Promoting fair and effective criminal justice

# UN Office of the High Commissioner for Human Rights report on Sustainable Development Goals and the right to health

## Submission by Penal Reform International

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Penal Reform International (PRI) welcomes the opportunity to submit information to the Office of the UN High Commissioner for Human Rights for its report on Sustainable Development Goals and Health, mandated under GA resolution 35/23 entitled 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health in the implementation of the 2030 Agenda for Sustainable Development'.

In this submission, PRI presents the key issues for a vulnerable and underserved group - prisoners. With over 10 million people detained globally at any one time, many with unique health issues including communicable diseases, promoting the right of prisoners is critical to achieving the Sustainable Development Goals.

*Also see,* PRI/TIJ, Global Prison Trends, Special Focus 2017: The Sustainable Development Goals and criminal justice'*,* 2017.[1]

### Introduction

Every human being has the right to the highest attainable standard of physical and mental health and, when a State deprives someone of their liberty, it takes on the duty of care to provide medical treatment and to protect and promote their physical and mental health and wellbeing. In other words, prisoners retain their right to health enshrined in Article 12 of the ICCPR and Principle 9 of the Basic Principles for the treatment of Prisoners.[2]

International standards, including the revised Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (UN Bangkok Rules), require the provision of adequate healthcare in prison. These standards detail how prison health should be delivered, recognising the equivalence of care and requiring the applicability of medical ethics that apply in the community.

[1] Available at: https://cdn.penalreform.org/wp-content/uploads/2016/06/Global_Prison_Trends_2017_Special_Focus.pdf.
[2] Special Rapporteur on the right to health (6 August 2010), Report submitted by Anand Grover, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/65/255.

## People in prison, health and poverty

The interrelatedness between poverty and the realisation of the right to health is evident for people who come into conflict with the law. Poverty is a cause and consequence of imprisonment and while in prison, the right to health of prisoners is often violated – inadequate health services, unhealthy conditions and overcrowding are common and frequently prisoners' health deteriorates.

The rates of disease, substance dependency and mental illness among prisoners are much higher than in the community. In fact, mortality rates have been shown to be as much as 50 per cent higher for prisoners than for people in the community.

One major factor contributing to the complex health issues of prisoners is that persons in conflict with the law often come from poor and marginalised backgrounds, and have experienced greater exposure to transmissible diseases, inadequate nutrition and fewer opportunities to access good quality healthcare. Additionally, people in prison may have a history of abuse and may be substance dependent, and suffering from withdrawal symptoms. They may also have neglected their physical health more generally. Some prisoners may have never been treated by a qualified doctor before their imprisonment, particularly if they come from remote, rural areas.

Despite these complex health issues, and the fact that 'prison health is public health' as the majority of prisoners return to their communities at some point, the provision of healthcare for prisoners is routinely underfunded, understaffed and lacks the full spectrum of treatment available in the community. Understaffing of healthcare staff in prisons is a problem affecting many countries (see target 3.c on the financing and recruitment, development, training and retention of the health personnel), even those that are high-resourced. In France, prisoners reported being on a waiting list for one to two years to have an initial appointment with a psychologist. In Colombia, for example, the Ombudsperson found that there was only one doctor for every 496 prisoners.[3]

It should be noted that the lack of healthcare and failure to provide access to medicines to prisoners can constitute cruel, inhuman or degrading treatment. For example, in a joint letter to the Chairperson of the fifty-second session of the Commission on Narcotic Drugs, the UN Special Rapporteur on Torture and the Special Rapporteur on the Right to Health noted that 'the failure to ensure access to controlled medicines for the relief of pain and suffering threatens fundamental rights to health and to protection against cruel, inhuman and degrading treatment.'[4]

## Overcrowding and the right to health in prison

Prison overcrowding affects at least 115 countries and it is common for even essential services, such as reproductive health and non-communicable diseases (target 3.8 and indicator 3.8.1) to be unavailable to prisoners.

The link between overcrowded prisons and violations of the right to health have been documented by several UN bodies. The Working Group on Arbitrary Detention found that in Morocco overcrowding 'inevitably leads to serious violations, such as denial of or insufficient

[3] See PRI/TIJ, Global Prison Trends, Special Focus 2017: The Sustainable Development Goals and criminal justice', 2017, p4.
[4] A/HRC/22/53 para. 56.

access to medical care, nutrition, sanitation, security and rehabilitation services'[5]; and in Georgia found cases of overcrowding 'that could adversely affect the health of detainees'.[6]

Furthermore, the OHCHR's report on 'Human rights implications of overincarceration and overcrowding', [7] detailed the impacts and factors associated with overcrowding and noted that it can be a root cause of entirely preventable medical conditions. The report stated that conditions in overcrowding 'contribute to the denial of the right to health', listing things such as poor natural light and ventilation, extreme temperatures, poor hygiene and sanitation standards as well as infestations of insects and vermin.

The transmission of diseases is rife in overcrowded facilities where both the lives of prisoners and staff at risk. This was described by the Inter-American Commission on Human Rights on the Situation of Persons Deprived of Liberty:

> *'Overcrowding … paves the way for the spread of disease; it creates an environment in which health and hygiene conditions are deplorable…'*[8]

## Communicable diseases

Communicable diseases are a particular concern in prison, with infection rates for TB between 10 and 100 times higher than in the community.[9] Prisoners are five times more likely to be living with HIV than adults in the general population and have been identified as a key population left behind in responses to the AIDS epidemic by UNAIDS (see target 3.3).[10]

Prisoners have been left behind in efforts to end and treat HIV, and receive treatment unequal to that in the community. In 2012, antiretroviral treatment for HIV was available to prisoners in only 43 countries.[11] Many prisons fail to provide the conditions and treatments necessary to reduce HIV transmission, including by recognising and implementing measures to reduce HIV infection caused by injecting drug use.

It is estimated that up to 90 per cent of people who inject drugs are imprisoned at some point in their lives.[12] Harm reduction as a means to ending the HIV/AIDS epidemic is receiving growing acceptance, including in the UNGASS on the world drug problem's Outcome Document.[13] However, on the ground findings from Harm Reduction International's 2017 report reveals that provision of these services in prisons remains extremely limited, particularly when compared to what is available in the community. Although allowing prisoners access to condoms is a highly effective measure to reduce the rate of HIV transmission, some prisons do not allow condoms for prisoners on the basis that sex is banned for security reasons.[14]

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[5] UN Working Group on Arbitrary Detention, Mission to Morocco, A/HRC/27/48/Add.5, 4 August 2014, Para 49.
[6] UN Working Group on Arbitrary Detention, Mission to Georgia, A/HRC/19/57/Add.2, 27 January 2012, Para 95; *see also* Mission to Mauritania, A/HRC/10/21/Add.2, 21 November 2008, Para 64.
[7] A/HRC/30/19
[8] Report of the Inter-American Commission on Human Rights on the Situation of Persons Deprived of Liberty in Honduras, 18 March 2013, Doc: OEA/Ser.L/V/II.147, Paragraph 66.
[9] World Health Organization, *Prisons and Health*, 2014.
[10] UN AIDS, *The Prevention Gap Report*, 2016, p7.
[11] Dolan, K. et al 'HIV prevention program in prison: a global systematic review of implementation' 20th International Conference on AIDS; Melbourne, Australia; July 20–25 (2014)
[12] Gen Sander, 'The global state of harm reduction in prisons: Inadequate, unreliable and unlawful', *PRI Blog*, 6 February 2017.
[13] See http://www.un.org/Docs/journal/asp/ws.asp?m=E/CN.7/2016/L.12/Rev.1
[14] UNODC, UNAIDS, WHO, *Effectiveness of Interventions to Manage HIV in Prisons – Provision of condoms and other measures to decrease sexual transmission,* 2007.

Moreover, only 63 countries provide TB treatment in prisons; screening for hepatitis is equally uncommon.[15] Disruption of treatment is frequent for prisoners, with even brief interruptions potentially leading to drug resistance, further illness and death.[16]

The UN Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) outline how medical treatment for women with HIV/AIDS should be different than treatment for men. However, the prevention, treatment and care for HIV/ AIDS for women prisoners is perpetually not gender-specific, ignoring both biological and other factors.

## Mental health

Prison populations having a significantly higher prevalence of mental health issues than in the community. This is partly because people with poor mental health tend to be imprisoned at higher rates (because they are more likely to be arrested, to confess and to be refused parole), and partly because the prison environment can cause or exacerbate mental health conditions.

The consequences can be severe: suicide rates in prisons are up to 10 times higher than those in the general population. In England and Wales statistics released in 2017 showed that 46% of women and 21% of men in prison have attempted suicide at some point, compared to 6% of the general population.[17]

Many mid and low-income countries do not provide adequate mental health support to prisoners. There are inadequate numbers of psychologists and psychiatrists, and most importantly prison staff are not trained and equipped to help retain or improve the mental health of prisoners in their care and awareness about how to handle mental health is still low.

The stigma, violence and segregation of persons with mental health conditions or psychosocial disabilities in prison are well documented. Their behaviour often leads to segregation, solitary confinement, disciplinary measures and being cut-off from vital support in the community.

## Continuity of care

Access to healthcare for people in criminal justice systems is frequently interrupted. Although many people leaving prison have communicable diseases or mental health needs, among other health issues, their treatment and care may be halted when they leave prison, or are transferred to another facility.

The UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)[18] emphasise the importance of continuity of care, particularly for HIV and TB patients, requiring coordination between prison and community health services, among other measures. However, there is often a lapse of treatment or services been cut off upon release from prison.

## Healthcare for women in prison

Women prisoners have different and greater primary healthcare needs in comparison to male prisoners. This is partly due to physiological differences, and partly because of their typical

[15] Rubenstein, L.S. et al '*HIV, prisoners, and human rights'* The Lancet (2016)
[16] Sonke Gender Justice, *Killing inmates softly: HIV treatment dysfunction in prisons,* (2014) < www.genderjustice.org.za/article/killing-inmates-softly-hiv-treatment-dysfunction-in-prisons/ > *last accessed 25 September 2016*
[17] See Prison Reform Trust UK, http://www.prisonreformtrust.org.uk/PressPolicy/News/vw/1/ItemID/435
[18] See, www.penalreform.org/priorities/prison-conditions/standard-minimum-rules/.

backgrounds, which often include physical or sexual abuse, drug use and unsafe sexual practices. However, as a minority in the prison population and gender-based discrimination prison health is ill-adapted for women. The UN Special Rapporteur on violence against women has summarised the lack of gender-specific healthcare provision in prison stating: "The mere replication of health services provided for male prisoners is (…) not adequate."[19]

The Special Rapporteur has also described the problem in more detail:

> *'Many prisons do not offer adequate mental or physical health care to women inmates and may actually provide less health care to female prisoners than to male prisoners. The consequence of a failure to consider women's specific health needs means ignoring reproductive health needs and medical conditions stemming from a history of poverty, malnutrition, physical or sexual abuse, drug use, or inadequate medical care.'*[20]

HIV and other sexually transmitted and blood-borne diseases are more prevalent among female prisoners than their male counterparts, due to the combination of gender inequality, stigma and women's vulnerability to contracting sexually transmitted infections and diseases. Although women prisoners are more likely to contract HIV in prison than men, they have less access to preventive and treatment programmes than their male counterparts. This has an impact on mother-to-child transmission rates.

A resolution adopted at the UN Commission on Crime Prevention and Criminal Justice, on this issue, titled 'Ensuring access to measures for the prevention of mother-to-child transmission of HIV in prisons'[21] took note of the high HIV infection rates among women in prison, 'owing to the combination of gender inequality, stigma and discrimination and the overrepresentation of women who inject drugs. The resolution noted with concern 'that programmes and interventions to eliminate new HIV infections among children and to keep their mothers alive have often not addressed the needs of women in prisons, and that prisons are often excluded from the national monitoring of mother-to-child transmission of HIV.' Furthermore, it *encourages* 'Member States, in developing responses to HIV/AIDS for persons in pretrial and post-trial detention, to ensure that programmes and services are responsive to the specific needs of women, including comprehensive prevention of mother-to-child transmission' (OP6)

Reproductive and pre- and post-natal care services for women in prison are also limited (see target 3.7 on universal access to sexual and reproductive health-care services). Furthermore, up to 80 per cent of women prisoners have an identifiable mental illness, many more than in the general population.[22]

## Healthcare for children deprived of their liberty

Placing children in detention can cause long-term psychological and physical damage. The UN Special Rapporteur on Torture has noted:

> *'A number of studies have shown that, regardless of the conditions in which children are held, detention has a profound and negative impact on child health and development.*

[19] Quoted in Rick Lines, The right to health of prisoners in international human rights law, International Journal of Prisoner Health, 2008, Vol. 4 Iss: 1, pp.3 – 53, p13.
[20] UN Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, 'Pathways to, conditions and consequences of incarceration for women', 21 August 2013, A/60/340, paragraph 44.
[21] Resolution 26/2, http://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_26/CCCPJ_Res_Dec/CCPCJ-RES-26-2.pdf
[22] PRI, *Guidance Document on the Bangkok Rules*, 2013.

> *Even very short periods of detention can undermine the child's psychological and physical well-being and compromise cognitive development.*'[23]

International standards therefore require detention of children to be used in exceptional circumstances – as a last resort, and for the shortest time possible (see Article 37 of the UN Convention on the Rights of the Child).

Where children are deprived of their liberty authorities need to implement specific measures and safeguards to safeguard their right to health. Many children in detention have mental health or psychological disorders, which can worsen due to their detention and separation from support networks. Children are frequently denied access to healthcare professionals, let alone child development specialists, despite international standards requiring access to be provided promptly at the point of detention.

Children who live in prison with their mother/caregiver are particularly vulnerable to violations of their rights to development and healthcare. There are even cases reported where breastfeeding mothers are unable to produce adequate amounts of milk for their babies.[24] Measures need to be in place to ensure adequate budget is allocated for meeting the healthcare needs of children living with their mothers in prison (including through proper registration when arriving at prison with their caregiver). The Bangkok Rules require that children living with their mothers in prison 'shall be provided with ongoing healthcare services and their development shall be monitored by specialists, in collaboration with community health services.' (Rule 51).

**Conclusion:**

Prisoners have complex and unique health needs that are frequently unmet. The right to health for specific groups within the prison population including women, children, and prisoners with mental health issues are also violated.

Contributing factors to violations of the right to health in places of detention include: inadequate number healthcare staff, poor material conditions, overcrowded facilities and a lack of harm reduction measures to reduce the transmission of communicable diseases.

The Sustainable Development Goal 3 on healthcare will not be achieved if the right to health for people deprived of their liberty continues to be deprioritised.

/END.

[23] UN Special Rapporteur on torture, Juan Mendez, 'Pathways to, conditions and consequences of incarceration for women', 5 March 2015, A/HRC/28/68, Para. 33.
[24] PRI/FHRI, *A shared sentence: children of imprisoned parents in Uganda,* 2015, p5.