



## Joint oral statement

### Panel discussion on the protection of the human rights of persons deprived of their liberty

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Mme/ Mr President,

The American Civil Liberties Union (ACLU), the Center for Legal and Social Studies (CELS), the International Legal Foundation (ILF) and Penal Reform International (PRI) welcome the panel discussion on the protection of the human rights of persons deprived of their liberty and recall last year's report of the Secretary-General on 'Human rights in the administration of justice: analysis of the international legal institutional framework for the protection of all persons deprived of their liberty'.<sup>1</sup>

From the five challenges highlighted in the report, the undersigned organisations would like to emphasise the significance of overcrowding and the overuse of detention for numerous human rights violations. Alongside other infringements of human rights, overcrowding has been observed to constitute one of the most common obstacles to the respect of human dignity and to the prohibition of torture and ill-treatment.<sup>2</sup>

Overcrowding constitutes a global problem with 117 out of 203 jurisdictions for which data had been collected in 2014, having a rate of prison occupancy above 100 per cent.<sup>3</sup>

The increasing number of persons detained is a result of policy choices. Detainees are not being provided with legal representation during the earliest stages of the criminal justice process, pre-trial detention is applied excessively, prison sentences are used as a default sanction, including for minor, non-violent offences and disproportionately affecting minorities, and are lengthening in response to governments pledging to be 'tough on crime'. The result is the unnecessary and disproportionate use of imprisonment, causing overcrowding and appalling conditions in detention while doing little to reduce crime rates.

We therefore call on member states, the Human Rights Council, UN Special Procedures and Treaty Bodies to systematically address the unnecessary use of detention as a means to prevent human rights violations, including torture, inhuman or degrading treatment.

In pre-trial detention, human rights concerns include the undermining of a fair trial and of the presumption of innocence, as well as the risk of a confession or statement being coerced by torture or ill-treatment. These concerns are exacerbated without early access to legal counsel, a risk increased by the fact of detention.

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<sup>1</sup> UN-Doc. A/68/261, 22 July 2013

<sup>2</sup> See para. 49 of the SG's report stating that, 'overcrowding inevitably has an adverse impact on conditions in places of deprivation of liberty and leads to serious violations of human rights, such as denial of or insufficient access to medical care, food, sanitation, security, and rehabilitation services', resulting in the risk of intimidation and inter-prisoner violence and facilitating corruption in several ways.

<sup>3</sup> <http://www.prisonstudies.org/highest-to-lowest>

The right to liberty and the right to dignity may be infringed by unnecessary and disproportionate imprisonment, for both pre-trial detention and prison sentences.<sup>4</sup>

As imprisonment disproportionately affects poor and marginalised groups, including racial and ethnic minorities, there is also a concern of discrimination in the deprivation of liberty. Those detained are particularly affected by the absence of effective mechanisms to ensure early and quality counsel.

Due to prison conditions, the common lack of adequate healthcare in detention and the higher risk of infection with communicable diseases<sup>5</sup> imprisonment also has a considerable, if not irreversible, impact on the right to health.<sup>6</sup>

Moreover, the risk of violence, prisoner protests and other disturbances in overcrowded prisons is acute, and suicides tend to increase as a result of overcrowding.<sup>7</sup>

In overcrowded prisons it is also more likely that corrupt prison officers extort money from inmates in exchange for access to rights and services.

As the Council of Europe's Commissioner for Human Rights suggested, '[t]he phenomenon of ill-treatment in prisons should not be viewed in isolation from the penitentiary system and criminal justice policy in general,' and reiterated 'the importance of (...) reducing resort to detention on remand and imprisonment.'<sup>8</sup>

Mme/ Mr President,

Strategies to reduce the number of people in detention therefore do not only constitute a measure of policy reform, but a human rights requirement.

Member states, the Human Rights Council, UN Special Procedures and Treaty Bodies should pursue a preventive approach, promoting the reduction of detention based on the principles of necessity and proportionality and the use of non-custodial alternatives wherever possible, as a means to address human rights concerns relating to over-use of detention.

In doing so, the Council should draw on and promote the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), which provide a framework for alternatives to both pre-trial detention and custodial sanctions.<sup>9</sup> This would, at the same time, free resources to improve prison conditions and procedural safeguards, including cost-effective alternatives to incarceration such as drug treatment programs.

A preventive approach should also include the implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, and the promotion of early access to counsel in the criminal justice process.

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<sup>4</sup> For example, the European Court of Human Rights has held life sentences without parole 'grossly disproportionate' and in breach of Article 3 of the European Convention on Human Rights. See [Harkins and Edwards v. the United Kingdom](#), [Rrapo v. Albania](#), [Babar Ahmad and others v. the United Kingdom](#), [Vinter v. United Kingdom](#), [Laszlo Magyar v. Hungary](#); see also [Canada](#) where proportionality in sentencing has constitutional status (*R v. Smith (Edward Dewey)* [1987] 1 SCR 1045), and Ireland (see the discussion in [Whelan and Lynch v. Minister for Justice, Equality and Law Reform](#)).

<sup>5</sup> such as HIV/AIDS, tuberculosis, and hepatitis

<sup>6</sup> The contagion rate with communicable diseases, such as HIV/AIDS, tuberculosis, and hepatitis has been found to be between 10 to 100 times higher amongst prison populations as compared to the general population. Detention has also been shown to cause or exacerbate mental health issues.

<sup>7</sup> UNODC, Handbook on strategies to reduce overcrowding in prisons, 2013, p. 12

<sup>8</sup> Nils Muižnieks, Council of Europe Commissioner for Human Rights, in a letter to Prime Minister Ivanishvili of Georgia, 4 December 2012, <https://wcd.coe.int/ViewDoc.jsp?id=2011345&Site=CM>

<sup>9</sup> Adopted by General Assembly resolution 45/110 of 14 December 1990

Without addressing the issue of overcrowding and mass-incarceration, to a considerable extent caused by the overuse of detention, the existing human rights mechanisms will continue to report on unfair and unnecessary deprivation of liberty and deplorable detention conditions across the globe without ever being able to effectively remedy them.

Thank you.

Statement to be delivered by Olivia Rope, Geneva, 10 September 2014