



# PRISON

Evidence of its use and over-use  
from around the world



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# Foreword

Imagine you are accused of theft, drug trafficking or even murder. Would you be arrested by the police and detained before trial? If convicted, would you go to prison? How long for?

Of course, the answers would depend in part on the offence you're accused of. But exactly the same alleged conduct would result in radically different responses depending on where in the world you happen to be and even, to some extent, on who you are. From the statistics in this report you can already make predictions about how you might fare:

- Imprisonment is simply a much more likely outcome in some countries than in others. The US is a well-known outlier, housing one fifth of the world's prison population. In 2008 its prison rate (the number of prisoners per 100,000 of the population) peaked at 755. By contrast, in India the prison rate is 33 and in the Netherlands it is 61.
- There have been shocking changes over time, for example, in how readily you might be sentenced to prison, how long for, and what conditions you'd face. Prisons have generally not kept pace with the ever-growing demand placed on them, making severe overcrowding and poor resourcing more common.
- Whether you would end up in prison is also affected by who you are. For example, Roma people make up around 40% of Hungary's prison population, despite representing only 6% of the national population; and Indigenous people in Australia represent 27% of adult prisoners while making up around 2% of all adult Australians. Across the board, poor and marginalised communities are overrepresented in prisons.

Differences in crime rates can't explain all of these statistical differences. Of course, this is a key part of the picture, but something much more nuanced and complex is going on.

This report is the eye-opening first output of a wider project that will look more closely at 'the custody journey' in contrasting jurisdictions. The project will enrich the – already fascinating – data presented in this report by mapping the many, varied and interwoven factors driving up prison populations worldwide, and exploring ways of reversing these trends. It will also draw on real cases to understand the lived experience of the criminal justice system. Statistics alone can sanitise reality – they do not speak to the violence, intimidation and isolation that are part of the daily experience of custody.

In the now famous words of Nelson Mandela, 'no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.' Clearly, the treatment of prisoners says a huge amount about a country's approach to all its people. But I would go a step further: I believe one of the best ways to understand a nation is to understand who it decides to put in jail and why.

Understanding this matters because the unrelenting growth in imprisonment globally cannot and should not be sustained. The weight of evidence is growing that prison is not the best way to meet many of the putative goals of imprisonment. Today's addiction to imprisonment is also contributing to chronic overcrowding, making prisons dangerous, inhumane places for inmates and staff. But think, too, of the enormous financial and social costs of today's gigantic global prison population and the wasted human potential resulting from over 10 million lives being lived behind bars.

**Jago Russell**

**Chief Executive, Fair Trials**

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# Summary

This report looks at patterns of imprisonment in ten contrasting jurisdictions across all five continents of the world, namely:

- **Kenya** and **South Africa** in Africa
- **Brazil** and the **United States** in the Americas
- **India** and **Thailand** in Asia
- **England and Wales, Hungary** and **the Netherlands** in Europe
- **Australia** in Oceania

Over the course of the report, we present a brief history of imprisonment in each of the ten countries, and consider what lessons might be learnt for reducing use of custody worldwide.

## Use and over-use of imprisonment worldwide

Across much of the world, recent decades have seen rapid and unrelenting growth in the use of imprisonment as a response to crime and social disorder. Today, well over 10 million people are imprisoned worldwide. Jurisdictions that have seen the fastest growth in prisoner numbers include the United States, where the total prison population more than quadrupled from around half a million in 1980 to its peak of over 2.3 million in 2008. Brazil has seen prisoner numbers increase twenty-fold from around 30,000 in 1973 to over 600,000 today. England and Wales provides another – albeit less dramatic – example of prison population growth: in 1975 there were around 40,000 prisoners; by 2012 the number had more than doubled to almost 87,000.

The causes of prison population growth are complex, but many of the consequences are clear. Over-use of imprisonment leads to overcrowded, inhumane and degrading conditions of detention. It disproportionately harms poor and marginalised groups in all societies. It limits the capacity of prison systems to deal effectively with the small minority of prisoners who pose serious risks to public safety, and indeed increases the risks posed by prisoners (to themselves as well as to others inside and outside prison walls). Over-use of imprisonment also imposes enormous costs on the public purse.

While there is no dispute that prison populations have risen steadily over most of the globe in recent decades, there are other strands to the story of imprisonment worldwide. Analysis of trends in the first 15 years of this century reveals a somewhat mixed picture. From 2000 to 2015, the total prison population of Oceania increased by 59%, while that of the Americas increased by 41%; that of Asia by 29%; and that of Africa by 15%. Europe, in contrast, saw a 21% fall in total prisoner numbers.

Broad continental trends mask starker disparities at country level – with, for example, the rate of increase in prisoner numbers in the United States having slowed and then reversed over the past 15 years. Some European countries have seen periods of growth in prisoner numbers followed by periods of decline (such as the Netherlands), and some vice versa (such as Hungary). On the other hand, there are countries throughout the world (such as India) in which levels of imprisonment have always been relatively low, and in which this continues to be the case.

In other words, there is **nothing inevitable about prison population growth**. While there are multiple factors that directly or indirectly promote greater use of incarceration, so too there are wide-ranging moderating influences and indeed downward pressures. These downward pressures include resource constraints, for the simple reason that prisons are expensive. There is growing recognition of imprisonment's failings as a

response to social problems, and growing acceptance that many of these problems can be most effectively tackled outside the realm of criminal justice altogether. And whether overtly or covertly, and whether motivated by economic or other concerns, some states have made clear political choices to curb or reduce the use of imprisonment.

In this report we consider why and how, and with what effect, such choices are made, and the factors that prevent, constrain or undermine these choices.

## **Developing strategies to reduce resort to imprisonment**

Each of the jurisdictions discussed in this report has a different story to tell about the ways in which imprisonment is used as a tool of penal policy and about the harms associated with excessive use of custody. Each also has lessons to impart about the issues to be addressed if prisoner numbers are to come down – and stay down. Of the ten jurisdictions, only the Netherlands has achieved a sustained reduction in imprisonment levels.

This report is the first output of a wider research and policy project whose aim is to devise workable strategies to curb the resort to imprisonment around the world. However, it is clear from the brief but diverse histories of imprisonment recounted here that there is no single set of factors which explains over-use of custody; and it is also clear that there is no single route towards effective reform.

We suggest in these pages some of the themes that effective strategies for reducing imprisonment will have to grapple with. In the broadest terms, these themes include: the politicisation of sentencing; imprisonment of low level offenders; over-representation of certain groups (including minority ethnic groups) in prison populations; drug policy; and excessive use of pre-trial detention. An overarching theme concerns the objectives of imprisonment. In our view, any formulation of strategy in this context demands a focus on the questions: what are the purposes of imprisonment as a response to certain forms of criminal conduct; and could these purposes be more effectively achieved in other ways?

# 1. Use and over-use of imprisonment worldwide

This report looks at patterns of imprisonment in ten contrasting jurisdictions across all five continents of the world, namely:

- **Kenya** and **South Africa** in Africa
- **Brazil** and the **United States** in the Americas
- **India** and **Thailand** in Asia
- **England and Wales, Hungary** and **the Netherlands** in Europe
- **Australia** in Oceania

Our primary interest is in disparities between the ten jurisdictions in the extent to which imprisonment is used as a tool of penal policy. In addressing this issue, our intention is to consider whether any transferable lessons on how to reduce resort to custody can be learnt from the ten countries' differing approaches to and experiences of criminal justice. We are aiming here to offer no more than some initial, provisional answers to this large and complex question: this report is the first output of a new, wider research and policy project which will address the issues raised here in much greater depth.

The report comprises three chapters. In this introductory chapter, we set the context for the discussion which follows, and provide an overview of use of imprisonment in the ten jurisdictions that have been selected for study. Chapter Two provides an account of patterns and trends in imprisonment in each of the jurisdictions in turn. Chapter Three then considers the main explanatory factors underlying prison population size, and suggests some starting points for strategies to curb resort to imprisonment. This third chapter is self-standing, and should be of interest to readers whether or not they have first read the preceding country accounts.

Unless otherwise specified, the prisons data presented over the course of this report derive from ICPR's World Prison Brief online database, which holds information on the prison populations of 223 independent countries and dependent territories.<sup>1</sup>

## 1.1 Patterns of imprisonment worldwide

Across much of the world, recent decades have seen rapid and unrelenting growth in use of imprisonment as a response to crime and social disorder. Today, well over 10 million people are imprisoned worldwide: this number includes both those who have been sentenced to imprisonment following conviction of a crime, and those who are being held in custody prior to trial or sentencing.<sup>2</sup>

Around one-fifth of the world's prisoners are in the USA. The size of the American prison population more than quadrupled from around half a million in 1980 to its peak of over 2.3 million in 2008. These numbers equate to an increase in the prison population rate (number of prisoners per 100,000 of the national population) from 220 in 1980 to 755 in 2008. Brazil has seen its prison population total increase twenty-fold from around 30,000 in 1973 to over 600,000 today; the rise in the prison population rate over this period was from 32 to 307. England and Wales provides another – albeit less dramatic – example of prison population growth over a sustained period: in 1975 there were around 40,000 prisoners (and a prison population rate of 81); by 2012 the absolute number of prisoners had more than doubled to almost 87,000 (giving a prison population rate of 153).

Causes of prison population growth in these and numerous other countries around the world are many, varied and interwoven. Scholars debate the relative explanatory value of, and inter-relationships between, such factors as: changing patterns of crime; increasingly punitive public debate and political cultures, and the wider geo-political insecurities which form their backdrop; and neoliberal imperatives to replace the 'welfare state' with a 'penal state' founded on mass incarceration of the poor and vulnerable. These and other factors conspire to produce sentencing frameworks within which custody is an ever more available sanction, and custodial terms

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1 The World Prison Brief, which can be accessed at <http://prisonstudies.org/>, is hosted and maintained by the Institute for Criminal Policy Research. The data held on the Brief (which is updated on a monthly basis) are largely derived from governmental or other official sources. The data used in this report were accessed from the database on 15.2.17.

2 For more detailed discussion of prison populations around the world, and many of the themes covered in this report, see Coyle et al (2016).

are ever longer. Increased levels of detention pre-trial are another manifestation of states' punitive and risk-averse penal policies, while also – particularly in economically less developed countries – reflecting massive inefficiencies, disorganisation and under-resourcing of judicial systems and processes.

But if causes of prison population growth are complex, many of the consequences and corollaries are clear. Over-use of imprisonment leads to overcrowded, inhumane and degrading conditions of detention and poor rehabilitation outcomes. It disproportionately harms poor and marginalised groups in all societies, including non-nationals and cultural and ethnic minority groups. It limits the capacity of prison systems to deal effectively with the small minority of prisoners who pose serious risks to public safety, and indeed increases the risks posed by prisoners (to themselves as well as to others inside and outside prison walls). Over-use of imprisonment also imposes enormous costs on the public purse and can impede economic development.

While there is no dispute that prison populations have risen steadily over most of the globe in recent decades, there are other strands to the story of the use of imprisonment worldwide. Analysis of trends in the first 15 years of this century reveals a somewhat mixed picture. The total prison population of the continent of Oceania increased by 59% from 2000 to 2015, outstripping the 25% growth in the general population, with the Americas showing a similar pattern (41% prison population versus 17% general population growth). The trend across Asia was in the same direction, but less marked (prisoner numbers increased by 29%; the general population by 18%). In Africa, on the other hand, the total prison population grew much more slowly (by 15%) than the general population (44% increase); and Europe was the only continent which saw a fall in the total number of prisoners (by 21%), while its general population increased (by 3%).

These broad continental trends mask much starker disparities at country level – with, for example, the rate of increase in prisoner numbers in the United States having slowed and then reversed over the past 15 years, while prisoner numbers have soared in many Latin American countries. Europe's overall decline in absolute prisoner numbers owes much to Russia, whose prison population declined from around one million in the year 2000 to around 640,000 in 2015. Some other European countries have seen periods of growth in prisoner numbers followed by periods of decline (such as the Netherlands), and some vice versa (such as Hungary). There are also countries throughout the world in which levels of imprisonment have always been relatively low, and in which this continues to be the case.

In other words, there is **nothing inevitable about prison population growth**. While there are multiple factors that directly or indirectly promote greater use of incarceration, so too there are wide-ranging moderating influences and indeed downward pressures. In many wealthy and impoverished countries alike, these downward pressures include resource constraints, for the simple reason that prisons are expensive. There is growing recognition of imprisonment's failings as a response to social problems, and that many of these problems can be most effectively tackled outside the realm of criminal justice altogether – for example, as part of a broader, human development approach. And whether overtly or covertly, and whether motivated by economic or other concerns, some states have made clear political choices to curb or reduce the use of imprisonment.

This report, and the wider project that will follow it, will look at why and how, and with what effect, such choices are made; and at the factors that prevent, constrain or undermine these choices.

## 1.2 The ten jurisdictions

In selecting ten jurisdictions for study in this report and the wider project, we had in mind our overall aim of drawing transferable lessons on how to reduce resort to imprisonment from disparate circumstances and policy approaches. To this end, the ten jurisdictions were selected on the basis of their geographic spread, their regional or global influence, and their diversity in terms of economic prosperity, legal systems, and prison population rates and trends. The availability of criminal justice data and of research and policy partners in each jurisdiction was another consideration.<sup>3</sup> Table 1.1 sets out some key facts on all ten.

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3 In the four countries with federal systems, much of the work of the wider project will focus on a single state, to permit more in-depth analysis than would be feasible with a whole-country approach. The states on which we will focus are São Paulo in Brazil, New York in the United States, the National Capital Territory of Delhi in India, and New South Wales in Australia.

**Table 1.1: The ten jurisdictions at a glance**

Country	Region	National population*	Gross Nat'l Income per capita (USD)**	Legal system
<b>Kenya</b>	Eastern Africa	47.0 million	\$2,762	Predominantly common law
<b>South Africa</b>	Southern Africa	55.6 million	\$12,122	Hybrid of common law, civil law & customary law
<b>Brazil</b>	South America	202.9 million	\$15,175	Civil law
<b>United States</b>	Northern America	322.3 million	\$52,947	Common law
<b>India</b>	Southern Asia	1,289.7 million	\$5,497	Common law
<b>Thailand</b>	South Eastern Asia	67.6 million	\$13,323	Civil law with strong common law influences
<b>England &amp; Wales</b>	Northern Europe	58.6 million	\$39,267***	Common law
<b>Hungary</b>	Central & Eastern Europe	9.8 million	\$22,916	Civil law
<b>Netherlands</b>	Western Europe	17.0 million	\$45,435	Civil law
<b>Australia</b>	Oceania	24.2 million	\$42,261	Common law

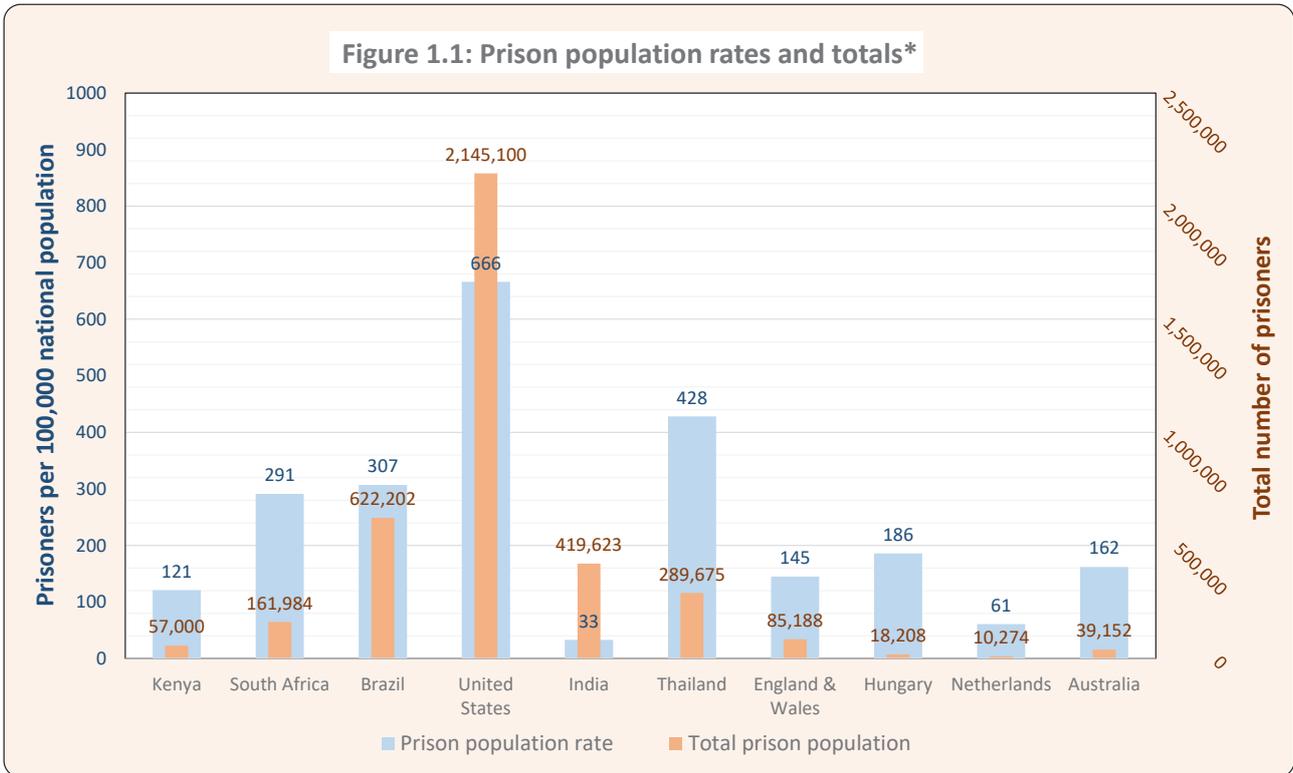
\* National population data derive from the World Prison Brief database. As with other World Prison Brief data cited in this report, the information was accessed on 15.2.17, but varies by country as to the specific dates to which it refers.

\*\* As recorded in the UN Human Development Index 2015 (UNDP, 2015).

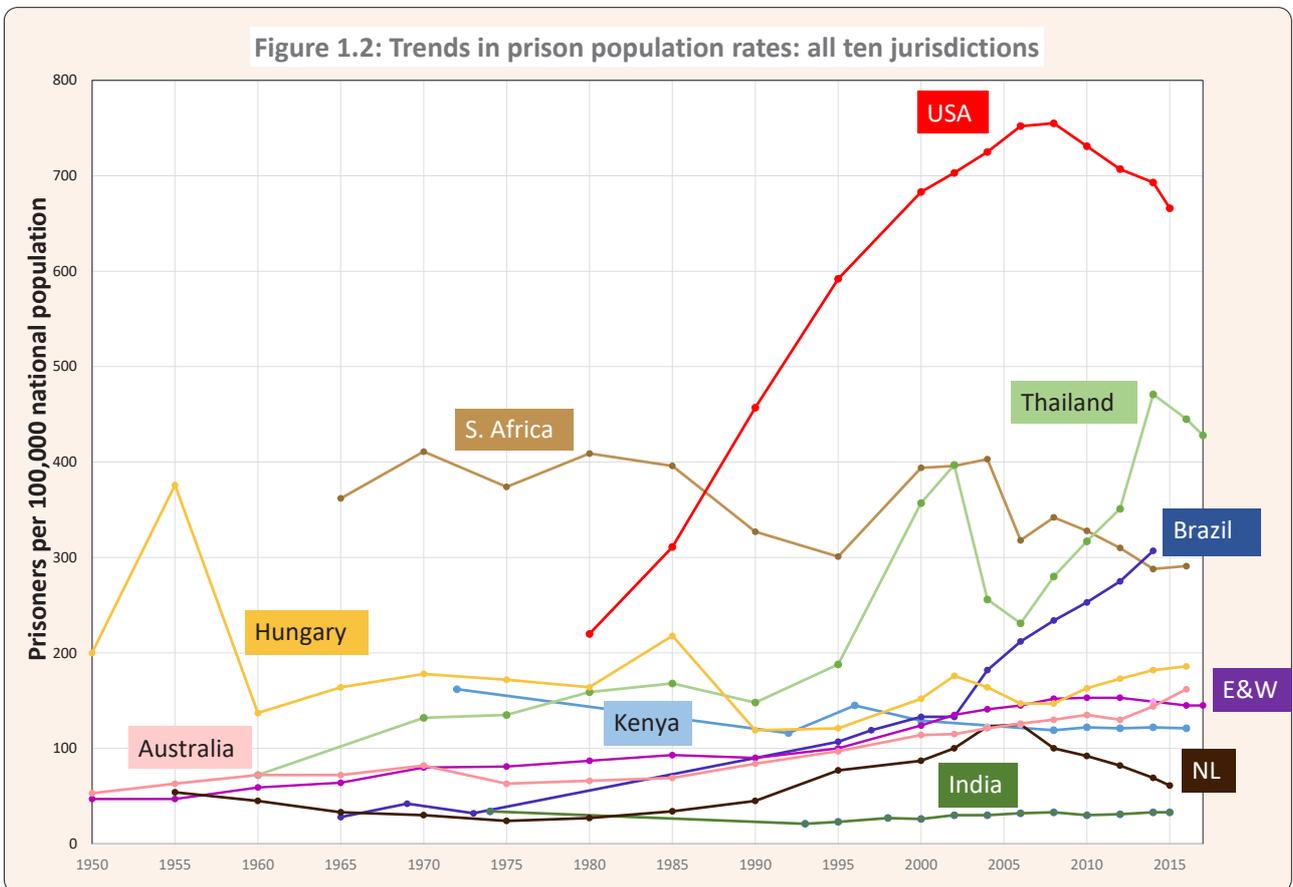
\*\*\* UK rather than England and Wales figure.

As summarised in Figure 1.1, the ten jurisdictions have vastly different prison population sizes and rates. The total prison population of the United States, at more than 2.1 million, dwarfs that of the others. Prison population rates – which, as the number of prisoners per 100,000 of the national population, are much more meaningful as a point of comparison – range from 666 and 428 in the United States and Thailand respectively to 61 and 33 in the Netherlands and India. As will be discussed in the chapter that follows, the ten jurisdictions also have widely different stories to tell about how their use of imprisonment has changed. Figure 1.2 displays recent trends in the prison population rate in all ten countries, and makes clear the diversity in the trajectories that have been followed.

The table in the Appendix shows where each of the jurisdictions ranks worldwide on various measures of imprisonment.



\*Most recent figures available on World Prison Brief database as of 15.2.17. Figures vary by jurisdiction as to the specific dates to which they refer.



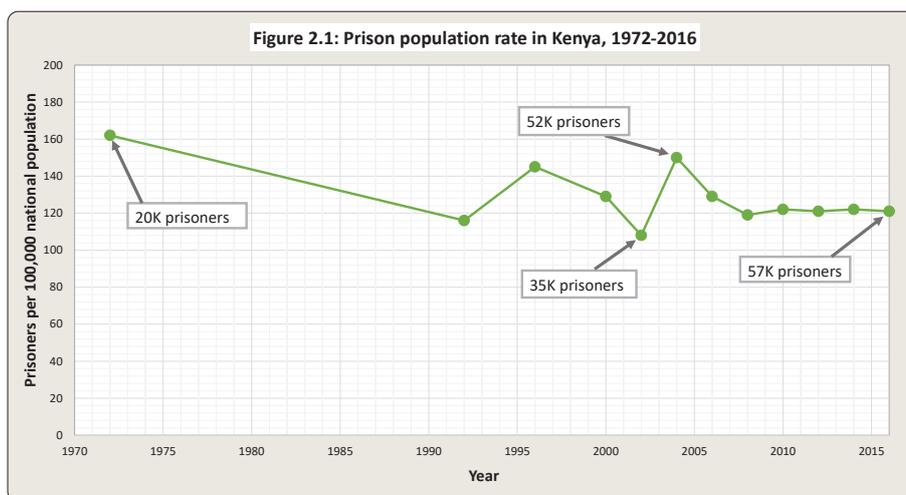
## 2. Some brief histories of the use of imprisonment

This chapter provides a short description of trends and key developments in use of imprisonment in each of the ten jurisdictions under review. For each jurisdiction, we are offering no more than a brief summary of what is in reality a long and complex story; it is our intention simply to give a flavour of these stories, and inevitably a great deal of detail and nuance is omitted.

The country accounts below include trend charts based on World Prison Brief data. These charts have differing start and end dates, reflecting the different time periods for which World Prison Brief trend data are available.

### 2.1 Kenya

The use of imprisonment as a punishment in Kenya dates from the country's colonisation by Britain in the late nineteenth century. By 1911, 30 prisons had been built, and by 1938 these held around 4,700 prisoners (Bernault, 2003). Use of imprisonment was limited until the Mau Mau uprising against colonial rule in the 1950s, and by 1955 the total prison population had surpassed 85,000. Following the mass release of Mau Mau activists after the country gained independence from Britain in 1963, the prison population fell again to around 13,000 (Kenya National Assembly, 1998).



In 1972 the total number of prisoners stood at around 20,000. Over the 20 years that followed, the total prison population increased to nearly 29,000, while – as this was a time of massive growth in the general population – the prison population *rate* fell from 162 to 116 per 100,000 of the general population. The prison population then rose dramatically between 1992 and 1996 to reach over 41,000 with a corresponding rate of 145. The Community Service Order Act of 1998 was the first real attempt to address the issue of the huge prison population and the associated poor conditions and overcrowding, with the Shadow Attorney General noting, ‘Given this intolerable condition [of overcrowding], it is... very surprising that there has been very little prison reform since Independence’ (Kenya National Assembly, 1998). The Act allowed courts to impose a community sentence on those who would have received a sentence of up to three years.

By 2002, the prison population had fallen to around 35,000 (a rate of 108) before it then began to rise rapidly to reach 52,000 (a rate of 150) in 2004. In 2003, Home Affairs Minister Moody Awori announced a series of reforms which included the release of 20,000 prisoners.<sup>4</sup> The reforms led to some improvement in living conditions, food and medical care, with new prisons being built and old ones expanded. The reforms also opened up the prisons to the media and to human rights organisations (Miring’u, 2011). The prison population subsequently fell to around 46,000 in 2008. In the same year the government established the Madoka Commission, headed by former Cabinet minister Marsden Madoka, to report on the state of the prison system. The Committee established that, despite Minister Awori’s reforms five years earlier, the prisons were still overcrowded with degrading conditions and a lack of rehabilitative programme (Kiplangat et al, 2015). Following the Madoka report the government established a committee to implement the report’s recommendations. However, only a year later the Ministry of Home Affairs admitted that the reforms were too expensive and were unlikely to happen.<sup>5</sup>

4 <http://news.bbc.co.uk/1/hi/world/africa/3954515.stm>

5 <http://www.nation.co.ke/News/-/1056/803162/-/vmul0e/-/>

Further efforts to reduce the prison population, including mass releases of prisoners, have been announced on an annual basis since 2010;<sup>6</sup> however the prison population has continued to rise and currently stands at 57,000. Around 40% of Kenyan prisoners are being held pre-trial, a large number of whom have been arrested for petty offences which would attract sentences of less than six months, despite provisions in the Constitution which state that a custodial remand is not permissible if the alleged offence is punishable only by a fine or short-term imprisonment. Over one-third of prisoners are unnecessarily incarcerated on the basis that they qualify for either probation or a Community Service Order as they are serving sentences of under three years or have under three years left to serve. The situation is exacerbated by a serious shortage of probation officers, and a lack of training for magistrates on community sentences.<sup>7</sup> Prisons in Kenya are operating at over twice their capacity of around 27,000, a situation which has led to serious human rights violations concerning the inhuman and degrading treatment of prisoners (see Box 2.1).

### Box 2.1: Conditions in Kenyan remand facilities

The National Council on the Administration of Justice, in its report on the *Criminal Justice System in Kenya: An Audit* (2016: 308; 315), found that:

Given that the majority of prisons surveyed are overcrowded it follows that the ratio of toilets to prisoners is far from ideal in a number of instances. From Murang'a it was reported that there is one toilet for 80 prisoners, Nakuru it was one to 75 and Makueni Remand 97... At four prisons it was reported that there are no showers and other means are used, such as buckets, basin and bath for washing purposes... Three issues stood out in respect of the most pressing medical problems reported by nearly all the [26 prisons examined], being TB, diarrhoea and scabies... The overall impression is that severely overcrowded facilities coupled with unsafe if not unhygienic practices and unsafe drinking water give rise to the majority of medical problems.

## 2.2 South Africa

The rise of mass imprisonment in South Africa began during the apartheid era of 1948 to 1994. Racial segregation in the prison system had been in place since the system's creation under the Prisons and Reformatories Act of 1911, but was continued and extended under the Prisons Act of 1959. The Act also entrenched the militaristic character of the prison management and closed the system off from inspection by outsiders.



Prior to 1960, prisons had not generally been used to control political unrest. However, this changed after a series of protests led to the large scale incarceration of political prisoners. From 1965 to 1980 the prison population increased from 72,000 to 102,000, and the prison population rate from 362 to 409, leading to an acknowledgment by the state that steps should be taken to reduce prisoner numbers. A new system of community supervision was proposed, and in 1986 the Criminal Procedure Act was amended to establish

6 See, for example, <http://www.nation.co.ke/news/50-000-to-be-released-in-prison-decongestion-plan/1056-880202-10nggwkz/index.html>; <http://allafrica.com/stories/201211030598.html>; <https://citizentv.co.ke/news/10000-petty-offenders-to-be-freed-to-decongest-prisons-121851/>

7 [http://www.standardmedia.co.ke/mobile/?articleID=2000160773&story\\_title=petty-offenders-jam-kenyan-prisons-as-congestion-hits-crisis-level](http://www.standardmedia.co.ke/mobile/?articleID=2000160773&story_title=petty-offenders-jam-kenyan-prisons-as-congestion-hits-crisis-level)

community sentences as a viable sentencing option. However, this was overshadowed by a state of emergency which was announced in 1985 and resulted in mass imprisonment of political prisoners without trial. By 1990 the prison population had reached 110,000, although – reflecting the large growth in the general population – the prison population rate had fallen to 327.

The move towards the end of the apartheid era in the late 1980s and early 1990s saw important changes to prison legislation. All references to race were eliminated and a reversal of segregation began, although this took a number of years to be fully implemented. The gradual release of political prisoners also began – including the release of South Africa's most famous political prisoner, Nelson Mandela, in February 1990. A significant development in the organisation of the prison system occurred in 1990 when the Prison Service was separated from the Department of Justice and renamed the Department of Correctional Services (DCS). The new Department was now also responsible for overseeing community sentences, which had scarcely been used since their introduction in 1986, and in 1991 a Probation Services Bill was introduced which also allowed for correctional supervision as a sentencing option.<sup>8</sup>

Following the democratic elections of 1994, the new ANC government made a commitment to protect the rights of all citizens, including prisoners, and October 1994 saw publication of a *White Paper on the Policy of the Department of Correctional Services in the new South Africa*. The next five years saw significant developments including the abolition of the death penalty, the demilitarisation of the prison service and the introduction of a system of inspection of places of detention. However, these changes occurred during a time when, as van Zyl Smit notes (2000: 200), 'there was probably some overall increase in crime rates in South Africa and certainly a dramatic increase in perceptions that crime was a major national problem'. In response, in 1997 the government passed the Criminal Law Amendment Act, which introduced mandatory minimum sentences for a range of crimes including murder, rape, and trafficking in persons for sexual purposes. The use of mandatory minimums was initially intended to be temporary. However the President extended their period of operation on three occasions and in 2007 they were made a permanent feature of South African legislation. In addition, sentences for other crimes became longer and the use of life imprisonment increased by nearly 3,000% from 443 prisoners in 1995 to more than 13,000 in 2014.<sup>9</sup> The total prison population peaked at 190,000 (a rate of 403) in 2004.

In 2004 a new *White Paper on Corrections* set out the need for 'a strategic policy and operational framework that recognises corrections as a societal responsibility,' and aimed to refocus efforts to make prisons places of rehabilitation and reform. However, as Muntingh describes, these aims are at odds with the provisions of the Correctional Services Act 1998, which was promulgated in full in 2004 and which curtails the services available to prisoners with a sentence of less than two years (Muntingh, 2009).

Against a backdrop of falling crime – albeit while levels of violent crime have remained comparatively high<sup>10</sup> – there has been an overall decline in the prison population since 2004; the current total is 162,000, producing a prison population rate of 291. Despite the fall in prisoner numbers, South Africa has the eleventh largest prison population in the world, and the system faces some serious issues. Among them is the high number of prisoners held pre-trial, which has consistently remained at around 30% of the prison population since 2000. The high numbers have been attributed to 'too many avoidable arrests; a restrictive and delay-creating bail regime; no mandatory review mechanism and a slow moving court system' (CSPRI et al, 2016:3). Muntingh notes that the DCS sees pre-trial detainees as 'a nuisance inherited from the previous regime' and that it 'feels a far greater responsibility towards sentenced offenders'. Many pre-trial prisoners spend long periods awaiting trial, and during this time they receive only the basic services required to house them (Muntingh, 2009: 202). A 2014 White Paper sought to 'address the policy gap that existed in relation to the responsibility for the management of the incarceration of [remand detainees.]', identifying insufficient remand detention facilities among other problems (DCS, 2014).

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8 All of the information up to this point has been taken from the South African Department of Correctional Services website <http://www.dcs.gov.za/AboutUs/History.aspx> and Singh (2005)

9 <http://www.news24.com/SouthAfrica/News/theres-been-a-3-000-increase-in-prisoners-serving-life-sentences-since-1995-lhr-20160920>

10 <https://theconversation.com/facts-show-south-africa-has-not-become-more-violent-since-democracy-62444>

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At the other end of the process, the considerable rise in the number of prisoners serving life sentences has put a great deal of pressure on the parole system and has led to a massive backlog in the number of applications for parole being processed by case management committees and the National Council of Correctional Services.<sup>11</sup>

South African prisons are seriously overcrowded, holding 162,000 prisoners in a system designed for 120,000. Pre-trial facilities are particularly affected by overcrowding, which is a significant cause of poor conditions (see Box 2.2). A recent study found the practice of locking up remand detainees for 23 hours a day in overcrowded, poorly ventilated conditions creates severe transmission risks: someone detained in such conditions for one year has a 90% chance of contracting TB.<sup>12</sup> South African prisons also face problems related to gangs, with one estimate being that 80% of prisoners in Western Cape prisons have a gang affiliation.<sup>13</sup>

### Box 2.2: Overcrowding at a South African remand prison

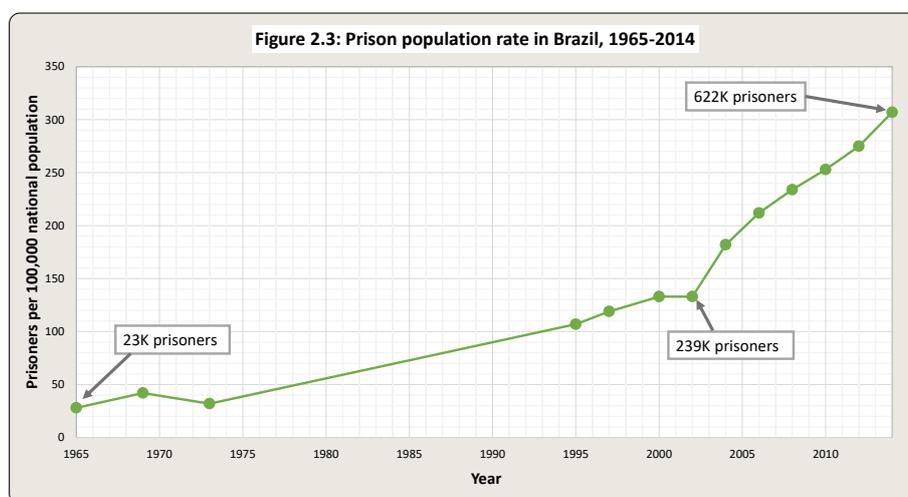
Pollsmoor Remand Prison was inspected by Constitutional Court Justice Edwin Cameron in August 2015. His report described conditions at the prison, which was operating at over 300% capacity, as ‘deplorable’, ‘profoundly disturbing’ and ‘vulnerable to constitutional challenge’ (Constitutional Court of South Africa, 2015). Shortly thereafter, two detainees died after having contracted Leptospirosis, a disease carried in rat urine. In December 2016 the Western Cape High Court issued a judgment in a case brought by the NGO Sonke Gender Justice which ordered the government to address the overcrowding, and gave them two weeks to show why they could not immediately reduce the number of detainees at the facility to not more than 120% of the approved number. (See Sonke Gender Justice, 2016a, 2016b.)

## 2.3 Brazil

The fifth most populous country in the world, Brazil currently has the fourth largest prison population (over 600,000 people) and a prison population rate of 301. Most of Brazil’s prisons are dilapidated, overcrowded and disease-ridden places where survival often depends on gang protection. News of riots, extreme violence and massacres in prisons has become grimly familiar over the past two decades. The most

serious outbreak of prison violence for some years (at Compaj, Manaus, in the north western state of Amazonas) ended on 2 January 2017. The result of competition between rival gangs for control of northern drug trafficking routes, the ensuing massacre left 56 prisoners dead. (See also Box 2.3.)

Brazil’s brutal and repressive military dictatorship between 1964 and 1985 left a legacy of weak protection for human rights and the rule of law and mistrust in the criminal justice system. These problems are still in evidence today, notwithstanding the return to democracy, and go some way to explaining the deaths and violence seen in Brazil’s prisons in recent decades and the central role played by organised crime groups both within and beyond prison walls.



11 <http://www.news24.com/SouthAfrica/News/parole-backlog-crisis-looms-20161022>

12 <http://bhekisisa.org/article/2015-06-05-comment-overcrowded-jails-deadly-inhumane>

13 <http://www.ibtimes.co.uk/inside-south-africas-brutal-prisons-if-i-didnt-join-gang-id-have-been-raped-1554475>

During the dictatorship, a group of imprisoned political activists and other prisoners formed the group that became known as the Comando Vermelho. In the early years following its formation in Rio de Janeiro, the group's activities focused on combating oppression and human rights abuses. However, they soon extended to drug trafficking and other forms of criminality. Brazil's other large criminal organisation, the Primeiro Comando da Capital (PCC), was also formed behind prison walls, in response to the massacre in 1992 of 111 prisoners at São Paulo's Carandiru prison. Today, these and similar organised crime groups control 90% of Brazil's prisons, from where they organise drug trafficking, extortion and prostitution operations across large swathes of the country (Miraglia, 2015).

Recent research has revealed the extent to which members of the PCC and other large crime organisations preside over a complex form of 'inmate self-governance'. This phenomenon has spread across the country's prisons and produced a 'system of forced reciprocity between people living and working together in poorly-resourced institutions, in circumstances of acute material deprivation' (Darke, 2013: 280-281).

Like most public sector services in Brazil, law enforcement and the justice system are marked by corruption, impunity and inefficiency. Despite economic growth, there remains enormous inequality of wealth, income and opportunity. Political instability and low prioritisation of criminal justice reform have left a power vacuum both in prisons and in the community. Much of Brazil's violence and criminality can be linked to organised crime groups and the brutal influence they wield in poor communities and in the justice system itself. It is well known that criminal organisations use violent coercion to recruit people to their ranks, both in the community and in prisons (see for example, Nunes Dias, 2011). Drug use by Brazilians is on the increase (although it has not reached the levels seen in the United States in recent decades). Several cities are in the grip of a crack cocaine epidemic after the main criminal organisations relaxed their self-imposed ban on its production (beginning with the Comando Vermelho in 2001) (Miraglia, 2015).

This is the socio-political background against which violence and crime have grown inexorably over the past four decades, leading to a homicide rate that is one of the world's highest. Perhaps unsurprisingly, surveys indicate punitive public attitudes to crime. In a recent poll, 57% believed a 'good criminal is a dead criminal'.<sup>14</sup> Nine out of ten Brazilians were reported to have been in favour of a constitutional amendment passed in July 2015 to reduce the age of criminal responsibility for serious violent crime from 18 to 16 years.<sup>15</sup>

Increasing domestic drug use coupled with tougher law enforcement have also contributed to Brazil's female prisoner population soaring from around 10,000 in the year 2000 to over 37,000 in 2014 (a much faster rate of increase than seen in the general prison population, which rose by 167% over that period). Most female prisoners are under thirty and nearly two-thirds are black or mixed race. 63% are in prison for drug offences, compared with 25% of their male counterparts, the largest proportion of whom are in prison for property or dishonesty offences (Brazilian Justice Ministry, 2014). Researchers have advanced two main reasons for the rise in women being imprisoned for drug offences: first, pressure is placed on women to bring drugs into prisons when visiting inmates; secondly, women often have little choice but to take over drug operations for male partners or relatives when the men are imprisoned (Ayres França, 2016).

Brazilian drug legislation has been developed largely in accordance with United Nations-promulgated international conventions, albeit with tougher sanctions than many countries and penal code provisions that extend to drug possession for private consumption. Much of the most recent surge in prisoner numbers followed the enactment in 2006 of new drug laws aimed at toughening sentences for trafficking offences while reducing penalties for possession. In fact, these led to the wide-scale imprisonment of first-time offenders for relatively low-level drugs offences (Miraglia, 2015). The new policies are reported to have led to a rise in the number of people incarcerated for drug trafficking from 33,000 in 2005 to 138,000 in 2013, representing around a quarter of all Brazilian prisoners.<sup>16</sup>

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14 <http://g1.globo.com/sao-paulo/noticia/2016/11/para-57-dos-brasileiros-bandido-bom-e-bandido-morto-diz-datafolha.html>

15 <http://www1.folha.uol.com.br/internacional/en/brazil/2015/06/1646052-nine-in-every-ten-brazilians-support-criminal-responsibility-at-the-age-of-16.shtml>

16 <http://www.telesurtv.net/english/news/Brazils-Supreme-Court-to-Discuss-Drug-Decriminalization-20150619-0014.html>

Experts have complained that police use the legislation to target ‘presumed’ traffickers arrested with small quantities of drugs who are in fact poor, first-time offenders and the ‘weakest link in the chain of drug production and sales’.<sup>17</sup> New legislation to reduce the age of criminal responsibility from 18 to 16 for serious offences involving violence is expected to lead to more growth in prisoner numbers.<sup>18</sup> A further major contributing factor to Brazil’s high prisoner numbers is the comparatively high proportion who are un-sentenced. Almost 40% of the prison population is made up of remand prisoners. This is largely the result of inefficient judicial processes, lack of legal representation, and laws requiring anyone accused of a drug-related offence to be denied bail (de Oliveira Carlos 2015). Judges have been criticised for excessive use of remand in custody. Lemgruber and Fernandez (2011), for example, found that only a third of pre-trial prisoners in Rio de Janeiro receive custodial sentences.

Brazil’s repressive war on drugs has not been accompanied by investment in prison buildings to meet the increased capacity required. This has led to what Human Rights Watch has called a ‘human rights disaster’ in Brazil’s prisons (HRW, 2015). The same organisation has called the war on drugs a ‘genocide’, in view of the disproportionate numbers of young black men arrested and prosecuted and the toll of violence and death this drugs war has taken on Brazil’s black and *mulato* (mixed race) community, which represented 68% of the prison population in 2015, while forming 51% of the general population.<sup>19</sup> As the right to vote in Brazil is lost as a result of a criminal conviction, the community with most to gain from reformed justice policies is significantly disenfranchised.

### **Box 2.3: Overcrowding leads to rioting, violence and multiple deaths in Brazil’s prisons**

Overcrowding, coupled with extreme staff shortages, often leads to rioting and violence in Brazil’s prisons. In the first two weeks of January 2017 alone, over 125 prisoners were killed in five separate prison riots. The prison in Roraima state where 33 prisoners were killed held over 1,400 prisoners in conditions designed for half that number. Overcrowding means it is difficult to keep members of rival gangs apart. As a BBC report notes, in the state of São Paulo, a single guard oversees 300 to 400 prisoners in some prisons. Resources are also scarce, with prisoners forced to compete for basics such as mattresses and food (BBC News, 2017).

In response to recent events Brazil’s federal government promised to spend an extra 1.2bn *reais* (US\$370m) to modernise the federal prison estate but it has traditionally preferred to let state budgets bear the cost of running the state prisons that house the vast majority of Brazil’s prisoners (*Economist*, 2017).

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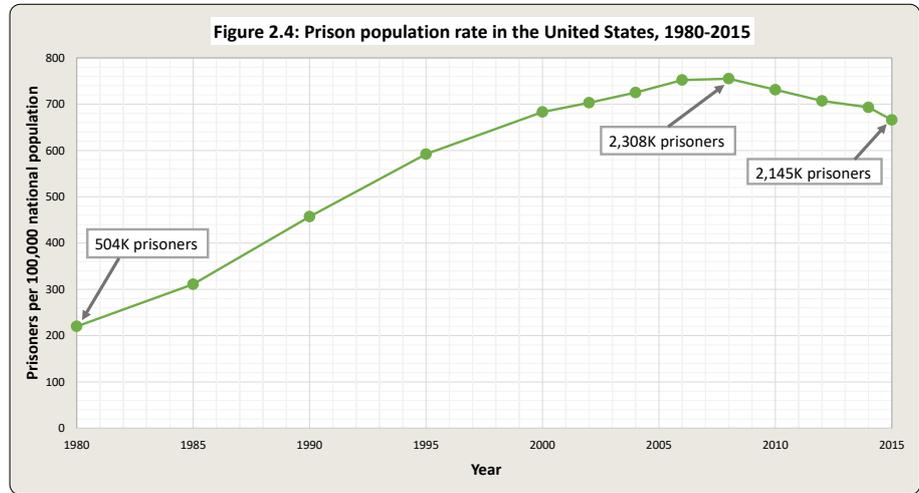
17 Vitore Maximiano, a public defender in São Paulo and the former National Secretary for Drug Policies, quoted in *Folha de S Paulo*, <http://www1.folha.uol.com.br/internacional/en/brazil/2017/01/1850214-brazil-overloads-prisons-with-nonviolent-inmates-with-no-prior-records.shtml>

18 <https://www.theguardian.com/world/2015/jun/29/brazil-prisons-criminal-responsibility-law-overcrowded>

19 According to the Guardian, citing data from the Brazilian national census of 2010 (<https://www.theguardian.com/world/2011/nov/17/brazil-census-african-brazilians-majority>).

## 2.4 The United States

The trend towards what is today's vast rate of imprisonment in the US started in the early 1970s. Over the fifty years prior to this, levels of incarceration had been fairly stable. Thereafter, as observed by Zimring, the 35 years from 1972 'produced a growth in rates of imprisonment that has never been recorded in the history of developed nations' (2010: 1230). By 2007, the imprisonment rate in the US had gone from being 'at the high end of western democracies', but by no means an 'outlier', to being 'three times that of any fully developed nation at any point in the post-World War II era' (Zimring, 2010: 1231).



In absolute numbers – and including those held in local jails, state prisons and federal prisons<sup>20</sup> – the total US prison population numbered around half a million by 1980, surpassed 2 million in the early 2000s, and hit a high of just over 2.3 million in 2008. At this point, there were 755 people in US prisons or jails for every 100,000 of the national population. While the numbers have since declined in both absolute and proportional terms, today the US has, at 666, the second highest prison population rate in the world – behind the small island nation of the Seychelles. No other country has a rate of over 600, and only Turkmenistan, El Salvador, the US Virgin Islands and Cuba have rates above 500.

Much of the explanation for the extraordinary growth in the US prison population lies in the following closely related factors: rising levels of crime, and particularly violent crime, from the 1960s to early 1990s; policy-makers' receding confidence in the scope (and public appetite) for reform and rehabilitation of offenders and an associated increasing commitment to the use of imprisonment to deter, punish and incapacitate; and the courts' implementation of toughening penal policy, through the imposition of more frequent and ever longer custodial terms. Harsher sentencing of drug offences was a key development, in the context of the US government's 'war on drugs' as declared by President Nixon in 1971 – with the consequence that admissions for drug offences accounted for almost one-third of all admissions to state and federal prisons over the period 1993 to 2009 (Rothwell, 2015).

Many drug and other offences were targeted by legislation at both federal and state levels introducing mandatory minimum prison sentences. Such legislation included 'three strikes' laws which typically required a 25-year sentence to be imposed for certain third felony convictions (for example, California's tough three strikes law which was enacted in 1994 – but has since been amended – resulted in sentences of 25 years to life for 'third strike' offences of drug possession or theft).<sup>21</sup> Further, a range of 'truth in sentencing' provisions increased the terms served in custody, by reducing opportunities for parole or eliminating the possibility of parole altogether for certain categories of prisoners. In 2012, of the almost 160,000 prisoners serving life sentences in America's prisons, almost 50,000 were serving life without parole (Sentencing Project, 2014). Another feature of the expanding prison system was the ever greater use of solitary confinement as a method of controlling prisoners, particularly within new super maximum security ('supermax') prisons (see Box 2.4).

<sup>20</sup> 'Jails' are mostly run by city or county authorities and hold defendants pre-trial and offenders sentenced to under a year's custody, whereas 'prisons' are operated either by state authorities or the federal Bureau of Prisons. Federal prisons house offenders convicted of federal crimes.

<sup>21</sup> Committee on Causes and Consequences of High Rates of Incarceration (2014); James (2014).

Meanwhile, the burgeoning privatisation of justice meant that commercial interests were well served by extensive prison building programmes.

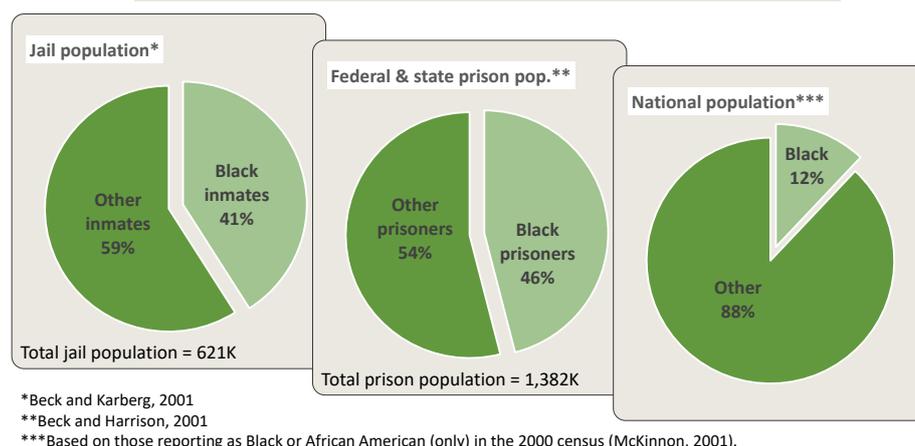
As the overall prison population of the US grew rapidly over three decades from the early 1970s, existing racial disparities within that population became more marked – peaking in the year 2000. As of 30 June 2000, more than one in ten (around 12%) of black men in their twenties to early thirties was in federal or state prison or in jail. The equivalent figures for Hispanic and white men in that age group were 4% and 1.7% – meaning that young black men were being incarcerated at seven times

the rate of young white men, and young Hispanic men at almost two and half times the rate of their white peers (Beck and Karberg, 2001). The disproportionality of the black jail and prison populations in 2000 is shown also in Figure 2.5. Explanations for the racial disparities in incarceration rates have generally encompassed a range of factors including discriminatory decision-making throughout

the justice process from the point of arrest onwards (and particularly with respect to prosecutions for drug offences), the intersection between race and poverty, and differential involvement in some types of offending.<sup>22</sup>

Over the past 10 to 15 years, driven at least in part by fiscal constraints and against a backdrop of steadily falling crime levels since the early 1990s, there has been some movement away from the mass incarceration that had formerly characterised US criminal justice policy. Steps have been taken towards sentencing reform – including a loosening of mandatory provisions in a range of states – and the expansion of community-based alternatives to custody (Porter, 2016); notwithstanding the fact that bipartisan proposals for significant sentencing reform at the federal level have to date been unsuccessful (Obama, 2017). Growth in the prison population has slowed and, since 2008, gone into reverse: at 666, the prison population rate for 2015 was 12% lower than the 2008 figure. There have been falls in numbers held in local jails, state prisons and federal prisons alike (Bureau of Justice Statistics, 2016; Carson and Anderson, 2016). The period since 2000 has also seen a narrowing in racial disparities in levels of incarceration, as shown in Table 2.1 below, with respect to male prisoners in state and federal establishments. However, Austin and et al note, reporting on 2014 data, that ‘it would take 100 years for the disparity [between African American and white imprisonment rates] to disappear at the current trend’ (2016: 14).

**Figure 2.5: Racial disparities in jail and prison populations in the US, 2000**



**Table 2.1: Prison population rate of male prisoners in federal and state prisons, by race and Hispanic origin, 2000-2015\***

Year	Black male PPR	Hispanic male PPR	White male PPR	Ratio black : white	Ratio Hispanic : white
2000	3,457	1,220	449	7.7:1	2.7:1
2005	3,145	1,224	471	6.7:1	2.6:1
2015	2,613	1,043	457	5.7:1	2.3:1

Sources: Sabol et al (2009); Carson and Anderson (2016).

<sup>22</sup> For discussion of factors underlying racial disparities in imprisonment levels see, for example, Mauer (2011), Neal and Rick (2013), Sentencing Project (2013).

Prospects for further progressive reform to criminal justice policy, and a continued downward trajectory in the US prison population, look highly uncertain at the time of writing. It remains to be seen whether existing reform efforts – bolstered by the now widespread acceptance that mass incarceration is economically unsustainable – have sufficient momentum to be sustained under the current Republican administration.

### Box 2.4: Solitary confinement and ‘supermax’ prisons

In view of the severe harms to mental health caused by solitary confinement, the international instruments on imprisonment specify that it should not be used other than in the most exceptional circumstances and for minimal periods (Nelson Mandela Rules 43-5 [UNODC, 2015]). Nevertheless, the US makes ‘widespread and routine use of extreme and prolonged isolation’, as a ‘standard tool to control and punish incarcerated people’ – such that an estimated 89,000 to 120,000 American prisoners were being held in segregated conditions by 2014 (Gottschalk, 2016).

The 1980s onwards saw the building of many new prisons, commonly known as ‘supermax’ prisons, designed specifically to hold prisoners in strict isolation. By 2004, more than 40 states had at least one supermax facility (Mears, 2005). Typical features of a supermax prison (as outlined by Shalev, 2011) are:

- Cells measure 70 to 80 sq. feet.
- Prisoners are kept alone in their cells for 22½-24 hours a day.
- Prisoners exercise alone in a cage or concrete exercise.
- No congregating areas, and no group activities.
- No work opportunities and few, if any, in-cell educational programmes.
- Family visits are limited, and held through a thick glass barrier.
- High-tech measures of control, surveillance and inspection.

Recent years have seen some significant moves towards reducing the use of solitary confinement at federal, state and local levels, amidst growing recognition of its harmful effects, particularly with respect to juveniles and prisoners with existing mental illnesses (Department of Justice, 2016; Obama, 2017).

## 2.5 India

The management and administration of prisons in India are governed by the Prisons Act 1894. Since the Government of India Act 1935, responsibility for prisons has been devolved to the 29 states and seven union territories. Each has its own prisons department and its own laws, rules and regulations.

The total prison population fell slightly from 206,000 in 1974 to 196,000 in 1993, before growing rapidly over the next

five years to reach over 275,000 – at which point the prison population rate of 27 prisoners per 100,000 general population was still below the 1974 figure of 34. In 1996 the Supreme Court issued a key judgment in the case of *Ramamurthy v State of Karnataka* (Supreme Court of India, 1996) in which it called for action to be taken in the following areas: overcrowding, the delay in trials, torture, ill treatment, neglect of health and hygiene, inadequate food, inadequate clothing, ‘prison vices’, deficiencies in communication, jail visits and management of open air prisons.



India's total prison population has continued to grow since the year 2000, and by 2015 stood at 420,000 – making it the fifth largest prison population in the world. However, as the world's second most populous country, India has one of the lowest prison population rates, at 33.

One of the most serious issues affecting Indian prisons is that two-thirds of prisoners are being held pre-trial, a figure which has not changed since 2000. As the Commonwealth Human Rights Initiative notes, this can be attributed to 'unnecessary arrests, sluggish pace of criminal trials, deliberate delays to suit administrative convenience, and inadequate security and escort staff to ferry prisoners back and forth from prison to court' (CHRI, 2016:2). The situation is exacerbated by a 40% shortfall of judges in the high courts,<sup>23</sup> and a lack of modern case management systems (US Department of State, 2016). (See also box 2.5.) Estimates suggest that there were over three million cases pending in Indian courts at the end of 2016.<sup>24</sup> While alternatives to imprisonment are available they are underused. Lengthy delays in cases coming to court mean many pre-trial prisoners are held for long periods. In 2001, a quarter of remand prisoners spent more than a year in prison awaiting trial, and a total of 3,599 pre-trial prisoners were detained in jails for five years or more without trial.

Most convicted prisoners in India are serving lengthy custodial terms. National prison statistics for 2015 reveal that more than half of convicted prisoners (56%) were on life sentences, while a further 28% were serving terms of five years or more (NCRB, 2016). In 2012 the Supreme Court confirmed that a life sentence is handed down with the presumption that the person will be imprisoned for the rest of his or her natural life; while governments can grant remission at their discretion, they cannot reduce a life sentence to less than 14 years.<sup>25</sup>

Indian prisons are overcrowded with 420,000 prisoners held in a system designed for 367,000, giving a national occupancy rate of 114%; however, occupancy levels vary vastly between states and union territories, from 34% in the state of Nagaland to 277% in the union territory of Dadra and Nagar Haveli at the end of 2015 (NCRB, 2016: Table 2.1). Conditions in prisons are described by the US Department of State (2016) as 'frequently life threatening', with its human rights report noting:

Prisons were often severely overcrowded, and food, medical care, sanitation, and environmental conditions often were inadequate. Potable water was only occasionally available. Prisons and detention centers remained underfunded, understaffed, and lacking sufficient infrastructure. Prisoners were physically mistreated.

Recent initiatives have aimed to tackle the problems in India's prisons and wider justice system. In January 2016 the Home Minister approved the Model Prison Manual 2016, which aims to bring 'basic uniformity in laws, rules and regulations governing the administration of prisons and the management of prisoners all over the country'.<sup>26</sup> In February 2016 the Supreme Court issued a ruling outlining a number of reforms to be made to improve prison conditions, noting that while the issues facing the prison system had been raised frequently over the previous 35 years, little improvement had been made. The Justices particularly specified initiatives that should be introduced to address the numbers of prisoners held pre-trial, including through regular reviews of the numbers and reasons for detention and improved access to lawyers and legal aid; and called for the effective utilisation of funds to improve prisoners' living conditions.<sup>27</sup>

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23 <http://www.livelaw.in/40-vacancies-high-courts-causing-denial-justice/>

24 <http://www.ipsnews.net/2016/08/indian-jails-slammed-as-purgatory-for-the-poor/>

25 <http://www.thehindu.com/news/national/Life-imprisonment-means-jail-term-for-entire-life-SC/article15619409.ece>

26 <http://indianexpress.com/article/india/india-news-india/prison-manual-revised-death-row-prisoners-will-be-allowed-to-meet-family-one-last-time/>

27 <https://www.prisonlegalnews.org/news/2016/sep/2/indias-supreme-court-orders-prison-and-jail-reforms/>

**Box 2.5: Shortage of judges across India**

According to a 2016 news report:

Chief Justice of India T.S. Thakur today chided the government for the shortage of judges that threatens ‘the country’s development’ and has filled jails with undertrials [i.e. pre-trial or remand detainees], showing rare candour before the Prime Minister and repeatedly wiping tears during his emotional speech ...

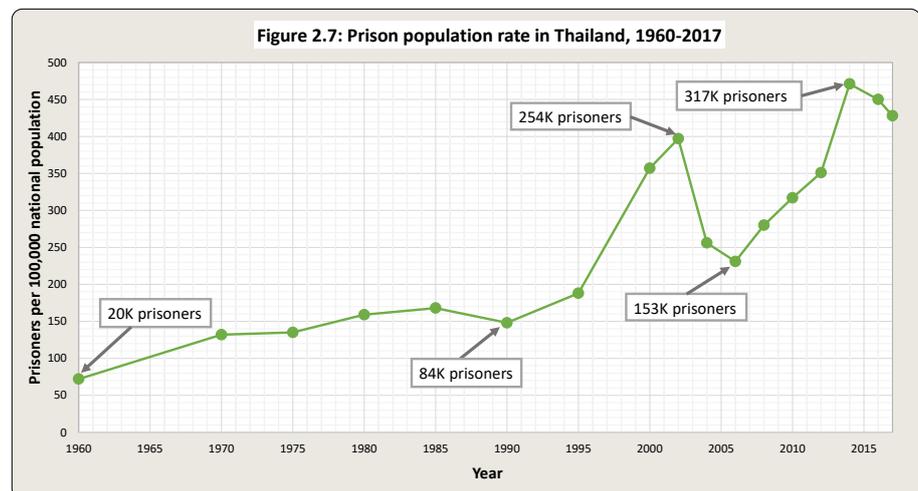
He cited figures, saying the government had in 1987 promised to raise the judges’ strength in the country to 40,357 – yet three decades later the number stood at 7,675 ...

He issued an appeal to the Prime Minister: ‘...it is not only in the name of the litigant, poor litigant – people who are languishing in jails – but also in the name of the development of the country, its progress, that I beseech you to rise to the occasion.’

New Delhi, April 24 2016, [https://www.telegraphindia.com/1160425/jsp/frontpage/story\\_82114.jsp#.WKb\\_ZPmLTIU](https://www.telegraphindia.com/1160425/jsp/frontpage/story_82114.jsp#.WKb_ZPmLTIU)

**2.6 Thailand**

With some fluctuations, Thailand’s prison population has been on a sharp upward trajectory since the 1990s. The total number of prisoners rocketed from 20,000 in 1960 to 330,000 in 2015, since when the number has dropped back to 290,000. In the context of rapid growth in the national population, the rise in absolute prisoner numbers from 1960 to 2014 equated to a more than six-fold increase in the prison population rate from 72 to 471.



Today, Thailand has the tenth highest rate in the world (and second highest in Asia, after Turkmenistan). Severely overcrowded prisons have been one of the direct results of prison population growth (see Box 2.6). There is no doubt that a punitive approach to drug offences has been the greatest driver of the rapidly rising prison population in Thailand. Figures for 2013 show that around two-thirds of sentenced male prisoners (65%), and over four-fifths of sentenced female offenders (83%), were being held for drug offences (Jeffries and Chuenurah, 2016).

Nevertheless, the story of prison population growth in Thailand is not an entirely straightforward one. For around ten years from the early 1990s, the prison population rose sharply, at a time of increasing availability and use of drugs, particularly amphetamine-type stimulants, and increasingly severe enforcement and punishment of the associated offences (Beyrer et al, 2003). Between 1995 and 2002, the prison population rate more than doubled from 188 to 397 – causing serious problems of prison overcrowding. Efforts to address these problems were successful in the short term, and the rapid rise in the prison population rate was followed by an even more rapid fall: from 397 to 231 in just four years.

Royal Pardons are a significant feature of the Thai prison system, and played some part in the decline in prisoner numbers from 2002 to 2006, as well as serving ‘as a mechanism to maintain order in prison’ since receipt of a pardon may depend on good behaviour in custody (Netrabukkana, 2016: 145). Pardons variously provide for reduction of custodial terms or for unconditional release of prisoners, and can be granted on an individual or (on days of national celebration or significance) a collective basis. A large collective pardon in 2004 resulted in more than 42,000 releases (Jeffries and Chuenurah, 2016). A greater part of the decline in the prison population

can be attributed to the development and promotion of diversionary and non-custodial provision for offenders, including community-based drug treatment and conflict-resolution services (Kittarayak, 2010). Of particular importance was the Narcotics Addict Rehabilitation Act 2002 which, while aligned with the Thai government's intention to make the country 'drug free', 'incorporate[d] a different approach to drug use and dependence by creating a legal regime to provide alternatives to incarceration for some drug offences' (Pearshouse, 2009: 3). The Act had the effect of diverting substantial numbers of arrested drug users into compulsory treatment (including treatment at specialist detention centres).

Alongside the explicit emphasis on treating certain categories of drug users as 'patients' rather than 'criminals', a 'War on Drugs' was declared by Prime Minister Thaksin Shinawatra in 2003, which promised ruthless enforcement of drug trafficking laws – widely reported to have extended to extra-judicial killings (Roberts et al, 2004). Notwithstanding the attempts to deal with low level drug offenders outside the prison system, and further collective pardons granted by the King, imprisonment rapidly re-established itself as 'the most convenient and safest option to deal with wrongdoers' – including through the imposition of very long sentences for the more serious drug offences (Junlakan et al, 2013: 321). The consequence was another rapid upsurge in the prison population. As in the years 1995 to 2002, the prison population rate more than doubled in the eight-year period 2006 to 2014: from 231 to a new high of 471. Most of the growth has been in the sentenced rather than the remanded proportion of the prison population: the latter accounted for 39% of prisoners in the year 2000, compared to 27% in 2010 and 20% today.

While women make up less than 7% of the worldwide prison population (Coyle et al, 2016), their proportion of Thailand's prison population is currently 14%, and was as high as 17% in the years 2000 and 2005. Excluding some very small jurisdictions, only six countries in the world have a larger percentage of female prisoners than Thailand. With convicted drug offenders accounting for 83% of sentenced female prisoners in 2013 (and as many as 90% in 2003), the importance of drug convictions to Thailand's relatively high female imprisonment rate is clear, even if there is no definitive evidence of disproportionality in convictions and sentencing of female drug offenders (Jeffries and Chuenurah, 2016).

There are today some signs of disillusionment with the 'War on Drugs' on the part of the Thai government, and steps being taken towards drug law reform in Thailand – potentially to include partial decriminalisation and promotion of harm reduction approaches. To what extent the proposals will be implemented, and whether they will impact prisoner numbers, are at this time open questions.<sup>28</sup>

### **Box 2.6: Overcrowding in Thai prisons**

Overcrowding has been a persistent problem in Thai prisons. A study on women prisoners for the Thai Institute of Justice found that prisoners slept in dormitories accommodating from 30 to 125 women, who generally slept on mattresses or, in some cases, blankets on the floor. Most dormitories had two Asian-style toilets and a wash basin in the corner, separated from the sleeping area by a low partition. Space allocation was usually 1.1 sq. m or less per person. Dormitories provide 'no space for personal belongings, which are kept outside in lockers. Prisoners sleep feet to feet, usually on their sides to fit into the small space, in some places, reportedly, with legs interlocked' (Thailand Institute of Justice, 2014: 40).

Similar findings were reported from doctoral research conducted in men's and women's prisons:

... the cells were all full to over their capacity. As a result, the inmates encountered serious difficulties in sleeping because they had to sleep lying down next to each other in a 'head-to-tail' formation, meaning that the inmate's head was placed between the feet and toes of two people and there was not any space between the inmates to turn over.

Prisoners further reported that they would immediately lose their sleeping space if they got up to go to the toilet in the night, and that new arrivals in prison often struggled to sleep because – for security reasons – lights were kept on in the dormitories all night (Netrabukkana, 2016: 93-4).

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28 For example, see <http://idpc.net/blog/2017/01/a-push-for-decriminalisation-and-harm-reduction-approaches-to-methamphetamine-in-thailand> and <http://www.eastasiaforum.org/2016/09/08/dutertes-drug-policy-following-in-thailands-footsteps/>.

## 2.7 England and Wales

While various forms of local prison had existed in England and Wales since the Middle Ages or before, the first national prisons were established in the early nineteenth century, in the wake of the 1779 Penitentiary Act. Among the first central government prisons were Millbank (opened in 1816 in Pimlico, London) and Pentonville (opened in 1842 in north London, and still serving as a prison today). The design of both – but particularly Pentonville – was influenced

by philosopher Jeremy Bentham's concept of the 'Panopticon', whereby radiating wings were intended to allow all prisoners to be watched from the mid-point of the building.<sup>29</sup> Over the course of the nineteenth century, the emphasis of prisons policy shifted variously between retributive, deterrent and reformist aspirations; and centralisation of England and Wales' prisons culminated in the creation of the Prisons Commission in 1878, which brought local prisons under central government control.

In the early twentieth century, around 17,000 prisoners were held in the prisons of England and Wales. The number rose a little before falling and then remaining relatively stable at around 10,000 to 15,000 over the years 1915 to 1945 (Allen and Dempsey, 2016). The post-war years of the late 1940s and the 1950s saw criminal justice policy infused with some of the same kinds of progressive ideals which underlay the establishment of the wider welfare state. The Criminal Justice Act of 1948 abolished penal servitude, hard labour and the sentence of whipping; and it established a more comprehensive system for dealing with offenders through a network of institutions, including different types of custodial establishment. 'Welfarism' in criminal justice 'was led by experts ... and was characterised by an emphasis on the responsibility of the state to care for and reform prisons as well as punish them' (Jewkes and Bennett, 2008: xix). Following the 1948 Act, there was a general confidence on the part of policy-makers and others that it was possible to develop effective criminal justice processes and practices which would contain or even significantly reduce crime (Faulkner, 2006: 107).

Notwithstanding this optimism, a gradual increase in recorded crime that had been seen in the first half of the twentieth century became a sharper rise from the mid-1950s, with the rise then accelerating further from the mid-1960s. While recorded crime rose, so too did the extent to which prison was used as a response to crime: from 1955 to 1985, the total number of prisoners grew from around 20,000 to around 46,000, doubling the prison population rate from 47 to 93. By the 1980s, there were growing concerns in policy circles about the over-use of imprisonment, and scepticism about prison's effectiveness as a means of either rehabilitating offenders or deterring crime. The 1991 Criminal Justice Act was intended to establish a clear sentencing framework which would consolidate a parsimonious approach to the use of imprisonment as punishment.

In the late 1980s to very early 1990s, the prison population reached a plateau and then declined – but this reversal of the prior trend proved to be short-lived. The 1991 Criminal Justice Act rapidly came under severe criticism on several counts, and, in the wake of several high profile criminal cases, much of the mass media launched a vigorous assault on what was depicted as the courts' 'soft' approach to crime. There followed a marked toughening of penal policy, including by way of replacement of some of the provisions of the 1991 Act with a new Criminal Justice Act in 1993. Notably, the statement in a 1990 White Paper that imprisonment 'can be an expensive way of making bad people worse' (Home Office, 1990: para 2.7) gave way to Home Secretary



<sup>29</sup> <https://www.ucl.ac.uk/Bentham-Project/who/panopticon>

Michael Howard's assertion that 'prison works', in 1993. Further policy change in a punitive direction, largely in the form of legislative provisions on sentencing, continued in a context of media pressure and competition between the two main political parties over who could best meet the general public's (presumed) demands for tougher responses to crime (Hough et al, 2003; British Academy, 2014).

Over the years 1993 to 2012, the total prison population in England and Wales almost doubled from around 44,000 to close to 87,000, while the prison population rate steadily climbed to a high of 153. The increase reflected the courts' imposition of proportionately more, and longer, custodial sentences; an additional factor was a higher rate of recall to custody of offenders who had broken their licence conditions (Ministry of Justice, 2013). The rapid *rise* in the prison population largely coincided with a sharp *fall* in crime levels from their peak in the mid-1990s, as measured by the victimisation survey the Crime Survey of England and Wales<sup>30</sup> and reflecting trends in much of the developed world.

As crime levels continued to fall, the upward trend in the prison population slowed over the course of the 2000s and, since 2012, prisoner numbers have dropped slightly. While there are no major policy initiatives behind this change, a number of inter-related factors appear to be exerting a downward pressure on levels of imprisonment. These factors include the continuing 'crime drop' and associated fall in numbers of people before the courts; a generalised pressure on sentencers to make less use of the expensive option of custody at a time of austerity; and a calmer climate of public and political debate about crime. Nevertheless, the prison population rate of England and Wales remains significantly higher than that of most of its Northern and Western European neighbours. Overcrowding is a continuing problem, with poor conditions greatly exacerbated by severe cuts to funding and staffing (from 2010 to 2015, the total number of full-time staff in prisons fell by more than 10,000 to 23,746).<sup>31</sup> At the time of writing, a recent series of disturbances and high and rapidly rising levels of assaults and self-harm are prompting profound concerns across the prison service and beyond about an evident 'prisons crisis' (see Box 2.7). The independent Chief Inspector of Prisons has described prisons as 'unacceptably violent and dangerous places' (HMIP, 2016: 8).

### Box 2.7: Rising violence and self-harm in prisons in England and Wales

A *White Paper on Prison Safety and Reform* (Ministry of Justice, 2016) reports that 'the prison system is currently under sustained and serious pressure from security threats and rising levels of violence'. Official figures (Ministry of Justice, 2017a) reveal that the year 2016 saw:

- A record high of 354 deaths in prison custody, up 38% on the previous year; of which a record 119 were self-inflicted, up 32% on the previous year;
- A record high of 37,784 incidents of self-harm (12 months to September 2016), up 23% on the previous year;
- A record high of 25,049 assaults (12 months to September 2016), up 31% on the previous year; of which a record 6,430 were assaults on staff, up 40% on the previous year.

In the last two months of 2016 there were riots in four prisons – Moorland, Bedford, Swaleside and Birmingham – the last of which has been described as the worst since the 1990 riot at HMP Strangeways, following which Lord Woolf published his seminal report setting out an agenda for comprehensive reform of the prison system (Woolf 1991).

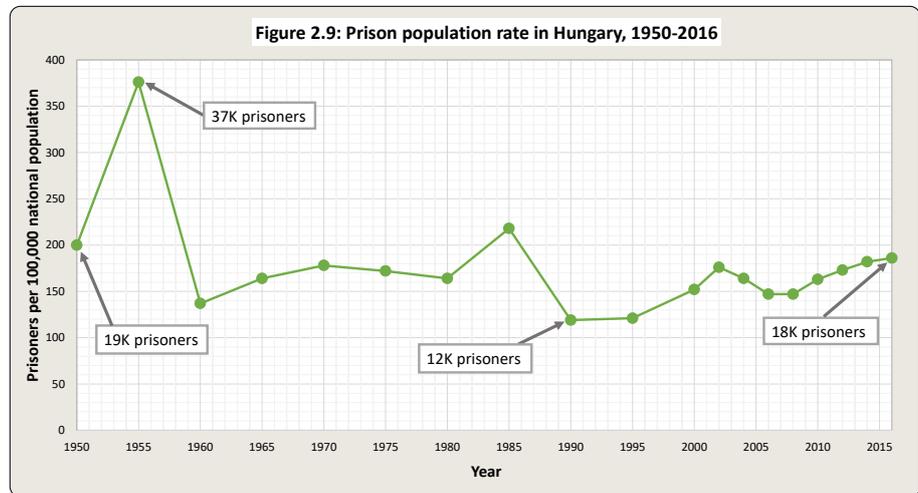
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30 Police recorded crime figures have also shown an overall fall since the mid-1990s, albeit with some significant fluctuations which relate in large part to changes in recording practices (Office for National Statistics, 2016; Bradford, 2015).

31 <https://www.theguardian.com/society/datablog/2016/nov/18/fewer-prison-officers-and-more-assaults-how-uk-prison-staffing-has-changed>

## 2.8 Hungary

Discounting Russia, Turkey and the ex-Soviet states, Hungary now has one of the highest imprisonment rates in Europe, while not (yet) having returned to the communist era levels of the mid-1950s. In 1955 Hungary's imprisonment rate peaked at 376, but it then fell significantly and by 1990 it stood at 119 – its lowest level in the post-war period. This dramatic reduction was chiefly the result of amnesties ordered in 1988, 1989 and 1990 during the transition to democratic government. That low rate was to prove short-lived, however.



Recent tough-on-crime measures are the main reason Hungary's prisoner numbers have returned to levels not seen since the mid-1980s. However, while higher incarceration rates are often associated with rising crime, the reverse appears to have occurred in Hungary, which has relatively low reported crime rates compared with other European Union countries. Hungary's reported crime rate, despite having increased in the early 1990s, is still half the size of Belgium's. Most recorded crime in Hungary is non-violent and property-related (HEUNI, 2014). Nonetheless, Hungarians' fear of crime is very high by European standards. Most Hungarians believe crime levels are 'much worse' than any other European country and that their country ranks among the ten most dangerous in Europe. In fact, it is one of the ten safest (Dunavolgyi, 2004; Kerezsi, 2004). Hungary has experienced dramatic shifts in its social, political and economic arrangements in the past 25 years. The resulting uncertainties and anxieties may go some way to explaining the heightened fear of crime.

Increasingly punitive political discourse, marked by racial stereotyping of Hungary's Roma and Gypsy communities in the media and in political rhetoric, may also be stoking anxiety about crime. In its campaign literature the radical right-wing Jobbik party even used the term 'Gypsy crime', describing this as 'a unique form of delinquency'. Media support for the anti-Roma rhetoric of Jobbik has also been identified as having indirectly helped to lay a foundation of popular support for more punitive policies (Boda et al, 2015).

This was the backdrop against which the centre-right FIDESZ party won a landslide victory in 2010, campaigning on a pledge to introduce tougher crime measures. Several of these measures have since been enacted, causing upward pressures on prisoner numbers. One example is the 'three strikes' sentencing legislation enacted in 2011, which compels courts to impose life sentences on habitual offenders committing serious violent crimes. Another such measure is a reduction in the age of criminal responsibility from 14 to 12 years for certain more serious crimes. If convicted, children serve custodial sentences in juvenile correctional institutes.

Changes have also been made to provisions on petty or administrative offences, which now allow people who do not pay fines to be imprisoned. It has been estimated that these changes have resulted in a tripling of fine defaulters being imprisoned since 2012. Those incarcerated are predominantly Roma, homeless people and sex workers, who are frequent targets of police enforcement action (Hungarian Helsinki Committee, 2016; see also Box 2.8). Under these provisions, courts can also incarcerate children for up to 45 days, either as a sanction, or for non-payment of a fine imposed as a sanction (US Department of State, 2014).

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Another example of Hungary's harsh penal provisions is its use of the whole life sentence, which has been held by the Strasbourg court to infringe Article 3 of the European Convention on Human Rights. Hungary refused to abolish the sentence, instead entrenching it further in 2011 by changes to the constitution (Amnesty International, 2011). A slight but ineffectual modification was enacted in 2015, introducing a mechanism

whereby prisoners who have served at least forty years of a life sentence may be put forward for presidential pardon. So far, no pardons have been granted.

Hungary's rising tide of penal populism has also been evident, in some parts of the country, in the phenomenon of patrols conducted by local vigilantes and more organised groups of paramilitary extremists, to counter the perceived threat of crime. Their activities often focus on Roma communities (Haney 2015; US Department of State, 2014). In addition to distrust in mainstream law enforcement systems, there is also an 'anti-expert' current running through justice policy. Whereas expert opinion was a central component of the penal reforms of the early 1990s, experts have since been side-lined from penal policy making (Kerezsi, 2009).

Although reintegration of offenders is the stated primary purpose of imprisonment under Hungarian law, recent research suggests that those who have served a prison sentence find it almost impossible to gain employment on release. This is exacerbated by a complete bar on ex-prisoners obtaining public sector jobs (Czafit and Köllő, 2015).

According to the US Department of State (2015), the FIDESZ victory in 2010 triggered a steady erosion of fundamental rights and civil liberties. Its report cites NGO complaints of police corruption and brutality (notably against Roma suspects), worsening conditions for sentenced and pre-trial detainees, physical abuse of prisoners and detainees by prison and detention staff, prisoner-on-prisoner violence and lengthy pre-trial detention. The report also refers to continued social exclusion and discrimination against Roma, intimidation of civil society bodies and systematic erosion of the rule of law. The outlook is unlikely to improve in the near term. FIDESZ was re-elected in 2014 and Jobbik (with more radically punitive policies than FIDESZ) increased its own share of seats in the parliament.

#### **Box 2.8: Roma people over-represented in overcrowded prisons**

Migrants, Roma and Gypsy people make up a large and growing proportion of Hungary's prison population. Despite making up only 6% of the national population, Roma people could represent up to 40% of Hungary's prisoners (based on studies cited in Tóth and Kádár, 2013: no official statistics are kept).

Hungary has the second most overcrowded prison system in Europe, a situation for which it has been heavily criticised by the European Court of Human Rights (ECtHR). In its judgment in the case of *Varga and Others v. Hungary* in March 2015, the Court concluded that the detention conditions of the six applicants, including their placement in overcrowded cells with poor ventilation, limited access to a shower and infestations of cockroaches and bedbugs in some cells amounted to a violation of Article 3 of the European Convention on Human Rights concerning inhuman and degrading treatment or punishment. The ECtHR noted that at that time there were approximately 450 such applications before it complaining of similar detention conditions in Hungary (Hungarian Helsinki Committee, 2015).

The ECtHR introduced a pilot judgment setting out a six-month period for Hungary to produce 'appropriate arrangements and to put in practice preventive and compensatory remedies in respect of the alleged violations.' The government submitted an action plan to the ECtHR, with proposals for improvements to prison conditions. Some changes have since been made (including in relation to sanitation in cells). New prisons are being built. The ECtHR is currently assessing the government's response and the litigation has been stayed until the end of August 2017.

## 2.9 The Netherlands

The Netherlands has long been perceived as a tolerant, progressive, liberal country with good social welfare and relatively low levels of income inequality. Individual freedom and social pluralism have been highly valued in the post-war era, as illustrated by the country's approach towards homosexuality, recreational drug-taking, abortion, prostitution and euthanasia. The Netherlands achieved a steady reduction in its use of imprisonment between 1947



and 1974, maintaining these lower levels even in the face of rising crime during the 1960s and 1970s. However, from the late 1980s the Dutch imprisonment rate surged. Its growth was only reversed from 2006, since when it has continued to fall. Today, spare capacity in Dutch prisons is being used to house prisoners from neighbouring countries, or to hold immigration detainees. One former prison now serves as a hotel.

From 1947 to the mid-1970s, a strategy of decarceration and reform led to significantly reduced use of imprisonment and more humane conditions. The Penitentiary Principles Act of 1953 substituted re-socialisation for retribution as the key principle governing prison regimes. There was increasing use of psychiatric and mental health treatment. Communal association and dialogue replaced harsh, isolating regimes. Studies were made of the effects of imprisonment on individuals. Prisoner numbers were kept down by pragmatic measures such as home leave, pardons, parole, and waiting lists for those sentenced to custody if no prison place was available. By the early 1970s Dutch imprisonment rates were among the lowest in Europe (Downes and van Swaaningen, 2007).

Downes and van Swaaningen (2007) explain that these policies of steady reduction in imprisonment and greater focus on rehabilitation were aided by socio-political factors, such as the media deferring to expert opinion on criminal and penal policy. There was an absence of the 'law and order politics' that was emerging in the USA and elsewhere. These were years of high employment, strong welfare support and relative social and political stability. As regards crime, the dominant narrative was one of 'minimal resort to coercion and punishment, combined with a maximum investment in welfare and rehabilitation' (Downes, 2007:94). Another factor may have been a national tendency towards scepticism about the efficacy of repressive measures (Korf 1995).

However, in the second half of the 1970s and early 1980s, there was a significant increase in the incidence of high volume, low level crime. In response, in 1985 the justice ministry issued a White Paper, *Society and Crime* (Ministerie van Justitie, 1985). This proposed radical policy changes in crime prevention and justice. The chief recommendation was to prosecute more cases, making greater use of lenient non-custodial penalties for minor offences, while using harsher penalties for the most serious ones.

Following *Society and Crime*, the prosecution service was given new powers to dispose of cases and wider discretion to develop policy in collaboration with police and other local authorities. This enabled prosecutors to control the volume of work coming before the courts. The new powers included provision for settling cases out of court by 'transactions' between suspect and prosecutor, by which the suspect agreed to pay a penalty (such as a fine or community service), without pleading guilty. Prosecutors also gained authority to issue 'punishment orders' whereby convictions would be entered and non-custodial penalties imposed – for designated offences punishable by up to six years in custody – without the involvement of a judge. Dutch prosecutors today are considerably more powerful and influential than in most other countries. The net effect of these and related

changes was that the number of cases tried in court remained manageable, and growth in the prison population was – initially, at least – relatively slow, despite the rising crime.

However, the growth in prisoner numbers began to accelerate from the late 1980s, and by 2005 the rate had peaked at 134 per 100,000. Over the 15 years from 1990 to 2005, the prison population rate had increased by around 200%; as points of comparison, the United States prison population rate increased by around 60% over the same period, as did that of England and Wales. Even after the crime rate in the Netherlands started to level off (from 1985), the use of imprisonment continued to rise. In prison regimes, there was now greater focus on risk management, less on treatment and re-socialisation. The one prisoner per cell requirement was dropped.

The steep rise in Dutch prisoner numbers was not caused primarily by the enactment of harsher sentencing laws, as in America. Instead, it reflected a greater policy focus on enforcement and increasing severity by judges in the exercise of their discretion with respect to sentencing and pre-trial detention. A White Paper published in 1990 proposed a significant policy shift away from humane, reductionist approaches. *Law in motion* (Ministerie van Justitie, 1990) called for a tougher approach aimed at ‘restoring credibility’ to the criminal justice system and responding to public concerns about rising crime.

This led to greater political focus on crime and security, on both left and right. As a result of changes introduced at this stage, the net of criminalisation widened, with a greater number of nuisance-type infractions (for example, begging) being prosecuted in the next two decades. Short custodial sentences were increasingly used to punish fine defaulters. More defendants were remanded in custody and longer prison terms were handed down for serious offences. Reoffending was treated as a stronger aggravating factor. Dutch drug policy also shifted towards tougher enforcement, in reaction to the perceived persistence of drug-related crime (Boekhout van Solinge, 2010). Other factors posited by researchers include tougher policies of right-wing governments (Boekhout van Solinge, 2010); judges believing the mild Dutch penal climate to be ‘out of sync’ with the policies of neighbouring countries; and judicial compassion shifting from perpetrators towards victims (van Ruller and Beijers, 1995).

The shift back to low rates of imprisonment from 2006 was a marked one and there has been no return to the high use of custody that set the Netherlands apart from other Western European states during the 1990s. The reasons advanced for the reductions in prisoner numbers over the past decade include lower levels of serious violent crime, fewer cases of serious crime coming before the courts, and the application of new legislation and prosecution guidelines promoting the use of community service in place of short prison sentences (Allen, 2012). The judiciary retains wide discretionary powers in sentencing. Legislation establishes maximum sentences for particular crimes; there are no minimum sentences. Indeterminate sentences are never used, other than the life sentence, which is handed down extremely rarely. Generally, a custodial sanction is considered a last resort; significant use is made of community service orders, fines and electronic tagging. Only when other methods have failed is prison used, and the custodial term is limited to the period deemed necessary for rehabilitation (Subramanian and Shames, 2013).

### **Box 2.9: Over-representation of non-nationals in Dutch prisons and high pre-trial detention**

There are two distinct causes for concern in the Dutch use of imprisonment. First, non-nationals and members of some ethnic minority groups are overrepresented in Dutch crime statistics, particularly juveniles. The number of prisoners who were born outside the country has risen in recent years and, in 2015, the proportion stood at 62% (11% of the prison population were of Moroccan descent, and 9% were from Suriname (Centraal Bureau voor de Statistiek, 2016).

Secondly, Dutch pre-trial detention rates are among the highest in Western Europe, at almost 30% of the prison population (compared to 11% in England and Wales). Recent research shows that the problem lies not in Dutch law (which meets the standards laid down in the European Convention on Human Rights and relevant Strasbourg legislation). It is the way the law is applied by courts that has been criticised by lawyers, academics and some judges, with alternatives to detention being under-used and too much weight being provided to prosecution arguments as to why detention is required (Fair Trials, 2016).

## 2.10 Australia

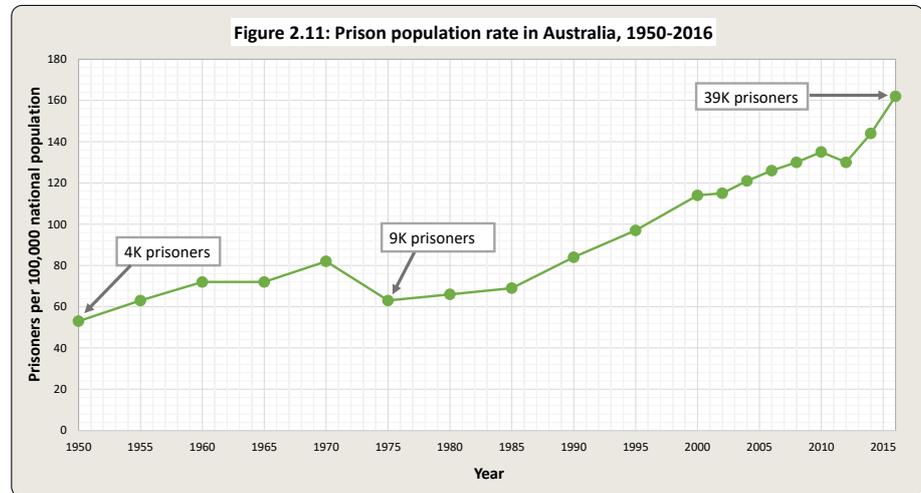
The history of colonial Australia is, in part, a history of imprisonment and exile. With penal transportation effectively serving as ‘an instrument of imperialism’ (Braithwaite, 2001: 50), early British settlement of Australia largely took the form of the establishment of penal colonies for convicts sent from Britain’s and Ireland’s overcrowded prisons. More than 160,000 such convicts made the months-long journey to Australia between 1787, when the first convict fleet set

sail from Portsmouth, and 1868, when penal transportation ceased. Once in Australia, transported convicts were assigned to work and subjected to varying degrees and methods of control for the duration of their sentence; a minority were incarcerated in prisons established on Australian soil.

By the year 1900 – one year before Australia became an independent nation – the country’s prisons held close to 5,000 prisoners, giving a prison population rate of 126. Over the next half-century, prisoner numbers remained below (and sometimes substantially below) 5,000, while the total population of the country steadily rose from less than four million to over eight million (Australia Bureau of Statistics [ABS], 2001a). In 1950 Australia’s prison population numbered around 4,000, and the prison population rate was 53. Since then the country has seen sustained and accelerating growth in prisoner numbers, excepting short-lived declines in the early 1970s and in 2010 to 2012. By 2016 the total prison population rate of 162 was three times the 1950 figure.

There are no federal prisons in Australia: responsibility for the administration of prisons is entirely delegated to the country’s six states and two mainland territories, each of which has its own laws and constitution. Federal prisoners – that is, those who have been convicted of ‘Commonwealth offences’ such as drug importation, or who have been transferred from other jurisdictions to serve their sentence – are housed in state prisons and make up a small minority of all prisoners.<sup>32</sup> Prison population rates vary widely between states and territories, with the Northern Territory having the highest by a considerable margin: at 923 prisoners per 100,000 adults in 2016, contrasting with 138 per 100,000 adults in Victoria.<sup>33</sup> However, all states and territories have seen a marked rise in prisoner numbers over the past 25 years (ABS, 2001b; 2016).

Proximate explanations for prison population growth across Australia over the past two to three decades, during which time there have been some rises in crime but overall steady or declining crime rates, seem to lie in increasingly punitive criminal justice policy and practice. Key developments in some states and territories include the introduction of mandatory sentencing and tighter sentencing guidelines, which have led to longer custodial terms; reduction in granting of bail and imposition of stricter bail conditions which have produced significant increases in remand populations; and reductions in use of parole. In turn, the increasingly punitive policy appears to reflect a wider public punitiveness and fear of crime, as is evident from public opinion research and is expressed most evidently in media reporting on crime and justice (Freiberg, 2005; Parliament of Australia, 2013; Cunneen et al 2013). It has been noted, for example, that ‘the introduction of minimum mandatory regimes in most states and territories and the Commonwealth are a political response to the concern that courts are too



<sup>32</sup> Federal prisoners numbered around 1,000 in September 2016 (Australia Bureau of Statistics, 2016).

<sup>33</sup> It should be noted that the Australian Bureau of Statistics tends to calculate the prison population as number of prisoners per 100,000 of the *adult* general population; which differs from the definition of prison population rate used elsewhere in this report.

lenient on offenders' (Law Council, 2014: 9). Cunneen et als' examination of imprisonment across Australia since the 1970s found that these immediate drivers of prison population growth, such as the emphasis on 'risk' management and the punitive turn, could not explain the marked differences in imprisonment rates between states and territories. They argue that 'the penal/colonial complex' which includes 'colonialism, post colonialism and race' should be taken into account in order to understand different penal cultures (2013:195).

A striking feature of imprisonment in Australia is the great and increasing overrepresentation of Indigenous people<sup>34</sup> in the prison population. In 1990, 14% of prisoners were identified as Indigenous; a figure that had increased to 19% by the year 2000 (ABS, 2001b). As of June 2016, Indigenous people represented 27% of adult prisoners while making up around 2% of all adult Australians; the imprisonment rates for Indigenous and non-Indigenous Australians (number of prisoners per 100,000 adults) were 2,346 and 154 respectively. The disproportionality was most marked in Western Australia, where the imprisonment rates were 3,383 and 206 respectively (ABS, 2016). (See also Box 2.10.)

### **Box 2.10: Imprisonment of Indigenous Australians**

Australian criminal justice statistics paint a picture of 'massive criminalisation and imprisonment of Indigenous people throughout the country' (Cunneen, 2000) which has been characterised as 'hyperincarceration' of Indigenous Australians especially those with mental and cognitive disability (Cunneen et al 2013); as Weatherburn (2014: 2) puts it, 'the depth and breadth of Aboriginal contact with the criminal justice system is so extraordinary, it almost defies belief'.

The causes of the huge disparities in imprisonment rates between Indigenous and non-Indigenous Australians are the subject of extensive and continuing debate among scholars. A common theme in much of this debate is the continuing legacy of dispossession, exploitation and disempowerment of Indigenous people, with many commentators having 'theorised that Australia's relationship with Aboriginal persons is one founded on a colonialist project of governance, discipline and control' (Kelly and Tubex, 2015: 2). Finnane and McGuire describe a range of strategies for exercising social control over Indigenous people – including use of capital and corporal punishment and confinement on reserves and missions – from the early years of British settlement up until the 1960s, from which time the country has seen 'the inevitable passage of large numbers of the dispossessed victims of colonization into the state penal systems' (2001: 294). Baldry and Cunneen theorise that it is 'within a broader context of these strategies and techniques of colonial patriarchy that we can understand why it is that particular social groups appear to become the targets of penal excess' (2014: 276).

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34 The term 'Indigenous' is used by the Australian Bureau of Statistics to refer to people of Aboriginal or Torres Strait Island descent, who identify as such and are accepted as such by the community with which they associate.

## 3. Learning from disparities in the use of imprisonment

Drawing on the preceding accounts of use of imprisonment in the ten jurisdictions, this chapter seeks, first, to identify the key factors which determine prison population size and, secondly, to set out some starting points for strategies to reduce resort to custody.

### 3.1 Understanding levels of imprisonment

Even the briefest histories of imprisonment in the ten jurisdictions demonstrate that variation in prison population rates, whether over time or between countries, cannot be explained with reference to a single cause or single set of causes. At any given time or in any given jurisdiction, the size of the prison population is determined by an array of different and interlocking factors, as depicted in Figure 3.1.

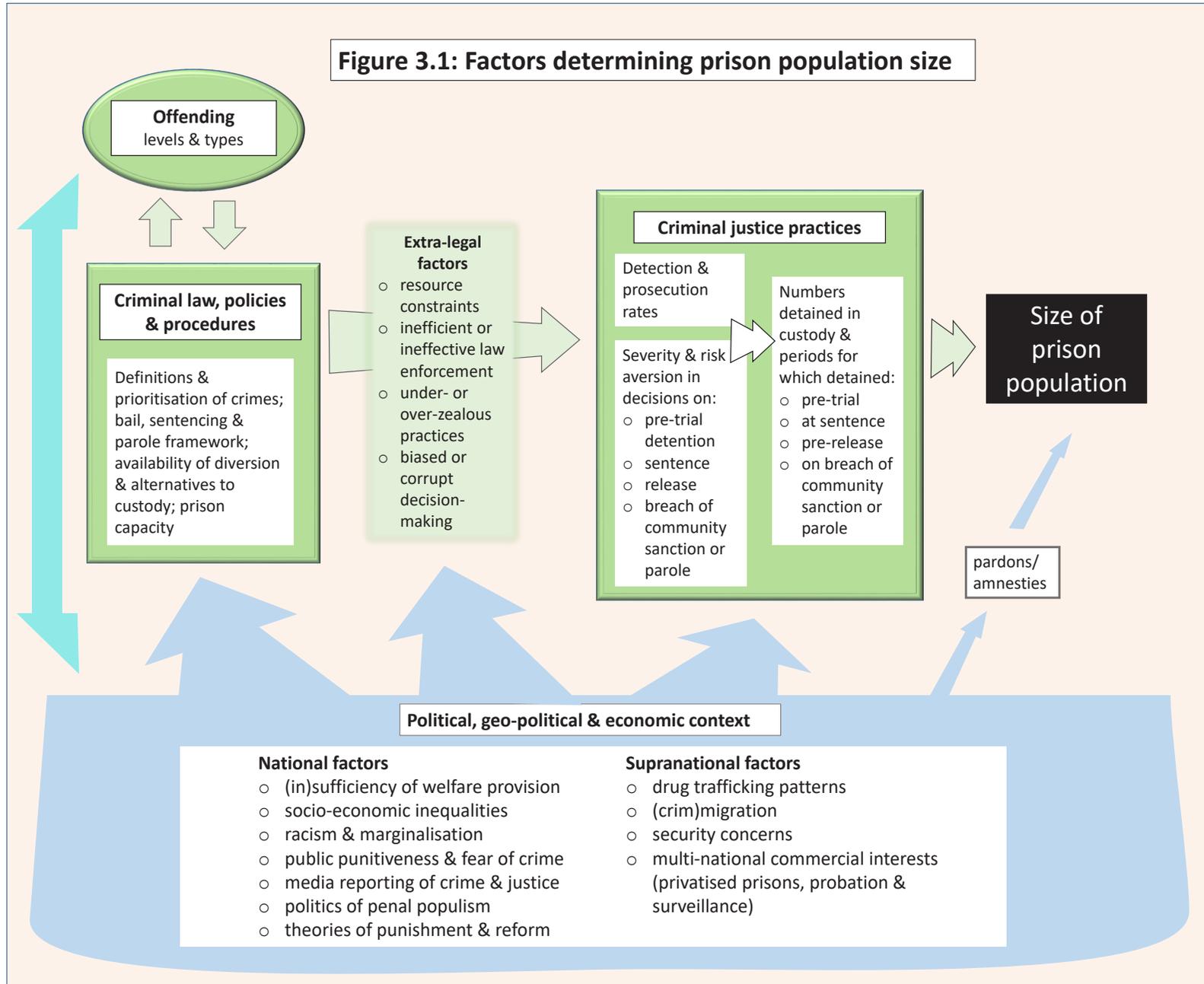
What are termed **criminal justice practices** in Figure 3.1 are the immediate determinants of prison population size. Self-evidently, the numbers in prison are a function of the numbers of people who are sent to custody and the periods for which they remain in custody. The prisoners include those who are detained by the authorities prior to trial or sentencing; those who are sentenced to custody upon conviction for a crime; those who have completed a period in custody and are awaiting a release decision or authorisation; those who are sent to custody following breach of a community or suspended sentence; and those who are returned to custody having violated parole conditions. Patterns of entry into and duration of custody themselves reflect the numbers appearing before the authorities for decisions on custody, and the ways in which these decisions are made.

What, then, determines the numbers of suspects, defendants and convicted offenders appearing before the authorities, and the nature of decision-making on custody? **Levels of offending** are an essential part of the picture, but they do not translate in a straightforward way into numbers of individuals prosecuted and facing custody. **Criminal law and criminal justice policies and procedures** both shape and mediate offending levels: by defining what constitutes an offence;<sup>35</sup> by explicitly or implicitly specifying those offences to be prioritised in enforcement and prosecution efforts; by establishing the criteria by which decisions are to be made on whether or not to impose custody and for what duration; and by setting the framework of custodial provision and its alternatives. Further, the translation of law and policy into practice is likely to be mediated by multiple **extra-legal factors** which can variously reinforce, impede or counter-act the intentions of the formal justice system. Such factors include, for example, racial or other forms of discrimination in the prosecution of offences; the degree of effectiveness, efficiency or zealotry (or otherwise) with which criminal justice practitioners perform their roles; and resource and infrastructure constraints which may limit the capacity of the courts to process cases.

None of the factors and influences mentioned above can be considered in isolation from the wider **political, geo-political and economic context** which defines or at least profoundly affects the structure and content of law and policy and the ways in which law and policy are interpreted and applied at all stages of the criminal justice process. Political, geo-political and economic conditions also give rise to or shape much of the conduct that is perceived and treated as criminal. Ultimately, therefore, the size of a society's prison population is intricately bound up with many of the most important features of that society – including its political culture, economy, structural inequalities, and the real and perceived internal and external threats it faces.

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<sup>35</sup> Most obviously, for example, levels of drug offending do not simply reflect the extent of drug consumption and trafficking, but also rise and fall in accordance with expansion or restriction of the net of drug criminalisation.



## 3.2 New approaches to reducing resort to imprisonment

All ten jurisdictions discussed in this report have experienced the negative effects of excessive use of imprisonment. All have lessons to impart about the issues to be addressed if prisoner numbers are to come down – and stay down. Of the ten, only the Netherlands has achieved a sustained reduction in imprisonment levels, and today has what could be called a parsimonious approach whereby custodial sentences are genuinely a last resort.<sup>36</sup> There have been steady falls in Dutch prisoner numbers since 2005 (at which point they were among the highest in Western Europe).

This report is the first output of a wider project whose aim is to devise workable strategies to curb the resort to imprisonment. However, just as there is no single explanation for the widely varying trajectories to a country's over-use of imprisonment, so too is there no single route towards effective reform. In this final chapter, drawing on what has emerged from each of the ten countries thus far, we provide some initial proposals about core themes and questions that such strategies could address. The first theme relates to the objectives of imprisonment. We start with this because, in our view, any formulation of strategy in this context demands a clear focus on the questions: what are the purposes of imprisonment as a response to a given form of criminal conduct; and could these purposes be better achieved in some other way?

### Theme 1: Purposes of imprisonment

One reason imprisonment has been so resistant to reform is the widely held assumption that its supposed functions cannot be performed in any other way. But what purposes can imprisonment reasonably and realistically be expected to serve? They may well be more limited than is commonly believed.

Incarceration in response to certain forms of (alleged or proven) criminal activity is an unquestioned facet of current times, as it has been since at least the nineteenth century. Despite the fact that prison is an expensive intervention and one with lasting adverse financial and social consequences for prisoners and their families, there is no international consensus on its proper aims and objectives.<sup>37</sup> Some jurisdictions set out, in statute, the aims or purposes of imprisonment, although often to limited practical effect. For example, Brazil's Penal Execution Law 1984<sup>38</sup> refers to the need for social reintegration to be supported through the sentence, but under-resourcing severely limits this in practice. The Netherlands' Penitentiary Principles Act 1998<sup>39</sup> prioritises the re-socialisation of prisoners and states that incarceration should entail as few restrictions as possible.<sup>40</sup> However, most legal systems do not specify the purposes that imprisonment should serve, or the mechanisms that should be employed to help ensure that those purposes are met.

Theorists have advanced the following putative objectives of, and justifications for, the use of imprisonment:

- denunciation of wrongdoing;
- punishment or retribution;
- deterrence;
- incapacitation (to manage risk and protect against further harm); and
- rehabilitation or re-socialisation.

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36 Although India's prison population rate is the lowest of our ten jurisdictions, there are significant problems with the overuse of custody at the pre-trial or remand stage and the exceptionally high number of sentenced prisoners serving life sentences, both of which contribute to severe overcrowding and poor conditions.

37 Article 10 of the International Covenant on Civil and Political Rights states: 'The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and rehabilitation'. This does not go so far as to say that reformation and rehabilitation should be the *objectives* of imprisonment.

38 *Lei de Execução Penal*, art. 1

39 *Penitentiare beginselenwet*

40 In England and Wales, the Prison and Reform Bill introduced in February 2017 provides, in section 1: 'In giving effect to sentences or orders of imprisonment or detention imposed by courts, prisons must aim to – (a) protect the public, (b) reform and rehabilitate offenders, (c) prepare prisoners for life outside prison, and (d) maintain an environment that is safe and secure.' There is no detail about how the stated purposes should be achieved.

Some have questioned whether, in light of the well-documented adverse personal and social consequences of imprisonment, any custodial setting could in reality meet the presumed ‘improving’ objectives of imprisonment. This is a complex question for another day. Nonetheless, while these supposed objectives are, in and of themselves, capable of providing some justification for imprisonment, how much weight should each be given? To what extent should punishment take precedence over rehabilitation – or vice versa? Too much weight is often given to the power of imprisonment to deter and to reform (objectives that are ‘talked up’ by politicians and governments in states with high imprisonment levels). Less weight is given to the poor record of imprisonment in preventing or deterring crime, or to the numerous adverse effects of a custodial sentence on individuals, families and communities.

What is needed is principled guidance on the relative weight and value to be ascribed to the supposed objectives of imprisonment posited above, taking account of its harmful effects and of the capacity of non-custodial measures to achieve the same objectives. For present purposes, we offer below a few brief observations on the shortcomings of the five objectives of imprisonment, not least in view of the way prison is experienced in most societies today.

With regard to the object of **denunciation**, this is also achieved – potentially with much less collateral damage – by sanctions other than incarceration, such as fines or unpaid work. The fact of a conviction and the resulting criminal record in themselves carry personal stigma, while the greater and lasting stigma associated with time spent in prison is often a major barrier to social reintegration.

As to **punishment or retribution**, even if one accepts that curtailing a person’s liberty is a necessary means of achieving these objectives, the use of imprisonment is open to criticism for going further than what is necessary or proportionate in the majority of cases where it is used. Moreover, imprisonment punishes not simply through the deprivation of liberty. In many parts of the world, that aspect of imprisonment is the least harmful one: violence, intimidation, isolation, untreated and worsening mental and physical health are also part of the daily experience of custody. After release, for many, the punishment continues, with diminished job and housing prospects, weaker family and community ties, and, in some jurisdictions, loss of voting rights.

Research evidence on the (general or specific) **deterrent** effects of imprisonment suggests that they are limited and that certainty of detection and punishment are more likely to deter than the threat of (longer) custodial sentences (Tonry, 2008; Aebi et al, 2015). In many jurisdictions, high levels of repeat offending among those who have been to prison point to custody’s limited impact on behaviour at an individual level.<sup>41</sup> Deterrence theory fails to account for impulsive or irrational motivations, or the influence of drugs and alcohol, which underlie much offending.

In many cases the objects of **incapacitation** and **risk management** can be achieved at less cost and with less harm by the use of electronic monitoring, curfews, supervision or other forms of restriction or control. While there will always be offenders who present serious risks to the public, and who should be in prison for as long as that risk exists and can be managed by no other means, the number of people falling into this category is likely to be small – in many countries making up no more than a fraction of those actually in custody.

The supposed **rehabilitating** or **re-socialising** purposes of imprisonment are perhaps the most problematic. It is uncontroversial to hold that individuals who break the law can be ‘reformed’, for example, through programmes and support that encourage them to take responsibility for the harm their offence caused, address the reasons for their conduct and try to desist in future. This principle rightly informs international, regional and some domestic standards on prison management. However, it is inherently contradictory to expect custodial settings to fulfil these purposes, involving (as they typically do) separation from family and community, hours of confinement in cells, forced cohabitation with other convicts, and exposure to harsh and sometimes violent conditions.

Alternative sanctions and measures are capable of meeting the five objectives discussed above in significant numbers of cases. Across much of the developed world, use of non-custodial sanctions and measures

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<sup>41</sup> For example, in England and Wales the latest one-year proven re-offending rate among adults released from custody was 45% (Ministry of Justice, 2017b).

has expanded rapidly in recent decades. This has led to some criticism that they have widened the net of criminalisation while doing little to curb imprisonment rates. In some jurisdictions, unduly harsh breach arrangements have in fact led to an increase in admissions to prison for non-compliance. Similarly, harsh recall rules have inflated the number of offenders returning to custody for breaching parole conditions: the United States and England and Wales offer clear examples of both problems. However, used proportionately, non-custodial alternatives have an important part to play in preventing excessive resort to custody, both at pre-trial and subsequent stages. As regards rehabilitation or reform, specifically, their prospects are usually better in the community. Only the objective of incapacitation might arguably, in certain circumstances, *necessitate* incarceration.

#### Purposes of imprisonment: key questions

- Are the purposes of imprisonment and the extent to which they can be fulfilled given adequate consideration in:
  - » the development of criminal justice legislation and policies?
  - » decision-making by judges and others who pass sentences?
  - » decision-making by prison governors, parole board members and probation or supervision staff relating to time spent in prison and the period following release?
- Are there clear provisions enabling the use of alternative measures and sanctions where these could meet the stated objectives of imprisonment as (or more) effectively?
- Is there a publicly accountable body responsible for assessing whether prisons policy is functioning adequately overall and whether imprisonment is, broadly speaking, meeting its objectives?

## Theme 2: Politicisation of sentencing

One of the main factors underlying higher prisoner numbers is the lengthening of prison terms, notably for more serious offences. In many countries (and in the majority of our ten jurisdictions), legislative changes to sentencing frameworks have brought about these longer prison sentences. For example, in the United States, South Africa, Australia, England and Wales and Hungary, mandatory sentencing provisions were introduced, variously employing ‘three strikes’ systems and mandatory minimum terms. In these countries, relatively high use is also made of life sentences with highly restricted (or no) access to parole. In addition, there has been a growing tendency in some countries to make use of forms of preventive detention, for example, through new forms of indeterminate sentence.<sup>42</sup>

Lengthy and indeterminate sentences are designed to show toughness in the face of serious and persistent forms of offending. The influence of pressure from the public and, particularly, the mass media is often highly significant, leading political parties to compete with each other to prove they can keep citizens safe from crime. This has variously been described as ‘law and order politics’ or in terms of ‘governing through crime’ (Simon 2007), ‘populist punitiveness’ (Bottoms, 1995) or ‘penal populism’ (Roberts et al, 2003). Several of our ten jurisdictions exemplify this trend.

While it is clear that these policies can have significant impact on prisoner numbers, what is less clear is the contribution they make to the putative objectives of imprisonment, beyond punishment and incapacitation. They are characterised by an approach to sentencing that removes much of the discretion traditionally reserved to sentencing courts to assess seriousness, harm, risk, aggravating and mitigating circumstances, and other variables relevant to sentencing. This removes an important check on unnecessarily long, or indefinite, custodial terms and also carries an implicit disregard for the individual prisoner’s potential to reform.

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42 In England and Wales, the indeterminate sentence for public protection (IPP) was introduced in 2005. It was designed for high-risk offenders but used far more widely than intended (Jacobson and Hough, 2010). Although these sentences were abolished in 2012, there were still around 4,000 prisoners serving IPPs at the end of June 2016 (Strickland, 2016).

### Politicisation of sentencing: key questions

- Is there sufficient separation of sentencing policy from politics, for example, through involvement in policy-making of independent criminal justice and mental health experts?
- Are sentencing policies informed by evidence of relative costs and harms of long or indeterminate sentences, and information about the scope of alternatives?
- What measures are in place for review and revision of the sentencing framework?
- Are systems in place for holding outside penal custody mentally disordered people who pose risks to public safety?
- What alternatives are available for managing risk at less cost, or harm, than extremely long or indeterminate custodial sentences?

### Theme 3: Less serious and lower risk offenders

In some jurisdictions, increasing use of imprisonment for less serious offences has contributed to higher prisoner numbers. In Hungary and in England and Wales, for example, numerous relatively minor offences have in recent years been added to the list of imprisonable crimes. In both of these jurisdictions, people who breach non-custodial sentences are also more likely today to go to prison.

In the African states we are studying, as in India, the prosecution of petty offences results in excessive use of imprisonment (including through unnecessary and lengthy pre-trial detention). It has now been recognised that this takes a disproportionate toll on poor communities and acts as a brake on development.

### Less serious and lower risk offenders: key questions

- Is there scope to decriminalise some forms of conduct, for example by moving it into the sphere of administrative or civil penalties where there is no criminal record and no possibility of a prison sentence?
- Do police, prosecutors and sentencers have sufficient discretion to divert minor offenders from the formal justice system or to deploy out-of-court disposals where appropriate?
- If conduct must be criminalised, can greater provision of alternatives to custody reduce the apparent 'need' for custody?
- Do the legal system and sentencing framework contain non-custodial options which formalise the making of reparation to victims, for example, through compensation or restorative justice?

### Theme 4: Who is in prison?

It is clear from the prison statistics of all ten jurisdictions considered here that certain groups and communities are greatly over-represented in prison populations. This is particularly evident in relation to race and ethnicity. For example, in England and Wales, the United States and Brazil, the proportion of black and mixed race people in prison significantly exceeds that in the general population; the same applies to the Indigenous peoples of Australia. The prison populations of England and Wales and the Netherlands contain greater numbers of non-nationals and people born in other states than do the general populations. In Hungary's prisons, Roma and Gypsy people are over-represented. In the African jurisdictions and India (as also elsewhere), it is the poor and marginalised communities who are overrepresented in prisons, many of them held in pre-trial detention.

The proportion of women in prison globally has risen at a far greater pace than that of men in recent decades (Walmsley, 2015). Thailand and Brazil both exemplify this trend, which extends into much of Southeast Asia and South and Central America. It appears that harsher penal policies for drug offences have driven much of this growth. Female prisoners, especially those with a drug dependency, face particular hardship when prisons are not equipped for their needs. Research suggests that up to 80% of women prisoners have an 'identifiable mental illness' (WHO, 2009).

Another over-represented group in many prison populations comprises people with specific vulnerabilities. Children, people with substance dependency, and those suffering from mental illness or learning disabilities are among those for whom custodial sentences can be especially damaging.

#### Who is in prison: key questions

- Are there systems for 'auditing' the prison population, to establish whether imprisonment is being used disproportionately against some groups or whether its use is causing greater harm to people with certain vulnerabilities or other characteristics?
- As a matter of policy, can use of custody be largely ruled out for certain groups, for example, children, young adults, women, the very old, those with mental or physical disabilities?
- Is suitable alternative provision available, for example, secure mental health treatment centres, or small residential units for particular groups of offenders such as women, drug dependent offenders and elderly offenders
- Are certain communities, groups or individuals falling into patterns of conduct resulting in repeat arrests or court appearances, such that alternative interventions should be examined?

### Theme 5: Drug policy

The various harmful effects of the global illegal drugs trade, when combined with poverty, unemployment, political instability and weak systems of law and order, represent a major challenge for national governments in some parts of the world. We have seen in relation to Brazil and Thailand how the combination of some or all of these factors can leave communities (and prison systems) vulnerable to control by organised crime groups. One side-effect may have been to increase public punitiveness, placing pressure on governments to pursue tough, zero tolerance approaches towards drug offenders and to disregard their basic human rights as prisoners.

Although states owe their citizens a duty to confront drug trafficking and its associated violence, this requires transparent, unbiased, fair, humane and proportionate criminal justice institutions. As the United Nations Office on Drugs and Crime has warned, excessive use of imprisonment for drug-related offences – particularly those of a minor nature – is ineffective in reducing recidivism and places a substantial burden on criminal justice systems (UNODC, 2016). This approach is especially harmful and counterproductive when states choose to devote their resources to harsh enforcement efforts in marginalised and underprivileged communities affected by high levels of unemployment and drug dependency.

International drug control conventions offer some flexibility in their requirements for national drug policies. This explains why there are differences across jurisdictions in the conduct treated as criminal, and in the types and severity of sanctions for drug offences, as well as in the extent of prosecutorial and sentencing discretion.

In no sense can it be said that the war on drugs has been won. The extensive use of criminalisation and imprisonment has, though, caused massive collateral damage. There is an urgent need to assess what alternative strategies exist beyond imprisonment, at least for some forms of drug use and abuse. As our country reports highlight, some jurisdictions have adopted more punitive approaches, including incarceration, for conduct which is elsewhere considered minor, such as possession of drugs for personal consumption. With growing recognition of the harms and ineffectiveness of tough law enforcement approaches, other strategies are gaining ground. Several countries have decriminalised or legalised the recreational use of cannabis. There is increasing support for a greater focus on harm reduction and for replacing a criminal justice approach with civil regulation.<sup>43</sup>

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43 At a United Nations General Assembly Special Session on drugs in New York in April 2016, support for a move away from criminalisation came from Costa Rica, the Czech Republic, Ecuador, Greece, Iceland, Jamaica, the Netherlands, Portugal, Slovenia, Switzerland, Trinidad and Tobago, Tunisia, the USA and Uruguay. Many other countries (and the European Union) cited the need for more proportionate sentencing for drug offences.

### Drug policy: key questions

- Are national sentencing policies, practices and guidelines for drug-related offences geared towards proportionate sentencing? Can they distinguish between more and less serious forms of conduct?
- Is there scope to decriminalise or treat as an administrative or civil wrong the possession of drugs for personal consumption?
- For conduct involving trafficking and supply of drugs, can the law and sentencing framework distinguish sufficiently between major and minor (or coerced) participants?
- Are police and prosecutors provided with sufficient discretion to divert minor drug offenders where arrest and prosecution could be counterproductive?
- Is sufficient resource devoted to prevention and treatment of drug misuse through voluntary programmes, education, and similar initiatives?

## Theme 6: Pre-trial detention

The unnecessary use of pre-trial detention is a major contributor to overcrowding and poor conditions worldwide and in many of the jurisdictions in our study. International treaties set out clear principles for using detention before trial as a last resort. It should only occur if (and for so long as) certain conditions apply, such as if the offending is above a specified level of seriousness, and where there is a risk that the accused person will abscond or a risk of interference with evidence or witnesses.

Research shows that over-use of pre-trial detention is not usually caused by absent or defective legal provisions, but by courts refusing to grant bail or other conditional release without sufficient grounds (as in the Netherlands), by the mandatory curbing of the right to bail for some offences (as in Brazil), by an absence of workable alternatives to custody, and by inefficient, under-resourced court systems (as in India).<sup>44</sup>

### Pre-trial detention: key questions

- Is pre-trial detention genuinely a last resort and are clear rules in place to ensure courts and prosecutors only use it when needed in the proper interests of justice and for the shortest time possible?
- Are non-custodial alternatives such as tagging or regular reporting available and fully funded and otherwise supported?
- Can greater investment in criminal justice systems reduce court backlogs, help provide for regular reviews of detention, and improve access to legal representation?

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<sup>44</sup> See, for example, Open Society Justice Initiative, 2014; de Oliveira Carlos, 2015) Commonwealth Human Rights Initiative, 2016; Fair Trials, 2016.

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# Appendix

## Ranking of ten jurisdictions relative to all others, in terms of key prison statistics

Prison population total	Prison population rate per 100,000 national pop.	% pre-trial/remand prisoners	% women prisoners
(223 jurisdictions ranked)	(221 jurisdictions ranked)	(216 jurisdictions ranked)	(217 jurisdictions ranked)
Highest: <b>USA (2,145,100)</b>	Highest: Seychelles (799)	Highest: Libya (90%)	Highest: Hong Kong (20.5%)**
4. Brazil (622,202)	<b>2. USA (666)</b>		
5. India (419,623)	10. Thailand (428)		
6. Thailand (289,675)			11. Thailand (13.6%)
11. South Africa (161,984)		18. India (67%)	<b>18. USA (9.7%)</b>
17. E & W (85,188)			29= Australia (8.0%)
33. Kenya (57,000)	32= Brazil (307)		40= Hungary (7.3%)
	36= South Africa (291)		
46. Australia (39,152)			
70. Hungary (18,208)		69. Kenya (40%)	66. Brazil (6.0%)
	77. Hungary (186)	77. Brazil (36%)	77= Netherlands (5.7%)
91. Netherlands (10,274)	92= Australia (162)	97. Australia (31%)	
	103= E & W (145)	100= Netherlands (30%)	100= E & W (4.6%)
		107. South Africa (28%)	
			113= India (4.3%)
	131= Kenya (121)	140. Hungary (21%)	
		142= Thailand (20%)	142= Kenya (3.4%)
		<b>144. USA (20%)</b>	
			176= South Africa (2.6%)
	184. Netherlands (61)		
		191. E & W (11%)	
	213= India (33)		
Lowest: San Marino (2)	Lowest: C. Af. Rep. (16)	Lowest: Tuvalu (0%)	Lowest: several (0%)

\* Source: World Prison Brief 'Highest to Lowest' tables, <http://www.prisonstudies.org/highest-to-lowest/prison-population-total>, accessed 15.2.17.

\*\* San Marino is shown on the World Prison Brief as having the largest percentage of women prisoners, but is excluded from this table because of its exceptionally low total number of prisoners.





## Institute for Criminal Policy Research

The Institute for Criminal Policy Research (ICPR) is based in the Law School of Birkbeck, University of London. ICPR conducts policy-oriented, academically-grounded research on all aspects of the criminal justice system. ICPR's work on this report forms part of the ICPR World Prison Research Programme, a new programme of international comparative research on prisons and the use of imprisonment. Further details of ICPR's research are available at <http://www.icpr.org.uk/>

ICPR's book, *Imprisonment Worldwide: The current situation and an alternative future* (Coyle, Fair, Jacobson and Walmsley) was published in June 2016 and is available from Policy Press.



## World Prison Brief

The World Prison Brief was established by Roy Walmsley and launched in September 2000 by the International Centre for Prison Studies. Since November 2014 the Brief has been hosted and maintained by the Institute for Criminal Policy Research. The data held on the Brief (which is updated on a monthly basis) are largely derived from governmental or other official sources. The data used in this report were accessed from the database on 15 February 2017. The World Prison Brief can be accessed at <http://prisonstudies.org/>



## Fair Trials

Fair Trials is a non-governmental organisation that works for fair trials according to internationally recognised standards of justice. Its vision is a world where every person's right to a fair trial is respected. Fair Trials pursues its mission by helping people to understand and defend their fair trial rights; by addressing the root causes of injustice through our legal and policy work; and through targeted training and network activities to equip lawyers to defend their clients' fair trial rights. Fair Trials recently coordinated a ten country study into the use of pre-trial detention across the EU. Further details about the report and Fair Trials' work more broadly can be found at [www.fairtrials.org](http://www.fairtrials.org)

