

# Background paper on the Workshop on Strategies and Best Practices against Overcrowding in Correctional Facilities (A/CONF. 213/16)

## Summary

The reduction of prison overcrowding, although complex, should be a high priority. This paper reviews factors contributing to that problem, such as criminal justice policies that give excessive weight to punishment or may not have been adequately assessed for impact; lack of alternatives to imprisonment and of sentencing policies and guidelines encouraging the use of non-custodial measures; inefficiency and delays within the justice process; challenges faced by the poor and vulnerable in accessing justice; lack of social reintegration programmes and postrelease support to prisoners; and insufficient prison infrastructure and capacity.

## I. Introduction

1. The rapid growth of the prison population constitutes one of the most challenging problems faced by criminal justice systems worldwide. According to the International Centre for Prison Studies, more than 9.8 million people, including sentenced prisoners and pretrial detainees, are held in penal institutions throughout the world.<sup>1</sup> The World Prison Brief<sup>2</sup> prepared by the Centre, indicates that the prison population has risen in 71 per cent of the countries surveyed (in 64 per cent of countries in Africa, 83 per cent in the Americas, 76 per cent in Asia, 68 per cent in Europe and 60 per cent in Oceania). Prison population rates, measured as the number of prisoners per 100,000 of the general population, vary considerably among different regions of the world, within regions and among prison facilities within countries.

2. According to the World Prison Brief, 114 of the 191 countries for which data had been collected had a rate of prison occupancy above 100 per cent (indicating overcrowding). Of those, 16 countries had rates of prison overcrowding<sup>3</sup> above 200 per cent, while 25 countries reported rates of between 150 and 200 per cent. According to Penal Reform International, the size of prison populations in Europe on average exceeds official capacity by 30 per cent, while the average prison occupancy rate in the United States of America is 107 per cent. In Bangladesh, the prison population stands at 288 per cent of official capacity, the highest rate in South Asia. Kenya has the highest rate of prison overcrowding in the world, with prison occupancy at 337 per cent of capacity.

3. Participants at the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Vienna in 2000, and the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, held in Bangkok in 2005, recognized the importance of containing the growth and overcrowding of prison populations by promoting safe and effective alternatives to incarceration and developing restorative justice policies.

4. Participants at the four regional preparatory meetings for the Twelfth United Nations Congress on Crime Prevention and Criminal Justice<sup>4</sup> recognized that occupancy of prison facilities was exceeding capacity and that overcrowding was an acute and widespread problem worldwide and recommended that the Workshop on Strategies and Best Practices against Overcrowding in Correctional Facilities

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1 Roy Walmsley, "World prison population list", 8th ed. (London, King's College, International Centre for Prison Studies, December 2008). Available from [www.kcl.ac.uk/depsta/law/research/icps/downloads/wpp1-8th\\_41.pdf](http://www.kcl.ac.uk/depsta/law/research/icps/downloads/wpp1-8th_41.pdf).

2 Available from [www.kcl.ac.uk/depsta/law/research/icps/worldbrief/](http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/) (last accessed on 8 February 2010).

3 The term "prison overcrowding" generally refers to situations in which the rate of prison occupancy is above 100 per cent of prison capacity. However, the way in which prison capacity is measured varies from country to country, depending on the space allocated for each prisoner in accordance with national legislation and administrative rules. Comparisons of overcrowding levels can therefore be misleading. The impact of overcrowding depends not only on the amount of space allocated to each prisoner, but also on the amount of time each prisoner can spend engaged in activities outside his or her cell. The scope of the present paper does not extend to measures that can be taken within prisons to mitigate the effects of overcrowding.

4 Reports of the Latin American, Western Asian, Asian and Pacific and African regional preparatory meetings for the Twelfth Congress (A/CONF.213/RPM.1/1, A/CONF.213/RPM.2/1, A/CONF.213/RPM.3/1 and A/CONF.213/RPM.4/1, respectively).

pay particular attention to the development of comprehensive, coordinated, multisectoral and sustained strategies and policies involving all stakeholders in the criminal justice system.

5. For over 50 years, the United Nations has developed standards and norms to encourage the development of criminal justice systems that meet basic human rights standards. Prison overcrowding may hinder compliance with such standards, with a resulting negative impact on prisoners, their families, prison systems and the community as a whole. In addition, failure to respect the right to a fair trial may contribute to an increase in the number of pretrial detainees and convicted persons and thus in the size of the prison population.

6. The earliest of the United Nations standards and norms, the Standard Minimum Rules for the Treatment of Prisoners<sup>5</sup> contains provisions relating to the rights of prisoners and minimum requirements regarding conditions of detention, which may be compromised by overcrowding in prison facilities. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173, annex) and the Basic Principles for the Treatment of Prisoners (Assembly resolution 45/111, annex) expand on those standards. Other United Nations instruments highlight the importance of non-custodial measures and of the use of imprisonment and pretrial detention as last-resort options that could assist in reducing the numbers of persons sent to prison (United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) (Assembly resolution 45/110, annex)). The United Nations instruments that specifically address unnecessary or unnecessarily prolonged pretrial detention, which often contributes to prison overcrowding, include the Universal Declaration of Human Rights (Assembly resolution 217 A (III)) and the International Covenant on Civil and Political Rights (Assembly resolution 2200 A (XXI), annex). Instruments such as the basic principles on the use of restorative justice programmes in criminal matters (Economic and Social Council resolution 2002/12, annex) encourage the use of restorative justice, which facilitates the use of alternatives to pretrial detention (pretrial diversion) and imprisonment. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (Assembly resolution 40/33, annex) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Assembly resolution 45/113, annex) provide exclusively for children and juveniles in conflict with the law and set out guidelines for the administration of juvenile justice and for institutions in which juveniles are confined.

7. Regional instruments also highlight the serious problems posed by prison overcrowding, including its potential to undermine the rights of prisoners, and provide for effective alternatives to imprisonment in policy and practice as a viable long-term solution to prison overcrowding (the Kampala Declaration on Prison Conditions in Africa (Council resolution 1997/36, annex); the Kadoma Declaration on Community Service (Council resolution 1998/23, annex I) and related recommendations on prison overcrowding; the Arusha Declaration on Good Prison Practice (Council resolution 1999/27, annex); and the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System) in Africa.

8. Overcrowded prison conditions violate prisoners' basic rights, undermine the safety of prison staff and that of the general public and weaken the ability of the prison system to meet prisoners' basic healthcare, food and accommodation needs and to provide rehabilitation programmes, education, training and recreational activities. Overcrowding hinders the ability of prison authorities to manage prisons effectively, address prisoners' social reintegration needs and ensure that their treatment meets the requirements set out in United Nations standards and norms, and may create an unsafe working environment for prison staff. It may also preclude an accurate census and effective classification of prisoners. Prisoners who do not have access to treatment programmes are more likely to reoffend following their release. The cost to society of failure of prisoners to reintegrate into the community is significant, both financially and in terms of public safety.

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5 *Human Rights: A Compilation of International Instruments*, Volume I (First Part): *Universal Instruments* (United Nations publication, Sales No. E.02.XIV.4 (Vol. I, Part 1)), sect. J, No. 34.

9. Many countries have adopted measures to address the multiple problems created by overcrowding in correctional facilities<sup>6</sup> and to mitigate the effects of overcrowding. The Workshop offers an opportunity for government representatives, experts and practitioners to exchange information on strategies and best practices for reducing overcrowding in correctional facilities. Specifically, the Workshop provides a forum for:

(a) The consideration of strategies to improve the fairness and efficiency of the criminal justice process;

(b) The review of good practices and strategies in improving access to justice for the poor and vulnerable;

(c) The review of good practices with respect to decriminalization, pretrial diversion, restorative justice at all stages of proceedings and alternatives to imprisonment, and assessment of the impact of such practices on prison overcrowding;

(d) The consideration of possible strategies for expanding the use of early release measures;

(e) The identification of effective programmes for the prevention of recidivism as a means of reducing prison overcrowding.

## **II. Factors contributing to prison overcrowding**

10. The reasons for the growth of prison populations worldwide are numerous and vary from region to region and from country to country. A range of social and economic factors and policies, the existence or lack of social support networks and health-care services in the community, crime prevention measures, the development of the criminal justice system, societal perceptions of crime and the role of imprisonment in countering crime all have an impact on the size of those populations. Other factors, such as excessive use of imprisonment, corruption, harsh social policies and growing income inequality can also have a considerable impact on the size of prison populations. In most countries, these factors have a cumulative effect. A multidisciplinary and comprehensive strategy is therefore needed in order to address them effectively.

11. For the purposes of the present paper, the key causes of overcrowding may be summarized as follows: (a) the inefficiency of the criminal justice process; (b) punitive criminal justice policies and the overuse of detention and imprisonment, particularly at the pretrial stage; (c) inadequate legislative provision for non-custodial measures and sanctions and lack of clear sentencing policies and guidelines encouraging the application of such measures and sanctions; (d) challenges faced by large sectors of society, especially the poor and vulnerable, in accessing justice; (e) inefficient measures to prevent recidivism; (f) lack or underuse of release programmes; and (g) inadequacy or lack of prison facilities and resources.

### **A. Inefficiency of the criminal justice process**

12. Prison overcrowding is often the result of problems and inefficiencies in the criminal justice system including ineffective or delayed investigation, the limited use of pretrial release provisions, inefficient case management practices, limited resources within the prosecution service and the judiciary and the lack of provision for or limited use of summary proceedings.<sup>7</sup> These problems contribute to case backlogs in courts, unacceptably long delays in completing investigations and committing cases to trial, multiple and often unnecessary court adjournments and excessive delays in trial proceedings and case dispositions, all of which have been identified as factors contributing to lengthy pretrial

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6 In the present paper the term “correctional facilities” is used to include all prisons and pretrial detention facilities, although the latter do not have a correctional function.

7 For the purposes of the present paper the term “summary proceedings” refers to simplified procedures which accelerate the trial process with the objective of ensuring greater efficiency in the criminal justice system and minimizing costs. Generally, summary proceedings are used in the lower courts, usually for lesser criminal offences, and constitute fast-track proceedings whereby certain formal procedures are dispensed with or streamlined. In Canada, for example, the amendment of relevant national legislation has involved the “hybridization” of offences under the Criminal Code that had previously been strictly indictable. Such hybridization allows prosecutors to choose summary proceedings in appropriate cases, thus avoiding the more complicated

detention periods.<sup>8</sup> There are instances in which the period of pretrial detention exceeds the length of the sentence likely to be imposed. In many jurisdictions, pretrial detainees account for a significant proportion of the prison population.<sup>9</sup>

13. Lack of cooperation among criminal justice agencies such as the police, prosecutors and courts, compounded in some cases by poor information exchange, is also a key concern. One of the underlying causes of such challenges is the lack of accurate and up-to-date information on individuals held in penal establishments.

Without accurate records, prison authorities have insufficient information concerning the identities of prisoners and are unable to track the case files of those prisoners. In the case of pretrial detainees, the lack of accurate records, including records of the dates of court hearings, can lead to considerable delays. The presence of a complete, accurate and accessible prisoner file system is a prerequisite for effective policymaking and prison management.

## **B. Punitive criminal justice policies and the overuse of detention and imprisonment**

14. Punitive criminal justice policies have had an impact on the growth of the prison population and prison overcrowding in many countries. Research in some countries indicates that the increase in the size of prison populations is attributable to causes often unrelated to crime rates.<sup>10</sup> In many cases the increase in the use of imprisonment appears to be a consequence of punitive penal policies that may be ad hoc and driven by short-term political exigencies. Courts in many countries are more likely now than a decade ago to sentence offenders to imprisonment and impose longer sentences.<sup>11</sup> In some countries, the increased use of life sentences with or without parole for a wider range of crimes is a growing trend. In many countries, non-violent offenders who have committed minor crimes are imprisoned rather than dealt with at the first stage of the criminal justice process by way of a caution, fine, suspended sentence or restorative justice measure.

15. Certain criminal justice policies have been identified as major factors contributing to increases in prison populations and to prison overcrowding, including extension of the range of offences to which the penalty of imprisonment applies and the introduction of longer terms of imprisonment for certain offences.<sup>12</sup> Policies that require convicted offenders to serve more time in prison, such as the shift from indeterminate to determinate sentencing, the increase in the number of mandatory minimum sentences<sup>13</sup> and the elimination of the practice of awarding good time to prisoners, can contribute to overcrowding. Community pressure also plays a contributory role; within communities concerned with safety and security, there may be de facto support for legislation and policies that contribute to prison overcrowding, including the extensive use of pretrial detention. The pressure that citizens exert on Governments, often through the media, to penalize offenders is one of the reasons why prisons remain

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procedures for indictable offences (such as a preliminary hearing (committal hearing) or trial before judge and jury). Hybridization offers a way to simplify and accelerate the trial process in cases relating to lesser offences and warrant summary proceedings. For a review of a number of reforms implemented in inquisitorial criminal justice systems with the aim of accelerating criminal proceedings, inter alia, by reducing the formality of criminal trials and streamlining the investigatory process, see Albin Eser, "The acceleration of criminal proceedings and the rights of the accused: comparative observations as to the reform of criminal procedure in Europe", *Maastricht Journal of European and Comparative Law*, vol. 3, No.4 (1996).

8 Human Rights Watch, *"The Perverse Side of Things": Torture, Inadequate Detention Conditions, and Excessive Use of Force by Guinean Security Forces* (New York, 2006), available from [www.hrw.org/reports/2006/guinea0806/](http://www.hrw.org/reports/2006/guinea0806/).

9 United States Department of State, Country reports on human rights practices: Senegal (2007), available from [www.state.gov/g/drl/rls/hrrpt/2007/100501.htm](http://www.state.gov/g/drl/rls/hrrpt/2007/100501.htm).

10 "Over-use of imprisonment: causes, consequences and responses", *Penal Reform International Newsletter*, vol. 55, July 2006, p. 5.

11 Ibid.

12 David Beck-Brown, "The high cost of prison overcrowding", *San Diego Union-Tribune*, 27 April 2006 (available from [www.davidbeck-brown.com/literaryarts\\_cost\\_of\\_prison\\_overcrowding.shtml](http://www.davidbeck-brown.com/literaryarts_cost_of_prison_overcrowding.shtml)); see also Patrick Kinkade, Matthew Leone and Scott Semond, "The consequences of jail crowding", *Crime and Delinquency*, vol. 41, No. 1 (1995), pp. 150-161.

13 Julia Sloth-Nielsen and Louise Ehlers, "Assessing the impact: mandatory and minimum sentences in South Africa", *SA Crime Quarterly*, vol. 14, December 2005, pp. 15-22.

the primary instruments of punishment.<sup>14</sup> Community pressure may also make parole boards reluctant to grant offenders early release or may hinder the establishment of programmes and services to assist offenders in successfully reintegrating into the community.

16. Policies relating to criminal procedures during the investigation and trial process and provision for bail or pretrial release can have a significant impact on prison populations. The lack of legislation or failure to enforce existing legislation relating to the criteria for placing persons in pretrial detention can limit access to bail and other pretrial release options. Remand prisoners may be imprisoned for lengthy periods as a result of policies and practices that cause unnecessary delays and inefficiency in the justice process. In some jurisdictions, suspects are expected to be brought before the court within a specific period. However, there may be no limit as to the number of times the police may obtain an extension on that period while completing investigations. As a result, persons may be detained for lengthy periods without charge.

### **C. Inadequate provision for non-custodial measures and sanctions**

17. In many countries, national legislation provides only for limited alternatives to imprisonment; where such alternatives exist, courts are often reluctant to use them, generally preferring imprisonment. Limited use of non-custodial measures may be part of a criminal justice policy that is punitive as a whole, or could be related to failure to reform legislation owing to lack of resources, lack of training for judges and the absence of clear sentencing guidelines encouraging the use of non-custodial measures.

18. Sentencing policies that encourage the use of community-based programmes but do not establish any obligation to develop and sustain such programmes are ineffectual and do nothing to alleviate prison overcrowding. Where such alternatives to imprisonment exist, sufficient resources are necessary to support non-custodial measures and to supervise offenders in the community.

### **D. Issues concerning access to justice**

19. The absence of a proper and effective legal representation system can contribute to the size of prison populations. Accused persons without representation may face a higher risk of being detained until the date of the hearing or trial or until being incarcerated upon conviction, even in cases involving minor offences. Lack of representation is also one of the causes of delays in the criminal justice process. The number of legal counsels or paralegals available to represent or assist accused persons at police stations, in court or in prison may be low, particularly in remote areas. In many jurisdictions, poor and vulnerable persons have inadequate access to legal assistance that could help them to remain in the community until the hearing or trial date or to appeal for an alternative to imprisonment upon conviction.

### **E. Inefficient measures to prevent recidivism**

20. Absent, limited or ineffective rehabilitation measures for offenders, both in the community and in prison, can have an impact on recidivism rates. The lack of reintegration programmes within correctional facilities can impede the successful reintegration of offenders into the community, thus increasing the likelihood of recidivism, which may in turn have a significant impact on prison populations. In some jurisdictions, the fastest growing segment of the prison population comprises offenders who have violated the terms of their parole or probation.<sup>15</sup> However, consideration should also be given to the possibility that conditions attached to probation or parole may be too strict and therefore difficult for offenders to comply with, and that in some jurisdictions, the only option available to the authorities in the event of a breach of those conditions is to order that the offender return to prison, in some cases to serve the remainder of his or her sentence, however minor those breaches

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14 Jeremy Sarkin, ed., *Human Rights in African Prisons*, Ohio University Research in International Studies, Africa Series (Athens, Ohio, Ohio University Press, 2008), p. 2.

15 Yvon Dandurand and others. *Conditional Release Violations, Suspensions and Revocations: A Comparative Analysis* (Vancouver, International Centre for Criminal Law Reform and Criminal Justice Policy, November 2008), p. 3. Available from [www.icclr.law.ubc.ca/files/books/Conditional Release Violations Final\\_English.pdf](http://www.icclr.law.ubc.ca/files/books/Conditional%20Release%20Violations%20Final_English.pdf).



may be (such as breach of curfew).

#### **F. Lack or underuse of release programmes**

21. In many jurisdictions, there is little provision for early release from prison, and where such provision exists, that mechanism is often underused due to resource limitations and other factors. Ineffective or inefficient parole systems or rigid parole rules that limit the number of cases in which parole is granted contribute to large prison populations. The number of parole suspensions and revocations depends not only on the behaviour of offenders but also on the manner in which they are supervised in the community and the legislative framework within which that supervision is carried out.

#### **G. Inadequate prison infrastructure and capacity**

22. In many countries, prison facilities are in need of replacement or renovation. They do not adequately accommodate existing prison populations or increases in the number of prisoners. In many post-conflict and transitional societies, the prison system has been destroyed or severely damaged. Lack of investment in prison construction and renovation and delays in building new facilities contribute to prison overcrowding and aggravate its effects. Prison construction, where undertaken, must be part of a comprehensive strategic plan to address overcrowding in prisons, inter alia, through measures to decrease the number of persons incarcerated.

#### **H. Other factors**

23. Some regions have experienced a rapid increase in the size of their prison populations as a result of a rise in crime rates that has a positive correlation with inequality, inadequate responses to poverty and social marginalization.<sup>16</sup> In many countries, the problem of prison overcrowding is exacerbated by the fact that illegal migrants are often detained before being repatriated (even if, as in many cases they have been living illegally in the country for a long time). In others, prisons have become the only facilities available for persons with mental health problems.

### **III. Strategies to reduce prison overcrowding**

24. Strategies developed to reduce prison overcrowding will vary according to the specific needs of individual jurisdictions. Best practices call for concerted and comprehensive efforts on the part of the entire criminal justice system, involving the cooperation and coordination of all criminal justice stakeholders. States should analyse their national criminal justice systems in the context of their historical, legal, economic and cultural background. Specific strategies are: (a) to ensure a system-wide, integrated and sustained approach to the criminal justice process and related programmes; (b) to improve the efficiency of the criminal justice process; (c) to ensure comprehensive sentencing policies; (d) to increase the use of alternatives to detention and imprisonment, on the basis of the principle of imprisonment as a last resort and the principle of proportionality; (e) to strengthen access to justice and public defence mechanisms; (f) to develop or strengthen, as appropriate, provisions for early release; (g) to strengthen measures to prevent recidivism, such as rehabilitation and reintegration programmes; (h) to increase prison capacity if absolutely necessary; and (i) to conduct research and development activities relating to information systems for the justice and corrections sectors. Strategies to reduce overcrowding should be gender-sensitive and should respond effectively to the needs of vulnerable groups.

25. The United Nations Office on Drugs and Crime (UNODC) has developed a number of tools and handbooks that can serve Member States as practical guides in developing strategies, such as the Criminal Justice Assessment Toolkit on custodial and non-custodial measures. It has also designed specific tools to assist in the development of strategies to reduce overcrowding among female prisoners

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16 See Pablo Fajnzylber, Daniel Lederman and Norma Loayza, "Inequality and violent crime", *Journal of Law and Economics*, vol. 45, No. 1 (April 2002); see also Elias Carranza and others, *Carcel y Justicia Penal en America Latina y el Caribe: Como Implementer el Modelo de Derechos y Obligaciones de las Naciones Unidas* (Mexico City, Siglo XXI, 2009).

and vulnerable groups in prisons, such as the *Handbook for Prison Managers and Policymakers on Women and Imprisonment*<sup>17</sup> and the *Handbook on Prisoners with Special Needs*.<sup>18</sup> Furthermore, the Commission on Crime Prevention and Criminal Justice, in its resolution 18/1, requested the Executive Director of UNODC to convene an open-ended intergovernmental expert group meeting to develop, consistent with the Standard Minimum Rules for the Treatment of Prisoners and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), supplementary rules specific to the treatment of women in detention and in custodial and non-custodial settings. The meeting, which was held in Bangkok from 23 to 26 November 2009, endorsed a series of supplementary rules providing, inter alia, for greater use of alternatives to prison in the case of certain categories of female offenders. The draft rules will be before the Congress (A/CONF.213/17) for appropriate consideration and action.

#### **A. Comprehensive criminal justice policies and programmes**

26. Successful strategies to reduce prison overcrowding are based on an integrated and sustained approach to enhancing the criminal justice process and are strengthened by in-depth understanding of the nature of the crime problem, the effective functioning of the criminal justice system and general strategies for crime prevention. Comprehensive policies may include both crime prevention measures and strategies that limit the reach of the criminal justice system, such as the use of decriminalization or pretrial diversion, thus reducing the number of persons convicted and imprisoned. Informal and restorative justice mechanisms have the potential to reduce court costs and case processing times and to provide communitybased forums for the resolution of cases. Policies should also discourage the use of criminal justice systems to deal with social issues such as mental health problems.

27. Strategies should cover the three stages of the criminal justice process: pretrial, trial and conviction. Measures to decrease the use and duration of pretrial detention include legislative and policy frameworks ensuring that police and pretrial detention are used only when absolutely necessary; encouragement of the use of pretrial release options; the requirement that pretrial detention be decided by a competent authority and for a determinate period of time; and the requirement that trials be held within a reasonable period of time beyond which detention is not permitted. Strategies such as plea bargaining or mechanisms for entering early guilty pleas or for fast-track case management can encourage the early disposition of cases. Governments could consider creating small claims courts or courts to hear cases involving minor offences. A number of jurisdictions have developed specialized courts designed to address the specific needs of certain groups of offenders and to provide an alternative to the use of imprisonment. Offenders who are mentally ill or dependent on drugs are often caught in an inescapable cycle of incarceration and release. Strategies that have used the authority of the court to compel therapeutic intervention (such as drug treatment courts and courts that try cases relating to violence in the family) have proved successful in this area.<sup>19</sup>

#### **B. Improving the efficiency of the criminal justice process**

28. One of the key challenges that must be addressed by strategies to reduce the prison population is inefficiencies in the criminal justice process that have a direct impact on the size of the prison population. Practices that contribute to prison overcrowding by creating backlogs of court cases and increasing the number of pretrial detainees could be identified through a system-wide review.

29. Strategies must also seek to reduce the time between commencement of proceedings and their conclusion with a final judgement; impose time limits (e.g. under statutory or constitutional law) for the conclusion of investigations and trials; review rules of procedure and court rules; improve joint investigations by and communication between the police and prosecution services; improve court administration, including automation, scheduling, case-tracking and casemonitoring schemes; enhance case management; and streamline pretrial processes such as disclosure, admissions and

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17 United Nations publication, Sales No. E.08.IV.4.

18 United Nations publication, Sales No. E.09.IV.4.

19 John Weekes and others, "Drug treatment courts", *FAQs*, Canadian Centre on Substance Abuse (Ottawa, March 2007). Available from [www.ccsa.ca](http://www.ccsa.ca).

case conferences. Strategies that might be explored include the creation of new courts, particularly in rural areas; the allocation of resources to increase the capacity of the criminal justice system; the introduction of summary proceedings;<sup>20</sup> the creation of opportunities for offenders to enter early guilty pleas; greater legal representation for offenders; more efficient case management; improved scheduling and notification processes; and strengthening of the role of paralegal professionals in facilitating the processing of cases.

30. Initiatives to improve the efficiency of the criminal justice process require a concerted effort on the part of the entire criminal justice system, which may require training for police, prosecutors, judges, staff of correctional facilities, communitybased non-governmental organizations and other agencies and organizations. The Chain Linked Initiative, which is being implemented in a number of African States, involves cooperation between courts, prosecutors, prisons, social services, local community leaders and non-governmental organizations. Participants in the initiative hold regular meetings, conduct joint prison visits and have developed and distributed agreed performance standards, which have been successful in expediting the processing of cases and the release of detainees found to have been imprisoned unlawfully.<sup>21</sup> Regional and national conferences involving all justice stakeholders serve as useful forums for the examination of ways to improve the administration of justice and for the development of interagency cooperation. For example, UNODC, the International Centre for Criminal Law Reform and Criminal Justice Policy and the United Nations Mission in the Sudan (UNMIS) are jointly supporting the capacity-building and reform efforts of the Southern Sudan prison service. While those activities are focused on supporting the prison service, they also include the strengthening of cooperation among relevant stakeholders in the justice system in identifying key issues and drawing up strategies for developing alternatives to imprisonment.

31. Justice systems should be supported by good information management systems providing up-to-date and easily accessible information on cases, accused persons and convicted offenders. The *Handbook on Prisoner File Management*,<sup>22</sup> published by UNODC, highlights the importance of maintaining accurate prisoner files as a means of ensuring compliance with international treaties and standards. Effective caseload management can help to expedite the hearings of pretrial detainees, facilitate the identification of convicted persons eligible for early release and ensure that adequate supervision and services are provided to persons released. Participants in the four regional preparatory meetings for the Twelfth Congress considered the special challenges posed by the fact that, in recent years, foreign nationals have tended to account for a large proportion of the prison population in many countries. Some of the practices suggested as a means of alleviating this problem include split sentences, programmes for the exchange of foreign prisoners and regional schemes for the transfer of such prisoners.<sup>23</sup> The transfer of foreign prisoners to their countries of origin should be conducted in accordance with international standards and, to the extent possible, in line with the Model Agreement on the Transfer of Foreign Prisoners.<sup>24</sup>

### **C. Comprehensive sentencing policies**

32. Comprehensive sentencing policies, based on enabling legislation can provide guidance to courts and encourage the use of alternatives to imprisonment. The cost to society of imprisonment in relation to the costs of other options should be taken into account when designing sentencing policies. Legislation and policies based on the principle of imprisonment as a last resort and the principle of proportionality can limit the overuse of imprisonment and contribute to a reduction in the size of prison

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20 See footnote 7 above.

21 Personal Reform International, "*Index of Good Practices in Reducing Pre-Trial Detention*", version 7, October 2005. Available from [www.penalreform.org](http://www.penalreform.org).

22 United Nations publication, Sales No. E.08.IV.3.

23 The requirement that prisoners must consent to the transfer ensures that transfers are not used as a method of expelling prisoners or as a means of disguised extradition (A/CONF.121/10, para. 14).

24 *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.1, annex I.



populations. Policies might include the provision of non-binding guidance to the courts on judicial discretion, the establishment of fixed upper limits and flexible lower limits for penalties or the adoption of legally binding sentencing guidelines that establish priorities with regard to the use of imprisonment and require courts to determine penalties in accordance with the limits of available prison capacity.

33. Such policies can help to minimize the use of mandatory sentences so that mitigating factors can be given greater consideration at the time of sentencing. The incarceration of offenders who do not pose a substantial threat to society, in conditions that undermine their human rights and endanger their mental and physical health and overall well-being, is not conducive to successful rehabilitation or reintegration. Sentencing policies should set out clear provisions relating to the social rehabilitation of offenders. Some countries have introduced sentencing processes that provide for the introduction of pre-sentence reports, which allow judges to consider a variety of options. Various restorative justice approaches can also be designed to provide for non-custodial alternatives. Sentencing policies should also address the impact of recidivism on prison populations.

#### **D. Increasing the use of alternatives to detention and imprisonment**

34. Relevant international instruments recommend that criminal legislation provide for a wide range of non-custodial sanctions applicable to different types of offence and to the individual circumstances of the offender (e.g. rule 8.1 of the Tokyo Rules). The availability of a range of alternatives to imprisonment is clearly necessary as a first step towards increasing the use of non-custodial sanctions in practice. In the UNODC *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment*,<sup>25</sup> the basic principles central to understanding alternatives to imprisonment at every stage of the criminal justice process are introduced and promising practices implemented throughout the world are described (see boxes 1 and 2).

##### Box 1

##### **Good practices in India and South Africa**

A pilot bail information scheme designed to reduce the use of detention in South Africa for persons unable to pay bail has reduced the number of persons in pretrial detention and improved the functioning of the courts in several pilot locations. The general view among those involved in the scheme is that it has produced positive outcomes.<sup>a</sup>

In India, a pilot project to implement a prison visitors' programme and a rights monitoring campaign designed to discourage the use of detention and to expedite trials, has reduced the number of persons detained while awaiting trial.<sup>b</sup>

a Louise Ehlers, "Frustrated potential: the short and long term impact of pretrial services in South Africa", in *Justice Initiatives: Pretrial Detention* (New York, Open Society Justice Initiative, 2008), pp. 121-140.

b R. K. Saxena, "Catalyst for change: the effect of prison visits on pretrial detention in India", *Justice Initiatives: Pretrial Detention* (New York, Open Society Justice Initiative, 2008), pp. 57-69.

35. Alternatives to imprisonment that might be considered when reviewing sentencing legislation and policies include suspended sentences, probation, community service, fines, compensation, conditional sentences, home detention with or without electronic monitoring, verbal sanctions and restriction of certain rights. In some jurisdictions, probation is a widely used alternative to imprisonment. The popularity of probation is due in large measure to its versatility. The duration and conditions of probation can be tailored to the offender's needs and circumstances and, similarly, the level of supervision can be adapted to the danger posed by the offender. Probation officers may, in addition to providing supervision, help persons under community supervision gain access to treatment programmes, such as programmes on violence prevention and substance abuse management and programmes targeting sex offenders through a cognitive skills approach. In many European jurisdictions and in North America, the expansion of electronic surveillance programmes, including

25 United Nations publication, Sales No. E.07.XI.2.

electronic monitoring and “tagging”, has increased the number of offenders who can be supervised in the community. Probation services have also been expanded to include specialized units providing community-based supervision for higher-risk offenders, including sex offenders.<sup>26</sup>

Box 2

**Good practice in Kyrgyzstan: criminal justice reform in 2007**

On 25 June 2007, Kyrgyzstan adopted a number of amendments to its Criminal Code, Code of Criminal Procedure, Penal Enforcement Code and to seven other laws. The changes introduced new alternatives to imprisonment, expanded the use of existing alternatives and reduced the length of sentences applicable to certain offences. The right to decide to arrest a person was transferred from the prosecutor to the courts. As a direct result of those changes, the prison population of Kyrgyzstan decreased dramatically from 15,249 in July 2006 to 9,797 in July 2009. That decrease was attributable largely to the reduction of prison sentences and the easing of conditions for early conditional release.

36. However, in low-income countries where alternatives such as probation and electronic surveillance programmes would entail an unmanageable financial burden, simpler alternatives, such as suspended sentences, home detention, compensation and fines (calculated on an equitable basis) may be preferred options. Unpaid work (community service) is also a possible alternative to short prison sentences. Many jurisdictions provide for a range of penalties applicable in cases in which enforcement of a sentence has failed, and explicitly provide for imprisonment only as a last resort. UNODC is working in Afghanistan to increase the use of alternatives to imprisonment by encouraging the use of those alternatives which are already provided for under relevant legislation but which are not being used. The initiative is based on a comprehensive needs assessment outlined in *Afghanistan: Implementing Alternatives to Imprisonment, in Line with International Standards and National Legislation*, published by UNODC in 2008. As part of that process, UNODC has led the review of the Code of Criminal Procedure of Afghanistan and has also recommended that national legislation provide for a greater number of alternatives to pretrial detention.

37. Capacity-building and awareness-raising are needed in order to increase the use of alternative measures by police, prosecution services and the judiciary. However, one of the key concerns regarding the development of alternatives to imprisonment is that a greater number of persons will require supervision by the justice system.

38. The availability of adequate resources to implement non-custodial measures is essential to any strategy to reduce overcrowding in correctional facilities. Civil society, including non-governmental organizations, can play a pivotal role in the use of community-based alternatives to imprisonment. One of the key challenges is to devise strategies to engage the community, sustain community involvement and promote public acceptance of schemes that allow offenders to remain in the community. Involvement of the community in schemes to reduce prison overcrowding through alternatives to imprisonment is not only cost-effective but also serves to strengthen reform efforts. Activities to raise public awareness of the effectiveness of community sentences can increase public acceptance of such alternatives. The design of alternative measures for specific groups of offenders, such as pregnant women, mothers of young children, elderly persons and prisoners with disabilities, should also be considered.

**E. Strengthening access to justice and access to public defence mechanisms**

39. Good defence lawyers, an effective public defence system, access to legal representation and information on available legal aid significantly improve the administration of justice and may reduce the number of persons in prison. Legal counsel or paralegals<sup>27</sup> can help to ensure that cases are heard within the legally mandated time frame or, failing that, that the accused person is released; in addition,

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26 Curt T. Griffiths, *Canadian Corrections*, 3rd ed. (Toronto, Nelson Education, 2010).

they can counsel prisoners on the benefits of pleading guilty early and provide them with accurate and up-to-date information. They play an important role in reducing prisoner anxiety and stress by increasing the legal literacy of prisoners and detainees. The provision of free legal aid can help to ensure that all individuals have access to legal advice. A further strategy to ensure that prisoners in situations of overcrowding have access to justice is to strengthen access to civil law procedures, class actions or compensation schemes.

#### **F. Developing or strengthening provisions for early release**

40. Early release mechanisms can reduce prison overcrowding and facilitate social rehabilitation and reintegration. The Tokyo Rules encourage the use of postsentencing alternatives in order to avoid institutionalization and to assist offenders in their early reintegration into society including, furlough and halfway houses, work or education release, various forms of parole, remission and pardon. Open prisons should also be considered. Parole or conditional release provides the State with the possibility of imposing conditions specifically tailored to the needs of the individual offender and to assist the offender in the transition from imprisonment to a law-abiding life in the community. Amnesties, pardons and prerogatives of mercy have also been used to reduce prison populations, particularly in cases in which persons convicted of a petty offence have been imprisoned or remanded for long periods or the offender is chronically or terminally ill.

41. Legislation and policies should provide clearly for the possibilities of parole and early release and the conditions for such release. The scope of early release programmes could be extended in such a way as to make early release part of the normal process of sentence enforcement. It is also necessary to ensure adequate supervisory resources, programmes and facilities within the community and to develop and adopt appropriate risk assessment instruments, which can be of use in identifying offenders who may be eligible for early release. In jurisdictions where prisoners must apply for parole in order to be considered for such release, they should be encouraged to do so. Such procedures may allay public concerns about community safety and provide a mechanism whereby offenders are informed at an early stage as to what they must do to qualify for early release and how they must behave in order not to forfeit their eligibility. Criteria used as the basis for early release decisions, such as good behaviour in prison, should be clear and fair. Parole revocation procedures might define specific criteria for revocation, such as the commission by the offender of a new or repeat offence while on parole, and could grant the appropriate authorities discretion to decide on partial revocation.

42. Administrative infrastructure is likely to be required in order to facilitate and monitor compliance with conditions for early release. Those conditions might include the payment of compensation or reparation to victims; treatment for drug or alcohol problems that played a part in the commission of the offence; participation in work, education or vocational training; participation in personal development programmes; or compliance with an order to refrain from contact with a certain person or to stay away from a certain place. The use of early release programmes and services to provide support to those released can facilitate successful reintegration into the community and help to reduce recidivism.

#### **G. Effective measures to prevent recidivism**

43. Comprehensive measures to prevent recidivism are important in reducing the number of persons in prison. Offenders may face social, financial and personal challenges, such as mental illness or substance abuse or addiction, that make it difficult for them to avoid returning to criminal activity. Essential features of a broader crime prevention effort include providing skills training, education, treatment programmes and psychological support for offenders in the community and for prisoners, and establishing programmes to assist offenders released from prison in becoming law-abiding citizens. Research shows that rehabilitation programmes yield better results when implemented in community settings. Strategies should include increasing the effectiveness of education, vocational training, social reintegration assistance and rehabilitation programmes offered to prisoners and of community

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27 See footnote 7 above.

reintegration and supervised release programmes. Vocational training, education and rehabilitation programmes comprise a key component of the majority of the prison reform programmes implemented by UNODC in developing and post-conflict countries and areas such as Afghanistan, the occupied Palestinian territories and Southern Sudan.

44. Reintegration programmes emphasizing the importance of preparing prisoners for release and of the continuity of treatment interventions before and after release have been introduced in a number of jurisdictions.<sup>28</sup> The aims of such programmes are to integrate the various elements of the criminal justice response, develop partnerships with communities and integrate institutional and community-based interventions to form an unbroken continuum. Case management plays a key role in individualizing treatment in prison and facilitating social reintegration.

45. Rehabilitation and reintegration programmes may involve the participation of justice personnel, social workers, educators, non-governmental organizations and community volunteers. Such programmes must prepare not only the prisoners themselves but also their families and the wider community for their return to the community. Public education is a key component of any strategy designed to increase community involvement in community-based programmes for offenders and ex-offenders. The Tokyo Rules encourage the organization of conferences, seminars, symposiums and other activities and the utilization of the mass media to stimulate awareness of the need for public participation.

## **H. Increasing prison capacity**

46. While it is sometimes necessary to increase prison capacity, experience has shown that the construction of new prisons alone is unlikely to provide a sustainable solution to prison overcrowding. In addition, the construction and maintenance of new prisons is expensive and therefore places a strain on possibly limited resources.

47. Where new prisons are essential, their construction should be accompanied by a comprehensive strategy to reduce the number of persons sent to prison in order to achieve a sustainable solution to the continuing growth of the prison population. The creation or strengthening of essential prison infrastructure can provide an opportunity to improve prison conditions, prison security and observance of the human rights of prisoners. However, it also requires expansion of the capacity of the prison service. Prison services should be available in remote areas so as to ease high congestion in prisons in urban centres, make prisoner transfers more secure and less costly and reduce delays in the justice process. Prisons should ideally be built in the vicinity of police buildings and courts so as to mitigate the challenge of transferring prisoners between police custody, the courts and prisons.

48. The mobilization of resources for construction and renovation programmes can be challenging for Member States. There is a need to strengthen cooperation between the prison service and those stakeholders who are able to advocate for support and bring more visibility to the challenges facing the prison system. Prison services should consider partnerships with other government agencies, such as ministries of health or education. The establishment or support for the commercialization of prison industries are possible ways of generating funds for the prison service and supporting rehabilitation efforts through skills training, and they might be promoted through private investment, cooperation with the private sector or the adoption of government policies that support such industries (e.g. in the area of procurement). Institutions that monitor detention conditions, safeguard prisoners' rights and prevent exploitation of prison labour could also play a role in mobilizing resources for prisons.

## **I. Conducting research and developing information systems**

49. Successful initiatives tend to be those founded on empirical understanding validated by key

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28 Curt T. Griffiths, Yvon Dandurand and Danielle Murdoch, *The Social Reintegration of Offenders and Crime Prevention*, Canada, Public Safety Canada, Research Report No. 2007-2 (Ottawa, National Crime Prevention Centre, 2007). Available from [www.publicsafety.gc.ca/res/cp/res/\\_fl/soc-reint-eng.pdf](http://www.publicsafety.gc.ca/res/cp/res/_fl/soc-reint-eng.pdf).

stakeholders. It is therefore important to set up mechanisms for collecting information on how the correctional system operates and how resources are used. Jurisdictions should develop information systems to document caseload and procedures for gathering information on persons held in prisons. That information can serve as the basis for evaluating the effectiveness of initiatives designed to reduce prison overcrowding; such evaluations in turn can be used in the development and application of relevant best practices. All available information should be readily comprehensible to all major stakeholders. In addition, networks to facilitate the sharing of information among jurisdictions should be developed in order to enhance reform initiatives. Governments should provide the necessary knowledge basis for criminal policy planning and legislation by ensuring that proper research infrastructure and resources are in place. Additional efforts are needed to raise public awareness of the way in which the criminal justice system functions and the various crime prevention strategies available. The introduction of a system for the management of prisoner data is one of the components of a number of UNODC prison reform projects in developing countries.

#### **J. Comprehensive social policies**

50. Crime is a social problem to which criminal justice systems can provide only a partial response. Strategies to ensure fair social justice and social equality, reduce income inequality and prevent social marginalization are needed in order to achieve a long-term and sustainable solution to prison overcrowding. Policies and actions relating to crime and criminal justice must be comprehensive, encompassing education, health, housing, employment and measures to combat violence.

#### **IV. Conclusion**

51. Overcrowding in prisons is a serious impediment to safe prison management, effective rehabilitation of offenders and compliance with United Nations instruments and standards relating to the human rights of prisoners. Overcrowding in correctional facilities may lead to multiple human rights violations, such as limitation of access to health care, nutrition and sanitation.

52. While the effectiveness of measures to counter overcrowding in correctional facilities varies depending on the specific situation and criminal justice system of each State, such measures should in all cases be part of a comprehensive crime prevention and criminal justice strategy.

53. Pursuant to the relevant United Nations standards and norms, the Workshop may wish to consider the following:

(a) Member States should recognize prison overcrowding as an unacceptable violation of human rights that requires a firm response. Each Member State should determine the upper limit of its prison capacity. Decisions to increase the number of prison places as a means of reducing overcrowding should not be taken without consideration of ways to reduce demand for prison places, thus avoiding an overall increase in the number of persons in prison;

(b) Member States should consider reviewing, evaluating and updating their policies, laws and practices in order to ensure their comprehensiveness and effectiveness in addressing prison overcrowding;

(c) The implementation by Member States of reforms and strategies to reduce overcrowding should be gender-sensitive and should respond effectively to the needs of vulnerable groups;

(d) Member States are urged to conduct a system-wide review to identify inefficiencies in the criminal justice process that contribute to detainees' being held for long periods during the pretrial and trial processes; to develop strategies to improve the efficiency of the criminal justice process through, inter alia, measures to reduce case backlogs; and to strengthen access to justice and access to public defence mechanisms;

(e) Member States should regard pretrial detention as a last resort. Accordingly, they should consider introducing time limits for detention, a mechanism for reviewing decisions to detain suspects, restorative justice, mediation programmes and electronic monitoring in order to reduce the number of persons held in pretrial detention and the duration of such detention;

(f) Member States are urged to ensure that courts are provided with principled guidance on sentencing, without infringing on their independence and discretionary freedom. Legislative or



policy guidance should be given in a form that reflects the principle of proportionality in such a way as to protect against unfounded severity and ensure the effective implementation of alternatives to imprisonment;

(g) Member States are strongly encouraged to review the adequacy of legal aid and other measures with a view to strengthening access to justice and public defence mechanisms, particularly for the poor and the most vulnerable;

(h) Member States should encourage the participation of all relevant stakeholders in the development and implementation of national strategies and action plans against overcrowding;

(i) Member States are urged to promote the participation of civil society organizations and local communities in implementing alternatives to imprisonment;

(j) Member States are encouraged to introduce measures that facilitate early release from correctional facilities, such as referral to halfway houses, electronic monitoring and good time;

(k) Member States should develop and strengthen research and data collection mechanisms in order to evaluate the effectiveness of reforms and strategies and to communicate that information to the public.