

## **PRISON OVERCROWDING**

Overcrowding in prisons has been considered an issue since the development of the modern prison, yet it has evaded simple definition because there is no international consensus about how to measure it. The term “prison overcrowding” is most commonly used to describe a situation in which the population of a prison exceeds the capacity that it was designed to house. This, however, lacks a rigorous analysis of the many nuances that require consideration.

This entry begins by presenting some of the ways in which prison overcrowding is generally understood and measured and considers how it can be viewed as arising at a point where a number of criminal justice policies intersect. These include, for example, the role of the criminal justice system, attitudes towards prison sentencing, alternatives to custody, the provision of healthcare to prisoners, and access to rehabilitation services. The effects of prison overcrowding, as well as initiatives that address the issue, are also considered.

### **The Growing Prison Population**

It is generally agreed that the prison population is growing in the majority of countries throughout the world. It is also generally accepted that overcrowding negatively affects prison systems and has the potential to impact upon delivery of healthcare, education, and rehabilitative services that characterize a modern prison. The trend must be understood in terms of the factors that contribute to the increase in the prison population, the potential societal cost, and the resulting financial burdens placed on governments.

A more pressing concern is that prisons in many cases are accommodating more prisoners than they were originally designed to house. A number of countries are reported as

having a prisoner occupancy rate higher than 120%, with some as high as almost 400%. It must be remembered, however, that the overcrowding rate is not an indicator for the actual problems and conditions faced by overcrowded prisons. It should also be noted that a simple comparison of overcrowding could be misleading and fail to consider other issues that have contributed to the situation. One reason for the use of such statistics is that it is the only quantifiable measure that can be used to provide an indication and analysis of overcrowding within one country, as well as enabling comparison between countries.

### **A Question of Space**

Although there is no internationally accepted standard for the minimum space requirement for each prisoner, attempts have been made to qualify what constitutes an acceptable level. The United Nations (UN) Standard Minimum Rules for the Treatment of Prisoners (SMR), for example, state that prisoners should be provided with accommodation, particularly where they sleep, that meets their health needs. This should include floor space that corresponds with international recommendations, fresh air, ventilation, heating and lighting (SMR, Rule 10)

Similarly, the guidelines provided by the International Committee of the Red Cross (ICRC) suggest that the minimum space required is 5.4 square meters per person in a single cell or 3.4 square meters per person in a shared cell or dormitory, including where bunkbeds are used. In addition, the ICRC argues that the appropriate amount of space required cannot be measured by space alone and should include consideration of the following factors:

- ◆ condition of the building,
- ◆ amount of time prisoners spend in the sleeping area,

- ◆ number of people in that area,
- ◆ other activities occurring in the space,
- ◆ ventilation and light,
- ◆ facilities and services available in the prison,
- ◆ extent of supervision available.

The ICRC argue that including more of the above factors will result in a more accurate measure of the impact of overcrowding, on both prisoners and staff. It is generally acknowledged that, currently, prisoners do not have the minimum space required as recommended by the ICRC and that the reality for many prisoners involves spending long hours in overcrowded, cramped conditions.

### **Causes for Prisons Overcrowding**

There are numerous and varied reasons to explain prison overcrowding. Rising prison populations can be due to changes in the law, policy, and sentencing practice by the courts; the length of sentences; a lack of investment in prison building programs; and a lack of prison locations due to age and deterioration of prison buildings. In some countries, where the overall rate of imprisonment is comparatively low, prisons in urban areas or situated close to the courts can still be overcrowded. Pre-detention prisons in particular may have very high levels of overcrowding.

A lack of investment in prison facilities can impact the provision of rehabilitation programs and result in higher rates of recidivism. There may be a lack of resources to fund preventative general and mental health care for vulnerable prisoners, such as those with problematic drug and/or alcohol use, those with learning difficulties, and those with mental

health problems. As a result, prisons may become a place where vulnerable groups are held without effective treatment to meet their needs. This has the potential to lead to a cycle of reoffending and imprisonment, which in turn contributes to overcrowding.

Greater use of custodial sentences, resulting from a lack of knowledge relating to alternatives to custodial sentences, can contribute to overcrowding. There may also be a lack of investment in measures such as electronic tagging and community sentences. In some countries, people may be in prison for lengthy periods prior to going on trial and nonviolent, vulnerable prisoners (e.g., problematic drug users, those with mental health problems, and individuals with learning disabilities) may receive tough sentences.

Changes in policy, including greater use of imprisonment, longer sentences and, in many European countries, more restricted use of parole or conditional release, are also factors that have influenced the growth in the prison population in certain countries. Often, these changes occur as a result of a desire to respond to public perceptions of the role of the criminal justice system.

## **Why Large Prison Populations Matter**

Prison overcrowding has the potential to impact on the quality of health care services provided, nutrition, sanitation, and the care of vulnerable groups. Effective prison management can also be compromised when there is a lack of space, making it more difficult to deliver rehabilitative, educational, cultural, recreational, and religious activities. The physical, mental health, and well being of all prisoners can also be affected, with the potential to exacerbate existing conditions and, at the worst extreme, generate prisoner tension and violence. There is growing acknowledgement from international bodies that overcrowding is a key impediment to the

implementation of SMRs in prisons. Overcrowding makes it harder for prison administrations to maintain or guarantee humane conditions that meet recommended international standards and guidelines.

Overcrowding has the potential to negatively affect prison staff working in a variety of areas within the institution. Staff may find, for example, that they have insufficient time to deal with prisoners' problems and struggle to provide a positive environment that promotes rehabilitation. Provision of health care that is equivalent to that available in the community may also become more challenging. Other professional groups (e.g., educators, psychologists, social workers) may struggle to deliver key services to meet the needs of individuals in an overcrowded prison. An increase in prisoner numbers also has the concomitant effect of lowering the staff-to-prisoner ratio and can increase the potential for conflict. All these factors combined can lead to a more dangerous and stressful working environment for prison staff and prisoners and act to lower staff morale.

## **Solutions**

If it is accepted that loss of freedom is the primary punishment for prisoners and that imprisonment should not impinge on individuals' human rights, then it becomes apparent that overcrowding in prison is an issue that needs to be addressed. Initiatives to reduce the numbers in prison could involve greater use of diversion schemes and alternatives to custody for those with problematic drug use or offenders with mental health problems. There is a wide range of alternatives available in many prison administrations, including, for example, supervision by probation services. Measures such as conditional and suspended sentences have the potential to contribute to the reduction of prison populations and do not require major investments to

implement. Similarly, cutting the amount of time people spend in prison on remand, making court procedures quicker, and using shorter sentences will act to reduce the number of offenders in prison. It is recognized, however, that countries are in different states of development in respect of their judicial and penal systems and may not be in a position to consider or implement some of these.

Plans to reduce overcrowding that build on the relevant international instruments have been developed. These include the SMR, the UN Standard Minimum Rules for Non-custodial Measures (also known as “the Tokyo Rules”) and the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (also known as “the Bangkok Rules”).

Reducing the size of the prison population could be achieved by a number of means. These include legislative change and the manner in which probation, community sentences, and alternatives to custody for young people and parents with dependent children are used. However, it is recognized that such measures require both creative thinking and political will to achieve.

### **Legislative Change**

Increasing parole boards’ authority for early release for prisoners who pose little danger to society may have a major impact on overcrowding. Providing restrictions on the use of pretrial detention to cases where offences are particularly serious or where it is not in the public interest to leave the accused in the community, regulating the amount of time allowed for the investigation period (in many countries this can be a very lengthy process), and improving access to justice at the point of pretrial detention particularly may reduce overcrowding, especially in those countries with high levels of overcrowding. Making a variety of alternative noncustodial measures and sanctions available to the courts might help to reduce the use of pretrial detention and imprisonment.

The use of mobile judges holding hearings in the prison may also reduce the number of prisoners kept in pretrial detention. Amnesty for less serious offenders who are nearing the end of their sentences can be an effective short-term measure.

### **Use of Probation, Alternatives, and Community Sentences**

Increased use of probation may impact overcrowding, although not all countries have a functioning probation service. A wider application and utilization of the UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) on alternatives to imprisonment may reduce overcrowding. Using diversion from Criminal Justice System (CJS), such as police warnings, cautions, mediation, referral to drug treatment or mental health services, and promoting the use of early release procedures (e.g., conditional release) might also be effective. Although there is no current concrete evidence that restorative justice has led to a reduction of the prison population, research indicates that as it becomes more widely used as an alternative to criminal justice procedures, it will create the conditions in which earlier release becomes possible.

### **Alternatives for Young People and Parents with Dependent Children**

Using alternatives that focus on education and restorative measures for young people and keeping the use of custodial sentences to a minimum may well impact on overcrowding. The Bangkok Rules suggest that non-custodial measures should be a preferred option for pregnant women and children's sole or primary carers when sentencing or deciding on pre-trial measures, with custodial measures used as a last resort for serious or violent offences.

In addition to the above measures, further reductions could be made to the prison population by utilizing alternatives to custody for groups who have special requirements. This can include, for example, female prisoners, prisoners with healthcare requirements, prisoners

with drug and/or alcohol addiction, prisoners with learning difficulties, older prisoners, prisoners with disabilities, prisoners from ethnic minorities, and foreign nationals. As well as reducing the prison population, diversion from custody might deliver the care and treatment needed by these groups that is rarely met in under resourced and overcrowded prisons.

*Morag MacDonald*

**See also Cost Effectiveness of Rehabilitation versus Incarceration; Global Imprisonment; Incarceration Rates, International; Mentally Ill Offenders in Prisons, Treatment for; Physical Health Needs of Incarcerated Offenders; Prison Reform**

#### **FURTHER READINGS**

Criminal Justice Alliance [2012]. Crowded Out? The impact of prison overcrowding on rehabilitation. [online]. Retrieved May 6, 2016, from [http://criminaljusticealliance.org/wp-content/uploads/2015/02/Crowded\\_Out\\_CriminalJusticeAlliance.pdf](http://criminaljusticealliance.org/wp-content/uploads/2015/02/Crowded_Out_CriminalJusticeAlliance.pdf)

International Committee of the Red Cross (ICRC) [2012]. 'Water, Sanitation, Hygiene and Habitat in Prisons 'Supplementary Guidance', 2012 [online]. Retrieved May 9, 2016 from <https://www.icrc.org/eng/resources/documents/publication/p4083.htm>

Penal Reform International, Overcrowding, 10 point Plan to Address Prison Overcrowding [2012]. [online]. Retrieved May 6, 2016, from <http://www.penalreform.org/priorities/prison-conditions/overcrowding/>

UNODC, [2013]. Handbook on Strategies to reduce overcrowding in prisons. United Nations, New York. [online]. Retrieved May 6, 2016, from <https://www.unodc.org/documents/justice-and-prison->

reform/Overcrowding\_in\_prisons\_Ebook.pdf Accessed 06/05/2016

Walmsley, R. [2016]. World Prison Population List, eleventh edition. Institute for Criminal Policy Research. [online]. Retrieved May 6, 2016, from

[http://www.prisonstudies.org/sites/default/files/resources/downloads/world\\_prison\\_population\\_list\\_11th\\_edition\\_0.pdf](http://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_11th_edition_0.pdf)

**[AU: This link is no longer active. Do you have an alternate one?]**