there were 295 incidents of assaults on prison staff between January and August 2017, and in one women's prison assaults on staff rose from two in 2009 to 29 in 2018. In France, the penitentiary administration reported 8,883 physical assaults on staff in 2017.²⁵⁰

Inter-related issues including budget cuts, rising levels of prison overcrowding and staffing shortages are contributing factors to unsafe environments for prison staff, magnified by the coronavirus pandemic. For example, in 2018 authorities in India reported staff shortages of 28 per cent.²⁵¹ Staff shortages are common for a range of reasons including budgetary restraints but also the inability of prison administrations to recruit and then retain staff, not least due to low salaries. The European Committee for the Prevention of Torture (CPT) noted in its 2019 report on its visit to Georgia that 'any significant staff increase will be impossible unless staff salaries

are made more competitive with those offered in the police and the private sector'.²⁵²

Alongside low salaries, a common issue for prison administrations is securing a sufficiently educated and professional staff force, linked to job satisfaction. Part of this is the negative public perception of prison staff, fuelled by the media in many cases. Surveys have found that prison staff often feel their work is misunderstood and undervalued. In Switzerland, for example, 61 per cent of staff who participated in a study on this issue said they were not appreciated for the work they did, blaming media coverage more than the lack of political support.²⁵³

Prisoner to staff ratios can be a good indicator of the reality of prison institutional strength—or lack thereof. High ratios also inhibit dynamic security approaches. The figures vary widely from country to country.²⁵⁴ In Thailand there are 32 prisoners per staff member, with rates of 8 to 9 staff to 1 prisoner seen in Morocco, Laos, and Peru. Higher prisoner to staff ratios exist in Costa Rica where there are 4 prisoners to each staff member, and less than 1 respectively in Sweden, Denmark and Norway.²⁵⁵

It should be noted, however, that ratios reported hide discrepancies within countries and across different types of staff. For instance, while the total prisoner to staff ratio in Cameroon was about 1 to 4.5 in 2017, only 273 medical staff were available for a prison population of 30,700 people, representing a ratio of about 1 medical staff for 110 prisoners.²⁵⁶ In North Macedonia, while in 2017 the overall ratio was of about 4 prisoners per staff member, detailed figures showed that one prison officer solely dedicated to custody supervised 19 people.²⁵⁷

Some countries are taking steps to provide more comprehensive training for their prison personnel, recognising the equal benefits training has for both staff and people they supervise. In Norway and Chile, prison officers in training receive a 2-year long theoretical and practical training in everyday prison and prisoner management as well as in criminology, law, social work or rehabilitation support.²⁵⁸

Several prison administrations have also put in place programmes for specialised training, including in Morocco where prison directors have received training on suicide prevention and harm-reduction.²⁵⁹ In China, officers in some prisons

have received training in psychology and counselling so they can provide support to people in prison.²⁶⁰

There is not only a data gap on the diversity of people imprisoned but also on the staff who work in the penitentiary sector. From PRI's observations and statistics available a lack diversity among prison staff is a common issue facing many systems, deepening divides between people in prison and staff, further increasing tensions and endangering the safety of both. In terms of gender, the justice sector remains male-dominated. The proportion of male prison personnel remains very high in many countries such as Algeria (89 per cent in 2015), Kenya (82 per cent in 2017) and Burkina Faso (85 per cent in 2018).²⁶¹ In India, the proportion of male staff is 88 per cent among executive jail staff.²⁶²

There are also low numbers of minorities, indigenous peoples and members of the LGBTQ community among prison staff. In England and Wales, where black people are overrepresented among the prison population and the majority of people in prison are under the age of 40, the majority of staff are white and more than half are aged 40 or over.²⁶³

Rehabilitation of people in prison, and environmental sustainability

As a core function of prison, a broad range of rehabilitation programmes should be offered, including physical and mental healthcare, physical activities, psychosocial support, education and vocational training courses and work opportunities.

There is growing recognition that such programmes can be designed to serve wider benefits than rehabilitation, including in the area of promoting sustainable environmental change (in both the

prison and the community). An increasing number of innovative prison programmes focus on wildlife, sustainability, biodiversity and the climate, allowing people in prison to improve their own natural environment as well as the environment for the community at large.

The 'Sustainability in Prisons' project in Washington State, US, delivers a wide range of science, sustainability and environmental

education programmes in 12 state prisons.²⁶⁴ The programmes range from endangered butterfly breeding programmes and prairie conservation to promoting sustainable operations within prison facilities such as waste sorting, composting, recycling, gardening, water and energy conservation. From 2017-2018 the prisons involved diverted more than 2,787 tons (American) of waste to composting and recycling; one prison which

Gardening on the grounds of a prison in Papua New Guinea.

An increasing number of innovative prison programmes focus on wildlife, sustainability, biodiversity and the climate.



switched to energy efficient lighting expects to save more than US\$22,000 annually as a result.

Environmentally focused prison programmes are often the result of partnerships with community organisations, connecting people in prison with local initiatives and creating links for after their release from prison. Some prisons offer training courses, providing participants with skills and qualifications in increasingly sought-after conservation and other environmental roles.

Nature-based programmes also relieve the stresses of prison life and can provide therapeutic value for people in prison. Recent research in England found that horticulture programmes in prisons had a marked positive impact on mental health and wellbeing of people in prison who are participating in the programme. They also provided the opportunity to gain skills, qualifications and work experience, increasing potential for employment.²⁶⁵ Oregon State Prison in the US recently opened a new Japanese style healing garden to be used for therapeutic purposes for people in prison with Post Traumatic Stress Disorder (PTSD).²⁶⁶

While prison farms are not a new solution to providing food for people in prison, there has been some innovation in food and agricultural sustainability. In Indonesia, the IDEP Foundation partners with Bangli State Prison in Bali, teach people in prison the importance of sustainable agriculture, environmental awareness and nutrition. The organic produce grown is used for prison meals, and the prison also sells organic seeds in the local community.²⁶⁷ In Papua New Guinea, the joint National Fisheries Authority and Correctional Services 'Fish for Prisons' programme teaches men in prison the knowledge and skills to build earthen ponds and farm freshwater fish, providing additional protein to the prison diet. According to the project's funders, developing fish

Sport in prison

The impact of sport on physical and mental wellbeing, as well as on behaviour and social interactions—among others—has long been acknowledged in the community. It is also increasingly recognised as a 'useful vehicle to address a number of risk and protective factors of crime and violence' in crime prevention and prison settings.²⁷¹ The UN Nelson Mandela Rules and the UN Bangkok Rules both encourage sport and physical activity opportunities to be put in place for people in prison.

Research has evidenced its far-reaching benefits beyond health and behaviour improvements; sport has, for instance, 'the power to change perceptions, counter prejudices [and] (...) inspire people'.²⁷² Proponents also say that it may offer individuals a path towards educational and professional development.

Sport is also becoming an inherent aspect of crime prevention and rehabilitation programmes around the world. As part of the 2015 Doha Declaration-related commitments, the UN Office on Drugs and Crime (UNODC) launched an initiative in 2019 to promote the incorporation of sport into youth crime prevention and criminal justice strategies on a global scale. In this vein, the Thailand Institute of Justice integrated this issue to its campaigns

and held an expert meeting on the subject in December 2019, in order to further knowledge and understanding and to provide governments with recommendations on how to achieve that goal.

Many countries have launched initiatives to give sport a central place in rehabilitation programmes. In Kenya, the NGO Espartanos Africa partnered with the Kenyan Prison Service in an initiative to teach rugby in a maximum-security prison, along with educational and vocational support. In Hong Kong, a prison rugby project 'aims to link young offenders with vocational training, education and employment post-release'.²⁷³ In the UK, where an independent review on sport and physical activity in prisons was carried out by the Ministry of Justice in 2018, there are several programmes in place. The AIRnetwork programme offers a multi-sport approach to engage individuals in a range of personal development and psychosocial interventions.

The EU Fundamental Rights Agency found that while all EU member states provided some sort of sports facilities and opportunities for physical activities in prisons, the quality, availability and access differed widely across countries, detention regimes, and for men and women—with women having less access to sport facilities than men in some places.²⁷⁴

farming skills improves the ability of people in prison to reintegrate into their communities after release by bringing valuable skills that benefit village life, and it has led to reduced antisocial behaviour.

There have also been some efforts to build eco-friendly prisons or adapting existing prisons to make them more sustainable. A building in Sollentuna high-security prison in Sweden recently won an award for its range of eco-friendly initiatives which include a green roof made of plants and turf designed to help the local bee population thrive. In addition, all food waste from the prison kitchen is converted into biogas.²⁶⁸ In Taiwan and Bulgaria,

people in prison have been trained to produce and install solar panels and water heaters to be used inside prisons and beyond.²⁶⁹

In La Joyita prison in Panama, around 90 per cent of waste produced, including aluminium and plastic, is recycled, and food waste is turned into fertilizer for use in plant production, including fruit trees, medicinal and culinary plants and seedlings for reforestation. Native trees, which are not grown in other gardens because they are not profitable, are also nurtured in the gardens.²⁷⁰

Fragile and conflict-affected states

The number of conflicts has increased on a dramatic scale over the past decade. Since 2008, 75 countries and contexts have been considered fragile at least once²⁷⁵ and in 2016 around 1.8 billion people were living in fragile contexts.²⁷⁶ The link between fragile and conflict situations and extreme poverty is increasing. The World Bank estimates that by 2030, 85 per cent of the extreme poor—some 342 million people—will live in fragile and conflict-affected states.²⁷⁷

The various aspects of criminal justice systems in fragile and conflict-affected contexts, such as law enforcement, courts and penitentiary services, often collapse alongside other core government functions in conflict. A functioning judicial and penal system is a necessary requisite to rebuilding peace. However, not unlike in peaceful contexts, funding remains low for justice systems and even lower for their penitentiary arms in fragile and conflict contexts. Although humanitarian assistance for all fragile contexts increased in recent years,²⁷⁸ aid is concentrated in a handful of places and does not always meet the most pressing and complex needs of each context.²⁷⁹

NGOs play an important role in delivering development assistance, with 15–17 per cent of development assistance in fragile contexts being delivered by NGOs in 2016.²⁸⁰ As non-political actors, NGOs' roles can be critical in the neglected area of prisons, including in coordinating and mobilising international and national actors to secure necessary funding and political will. In Yemen, PRI has garnered international support for prison reform in aid efforts and, since the conflict broke out in 2014, has supported authorities in providing essential services in prisons.²⁸¹ In Central African Republic, PRI is establishing a civil society platform to support the implementation of the national

strategy for the demilitarisation of prison establishments through advocacy and mobilisation for commitment from all partners involved in its implementation.²⁸²

Such work to strengthen prison administrations is critical as prison reform can serve as a starting point for wider reforms in the criminal justice system and as a contributor to the respect of rule of law. Prisons play a primary role in ensuring accountability and fighting impunity for human rights violations in conflict-affected states, committed by both state and non-state actors.

Alongside independent prosecutorial and judicial functions, fair sentencing and prison conditions that meet international standards are required to fight impunity. Recently, the Prosecutor-General of the Central African Republic wrote about the successful convictions of a number of military group leaders.²⁸³ However, the prisons where the state will detain these leaders remain insecure and fall far short of minimum standards, let alone provide a conducive environment for rehabilitation, required by international standards.

The management and administration of prisons often shifts during conflicts (or post-conflict) from a civilian public body to the military. Non-state actors may also take control, such as in Yemen where prisons in the south of the country are run by non-state actors of *de facto* authorities that are not recognised by the international community as a ruling authority. In Libya, there are prisons run by various factions vying for control over territory and power.

A key priority for international actors working in post-conflict settings is to transfer the control of prisons to civilian agencies and professionalised staff, including in Central African Republic where PRI is working with the

UN Multidimensional Integrated Stabilization Mission (MINUSCA). With new recruits composing anywhere up to 90 per cent of the staff, like in the south of Yemen, continuous training, including on human rights standards for the treatment of people in prison, is desperately needed.

In many post-conflict settings, UN Peacekeeping Operations have dispatched corrections officers to professionalise and build capacity of national staff. There are approximately 300 Government Provided Personnel working across eight UN peace operations, a number that has remained relatively stable since 2017.

Poor infrastructure, a lack of security and low levels of adequately trained staff continue to be the major challenges faced by prisons in conflict and fragile contexts. Reports of prison riots and escapes remain worryingly common in many conflict settings, and the responses from authorities, equally concerning. In 2019, there were several cases of prison staff opening fire on people in prison during attempted escapes; in Chad, one prisoner was killed and five were injured; in Mozambique, three people were shot dead and seven were wounded during a riot in the country's largest prison in August. In response to protests in Haitian prisons, where overcrowding conditions are dire, some authorities placed people in cells with no toilets or showers with limited possibilities for people to be outdoors.²⁸⁴

People in prison and staff in conflict settings have also been subject to external attacks. In Yemen, airstrikes on the Al-Houdedah prison in 2019 left parts of the infrastructure destroyed. In another prison in Abean, conflict between two parties saw members of one of the groups breaking into the prison and stealing equipment that PRI had provided the prison with, such as mattresses and blankets.

Natural disasters and extreme weather

Prison authorities are faced with major challenges when natural disasters threaten the safety and security of people in prison. The decision to evacuate a prison or not must balance security concerns with public safety and the safety of people in prison and staff. Either way there can be potentially serious human rights implications.

Increasingly prison authorities around the world have been required to make decisions as to whether to evacuate facilities during major storms, earthquakes, fires, floods and other natural disasters. In September 2019, an extended monsoon season in India caused serious, fatal flooding in Uttar Pradesh and Bihar States, forcing the evacuation of around 900 people from a prison in Ballia.²⁸⁵ In the same month in the US, Florida's Department of Corrections evacuated or relocated 4,407 people in prison in September in preparation for Hurricane Dorian.²⁸⁶ During the 2018 Sulawesi earthquake in Indonesia, in the absence of natural disaster preparedness guidelines or procedures for prisons, authorities unlocked Palu prison that held 500 people.²⁸⁷

At the end of 2019, large scale evacuations of prison facilities took place in Australia in response to widespread and unprecedented bushfires. Staff and around 120

people in prison were evacuated from Oberon Correctional Centre in New South Wales after the facility was threatened by fires. The prisoners were transferred to two other correctional centres, one of which, Lithgow, was itself surrounded by fires ten days later. Lithgow was not evacuated as authorities determined it would be safer to contain people in the prison given the road closures and fire risks.

Human rights concerns are rife in any prison evacuation situation. In Florida in 2019, relatives reported not knowing whether their family members had been moved, and if so, where they had gone.²⁸⁸ The process of transporting people between prison facilities is itself a high-risk situation, especially when groups which should be separated are transported together or when there is not appropriate supervision. For example, during a prison fire evacuation in California in October 2019, a number of children were reportedly beaten by others they were transported with. It later became clear that there were no adult staff present in the vehicle to supervise the children and that low and high security people had been transported together.²⁸⁹

Australian authorities announced that people held in minimum security facilities could be trained

to fight fires and undertake clean up, maintenance and local rebuilding efforts. A similar system is in place in California in the US. In response to this initiative, PRI welcomed any rehabilitation initiative that helps people learn new skills and allows them to contribute to the local community, but cautioned that this type of emergency relief work must be entirely voluntary, sufficiently compensated and only undertaken with safety measures in place and appropriate training.²⁹⁰

Extremely hot and cold temperatures inside prisons continued to be a problem for both staff and people held in prison, with temperatures reportedly reaching 45 degrees Celsius in French prisons during 2019 heatwaves that affected at least 71,000 people.²⁹¹ In August 2018, the Texas Department of Criminal Justice reported that 19 people in prison and prison staff members had been treated for heat-related illnesses in a one-month period.²⁹² The Prison Policy Initiative in the US has found that in 2019 at least 13 states in the hottest regions of the country lack universal air conditioning in their prisons, noting that medical conditions which make people especially vulnerable to high temperatures are especially common in prisons.²⁹³

Part five

ROLE AND USE OF TECHNOLOGIES

Technological innovation provides many opportunities for improving the efficient functioning of criminal justice systems and supporting the rehabilitation of people in prison, albeit with a range of challenges. Online education, video visitation systems, electronic file management systems and remote court hearings are becoming more common in some regions' prisons, namely in Europe, North America and some parts of Asia and Oceania.

These types of technologies are not available in every region, owing to the fact that more than half the world has limited or no access to the Internet, on which many such tools rely.²⁹⁴ In prisons and the wider criminal justice system in low- and middle-income countries, where resources are often scarce and prisons are not a political priority, this digital divide is magnified. For people in conflict with the law, as well as their families and legal representatives, lack of internet can be a barrier to education, contact with the outside world, seeking redress for grievances and access to justice.

Surveillance technology is well established in a large majority of prisons globally, and it is increasing with the introduction of tools that utilise Artificial Intelligence (AI). Regarding the use of traditional surveillance technology, the permanent surveillance of a number of people in prison in Russia through closed-circuit television cameras (CCTV) was an issue brought to the European Court of Human Rights in 2019. The Court found that the right to privacy had been violated as the laws on monitoring of certain

detainees were not sufficiently clear or detailed, and therefore left the right to respect for private life inadequately protected.²⁹⁵ A similar complaint was raised by a person held in remand in the Czech Republic, where the Ombudsperson concluded that a blanket policy to use cameras in pre-trial detention centres disproportionately interferes with the right to privacy.²⁹⁶

New technologies are also increasingly used in probation and community corrections settings. This includes the expansion of electronic monitoring and other forms of remote supervision such as telephone check-ins or biometric check-in kiosks, used in several countries to automate probation reporting conditions.²⁹⁷ Most of these technologies tend to place excessive emphasis on control and security, rather than on rehabilitation, with increased and enhanced controlling of the probationer's strict compliance with conditions of a measure or sanction and less human contact and support beyond those rules.²⁹⁸ (See Special Focus : Alternatives to imprisonment)

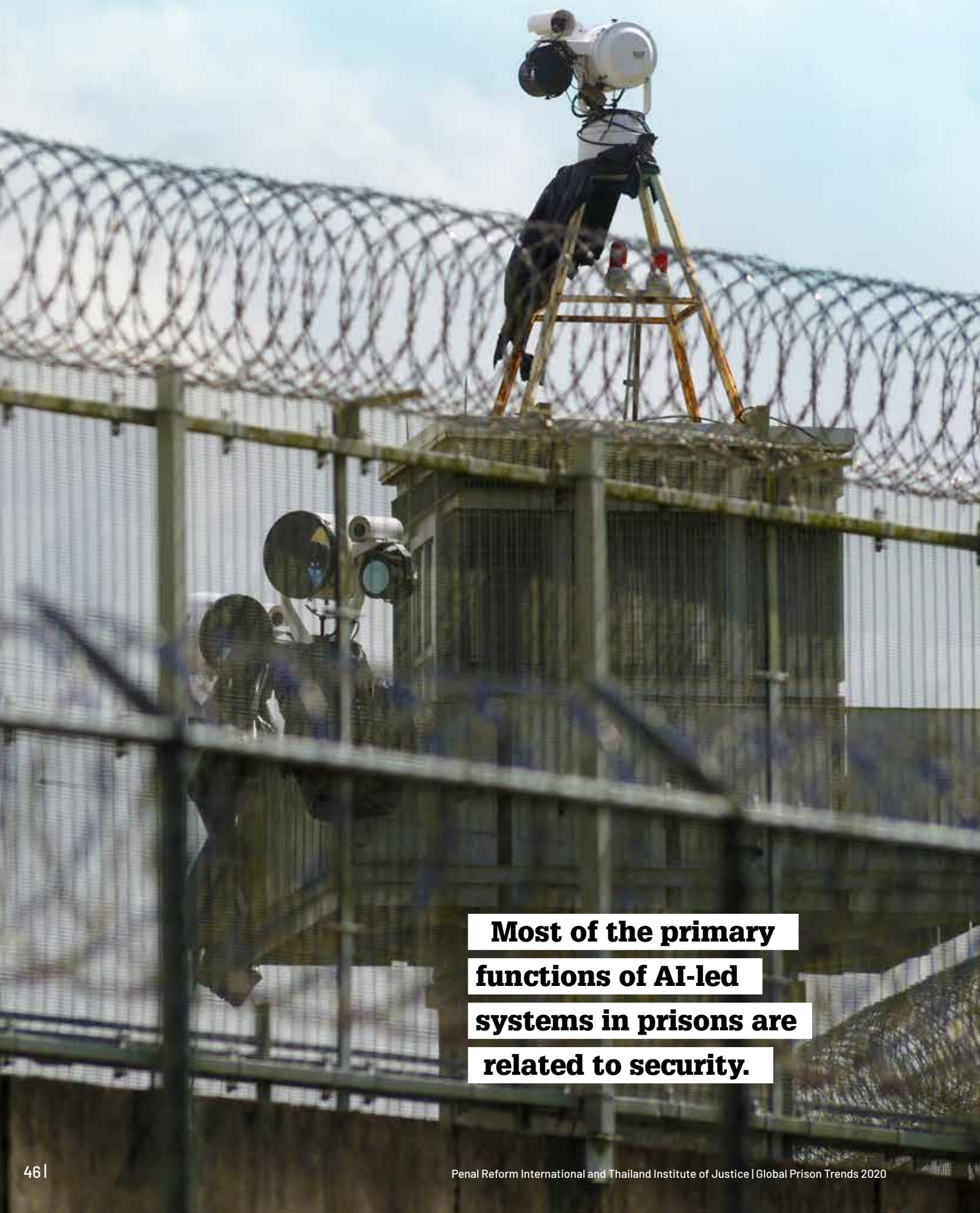
The use of technologies in criminal justice systems is not new, but in recent years, the introduction and expansion of AI-led tools for crime prevention and the management of people has become one of the key emerging trends in this area. There is no agreed definition of AI, however it can be described as an umbrella term to refer generally to a set of sciences, theories and techniques dedicated to improving the ability of machines to do

things requiring intelligence. An AI system is a machine-based system that makes recommendations, predictions or decisions for a given set of objectives.²⁹⁹

Programmes and tools using AI technologies have been adopted by police, courts, probation and prison systems in a host of countries. The potential benefits include cost savings, time efficiency and objectivity. However, there are shared concerns among human rights bodies at the regional and international levels about the impact of digitisation and automation of criminal justice decisions on individuals' lives and whether new technologies adopted are, in fact, leading to safer societies. Calls for greater regulation and consideration of impacts before further expansion of AI in criminal justice systems have been made by civil society and watchdogs.³⁰⁰

In October 2019, on the occasion of the Council of Europe's justice ministers' gathering to discuss the use of technologies in criminal justice systems, the Commissioner for Human Rights made a statement warning of the need to carry out human rights impact assessments of AI systems; establish public consultations; engage with the private sector; and ensure effective parliamentary, judicial and expert oversight of the use of technologies in the criminal justice system. The Commissioner outlined some of the positive benefits of using technologies but also warned that there was a need to 'shield judges and witnesses from undue interference and digital piracy [and] ensure training

A video and surveillance security system in Mexico.



**Most of the primary
functions of AI-led
systems in prisons are
related to security.**

on digital technologies'.³⁰¹ More widely, a recommendation by the Commissioner for Human Rights sets out guidance on the way in which the negative impact of AI systems on human rights can be prevented or mitigated, focusing on 10 key areas of action.³⁰²

In places of detention, including prisons, most of the primary functions of AI-led systems are related to security. New systems are being used to alert staff to behaviour or activity by people in prison that the system registers as 'abnormal' or 'suspicious'. In Hong Kong, a wristband device has been tested to do this, alongside measuring heart rates of the wearer. In China, hidden cameras and sensors are being placed in every cell in one test site to generate daily reports on each person in prison. A prison in the UK is using AI-equipped cameras to prevent contraband, drugs and weapons entering the prison by detecting the items and certain human movements and behaviours which are classified as 'suspicious' by the system.

Such tools to monitor the daily activities of people in prison are employing AI techniques to minimise staff time, among other things. However, they can come at a cost of reducing human interaction with people in prison, which is a crucial factor to rehabilitation and ensuring the needs of people supervised by staff are understood and met.

As with CCTV, there are concerns about the right to privacy with systems that record and process data on the constant movements of people. In several states in the US, AI is employed to monitor phone calls. Such systems use speech recognition, semantic analytics and

machine learning software to build databases of searchable words and patterns to detect illegal activity.³⁰³

The introduction of robots and 'smart' prisons,³⁰⁴ where computer systems are used by people in prison to schedule appointments, visits and order and deliver food, suggest further initiatives that minimise interaction between people detained and staff. On the other hand they can positively give independence and self-autonomy to the users.

In Hong Kong, a robot prison guard programme is being piloted. The robot is equipped with a camera to record and send images to staff and a microphone so staff and people in prison can speak to each other remotely. In South Korea, 'robotic guards' were introduced in prison facilities in 2012 'to secure prisoners' life and safety and decrease the workload of correctional officers in a poor working environment'.³⁰⁵

Beyond prison management, AI is increasingly looked to for reducing reoffending rates, assessing risk of someone convicted of a criminal offence, and even predicting when someone may commit their first criminal offence. While assessing someone's risk factors through criminogenic needs is well established and a proven tool in predicting and reducing recidivism, these models have been applied through human assessments. In jurisdictions where AI models have been developed and implemented to make such assessments, human judgement is, to a large degree, eliminated.

In the US and the UK, AI-led programmes have been used by some courts and police forces to decide on someone's liberty or imprisonment, and length of sentence. Other countries are

following such models, such as in Abu Dhabi, where AI was introduced to detect risks of reoffending for sentencing decisions. In Kenya, a study across three prisons is looking to see how AI can predict recidivism of people in prison—and, if implemented, will presumably impact on decisions about when someone is released and on what conditions.

A key concern in using AI-led systems in such criminal justice decision-making is the reliability of the data sources that their algorithms use. There is some evidence that eliminating human judgement from decisions can promote fairer decision-making,³⁰⁶ but there is an equal, if not greater, body of research that points to fundamental issues with discriminatory decisions and a lack of transparency.³⁰⁷ In this vein, the Council of Europe recommendation on AI advises that in cases where 'it is not possible to meaningfully mitigate the identified risks [to human rights violations], the AI system should not be deployed or otherwise used by any public authority'.³⁰⁸

Lack of transparency is another concern in using AI generally, but it is particularly relevant in criminal justice decision-making where the impact on people's lives (and their families) is significant. Algorithms used to direct sentencing or prison classification are usually developed by private sector companies and are often considered trade secrets. This means justice actors may not understand the complex functions and removes the opportunity for a suspect, defendant or person in prison (or their legal representation) to enquire or understand the computer-generated decision.³⁰⁹

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PART FIVE

Role and use of technologies

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About Penal Reform International

Penal Reform International (PRI) is a non-governmental organisation working globally to promote criminal justice systems that uphold human rights for all and do no harm. We work to make criminal justice systems non-discriminatory and protect the rights of disadvantaged people. We run practical human rights programmes and support reforms that make criminal justice fair and effective.

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Thailand Institute of Justice (TIJ) is a public organization established by the Government of Thailand in 2011 and officially recognized by the United Nations Office on Drugs and Crime (UNODC) as the latest member of the 'United Nations Crime Prevention and Criminal Justice Programme Network Institutes' (PNIs) in 2016. One of the primary objectives of the TIJ is to promote and support the implementation of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (or 'the Bangkok Rules'). In addition, the TIJ strives to serve as a bridge that transports global ideas to local practices with an emphasis on fundamental issues including interconnections between the rule of law and sustainable development, human rights, peace and security.

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