

## **CURRENT SITUATION OF PRISON OVERCROWDING**

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1. It is estimated that there are more than 10 million prisoners in the world and that each year perhaps 30 million people enter prison establishments. Despite a number of international treaties and instruments which should protect the rights of prisoners, such rights are routinely violated. The UN Special Rapporteur on Torture told the General Assembly last year that “in many countries of the world, places of detention are constantly overcrowded, filthy and lack the minimum facilities necessary to allow for a dignified existence. Moreover, tuberculosis and other highly contagious diseases are rife. Inter-prisoner hierarchies and violence are common features of many places of detention, and the guards often delegate their authority and responsibility to protect detainees against discrimination, exploitation and violence to privileged detainees who, in turn, use this power to their own benefit.”
2. Overcrowding is the most important reason for the failure of states to meet minimum standards of decency and humanity. The aim of this paper is to describe briefly what we know about the state of overcrowding around the world, before my colleagues go on to discuss causes and counter measures.
3. It is important to try to agree what we mean by overcrowding. It is relatively easy to recognise it when we see it - situations where there is not enough room for prisoners to sleep; not the facilities to provide sufficient food, health care or any form of constructive activities; insufficient staff to ensure that prisoners are safe; the lack of accommodation to hold separately types of prisoners who should be kept apart - women from men, juveniles from adults; untried from convicted; or lack of capacity to receive any more numbers so that emergency measures have to be taken - in the form of amnesties, emergency accommodation or the holding of prisoners in police stations.
4. If we think about these dimensions we realise that the problem of overcrowding exists in all sorts of prison systems in rich and poor countries, common and civil law jurisdictions, and different types of polity. In the UK emergency measures were introduced in 2007 and are still in place to release prisoners 18 days early in order to free up space; in France last year violent protests erupted when guards started industrial action against overcrowding. In California federal judges have ruled that overcrowding is the chief impediment to adequate healthcare and ordered a cap on the number of prisoners at two thirds of the existing level. In South America the Inter American Court has issued mandates relating to overcrowding and the associated life threatening problems here in Brazil (Urso Branco) and in Argentina (Mendoza). In some of the poorest countries, particularly in Africa, congestion can lead to suffocation and death. Examples abound of overcrowding leading to riots and mutinies, violence and corruption, damage to physical and mental health not just of prisoners but of staff as well. Overcrowding is not limited to adult prisoners. The Special Rapporteur found that far too many of the children whom he met on his visits “are held in severely overcrowded cells, under deplorable sanitary and hygienic conditions.”
5. It is possible to illustrate the current situation of overcrowding with reference to disturbing descriptions of human misery from every continent. But it is important to go beyond specific examples to build an accurate picture of the extent and nature of the problem globally.
6. There is not however a straightforward way of measuring overcrowding because there is no universal agreement about how much space prisoners should have or the facilities to which they should have access. International standards state that each prisoner must have enough space, although definitions of adequacy vary from country to country and depend among other factors on

how much time prisoners spend in their cells. The UN Standard Minimum Rules do say that all cells and dormitories must have adequate heating, lighting and ventilation and that every detainee or prisoner should have his own bed or mattress with clean bedding. But in the absence of a binding convention on prisoners' rights, we are short of comprehensive baseline information.

7. The International Committee of the Red Cross (ICRC) has recommended minimum standards in respect of these dimensions e.g. minimum space per prisoner of no less than 3.4 sq m<sup>1</sup> and area within the security perimeter of 20-30sq m per person. Minimum rates of air renewal and intensity of light have also been specified.<sup>2</sup> But there is no systematic data available to assess whether these objective standards are being met or to enable comparisons to be made. There is even less data about how prisoners perceive overcrowding. As the UN Rapporteur has said "If cells are severely overcrowded, not much privacy is left for individual detainees within the cells." But we know little about how prisoners experience overcrowding.
8. The ICPS World Prison Brief includes details of the *occupancy* levels in the prison systems of 191 countries. It does this by showing the official (uncrowded) capacity of the prison system and presenting the prison population total as a percentage of the capacity figure. This percentage is the occupancy rate and it demonstrates whether a prison system holds more prisoners than it is intended to hold and, if so, by how much.
9. The occupancy level is *not* the same thing as the level of overcrowding. But, it is perhaps the best proxy measure of overcrowding that is available in the absence of detailed information about the amount of space that each prisoner has in their living accommodation.
10. There are some important caveats about this measure. First a system as a whole may have fewer prisoners than it is intended to hold but individual prisons or parts of prisons may be overcrowded - sometimes severely so. For example Argentina and Russia report less than 100% occupancy but it is well known that there is gross overcrowding in some penal institutions in those countries. In a recent case at the European Court of Human Rights detention in a Russian remand centre provided from 0.5 to 0.6 square metres of floor space per person. (Andreyevskiy v. Russia 2009). In a similar vein, while Cameroon's total occupancy level may be 138 %, New Bell Prison in Douala had four times the number of prisoners it was designed for when ICPS visited in 2008.
11. A total occupancy level in a large country may serve to mask sizeable variations between regions or types of institution. The overall US occupancy level of 110% comprises 95% in local jails, 116% in state prisons and 162% in federal prisons. There is likely to be considerable variation too within each category of prison - California's prison population is about double capacity.
12. In most systems there tends to be more overcrowding among pre trial prisoners than among sentenced prisoners. Indeed the requirement to keep pre trial detainees apart from sentenced prisoners can lead to gross discrepancies in living space within one institution.
13. The second caveat is that countries can decide and sometimes change the designated capacity of a prison. By moving a bunk bed into a cell the capacity doubles and 100% overcrowding disappears! So it is possible for each prison in a prison system to hold fewer prisoners than its official capacity, and for the prison system's overall occupancy rate thus to be below 100%, but nonetheless for the prison system to be overcrowded. This occurs when the official capacity of the system is set at a level that allows so little space per prisoner in the living accommodation that the prisons are overcrowded despite the fact that they hold no more prisoners than the official capacity. Since the official capacity of each prison system is set according to criteria decided by the country

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1 Standards are higher in Europe

2 Nembrini, G. P. (2005) *Water, Sanitation, Hygiene and Habitat in Prisons*. Geneva: International Committee of the Red Cross

concerned, it follows that those international comparisons of occupancy levels are far from precise.

14. Despite these warnings, prison systems that have occupancy rates exceeding 100% will (almost certainly) have overcrowding in the system and the higher the rate the more likely that the overcrowding is of a serious nature. What does our data show?
15. First that in 60% of countries (114 out of 191) the prison system holds more prisoners than it is intended to hold. The official capacity is exceeded in 72% (28/39) of African countries on which information is available, 70% (32/46) of countries in the Americas, 56% (9/16) of countries in Oceania, 68% (17/25) of Asian countries and 44% (25/57) of countries in Europe.
16. Second in 41 countries (21%) the occupancy rate exceeds 150%, meaning that the prison system is more than 50% overcrowded. The extent of overcrowding is greatest in African prison systems. The occupancy rate is over 150% in 41% (16/39). A similar level of severe overcrowding is present in 19% (3/16) of the countries in Oceania on which information is available, in 28% (7/25) of Asian countries, in 28% (13/46) of countries in the Americas and 2% (1/57) of European countries.
17. Third, in 16 of the 191 countries (8%) the occupancy rate exceeds 200%, meaning that there are at least two prisoners accommodated in the space intended for one. Nine of these countries are in Africa (Benin, Burundi, Côte d'Ivoire, Kenya, Mali, Rwanda, Sudan, Uganda and Zambia), two in Asia (Bangladesh and Pakistan), four in the Americas (Ecuador, El Salvador, Haiti and St Vincent and the Grenadines) and one in Oceania (French Polynesia).
18. The table below summarises prison occupancy rates by continent.

	Under 100%	100% but under 120%	120% but under 150%	150% but under 200%	200% and over	Total
<b>Africa</b>	11	4	8	7	9	39
<b>Americas</b>	14	8	11	9	4	46
<b>Asia</b>	8	4	6	5	2	25
<b>Europe</b>	32	16	8	1	0	57
<b>Oceania</b>	7	4	2	2	1	16
<b>Total</b>	72 (39%)	36 (20%)	35 (19%)	24 (13%)	16 (9%)	183 (100%)

19. As a way of leading to further considerations of causes and countermeasures, I would conclude by pointing out that our data suggests two important elements of the problem. First the countries that have the highest rates of over-occupancy do not tend to have particularly high rates of imprisonment per head of population. Of the 14 most overcrowded countries where detailed comparison is possible, it is only El Salvador whose prison population rate exceeds 150 per 100,000. By contrast several have relatively low rates of imprisonment.
20. This might suggest that the way to address the problem is to build more prison capacity. But the other interesting finding is that the most overcrowded countries generally have high rates of pre trial detention. Of the 16 most overcrowded systems, 7 have prison populations of which more than half are waiting for trial and it is more than 35% in a further four.
21. The table below shows the prison population rate and percentage of pre-trial detainees in the 16 countries with the highest occupancy rates<sup>3</sup>

3 These statistics were taken from World Prison Brief *Online* at 11 February 2010. Statistics are not necessarily from the same year but represent the most recent figures available.

Country	Occupancy rate (%)	Prison population rate (per 100,000 of the national population)	Pre-trial detainees (% of prison population)
Haiti	335.1	83	78.0
Benin	307.1	66	79.6
Bangladesh	302.4	51	69.0
Burundi	264.2	129	68.0
Sudan	255.3	45	c.10
Pakistan	249.5	55	66.1
El Salvador	240.8	273	35.9
Kenya	223.3	117	43.3
Mali	223.3	52	88.7
Uganda	223.0	91	56.0
Cote D'Ivoire	218.0	56	28.5
French Polynesia (France)	215.9	153	N/A
Zambia	207.3	120	35.3
St Vincent and the Grenadines	205.0	346	21.8
Ecuador	202.7	126	44.4
Rwanda	202.4	593	26.9

22. Looked at the other way round, of the 20 countries with the highest rate of pre trial detention 14 have high rates of occupancy - over 120% . What this suggests is that the route to addressing overcrowding is to improve the functioning of the criminal justice process.

23. The table below shows the occupancy rate in the 20 countries with the highest percentage of pre-trial detainees<sup>4</sup>

Country	Pre-trial detainees (% of prison population)	Occupancy rate(%)
Liberia	97.3	136.3
Mali	88.7	223.3
Benin	79.6	307.1
Haiti	78.0	335.1
Niger	c.76	64.6
Bolivia	78.4	165.5
Congo (Brazzaville)	c.70	N/A
Paraguay	69.5	116.3
Nigeria	69.3	84.1
Bangladesh	69.0	302.4
Burundi	68.0	264.2
India	66.6	135.7
Pakistan	66.1	249.5
Cameroon	65.6	137.4
Monaco	64.0	44.4
Honduras	63.5	140.0
Philippines	63.3	156.4
Uruguay	63.1	133.6
Seychelles	63.0	76.3
Lebanon	62.5	120.9

24. This is particularly true in respect of countries emerging from conflict. Until the disaster, Haiti had the highest level of over-occupation and while data is difficult to obtain, overcrowding situations in Liberia, Rwanda and DR Congo can amount to humanitarian emergencies. Like all such emergencies, the response must include short term relief and the development of longer term sustainable solutions.

<sup>4</sup> These statistics were taken from World Prison Brief *Online* at 11 February 2010. Statistics are not necessarily from the same year but represent the most recent figures available.