

# Ten-Point Plan to Reduce Prison Overcrowding

## Introduction

The following plan focuses on ways of reducing overcrowding in prisons around the world. Overcrowding or congestion, as it is called in some countries, is the biggest single problem facing prison systems with consequences that can at worst be life-threatening and at best prevent prisons from fulfilling their proper function.

There is no universally agreed definition of what constitutes overcrowding but data shows that in some 117 countries the number of prisoners exceeds the number of spaces available. Sixteen prison systems hold more than double their capacity and in a further 32 countries there are occupancy rates of between 150 and 200%. Measured this way the highest rate of overcrowding in the Americas is 335% (Haiti), in Africa 307% (Benin), in Asia 259% (Iran), in Oceania 215% (French Polynesia), and in Europe 158% (Serbia). But overcrowding is not limited to countries whose overall prison population exceeds capacity. Particular prisons or sections of prisons can be overcrowded even if the prison system as a whole is not. Moreover, in the absence of precise international standards, it is up to individual countries themselves to determine – and sometimes revise – the capacity of particular prisons. The data is therefore likely to understate the extent of the problem.

The plan builds on the relevant international instruments including the UN Standard Minimum Rules for the Treatment of Prisoners, the UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) and the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules).

Penal Reform International (PRI) believes that a prison system that meets international standards is essential for the proper administration of criminal justice. Particular attention should be given to vulnerable groups who are often additionally adversely affected by the negative effects of overcrowding. Women prisoners and children deprived of their liberty are a small percentage of a country's total prison population meaning that their specific needs tend to remain unacknowledged and unmet, which is exacerbated in overcrowded and overstretched prison systems. In some countries chronic overcrowding is relieved only by the use of periodic amnesties and pardons which, while producing short-term relief, do not provide a sustainable solution

and can erode public confidence. In others, costly prison-building programmes are undertaken to meet a growing demand for prison places, which is sometimes stimulated further by private companies who make profits from prison construction and administration.

Given the disadvantages of these approaches, PRI is publishing this plan to assist policymakers and practitioners who wish to tackle overcrowding in a systematic and affordable way. The results should help to ensure that imprisonment is only used when proportionate to the offence committed and where there are no other appropriate options, and that the conditions of detention can meet the standards expected by the international community.

PRI, February 2012



## Ten-Point Plan to Reduce Prison Overcrowding

### 1. Collect and use data to inform a rational, humane and cost-effective use of prison

Reducing overcrowding requires an understanding of the extent of the problem and the reasons for which it has come about in a particular prison system. A census of the prison population can identify who is in prison and why, and point to priorities for relieving congestion. Timely and accurate information can also enable a more rational debate about the most effective use of prison and assist advocacy on behalf of policies which meet international standards. Information-gathering and analysis should be part of a regular routine and the public should be kept informed about measures which work best to reduce crime.

### 2. Review and reform the criminal justice process as a whole from arrest to release and invest in crime prevention and reduction

Imprisonment comes at the end of a long chain of decisions involving legislators and policymakers, the police, prosecutors and courts. The extent to which prison is used reflects a range of factors including levels of inequality and investment in social policy as well as levels of crime. Reducing prison numbers is not simply a question of establishing measures which can act as direct alternatives to pre-trial detention or sentences, although these are important. It involves the development and use of a wide range of methods to prevent crime through social and situational measures and of ways to resolve harms and disputes without recourse to criminal law, for example by using informal and restorative justice approaches.

### 3. Divert minor cases out of the criminal justice system

International standards and norms recommend that resorting to prosecution and incarceration be employed only where this is proportionate to the offence committed and there are no other appropriate options. To ensure that prisons play their proper role, including the role of rehabilitation, it is important that minor offences be processed in different ways. Many countries have systems of diversion, such as police warnings or cautions, restorative justice or mediation options, referral to mental health or drug treatment or prosecutorial fines. Others have centuries-old informal processes of traditional justice which can provide accessible and informal justice. As long as basic human rights are observed, such processes can have an important role to play.

### 4. Improve access to justice and case management during pre-trial detention

Countries with the highest levels of overcrowding also have prison populations with the highest proportions of pre-trial detainees. In 40 countries more than half of prisoners are held on remand. Efforts to address the problem of lengthy pre-trial detention include:

- increasing legal aid and assistance and supplementing this by making use of paralegals to provide advice to defendants;
- enforcing time limits in criminal proceedings;
- offering bail and other alternatives to pre-trial detention;
- holding 'camp courts' inside prisons; and
- reforming criminal procedure so that cases are reviewed regularly and brought to a conclusion more speedily.

## 5. Develop and implement constructive non-custodial measures and sentences

Too many criminal justice systems, whether non-custodial responses exist in law or not, still use imprisonment as their default sanction. This can be because of: mistaken beliefs that society's and the victim's interests are best served by a custodial sentence; excessive influence of the police and prosecutors over the criminal justice system; and poor training for judges or their fear of being considered corrupt or 'soft' on crime. Sometimes there is either no organisation available to supervise community sentences or a shortage of resources for implementation of responses to crime which permit the offender to remain in and provide compensation to the community. A range of community-based sentences should be available to courts including discharges, fines and community service and measures should be taken to assist offenders to comply with these. Non-custodial sentencing can be particularly effective for women offenders who are usually apprehended for non-violent crimes and whose crimes are often closely related to their economic and social disadvantage in society.

## 6. Make special arrangements for children and young offenders

Children differ from adults in their physical and psychological development, and their emotional and educational needs. These differences constitute the basis for the lesser culpability of children in conflict with the law and require different responses to be available. The experience of imprisonment can often strengthen rather than weaken a child's delinquency. The UN has said that children under 12 should not be liable to prosecution. For those under 18, traditional objectives of criminal justice, such as repression and retribution, must give way to education and restorative measures. The best interests of the child should be a primary consideration in making decisions, and this can be done while still paying attention to effective public safety. Custodial remand and sentences should be used as a last resort, for the shortest time, and used only in exceptional cases. Small, open facilities with minimal security measures should be developed for children serving such sentences.

## 7. Consider alternative arrangements for parents with dependent children, particularly mothers with babies

It is increasingly understood that the best interests of the child should also be taken into consideration in deciding whether or not to detain a parent. Sentencing courts should have enough information to enable them to balance society's and the child's interests, and for them to consider (and have available to them) community-based options. The recently adopted Bangkok Rules emphasise that, when sentencing or deciding on pre-trial measures for a pregnant woman or a child's sole or primary caretaker, non-custodial measures should be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent.

## 8. Identify mental illness and drug addiction and divert those affected to appropriate medical or other care

Many people enter prisons when they should have been diverted into mental health or social care from police stations or courts because they suffer from mental illness or learning disabilities. Prisons are ill-equipped to meet their needs and overcrowding can have a particularly adverse effect. Despite this it is still the case that in some countries prisons, rather than hospitals, are even used to house people with mental health issues as a matter of policy. Many people in prison around the world have alcohol or drug addiction problems. Specialist facilities to treat such dependence as an alternative to imprisonment, whether or not the offence was related to addiction, can reduce prison overcrowding and improve outcomes in the prevention of re-offending.

## 9. Reduce sentence lengths and ensure consistent sentencing practice

Prison sentences should be kept as short as possible, consistent with justice being done. In some countries legislators restrict judges' flexibility by setting mandatory or minimum sentences higher than is required by the state's need to respond appropriately and proportionately to particular offences. In others, administrations fail to monitor and respond to sentencing practices that do not meet the requirement of predictability and consistency. Appropriate guidance is needed to inform judges' independent decision-making.

## 10. Develop opportunities for parole or other forms of early release and assist prisoners on release to prevent their return to prison

Parole systems and earned remission provide an incentive for prisoners to behave well in prison and to be rewarded by early release after a programme of rehabilitation. Sentences which are served partly in custody and partly in the community under supervision can also reduce pressure on prison places, although it is important that decisions to release prisoners, particularly those convicted of serious crimes, are not made or seen to be made simply to free up prison space. Open prisons, halfway houses, hostels and other supervised accommodation can provide an effective placement for offenders approaching and after release and should form part of the reintegration support provided in order to prevent them from returning to swell prison numbers.

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