

Guidance Note 4

Dealing with prison overcrowding

Summary

- Prison overcrowding is widespread throughout the world.
- It creates danger for prison staff and leads to human rights abuses, violence and disease.
- It can lead to conditions that constitute inhuman and degrading treatment for prisoners and unacceptable working conditions for prison staff.
- Two long-term solutions are possible: increasing the capacity of the prison system or reducing the number of prisoners.
- Increasing the capacity of the prison system rarely succeeds as a long-term strategy to reduce overcrowding. Changing criminal procedure and sentencing policies is a more effective mechanism.
- In the short-term overcrowding can be reduced by amnesties, reviewing the legality of detention status so that those held unlawfully can be released and removing groups inappropriately held, such as the mentally ill.
- Its effects can be mitigated by making better use of the overall space available, reviewing security levels, classifying prisoners by security risk so that lower-risk prisoners can be accommodated in less secure accommodation and introducing activities which generate income and produce food.

“ All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

— *Article Ten, United Nations International Covenant on Civil and Political Rights*

Guidance Notes on Prison Reform

This guidance note is number four in a series designed to give practical help to those developing and delivering prison reform projects. All the guidance notes:

- are set within the international human rights framework
- apply in a variety of cultural and political environments
- propose solutions that are likely to be sustainable in a variety of socio-economic situations and do not involve a significant increase in resources
- take account of the realities of prison management

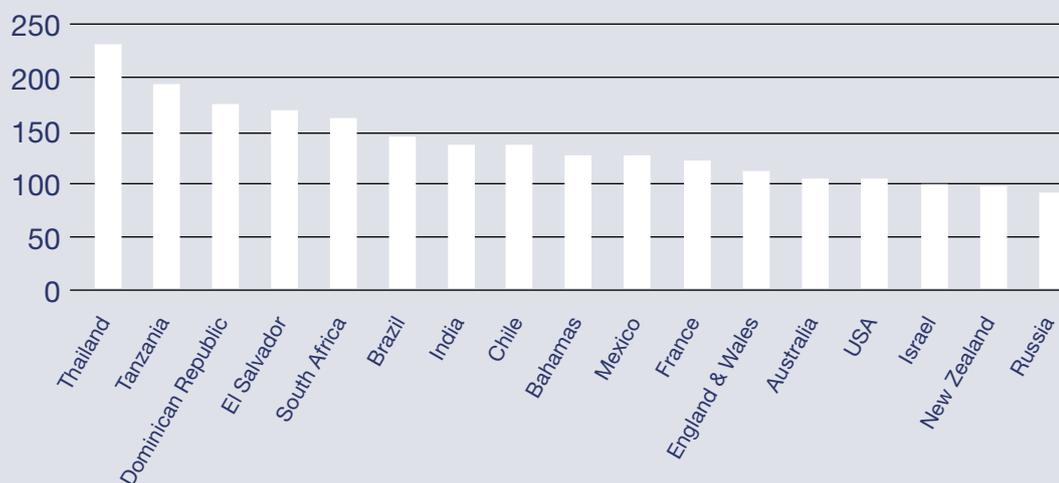
The production of these guidance documents on how to undertake prison reform projects is supported by the UK Foreign and Commonwealth Office.

The extent of overcrowding

Many prisons of the world are overcrowded, that is, they are holding more prisoners than they were designed for. Overcrowding is found in the East and in the West, in the developing and developed world. For example, the prison system of England and Wales has been overcrowded in every one of the last 20 years.¹ Currently the US federal prison system is 33 per cent overcrowded and State systems in the US are up to 17 per cent overcrowded.² Higher levels are found in some countries. The one prison in Barbados, Glendairy Prison, is 302 per cent occupied. The prisons in Cameroon are 296 per cent occupied.

The table below gives levels of overcrowding as officially measured. However, there is no internationally accepted definition of overcrowding and the criteria used will vary greatly from having two in a cell built for one to having two in a bed made for one, or having barely enough floor space to lie full length.

Occupancy levels in some prison systems worldwide by percentage, where 100% is full occupancy



These statistics were taken from World Prison Brief Online at 19 April 2004. Statistics are not necessarily from the same year but represent the most recent figures available. Percentages have been rounded to the nearest whole number.

Levels of overcrowding vary and in some countries overcrowding reaches levels where it can be described as cruel, inhuman or degrading treatment or punishment.

“ The negative effects upon prisoners’ lives of the poor material conditions seen at Oporto Prison were undoubtedly exacerbated by the fact that the establishment was grossly overcrowded, especially in the areas for male prisoners. The situation in B Wing was typical: of one hundred and twenty-two 7m² cells (designed for single occupancy), one hundred and eighteen were holding three prisoners and the remaining four were holding two inmates; living space was equally limited in the Wing’s three dormitories, where up to ten prisoners were being held in rooms measuring little more than 16m².³

CPT visit to Portugal 2001

Overcrowding is concentrated

In many prison systems, overcrowding is concentrated in the pre-trial part of the system. In many countries pre-trial prisoners tend to suffer the worst prison conditions. In the prisons of the countries of the former Soviet Union overcrowding is usually

concentrated in the pre-trial prisons called SIZOs while other parts of the system are not fully occupied.

How overcrowding is measured

There are different ways of measuring overcrowding. One is according to the amount of personal space per prisoner. Most prison systems have a figure for the capacity of their prisons and can indicate when their prisons are overcrowded. However, these figures are often based on local definitions of what is considered to be an acceptable amount of space. There is no universally agreed international standard. Sometimes when prisons have reached their capacity detainees are held in police detention where the conditions can be even worse than in the overcrowded pre-trial prisons.

“ *The European Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment (CPT) has recommended 4 square metres per person as a useful measure when trying to improve on wholly unacceptable levels of overcrowding. However it has described an individual cell measuring 4.5 square metres as ‘very small’, and unsuitable for periods of detention exceeding one or two days, one of 6 square metres as ‘rather small’, and one of 10 square metres as ‘of a good size for individual occupation’ but ‘rather small’ for dual occupation. Cells for individual occupation measuring 8 square metres and 9 square metres have been considered to provide ‘entirely satisfactory’ and ‘reasonable’ conditions of detention’.*

Visits to Iceland in 1998, Netherlands in 1997, Hungary in 1999

The amount of personal space allocated to each prisoner is only one measure of overcrowding. The amount of space available to each prisoner in a cell or dormitory must be considered together with the amount of time the prisoner spends out of the overcrowded cell or dormitory each day. To spend 23 hours a day in a space of 3 square metres is much worse than if the prisoner is only kept there at night and can spend the day in a yard or workshop or classroom. Overcrowded conditions are made worse where there is scarcely any natural light and limited ventilation in the living accommodation.

The effects of overcrowding extend to all parts of a prison. Overcrowding will put pressure on utilities, such as the amount of water that is available and the capacity of the sewage system. The kitchen may not have the facilities to produce enough meals. It is also made worse if cooking, washing, clothes drying and bathing are all carried out in the cell, rather than in outside facilities. Access to facilities such as work, education and sports will also be affected by overcrowding. Bed spaces may be insufficient so that prisoners may have to sleep in shifts.

“ *Prison conditions were harsh and life threatening. ... Prison cells averaged less than one square yard of space per inmate ...*

US Department of State, *Madagascar country report 2003*⁴

The consequences of overcrowding

Prison overcrowding can:

- violate fundamental human rights, such as the right to life and to security of the person
- have potentially dangerous public health effects, with overcrowded accommodation acting as an incubator for infectious diseases such as TB and HIV/AIDS

- adversely affect mental health
- seriously affect the ability to control crime and violence within the prison walls
- create a dangerous environment for the prison staff
- make it impossible to deliver minimum standards of light, air and privacy
- make it impossible to follow minimum UN requirements on the separation of men from women, young from adults, pre-trial from convicted prisoners

Overcrowding and prison reform

Severe overcrowding can sometimes act as a trigger for prison reform because of public concerns about high prisoner death rates, riots, or health problems. In societies with freedom of expression, press coverage of the effects of overcrowding can be highly dramatic and visual. Other motives for reducing overcrowding can be the pressure of criticism from international bodies or a wish by the government for international acceptance. Pressure from prison staff or their representative bodies because of fears for their health and safety can also be an impetus for governments to tackle overcrowding.

Prison reform is sometimes on the agenda of a new government or new Minister of Interior or Justice and tackling severe overcrowding can be a relatively uncontroversial way to start the process.

What can be done?

There are a number of ways of dealing with prison overcrowding:

- increasing the prison capacity
- reducing the number of prisoners (see Guidance Notes 5 and 15)
- taking short term measures, such as amnesties and other early release schemes
- making better use of the total space available in the prison system
- making better use of all the space in the overcrowded prisons
- improving the living conditions

Increasing the prison capacity

Building new prisons can be necessary when the existing ones are dilapidated and crumbling. However, there is no evidence that building additional prison places can succeed as a long-term strategy for reducing overcrowding. It also needs to be recognised that prisons are expensive to build and subsequently to maintain.

“ ‘... a number of European States have embarked on extensive programmes of prison building, only to find their prison populations rising in tandem with the increased capacity acquired by their prison estates. By contrast, in those countries which enjoy relatively uncrowded prison systems, the existence of policies to limit and/or modulate the number of persons being sent to prison has tended to be an important element in maintaining the prison population at a manageable level.’

CPT visit to Hungary 2001⁵

If it is necessary to build additional prison capacity, lower security accommodation should be provided whenever possible. Most prison systems have too many prisoners

kept in high security accommodation. Building lower security prisons is cheaper and the living conditions are usually of a higher standard.

“ Prisons were underfunded, understaffed, and overcrowded. For example, in Niamey’s Civil Prison, there were approximately 550 prisoners in a facility built for 350; ... A new maximum security prison in Koutoukale was completed during the year; however, it did little to relieve prison overcrowding.

US State Department, *Niger country report 2003*⁶

The size of a country’s prison population is generally determined by policy decisions about how a government chooses to respond to crime, rather than being any reflection of actual crime rates.

“ In the course of this conference we have been reminded several times that the way prisons are managed in individual countries is linked closely to the social structures within each state. Prisons do not exist in a vacuum. To a large extent, they reflect the values to which each society adheres. One example of this is the use which society makes of imprisonment ... A society can choose to have a high or low rate of imprisonment and this choice is reflected in the sentencing patterns adopted by individual judges. In recent years a number of European countries, especially in the West, have decided, either consciously or by default, to have higher rates of imprisonment. They have done this through the introduction of more punitive legislation or as a result of politicians and the media encouraging judicial authorities to send more people to prison for longer periods of time.

13th conference of European Directors of Prison Administration, Strasbourg November 2002⁷

Levels of use of imprisonment vary greatly from country to country. Prison population rates are measured per 100,000 of the general population in any country. The world average prison population is just under 150 per 100,000.

The United States has 4.6% of the world’s population and 23.1% of the world’s prisoners. In contrast, Canada, its northern neighbour has 0.51% of the world’s population and 0.4% of the world’s prisoners.

Imprisonment rates in some prison systems worldwide

Imprisonment rate (per 100,000 of the population)		Imprisonment rate (per 100,000 of the population)	
United States of America	715	El Salvador	158
Belarus	554	England & Wales	141
Russia	548	United Kingdom: Scotland	130
Ukraine	416	China	119
Bahamas	410	Tanzania	116
South Africa	402	Canada	116
Thailand	340	Mexico	169
Chile	204	Australia	114
Mexico	169	Finland	71
Brazil	169	Japan	58
New Zealand	161		

These statistics were taken from World Prison Brief Online at 22 November 2004. Statistics are not necessarily from the same year but represent the most recent figures available.

Reducing the number of prisoners

Reducing high levels of imprisonment requires action at many levels. The criminal justice process is complex and the work of the police, prosecutors, judges, prison authorities and health and social welfare agencies is interconnected. A state wishing to reduce its prison population in a sustainable manner will need to:

- review its criminal justice system
- establish who is being imprisoned, for how long and with what objectives
- create a public and political debate about crime and justice

The following actions can reduce the use of imprisonment:

- reforming the criminal code to take some acts out of the scope of the criminal law
- reducing the use of detention for those awaiting trial
- creating a new sentencing framework with shorter imprisonment terms
- improving the functioning and credibility of existing alternative punishments and/or introducing new alternative measures
- introducing early and conditional release mechanisms
- strengthening mental health and youth facilities so that categories of people who should not be imprisoned can be diverted from the criminal justice system

Methods of dealing with overcrowding in the short term

Measures can be taken in the short-term which can ameliorate the situation and improve the conditions of both staff and prisoners whilst a longer-term strategy is being developed.

Amnesties are sometimes used to reduce the number of prisoners and in some countries groups of prisoners are released under amnesty on a certain day every year, such as Independence Day. Amnesties have short term value but a number of difficulties have been identified:

- public opinion is often inadequately prepared and can react with fear to the prospect of wholesale release of ‘criminals’
- prisoners can be released from prison with no preparation or social support, so can quickly return to prison
- the release of prisoners suffering from infectious diseases without proper follow-up can be a risk to public health
- prisoners are often released en bloc because they fall into a certain category with no individual risk assessment

The legality of the detention status of all prisoners can be reviewed. Experience shows that in some jurisdictions a significant number of pre-trial prisoners are either being illegally held or have exceeded the length of sentence they would have served if convicted. Also, some prisoners might be relocated to more appropriate locations. For instance, mentally disturbed prisoners might be moved to hospitals; some foreigners might choose to be transferred to their home countries under transfer treaties and juveniles moved to childrens’ homes or to foster care.

“ Speaking of the reduction in the number of prisoners in Mozambique the Special Rapporteur On Prisons and Conditions of Detention in Africa notes that the decrease could partly be explained by ‘the setting up of “Commissions to strengthen legality”

which regularly review the legality of detention by touring the prisons and checking prisoners' files. They can decide to release prisoners awaiting trial or even bail those who have served their sentence but cannot pay a fine. The Commissions also release those prisoners who can prove that they are under 16'.

Dr Vera Chirwa, Special Rapporteur on Prisons and Conditions of Detention in Africa,
*Report on second visit to Mozambique 2001*⁸

Dealing with overcrowding through better use of existing resources

Making better use of the total space available in the prison system

A review can be carried out of how the institutions available regionally or nationally are being used. It is possible to look into the reasons why some prisons are not overcrowded, and the possibility of transferring to them prisoners from overcrowded institutions, while bearing in mind that prisoners may prefer to be accommodated in a prison near where they or their family live.

Making better use of all the space in the overcrowded prisons

Existing unused or under-used buildings can be converted to create recreation space or additional accommodation. It is often suggested that prisoners cannot be allowed out of their overcrowded cells into the outside area because the perimeter security is weak. Improving perimeter security by raising the height of the prison wall for instance can allow more use of the prison yards by prisoners.

“ *In Tete Maximum Security Prison the walls are not high enough to ensure security and prisoners' outdoor exercise is consequently very limited.*

Dr Vera Chirwa, Special Rapporteur on Prisons and Conditions of Detention in Africa,
*Report on second visit to Mozambique 2001*⁹

Accommodation which is currently uninhabitable can be repaired so that it can be brought back into use.

Where prisoners are housed in large barracks, partitions can be built to give a reasonable degree of privacy, most particularly in washing or toilet areas. This can alleviate some of the consequences of overcrowding.

“ *In Bayan Zurka Women's Prison in Mongolia, the large dormitories have been subdivided by simple wooden frames and hard board sheeting to allow groups of 4-6 prisoners to have their own space.*

ICPS Mission Report 1999

The way parts of the prison are classified, or 'zoned' can be changed to make movement of staff and prisoners around the prison more flexible. Prisoners can then have more time out of cells without entailing contact between unauthorised categories of prisoner. Time spent out of the cell or barrack can be increased by using hallways, courtyards, gyms and other association space for groups of prisoners in rotation.

Classification of prisoners can be introduced so that those who require less supervision can be grouped together and may be allowed more time out of the cell or dormitory.

The use of accommodation can be reviewed. Sometimes, for example because of lack of staff or for the convenience of staff, prisoners will be concentrated in one or two cells although additional empty cells are available.

Immediate humanitarian assistance

Sometimes the overcrowding is so serious that many lives are threatened. It might then be appropriate to seek short term crisis funds urgently just to keep the prisoners alive.

Local humanitarian organisations and non-governmental groups could well be involved in the monitoring and distribution of such aid.

References

- 1 From HM Prison Service annual reports
- 2 *Prison and Jail Inmates at Midyear 2003*, US Department of Justice, Bureau of Justice Statistics, Washington DC, 2004, p.1
- 3 *Report to the Portuguese Government on the visit to Portugal carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 19 to 30 April 1999*, Strasbourg, July 2001
- 4 *Country Reports on Human Rights Practices 2002, Madagascar*, US Department of State, Washington DC, www.state.gov, 2003
- 5 *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 5 to 16 December 1999*, Strasbourg, March 2001
- 6 *Country Reports on Human Rights Practices 2002, Niger*, US Department of State, Washington DC, www.state.gov, 2003
- 7 *Report of European Committee on Crime Problems*, 13th conference of Directors of Prison Administration, Strasbourg, November 2002
- 8 Dr. Vera Chirwa, Special Rapporteur on prisons and conditions of detention in Africa, *Report on second visit to Mozambique conducted 4-14 April 2001*, African Commission on Human and People's Rights, Banjul, 2001
- 9 *ibid*