

# United Nations System Common Position on Incarceration



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*“It is said that 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.”*

*Nelson Rolihlahla Mandela*



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## ABSTRACT

*Judicial and prison systems around the globe continue to face fundamental challenges that undermine the ultimate purpose of incarceration as a sentence, namely, to protect society from crime and to prevent recidivism by supporting rehabilitation and preparing prisoners for their social reintegration upon release.*

*Overincarceration, overcrowding, poor conditions and the serious neglect of prison services are causing prisons to be a weak link in criminal justice systems and a low priority in reform efforts. The consequences for public safety, health and human rights, as well as the financial and socioeconomic costs resulting from these deficiencies, are immense. In some countries, including those in conflict, post-conflict and other crisis situations, severe prison deficiencies have had a negative impact on peace, security and stability. The disproportionate impact of the coronavirus disease (COVID-19) in prison settings has demonstrated what can happen when already overburdened and ill-equipped prisons are confronted with crises. Addressing the challenges associated with incarceration, including its overuse, should be a key part of the effort to “build back better”.*

*Many problems manifested in prison settings are the result of socioeconomic disparities and systemic deficiencies in criminal justice systems. Societal, racial and other forms of discrimination may be equally reflected in criminal justice policies and practices. Effective and sustainable reform efforts therefore require a holistic reform approach aimed at addressing the root causes of overincarceration and overcrowding, and shifting policies towards prevention and alternatives to imprisonment.*

*The United Nations commitment to “leave no one behind” recognizes prisoners as a particularly vulnerable and marginalized group that is subject to discrimination and exclusion. Sufficiently resourced and well-managed prison services and State policies that advance non-custodial measures are important enablers of the 2030 Agenda for Sustainable Development.*

*The United Nations system common position on incarceration provides a common framework for United Nations support to Member States, with the objectives of reducing the overreliance on incarceration and reducing the prison population, strengthening prison management and improving prison conditions and advancing the rehabilitation and social reintegration of offenders.*

*It is closely informed by research findings and is firmly grounded in both international human rights law and the United Nations standards and norms in crime prevention and criminal justice. As such, it constitutes a guide for consistent United Nations advocacy and assistance aimed at supporting reform efforts in Member States relating to incarceration.*

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## PURPOSE AND SCOPE

The present paper sets forth the United Nations system common position on incarceration.<sup>1</sup> It addresses prison and associated challenges at the global, regional and national levels and constitutes the common framework for United Nations support to Member States in relation to incarceration.

The paper reflects a “One UN” approach aimed at supporting efforts to rethink the current overreliance on and implementation of incarceration, including through better coordination and integrated efforts.

The United Nations system common position on incarceration is based on the understanding that no one should be subjected to arbitrary arrest or detention<sup>2</sup> and that the deprivation of liberty in response to a criminal charge or offence should constitute a measure of last resort, with due consideration first being paid to non-custodial sanctions or measures.

It also acknowledges that, as part of individualized, balanced and proportionate criminal justice responses to offending, well-managed prisons constitute an important aspect of the justice chain. Prison services that respect human dignity and operate in line with international norms and standards constitute a core element of efforts to maintain peace and security, public safety and respect for human rights.

As such, prison reform and the treatment of offenders should be viewed as an integral part of the 2030 Agenda for Sustainable Development, in particular with regard to Sustainable Development Goal 16, on peace, justice and strong institutions, as well as Goal 3, on good health and well-being, Goal 5, on gender equality, and Goal 10, on reduced inequalities.

This paper focuses on the deprivation of liberty in places of detention within criminal justice systems. It therefore excludes other forms of deprivation of liberty, such as immigration-related detention of an administrative nature.<sup>3</sup> The specific situation of children deprived of liberty is not addressed in detail, as it is governed by an additional set of legal considerations and obligations.<sup>4</sup>

## DEFINITIONS

- > *Incarceration*. The state of being deprived of liberty in prisons, including pretrial detention facilities.
- > *Prisons*. All authorized places of detention within a criminal justice system, including those used for the purposes of pretrial detention and imprisonment upon conviction.
- > *Prisoners*. All persons who are held in prisons as defined above, irrespective of their legal status, excluding children accompanying an incarcerated parent.
- > *Pretrial detainees*. All persons who, in connection with an alleged offence, are detained in prison between the time of arrest and the time of judgment at first instance.
- > *Non-custodial measure*. A decision made by a competent authority, at any stage of the administration of criminal justice, that requires a person suspected or accused of, or sentenced for, an offence to submit to certain conditions or obligations that do not include incarceration.
- > *Children*. All individuals under the age of 18 years.<sup>5</sup>

## GLOBAL PRISON CHALLENGES

Criminal justice responses to crime, including the deprivation of liberty, are implemented by States in the name of justice. Incarceration and the treatment of offenders should therefore reflect a State's obligation to ensure justice, preserve public safety and hold offenders accountable while fully respecting applicable human rights in the process.

### Overuse of pretrial detention and imprisonment

In 2019, more than 11 million people, including 410,000 children, were held in prisons across the globe, representing an increase of 25 per cent since 2000 in the total number held. While the number of female prisoners worldwide represented a small minority of the prison population in most countries, their number grew by 50 per cent over the same period, reaching more than 714,000 women.<sup>6</sup>

Member States resort to imprisonment to very different degrees. According to estimates, while the global average imprisonment rate stands below 150 prisoners per 100,000 of the overall national population, it has reached 300–650 prisoners per 100,000 of the overall national population in more than 25 Member States.<sup>7</sup>

Studies have found that general crime trends do not explain the overall use of imprisonment. Neither reported crime nor victimization are systematically reflected in incarceration levels.<sup>8</sup>

Despite these circumstances, incarceration often remains the default choice, if not the only response, to address criminal behaviour. Investments in the availability, quality and use of non-custodial measures continue to be overlooked.

*“Imprisonment has become an almost automatic response rather than a last resort, as mirrored in increasing and disproportionate penalization, excessive use of pretrial detention, increased length of prison sentences and little use of non-custodial alternatives. Furthermore, the penitentiary system in most countries is no longer aimed at the reformation and social rehabilitation of convicts but simply aims to punish by locking offenders away. Non-compliance with international standards in relation to conditions of detention is caused by resource constraints and by the punitive approach of most criminal justice systems.”<sup>9</sup>*

Despite relevant provisions in international law,<sup>10</sup> the overuse and excessive length of pretrial detention remains a global challenge. Even though many individuals charged with criminal offences do not pose a risk to public safety or the administration of justice, their number among the prison population has nevertheless risen by 30 per cent since 2000, to more than 3 million people. Pretrial detainees outnumber convicted prisoners in 45 Member States; in 14 of those States, pretrial detainees represent more than 70 per cent of the prison population.<sup>11</sup>

In some countries, pretrial detainees remain in detention for a period longer than the sentence period that would typically apply to those found guilty of the alleged offence. Others are subject to prolonged detention in police holding cells that are not designed, and should not be used, for that purpose.

For these reasons, Sustainable Development Goal 16, on peace, justice and strong institutions, establishes the percentage of pretrial detainees within prison populations as an indicator for measuring the efficiency of, and access to, justice systems.<sup>12</sup>

As a result of a limited range of alternatives to incarceration provided in law, courts may lack the necessary options to ensure that

imposed sentences are proportionate to the gravity, nature and circumstances of the offence. More often, however, the problem is a reluctance to apply non-custodial measures embodied in national law. This may be due to a lack of awareness of, or confidence in, their effectiveness, a lack, or perceived lack, of public support, or insufficient health-care, housing and social welfare services. The absence or inadequacy of the entities and infrastructure required to implement alternatives to incarceration, including restorative justice approaches,<sup>13</sup> compounds the problem.

The overuse of incarceration is often fuelled by “zero tolerance” policies<sup>14</sup> and populist rhetoric that call for stricter law enforcement and sentencing.<sup>15</sup> This occurs despite research findings indicating that it is not the prospect or severity of a prison sentence that deters crime, but the perceived probability of apprehension.<sup>16</sup>

For example, the use of life imprisonment, which has replaced capital punishment as the most severe penal sanction in 149 countries, increased by 84 per cent from 2000 to 2015, when 479,000 prisoners were serving a formal life sentence. It appears that the progressive abolition of the death penalty was not the exclusive driver of that increase, as research<sup>17</sup> also points to the application of life sentences to a wider range of offences and for longer or indefinite time periods, including life sentences without parole.<sup>18</sup>

### **Reinforced discrimination and inequalities**

Inequalities and low socioeconomic status have been found to be relevant to the incidence of crime.<sup>19</sup> Incarceration therefore disproportionately affects and impacts the segments of society that are living in poverty or are marginalized. In some countries, people are imprisoned as a result of factors

directly linked to poverty, such as homelessness or the inability to pay fines.

When poverty and insufficient access to social, health and legal aid services for the disadvantaged are combined with policies aimed at being “tough on crime” and systemic forms of discrimination (e.g., based on race, ethnicity, sex or gender), the result is the overrepresentation of minority and marginalized groups among prisoners, many of whom are charged with petty and non-violent offences. The time spent in prison is likely to aggravate unemployment, homelessness and poverty, thereby feeding a vicious cycle of deprivation and exclusion.

*“Because law enforcement officials often use ‘poverty’, ‘homelessness’ or ‘disadvantage’ as indicators of criminality, persons living in poverty come into contact with the criminal justice system with a disproportionately high frequency. They also encounter considerable obstacles manoeuvring within or exiting the system. As a result, disproportionately high numbers of the poorest and most excluded are arrested, detained and imprisoned.”<sup>20</sup>*

Individuals may also be deprived of liberty for apostasy or so-called “moral crimes”, many of them linked to discrimination against women and lesbian, gay, bisexual, transgender or intersex persons.<sup>21</sup>

Children may be deprived of liberty for non-criminal acts that are only prohibited under the law on the basis of the person’s status as a child (referred to as “status offences”), or as a substitute for referral to childcare and protection services.

Owing to a lack of community-based support and public health-care facilities, in numerous countries, persons with mental health conditions or psychosocial disabilities are often imprisoned, even when they have not committed any offence or have been found not to be criminally responsible.

Incarceration for the above reasons amounts to arbitrary detention in violation of international norms and standards.<sup>22</sup>

The number of individuals convicted for drug-related offences is estimated to account for 18 per cent of the global prison population.<sup>23</sup> Reflecting socioeconomic inequalities,<sup>24</sup> those detained for drug-related offences are often low-level offenders, such as persons who use drugs or who have drug use disorders, drug couriers<sup>25</sup> or small-scale dealers. The proportion of women (35 per cent) imprisoned for drug-related offences is higher than that of men (19 per cent),<sup>26</sup> which illustrates the need to address intersecting forms of gender-based discrimination, inequality and abuse.<sup>27</sup>

In many countries, national drug laws make no or limited provision for alternatives to imprisonment, even for low-level offenders. In addition, available data point to a lack of evidence-based programmes for the treatment of drug use disorders and the reduction of the negative health consequences of drug use in prisons,<sup>28</sup> and to an increased risk of relapse to drug use and drug overdose upon release.<sup>29</sup> Where such evidence-based interventions for prisoners with drug use disorders do exist, they have been proved to reduce the risk of relapse and recidivism.<sup>30</sup>

The distinct background, profile and specific needs of women and girls in conflict with the law tend to be grossly neglected and subsumed into a male-centred model of incarceration.<sup>31</sup> Incarceration has a particularly negative impact on women and their dependants in terms of safety, exposure to gender-based violence, mental health and stigma, owing in part to the lack of gender-responsive prison management practices and rehabilitation programmes.

The impact of incarceration extends well beyond the actual prisoners. It is also heavily

felt by their families in terms of economic status, compromised family ties and stigma, thereby perpetuating inequalities, discrimination and exclusion. A particularly affected group are the children of incarcerated parents,<sup>32</sup> including those children who are temporarily allowed to live with a parent in prison. Studies indicate that children of incarcerated caregivers suffer from higher rates of behavioural, emotional and cognitive problems, and are more likely to get caught up in a cycle of intergenerational risky behaviour and contact with the criminal justice system.<sup>33</sup>

### **Prison overcrowding**

Prison overcrowding constitutes an acute global human rights, health and security crisis and stands out as the greatest contributor to violations of international minimum standards in prisons. The phenomenon continues to affect a majority of Member States worldwide (110 Member States), with more than 50 Member States operating prison services at more than 150 per cent of their official capacity.<sup>34</sup> In many prisons, overcrowding is so acute that prisoners are forced to share beds, sleep in shifts or on top of each other, or spend the night standing.

The excessive resort to pretrial detention has been identified as a main contributor to prison overcrowding worldwide. While pretrial detainees should be presumed innocent until proved guilty by a court of law, and treated as such, conditions in pretrial detention are often worse than those for convicted prisoners, and are characterized by, inter alia, poor infrastructure and poor service and programme delivery.

Operating significantly over the intended capacity of prisons is not simply an issue of lack of space. It also gravely affects the quality of nutrition, sanitation and hygiene,

health services, rates of transmission of infectious diseases, the provision of care to vulnerable groups, and the physical and mental health of prisoners, as well as their access to constructive activities and programmes. Overcrowding generates conflicts, fuels violence, decays prison infrastructure and poses immense security and management challenges.

Insufficient supervision, safety and prisoner classification schemes in overcrowded prisons can lead prisoners to seek protection from high-risk prisoners or prison gangs and can provide dangerous entry points for radicalization to violence. The declining ratio of prison staff per prisoner and adverse work environments have had a negative impact on staff performance, attitudes and well-being. In such circumstances, prison officers are more likely to take on a more authoritarian and less positive role.

In summary, the impact of overcrowding multiplies the challenges faced by prison services in preserving the integrity of prison management, ensuring the health, safety and well-being of prisoners, maintaining a rehabilitative prison regime and preserving prison security.

### **Neglect and abuse**

Incarceration creates a situation in which prisoners depend upon prison services for the fulfilment of all their day-to-day needs. Member States therefore owe a heightened duty of care and special responsibility<sup>35</sup> to respect, protect and fulfil the human rights of prisoners. In this regard, public scrutiny is crucial, owing to the closed nature of prisons.

Notwithstanding these factors, prison management and the treatment of offenders are a low priority in many Member States. Prisons tend to be underresourced and often struggle to provide for even the

most basic and life sustaining needs of prisoners. Budgets for the maintenance, refurbishment or construction of sound prison infrastructure are scarce or do not take into account evidence-based designs that would support a safe, decent and healthy prison environment.

This situation, exacerbated by the typically poorer health status of prisoners at the time of admission and poor linkages with public health facilities, often leads to a higher mortality rate and the prevalence of communicable<sup>36</sup> and non-communicable<sup>37</sup> diseases in prisons. Those diseases not only affect prisoners, their families, visitors and prison officers, but also put an increased health burden on society at large. Unsurprisingly, prison settings have been hit particularly hard by the coronavirus disease (COVID-19) and continue to be at severe risk of amplified transmission and outbreaks of the disease. It has been estimated that, as of April 2021, more than 538,000 prisoners in 122 countries have tested positive for the coronavirus, among which there have been 3,900 COVID-19-related fatalities.<sup>38</sup> In addition, research in individual countries indicates that, compared to the general population, prisoners are more likely to become infected with the coronavirus and more likely to die from COVID-19.

The neglect of places of detention increases the risk of inadequate management, oversight and accountability mechanisms. Even basic and key requirements, such as the separation of men from women, adults from children and sentenced prisoners from pretrial detainees,<sup>39</sup> are not consistently met in many countries. Furthermore, the access of prisoners to legal advice, as well as to representatives of independent inspection bodies, may be seriously compromised or impeded.

Prison officers<sup>40</sup> are typically held in lower regard than other public officials working in



the criminal justice system. They tend to have lower salaries, less training and fewer career opportunities. This not only leads to difficulties in recruiting qualified staff, but also has negative consequences on their morale and performance.

All of the above factors increase the risk of torture, ill-treatment and other human rights violations in prisons. Widespread corruption<sup>41</sup> and security breaches, including continued criminal activity while imprisoned, can also have a destabilizing effect well beyond prison walls.

## KEY OBSERVATIONS

Despite commendable initiatives and progress in individual jurisdictions, prison systems around the globe continue to face fundamental challenges that undermine the ultimate purpose of a prison sentence, namely, to protect society from crime and to prevent recidivism by supporting rehabilitation and preparing prisoners for their social reintegration upon release.

- > Overcrowding, poor prison conditions and the serious neglect of prison services cause prisons to be a weak link in criminal justice systems and a low priority in related reform efforts. The consequences for public safety, health, and human rights, as well as the financial and socioeconomic costs resulting from these long-standing deficiencies, are immense.
- > Prison management and the treatment of offenders have an impact on progress towards a variety of Sustainable Development Goals,<sup>42</sup> and related targets and indicators.<sup>43</sup> Sufficiently resourced and well-managed prison services and entities in charge of non-custodial measures are an important enabler of the 2030 Agenda for Sustainable Development. The United Nations

commitment to “leave no one behind” recognizes prisoners as a particularly vulnerable and marginalized group subject to discrimination and exclusion.<sup>44</sup>

- > Given the closed nature of prisons and the inherent risk of abuse and violence in them, a two-fold system of regular monitoring and inspections by the prison service, on the one hand, and by external, independent bodies, on the other, is essential for preventing torture and ill-treatment.
- > Many problems manifested in prison settings are the result of systemic deficiencies in criminal justice systems, including in relation to racial and gender justice and justice for children. Effective and sustainable reform efforts require a holistic approach that identifies legislative shortcomings, procedural bottlenecks and deficiencies in physical rule-of-law infrastructure, and that invests in the use of non-custodial measures and access to quality legal aid.
- > Strategies to prevent and combat racism and racial discrimination in criminal justice systems, in line with human rights norms,<sup>45</sup> should encompass dedicated measures regarding prison management and the treatment of offenders.
- > The disproportionate impact of COVID-19 in prison settings has demonstrated what can happen when already overburdened and ill-equipped prisons are confronted with crises. Addressing the challenges associated with incarceration, including insufficient coordination between the justice and health sectors, should be a key part of the effort to “build back better”.
- > The post-COVID-19 recovery will provide an important opportunity for criminal justice systems to address their chronic shortcomings and engage in holistic

prison reform. Building on the emergency initiatives adopted by Member States, which have authorized the release of at least 700,000 prisoners globally,<sup>46</sup> a concerted effort is needed to fully implement these results in a sustainable manner and to urgently rethink the overuse of incarceration.

- > In many cases, women offenders do not pose a serious risk to public safety. Greater efforts to promote gender-responsive alternatives to incarceration, taking into account their specific circumstances, such as pregnancy or caretaking responsibilities, are essential. Responses to the distinct backgrounds and needs of women prisoners and offenders must be enhanced, including through social reintegration strategies that address the underlying socioeconomic issues they may face.
- > Although incarcerated, prisoners remain a part of society. Accordingly, civil society has an important role to play in supporting the treatment of offenders in both the community and in prisons through complementary support, monitoring and services in support of rehabilitation and social reintegration.
- > Public opinion has a major influence on how policymakers respond to crime. While public demand for harsher penalties is often used to justify punitive criminal justice policies, proactive information-sharing and awareness-raising can result in a more balanced understanding. Solid research, data and close collaboration with the media and communities are key to fostering public support and political will for penal reform.
- > Prison challenges may be particularly acute in conflict, post-conflict and other crisis settings, resulting not only in serious human rights violations, but also

in prison riots, mass escapes and the increased potential for the spread of violent extremist ideology. By serving as drivers of conflict and weakening public confidence in rule-of-law institutions, such developments seriously undermine the stabilization and peace sustainment efforts of United Nations peace missions. At the same time, efforts to counter armed groups, deter the perpetration of serious conflict-related crimes and ensure the criminal accountability of State and non-State actors require functioning prison systems.

## COMMON APPROACH

The United Nations system stands ready to assist Member States in addressing global prison challenges within the framework of the 2030 Agenda for Sustainable Development.

All efforts to address global prison challenges will be based on international human rights law<sup>47</sup> and the United Nations standards and norms in crime prevention and criminal justice,<sup>48</sup> including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). This will not only serve to ensure the human dignity of prisoners, but will also benefit public safety and the social cohesion of societies at large.

The United Nations system recognizes that more needs to be done, and is committed to enhancing its efforts, in a systematic and integrated manner, in three thematic areas:

- (a) Shifting policies towards prevention and alternatives;
- (b) Strengthening prison management and improving prison conditions;
- (c) Advancing the rehabilitation and social reintegration of offenders.

## Shifting policies towards prevention and alternatives

Incarceration should be used as a last resort, taking into account the nature and gravity of the offence, the risk the offender poses to the public and the offender's social reintegration needs. Crime prevention and alternatives to incarceration<sup>49</sup> are key to avoiding the overreliance on, and inappropriate use of, incarceration.

The focus of criminal justice responses should be shifted from imposing punishment and isolation to investing in longer-term strategies for crime prevention, rehabilitation, restorative justice and social reintegration, with an emphasis on the most vulnerable. This shift also requires a movement towards depenalization and decriminalization in appropriate cases, in line with international norms and standards.<sup>50</sup>

Preventing crime from occurring in the first place is essential for reducing the number of people who come in contact with the criminal justice system. There are factors at the individual, family, community and wider society levels that can place individuals at a higher risk of crime, violence and victimization.

Identifying and minimizing these risk factors is key, and can be accomplished through, inter alia, multi-stakeholder consultations, a review of existing crime data, and empirical research on the structural conditions that give rise to crime. The findings of such efforts should inform the design and implementation of evidence-based crime prevention strategies and programmes and ensure a more coordinated response from all relevant services.

The effective use of alternatives to incarceration is another precondition to

addressing global prison challenges, as such measures directly reduce prison populations.

Concrete measures may include: diversion or discharge, including conditional discharge, at the pretrial stage; status penalties, economic sanctions, restitution or compensation orders, suspended sentences, probation and judicial supervision, community sentence orders, house arrest or any other form of non-institutional treatment, at the trial stage; and halfway houses or various forms of parole and pardoning schemes, at the post-sentencing stage; as well as treatment measures for offenders with drug use disorders at various stages of their contact with the justice system.<sup>51</sup>

While a proper balance needs to be struck between the rights of victims, the rights of offenders and the need for public safety, the potential of non-custodial measures has not been fully realized in many Member States.

For various categories of offences and offenders, non-custodial measures can be more effective in reducing the risk of re-offending, as they can support rehabilitation in the community. Given the significant cost of imprisonment, even in low-resourced prison settings, non-custodial measures tend to be more cost-effective, enabling resources to be invested in social, welfare and health services with long-term benefits for communities at large. As they prevent the unnecessary exposure to the harmful impact of incarceration, alternatives are also a more proportionate and humane criminal justice response, in appropriate cases.

Prior to any decision to expand prison capacity, States that are confronted with prison overcrowding should first explore and exhaust opportunities to reduce the prison population, and then conduct a comprehensive and realistic assessment of remaining needs.<sup>52</sup>

*The United Nations system will give priority to assisting Member States in moving towards appropriate depenalization and the enhanced use of alternatives to incarceration at all stages of the administration of criminal justice, in compliance with the United Nations Standard Minimum Rules on Non-custodial Measures (the Tokyo Rules).*

This approach will be pursued in close cooperation with all relevant stakeholders, including governments, legislators, judges, prosecutors, the police, lawyers, legal aid providers, social service providers and civil society. Analysing the composition and characteristics of the national prison population will provide key insights into predominant crime types and overrepresented categories of offenders for whom the deprivation of liberty may be unsuitable or disproportionate.

While they are typically less resource-intensive than incarceration, non-custodial measures nevertheless require sufficient physical infrastructure and resources, including for probation and parole agencies, social services and civil society organizations, in order to be functional and effective.

*The United Nations system will support Member States in building the capacity of criminal justice, social welfare and other agencies that supervise and support offenders who are subject to community-based sanctions or measures.*

Given the particularly harmful impact of incarceration on women, additional consideration should be given to gender-responsive prison design, management practices and non-custodial measures for women offenders, taking into account their specific circumstances, the often non-violent nature of the offences they commit and any wrongful criminalization, including with

regard to bodily autonomy and access to sexual and reproductive health.

*The United Nations will advocate for consistent gender analysis and responsiveness in all policies, laws and practices concerning incarceration and the broader criminal justice system, in line with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).<sup>53</sup>*

Prisons and the resort to imprisonment strongly reflect societal inequalities and discrimination. Particular vigilance is therefore required to ensure that persons who belong to minority groups and who are in contact with the law, whether they are suspected, accused or convicted of criminal offences, whether they are detained or imprisoned, or whether they are victims or witnesses of crime, are protected from all forms of discrimination.

*The United Nations system will advocate for criminal justice and prison systems that are free from racism, racial discrimination, xenophobia and related intolerance, including by ensuring that recruitment into public employment within criminal justice systems reflects the diversity of the population, including minority groups.*

The best interests of children should be a priority in all actions that affect them. In the case of child offenders, all efforts should be made to resort to diversion, other non-custodial measures and restorative justice, regardless of their alleged associations and offences. Any alternative dispositions should ensure that children are dealt with in a manner that is appropriate to their circumstances and the nature of their offences. A child deprived of liberty should be held separately from adults, unless it is in the child's best interest not to do so.

*The United Nations system will advocate for the principle that children should only be deprived of their liberty as a measure of last resort and for the shortest appropriate time period, in line with the Convention on the Rights of the Child.*<sup>54</sup>

Because of the number of criminal justice institutions it would involve, reducing the overuse and excessive length of pretrial detention is one of the most complex challenges to be addressed. Reform efforts need to be aimed at ensuring fairness, efficiency and effectiveness at all stages of the criminal justice process, including investigation, prosecution and adjudication. In order to address procedural delays, case backlogs and miscarriages of justice, it is crucial to build the capacity of criminal justice actors, improve inter-agency cooperation, simplify and speed up criminal justice procedures and improve data management systems and other infrastructure, at the same time ensuring transparency and accountability.

The right of suspects and defendants to have access to legal representation and advice is also important for guaranteeing fair trials that meet the requirements of international law.<sup>55</sup> This should include timely access to legal advice at no cost where the person has no means and where the interests of justice so require. Early access to effective legal aid, including in police custody and pretrial detention, is key to ensuring that detainees are able to effectively challenge the basis for their detention early on, that proceedings are fair and that the rights of detainees and prisoners are respected. Access to legal services has also proved to be a key safeguard against torture and ill-treatment.

*The United Nations system will assist Member States in restricting the use of pretrial detention to narrowly prescribed circumstances<sup>56</sup> through criminal justice reform targeting legislation and access to*

*effective legal aid and affordable bail, as well as the efficiency of national criminal justice systems, guided by the principles of fairness and due process.*

This objective will be embedded in efforts to promote proportionate and individualized sentencing that takes into account the nature, gravity and circumstances of the offence, as well as the background of the offender, and that ensures proper consideration of diversion and other non-custodial measures.

In the case of persons with drug use disorders, the approach will also be aimed at increasing access to evidence-based and voluntary drug treatment, as well as to other health services at the community level. Not only is such an approach supported by clear evidence that health-oriented approaches are the most effective in reducing drug use and the social harm that it causes, but it is also in full compliance with the international drug control conventions.<sup>57</sup>

The phenomenon of drug use disorders is a public health concern that requires evidence-based responses that are health-centred and in line with ethical standards.

*The United Nations system will support reform efforts aimed at ensuring proportionate and individualized sentencing policies and alternatives to conviction or punishment in appropriate cases,<sup>58</sup> including for minor drug-related offences.<sup>59</sup> It will equally advocate for the decriminalization of acts that are protected by international human rights law.*

### **Strengthening prison management and improving prison conditions**

The mission of all prison services is to keep prisoners in safe and secure custody, while treating them with respect for their human

dignity. Constituting the minimum conditions accepted as suitable by the United Nations, the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) have led to a renewed momentum in prison reform efforts worldwide, and form the basis for United Nations support. The Nelson Mandela Rules promote a human rights-based approach to prison management that places the human dignity of prisoners at centre stage and outlines what is generally accepted as being good principles and practice in the treatment of prisoners and prison management.<sup>60</sup>

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which at the time of writing had been ratified by 91 Member States, establishes a system of regular visits to places of deprivation of liberty in order to prevent torture and ill-treatment at the national level. The visits are undertaken by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and by so-called national preventive mechanisms, which are independent national bodies that States parties are required to establish in accordance with the Optional Protocol.<sup>61</sup>

*The United Nations system will align its prison reform support with four thematic priority areas that encapsulate the prerequisites for sound and humane prison management in line with the Nelson Mandela Rules and other relevant international norms and standards.*

#### ***Thematic priority 1. Conditions of incarceration***

Thematic priority 1, on conditions of incarceration, relates to the overall quality of accommodation, sanitation, and hygiene, and the provision of basic services, as well as

rehabilitation opportunities, including humane and gender-responsive prison infrastructure that supports a decent and constructive prison environment. Prison conditions constitute a key aspect of the overall quality of prison life and the human dignity of prisoners. The responsibility of Member States to provide for prisoners' basic needs and well-being cannot be conditional on the material resources available in those States or be "outsourced" to the prisoners' families.<sup>62</sup>

In addition, prisoners need to have access to health services free of charge and of a standard of quality at least as high as that applicable in the community. These should include psychological support and sexual and reproductive health care, as well as access to essential medicines. Such access is particularly important for prisoners, as they often have poorer physical and mental health than the general public. In line with the universal right to health, prison health services need to be in a position to provide for the health-care needs of prisoners, including needs of a gender-specific nature. Health-care professionals in prisons must be guided by the same ethical and professional standards as those applicable to patients in the community.<sup>63</sup>

Good health in prisons also benefits public health outcomes and the prevention of recidivism, as many drivers of criminal behaviour, such as drug use or mental health disorders, are related to health.

#### ***Thematic priority 2. Human rights safeguards for prisoners***

Human rights safeguards for prisoners are crucial for ensuring the integrity, transparency and accountability of prison management. Prison sentences punish offenders through the deprivation of their liberty alone and must not involve additional hardships or abuse. Concrete mechanisms to

counter the vulnerabilities that stem from closed prison environments, including the unequal power relationship between prison officers and prisoners, are required to ensure safety for all and at all times.

Furthermore, adequate information for prisoners on their rights and obligations, an accessible, safe and effective complaints system, the access of prisoners to legal aid and regular independent inspections of prisons are all essential to mitigating the risks of corruption and abuse inherent in prison systems and ensuring the absolute prohibition of torture and ill-treatment.

Certain groups will require particular attention, owing to the specific needs they have in prisons<sup>64</sup> or to the heightened risk of discrimination and abuse, including sexual and gender-based violence, to which they may be exposed by prisoners or prison staff. Categories to which particular attention needs to be paid include: women;<sup>65</sup> children; young people; the elderly, including those with terminal illness; prisoners with disabilities; prisoners with chronic diseases or mental health-care needs; foreign prisoners; prisoners belonging to ethnic minorities or indigenous peoples; lesbian, gay, bisexual, transgender or intersex prisoners; prisoners serving life sentences; and prisoners under sentence of death.

Many of these prisoners are in a situation of vulnerability attributable to more than one cause (a concept referred to as intersectionality), thus they may suffer as a result of their existing special needs, which may be intensified in prison, and as a result of the additional risks they face, stemming from their particular status.

### ***Thematic priority 3. Security and safety***

Safety and security are core elements of prison systems that require the significant

attention of prison managers. In this regard, related prison management practices, such as the classification of prisoners according to individually assessed risks and needs, corresponding sentence plans and the prisoners' subsequent allocation to a suitable prison regime, are indispensable prerequisites. Such practices also serve to ensure that prison planning and design matches the actual profile of the prison population.

More broadly, evidence has demonstrated the value of investing in the concept of dynamic security, which involves fostering professional and positive prisoner-staff relations, ensuring adequate ratios between prisoners and staff, diverting the energy of prisoners into constructive activities and establishing a decent and balanced prison regime.

A particular challenge for prison systems has been offenders who are members of crime syndicates or who enter prisons with extensive organized crime contacts already at their disposal. In cases involving such offenders, ineffective security and safety measures are likely to facilitate their continued involvement in crime and the exercise of undue control and influence vis-à-vis prison officers and prisoners alike.

More recently, the increasing inflow of individuals charged with or convicted for terrorism-related offences has highlighted the risk of violent extremism in prisons, including radicalization to violence and related recruitment efforts. These serious threats must be addressed, as called for by the Security Council.<sup>66</sup>

At the same time, prison security is an area prone to abuse. Implementing legitimate security measures in line with international norms and standards, including in relation to human rights and the use of force, is therefore essential.

#### **Thematic priority 4.** **Organizational culture**

The organizational culture in prison services greatly influences how the overall principles governing prison management are translated into practice. Where and how prisons are administered within government plays an important role in this regard.

In order to ensure a strict separation between law enforcement or military entities, on the one hand, and the agency in charge of the implementation of prison sentences, on the other, the existence of a civilian prison system with professional prison staff is key.<sup>67</sup> Depending on the national context and the access to sufficient resources, this may include placing the responsibility for prisons with the Ministry of Justice or a similar government department. For similar reasons, it is preferable to place the responsibility for health services in prisons under the Ministry of Health or to at least ensure a close relationship between prison health-care services and public health authorities.

An enhanced investment in the most important resource of a prison system, namely, its personnel, is crucial in this regard.<sup>68</sup> Supporting an ethos and self-perception among prison officers, including senior management, that they are not merely guards or wardens, but rather agents for change, can help to harmonize legitimate security requirements with those of rehabilitation and reform. Improved recruitment processes, workplace policies and conditions, career opportunities, tailored training<sup>69</sup> and staff support infrastructure are key to enabling them to fulfil their complex and multifaceted tasks. Such efforts should be complemented by an enhanced public acknowledgement of the “social service of great importance”<sup>70</sup> provided by prison personnel.

International minimum prison standards, such as the Nelson Mandela Rules, clearly require that prisons be managed by professional prison staff that have civil service status.<sup>71</sup> A contrary decision to privatize prison management does not exonerate States from their responsibility to guarantee prisoners’ human rights and their duty of care towards prisoners.<sup>72</sup> Effective monitoring and accountability mechanisms that protect prisoners’ rights should be in place.<sup>73</sup> Furthermore, it should be noted that there appears to be no solid data or conclusive evidence that would suggest that privatized prisons are characterized by enhanced cost-effectiveness.<sup>74</sup>

#### **Advancing the rehabilitation and social reintegration of offenders**

Incarceration, by itself, does not have a reformative effect. On the contrary, it exacerbates many of the challenges faced by individuals who have come into conflict with the law. In addition, long or harsh prison sentences may result in so-called institutionalization, which affects prisoners’ personalities and social and life skills in a way that makes their social reintegration even more difficult.

*In line with the Nelson Mandela Rules, the United Nations system will promote a rehabilitative approach to prison management that fosters the willingness and ability of prisoners to lead law-abiding and self-supporting lives upon release, and that is embedded in a decent, safe and healthy prison environment and the positive engagement of officers with prisoners.*<sup>75</sup>

Since the vast majority of prisoners will eventually return to society, such an approach is a precondition for fulfilling the ultimate purpose of prison sentences: to



protect society from crime. Rehabilitation and security are often seen as opposites, however, on the contrary, a rehabilitative prison environment enhances safety and control inside prisons, as prisoners who are involved in constructive and meaningful activities are easier to manage and less prone to violence.

Dedicated programmes should be designed to address the root causes of offending and enhance the social reintegration prospects of prisoners upon release in accordance with their individual treatment needs. Such needs may include education; vocational training and work experience; counselling; physical and mental health care, including psychological support; treatment for substance use disorders, cognitive-behavioural therapy, life skills training and family-oriented programming for incarcerated parents. Access to constructive activities should equally include physical exercise and sports, and spiritual, cultural and recreational programmes.

Women prisoners should not only have equal access to rehabilitation and social reintegration programmes, but also be offered gender-responsive programmes that address their specific backgrounds, needs and perspectives without being limited to stereotypical activities considered “suitable” for women.

Many of the above-mentioned activities require suitable prison infrastructure, which is often lacking. Prison facilities should have sufficient space and capacity to maximize prisoners’ daily access to related services. In addition, rehabilitative prison regimes also include opportunities for the early, conditional or compassionate release of prisoners, subject to their behaviour, progress and circumstances and in line with institutionalized reviews provided for in national legislation.<sup>76</sup>

The rehabilitation and social reintegration of prisoners is a societal task that cannot be fulfilled by prison services alone. More than any other aspect of prison management, this is an area for which the support of relevant government entities<sup>77</sup> – complemented by the active involvement of civil society<sup>78</sup> – is critical. Such cross-institutional cooperation ensures that services are provided in accordance with the standards applicable for similar services in the community, and are continued in the community upon release, as required.<sup>79</sup>

More broadly, this approach mitigates the isolation of prisons from the outside world and contributes to the normalization of prisons vis-à-vis the community, minimizing, as much as possible, the differences between prison life and life at liberty.<sup>80</sup> The approach is also important for preventing any prison-based scheme purported to be rehabilitative from becoming exploitative or afflictive in nature. The rationale for rehabilitation programmes must be to enhance social reintegration prospects as per in line with individually assessed risks and needs, and in consultation with the prisoner concerned.

***The United Nations system will promote an all-of-government approach to the rehabilitation of prisoners and offenders, in close coordination with civil society. It will not support any programme that is exploitative or primarily geared towards making a profit from prison industries, compulsory treatment or purported re-education programmes that run counter to human rights or medical ethics.***

The transition period from incarceration to liberty and the period immediately following release are critical and difficult for all prisoners. Social reintegration support must therefore not end at the prison gate but instead ensure a continuity of care, including

for physical and mental health-related matters.<sup>81</sup> Even the best prison-based rehabilitation programme will be undermined if former prisoners find themselves without any post-release support (or supervision, where applicable). Community-based support services are equally important for offenders subject to non-custodial measures.

*The United Nations system will support inter-agency arrangements to prepare prisoners for their social reintegration in order to facilitate their gradual and carefully accompanied return to society, coupled with efforts to reduce the stigma associated with being a former detainee or offender.*

Public attitudes towards prisoners and offenders play an important role in reducing the risk of their return to crime. Reducing recidivism requires efforts to prepare the community, including potential employers, to receive former prisoners and offenders and to reduce the severe stigma typically associated with offending. This can include political support, awareness-raising, multi-agency collaboration, incentives and the active engagement of civil society, coupled with efforts to ensure that victims of crime are not afforded less support and fewer resources for their recovery and welfare.

## DIRECTIONS FOR ACTION

### **Ensure that the topic of incarceration remains high on the political agenda**

The United Nations system recognizes that the response of Member States to crime, including by means of incarceration, is intrinsically linked to human rights, equality, public safety, security, health, sustainable development and public trust in the fairness and effectiveness of criminal justice systems.

It equally acknowledges, however, that enhanced efforts are required to sensitize policymakers and the general public to the issue of incarceration and its impact.

The United Nations system will therefore work to ensure that incarceration and its overuse remain high on the political agenda, including as part of the discussions relating to the 2030 Agenda for Sustainable Development and the Secretary-General's Call to Action for Human Rights.<sup>82</sup> This will include advocacy for the core principles and safeguards by which incarceration should be governed. Regular thematic meetings and debates in relevant intergovernmental bodies<sup>83</sup> will be actively encouraged and supported.

Priority attention will be paid to building on existing platforms in which Member States are already engaged, such as the Group of Friends of Corrections in Peace Operations (New York) and the Group of Friends of the Nelson Mandela Rules (Vienna). Consultations among Member States through these processes and other multilateral mechanisms will foster the exchange of promising practices, provide policy coherence and create opportunities to address emerging challenges.

### **Enhance United Nations advocacy efforts in support of Member States**

In order to alleviate global prison challenges and generate tangible positive change, the United Nations system will intensify its advocacy efforts at the international, regional and national levels to support Member States in addressing those challenges.

Depending on the country context concerned, priority objectives will include the following:

- > Pretrial detention and imprisonment are restricted to measures of last resort and are embedded in a variety of non-custodial measures that can serve as effective alternatives.
- > Legislative and policy amendments lead to proportionate and individualized sentencing and the decriminalization of acts that are protected by international human rights law.
- > Gender analysis and responsiveness are consistently applied in all policies, laws and practices concerning incarceration and the broader criminal justice system.
- > Procedural bottlenecks in criminal justice systems and other deficiencies that contribute to delays and overcrowding are identified and effectively addressed.
- > The access of alleged offenders and sentenced prisoners to legal advice, assistance and representation, including through legal aid, is guaranteed at all stages of the criminal justice process.
- > Drug use and drug use disorders are acknowledged as a public health concern that require, above all, evidence-based and health-centred responses in the community, as opposed to incarceration.<sup>84</sup>
- > Prison conditions and infrastructure and the treatment of prisoners are in line with human rights and are consistently aimed at strengthening the social reintegration prospects of prisoners, all the while ensuring safe and secure custody.
- > Compliance with international norms and standards related to prison management and the treatment of prisoners, including the Nelson Mandela Rules and the Bangkok Rules, is monitored and enhanced, and efforts are undertaken to promote the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- > Such compliance and related efforts are recognized as also constituting a fundamental basis for the effective management of high-risk prisoners and for countering the risk of radicalization to violence in prisons.
- > Rehabilitation and health services in prisons are integrated, as much as possible, in the corresponding public systems, and are provided at a similar standard as in the community.
- > The buy-in of all relevant stakeholders and the general public to the societal task of supporting the rehabilitation and social reintegration of offenders is promoted as a key contributor to public safety.
- > Lessons learned from the disproportionate impact of COVID-19 in prisons are translated into a renewed impetus for comprehensive penal reform, including sustainable strategies to reduce prison populations.

With regard to entry-points for advocacy, it is important to note that, in 2015, the General Assembly decided to extend the scope of Nelson Mandela International Day (18 July) to promote humane conditions of imprisonment, to raise awareness of prisoners being a continuous part of society and to value the work of prison staff as a social service of particular importance.

In the light of the invitation of the General Assembly to organizations of the United Nations system to celebrate the occasion in an appropriate manner, attention will be paid to organizing awareness-raising campaigns and other events on this particular day.<sup>85</sup>

### **Strengthen United Nations capacity to respond to requests for assistance**

Strengthened United Nations capacity will enable the United Nations system to better support countries that lack the expertise and resources to address incarceration-related challenges. Given the increasing number of requests from Member States for advisory services and technical support in the fields of prison reform and penal reform, strong and well-coordinated United Nations capacity will play a vital role in responding to such requests in a timely, effective and consistent manner.

High-level advocacy aimed at the principal organs and subsidiary bodies of the United Nations Secretariat, as well as at Member States, including host countries and donors, is required to ensure sustained engagement in this area.

Closely guided by the present common position, the United Nations system will leverage the specialized expertise of the United Nations Office on Drugs and Crime (UNODC),<sup>86</sup> the Department of Peace Operations<sup>87</sup> and the Office of the United Nations High Commissioner for Human Rights (OHCHR)<sup>88</sup>, working in close coordination with other relevant United Nations entities.<sup>89</sup>

As part of the United Nations rule of law arrangement, the senior United Nations official in-country<sup>90</sup> will assist in building political consensus at the country level on the need to address prison challenges, in resolving political obstacles and in coordinating United Nations country support on the rule of law. United Nations resident coordinators, country teams and operations will work to ensure that the topic of incarceration and associated criminal justice challenges will be mainstreamed into sustainable development cooperation

frameworks and, where applicable, integrated strategic frameworks, as an integral part of the overall technical assistance provided by the United Nations in the country.

The United Nations system will focus on delivering technical assistance that is consistent across all lead agencies, in order to harmonize efforts and with a view to generating sustainable change.

### **Establish a centralized United Nations information hub on incarceration**

The United Nations system and its specialized entities continuously monitor, collect and analyse a variety of data and develop technical guidance manuals, training curricula and other tools and resources that include promising practices, all of which are highly relevant to informing prison and penal reform processes in Member States.

In an effort to consolidate and further enhance this wealth of expertise and to facilitate access by both United Nations entities and Member States, the United Nations system will work towards establishing a digital “one-stop-shop” on issues related to incarceration.

The United Nations will also seek to strengthen its research capacity and that of Member States to continuously assess the effectiveness, including the cost-effectiveness, efficiency and human rights compliance of criminal justice responses to crime, and to generate a solid evidence-base.<sup>91</sup> With regard to the generation of data, the United Nations Survey of Crime Trends and Operations of Criminal Justice Systems will be a priority source for relevant statistics and data analysis,<sup>92</sup> complemented by the Health in Prisons European Database, as a source of health-related data.<sup>93</sup>

### **Enhancing prison support in United Nations field missions and other crisis settings**

While safe, secure and humane prisons are critical to the efforts of United Nations peacekeeping and special political missions to sustain peace, support stabilization and protect civilians, prison reform tends to remain a low priority. More robust support from host countries and the international community to enable the United Nations to adequately respond to the issue of incarceration in these settings, including the explicit provision of corrections mandates for field missions and the allocation of sufficient resources,<sup>94</sup> is critical and a collective responsibility.

United Nations support in field missions and other crisis settings will be strategically aimed at improving prison conditions, strengthening prison management and reducing the unnecessary use of incarceration, as part of the mission's broader peace and security objectives. Particular emphasis will be placed on the following measures:

- > Establishing, from the outset, stronger linkages and cooperation between police, justice and corrections authorities, and with security, development and humanitarian partners.
- > Advocating for and supporting adequate international and national investments in prison systems to ensure safe, secure and humane custody, complemented by community outreach strategies.
- > Addressing overincarceration, including the excessive use of pretrial detention, and fostering commitment at the national level to enhance the resort to non-custodial measures, including law reform and increased access to legal aid.

- > Ensuring accountability in the criminal justice system and the safe and secure custody of perpetrators of atrocity crimes, terrorist offences and other serious crimes that fuel armed conflict, including conflict-related sexual violence.

The Global Focal Point for the Rule of Law<sup>95</sup> will serve as the main forum for United Nations inter-agency coordination on the rule of law in post-conflict and other crisis situations. The United Nations system will also ensure that efforts invested in supporting criminal justice systems, including prisons, are continued after the conclusion of field operations, so that the gains achieved are not reversed during and after mission transitions.

### **Strengthen partnerships with international organizations and civil society**

The United Nations system will further strengthen its coordination and partnerships with international and civil society organizations, including women and youth-led organizations, as well as renowned research institutes, think tanks and local communities.

- <sup>1</sup> The United Nations system common position on incarceration was developed by a working group of relevant United Nations entities under the co-leadership of the United Nations Office on Drugs and Crime (UNODC), the Department for Peace Operations and the Office of the United Nations High Commissioner for Human Rights (OHCHR), within the framework of the Secretary-General's Executive Committee.
- <sup>2</sup> See Human Rights Committee, general comment No. 35 (2014) on liberty and security of person (CCPR/C/GC/35).
- <sup>3</sup> For relevant standards in this regard, see the guidance developed by the Human Rights Committee, the Working Group on Arbitrary Detention, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Committee on the Rights of the Child (CCPR/C/GC/35; A/HRC/39/45, annex; CMW/C/GC/3-CRC/C/GC/22; CMW/C/GC/4-CRC/C/GC/23).
- <sup>4</sup> Including the Convention on the Rights of the Child and relevant United Nations standards and norms in crime prevention and criminal justice, such as the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113, annex), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (General Assembly resolution 40/33, annex) and the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (General Assembly resolution 69/194, annex).
- <sup>5</sup> Art. 1 of the Convention on the Rights of the Child.
- <sup>6</sup> See the United Nations Surveys on Crime Trends and the Operations of Criminal Justice Systems, complemented by data from the "World prison population list" and the "World female imprisonment list", compiled by the World Prison Brief, Institute for Criminal Policy Research, and Birkbeck, University of London; see also the report of the Independent Expert for the United Nations global study on children deprived of liberty (A/74/136). The 2019 estimate of the global prison population refers to the total numbers of prisoners at a specific date as opposed to the total number of persons that were detained or imprisoned throughout the year.
- <sup>7</sup> Ibid.
- <sup>8</sup> Tapio Lappi-Seppälä, "Causes of prison overcrowding", paper submitted to the workshop on strategies to reduce prison overcrowding in correctional facilities; Twelfth United Nations Congress on Crime Prevention and Criminal Justice (Salvador, Brazil, 12–19 April 2010); Oliver Roeder, Lauren-Brooke Eisen and Julia Bowling, *What Caused the Crime Decline?* (New York, Brennan Center for Justice, York University School of Law, 2015).
- <sup>9</sup> A/68/295, para. 85.
- <sup>10</sup> International Covenant on Civil and Political Rights, art. 9, para. 3, and art. 14, para. 2. With regard to corresponding provisions in the United Nations standards and norms in crime prevention and criminal justice, see the United Nations Standards Minimum Rules for Non-Custodial Measures (the Tokyo Rules), rule 6.1.
- <sup>11</sup> See the United Nations Surveys on Crime Trends and the Operations of Criminal Justice Systems, complemented by data from the "World pretrial/remand imprisonment list", compiled by the World Prison Brief; see also Catherine Heard and Helen Fair, *Pre-trial Detention and Its Over-use: Evidence from Ten Countries* (London, Institute for Crime and Policy Research, Birkbeck, University of London, 2019).
- <sup>12</sup> Indicator 16.3.2 (Unsentenced detainees as a proportion of the overall prison population) of target 16.3 (Promote the rule of law at the national and international levels and ensure access to justice for all) under Sustainable Development Goal 16 (Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels).
- <sup>13</sup> Any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator (Economic and Social Council resolution 2002/12, annex, para. 2).
- <sup>14</sup> Including, inter alia, mandatory minimum sentencing laws, an increase in longer sentences and changes in the eligibility for early release.
- <sup>15</sup> This concern also represents a challenge in the context of immigration detention in countries that rely on criminal law to enforce immigration statutes – a problem in itself that risks leading to arbitrary detention (International Organization for Migration (IOM), *World Migration Report 2020* (Geneva, 2019)).
- <sup>16</sup> Daniel S. Nagin, "Deterrence in the twenty-first century", *Crime and Justice*, vol. 42, No. 1 (August 2013).
- <sup>17</sup> Dirk van Zyl Smit and Catherine Appleton, *Life Imprisonment: A Global Human Rights Analysis* (Cambridge, Massachusetts, Harvard University Press, 2019).
- <sup>18</sup> Life without parole is a criminal sentence that requires the serving of a lifelong sentence in prison without the possibility of parole. Life without parole means that the sentenced person will spend the rest of his or her life in prison, where he or she will eventually die.
- <sup>19</sup> Tim Newburn, "Social disadvantage, crime, and punishment", in *Social Advantage and Disadvantage*, Hartley Dean and Lucinda Platt (Oxford, Oxford University Press, 2016); Pablo Fajnzylber, Daniel Ledermann and Norman Loayza, "Inequality and violent crime", *Journal of Law and Economics*, vol. 45, No. 1 (April 2002).
- <sup>20</sup> A/66/265, para. 65.
- <sup>21</sup> Such as adultery, homosexuality or the mere act of accessing sexual or reproductive health care.
- <sup>22</sup> International Covenant on Civil and Political Rights, arts. 9, 11, 17, para. 1, and 18, para. 1; United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rule 109.
- <sup>23</sup> *World Drug Report 2016* (United Nations publication, 2016), pp. 101–102.

- <sup>24</sup> *World Drug Report 2020*, booklet 5, *Socioeconomic Characteristics and Drug Use Disorders* (United Nations publication, 2020).
- <sup>25</sup> Often referred to as “drug mules”; this term refers to people, often women, who agree to transport drugs within the borders of a country or from one country to another for small amounts of money.
- <sup>26</sup> *World Drug Report 2019*, booklet 2, *Global Overview of Drug Demand and Supply* (United Nations publication, 2019).
- <sup>27</sup> *World Drug Report 2018*, booklet 5, *Women and Drugs: Drug Use, Drug Supply and Their Consequences* (United Nations publication, 2018).
- <sup>28</sup> *World Drug Report 2019*, booklet 2.
- <sup>29</sup> Elizabeth L.C. Merrall and others, “Meta-analysis of drug-related deaths soon after release from prison”, *Addiction*, vol. 105, No. 9 (September 2010).
- <sup>30</sup> Amanda E. Perry and others, “Interventions for drug-using offenders with co-occurring mental health problems”, *Cochrane Database of Systematic Reviews*, No. 10, art. No. CD010901 (2019); Dominique de Andrade and others, “Substance use and recidivism outcomes for prison-based drug and alcohol interventions”, *Epidemiological Reviews*, vol. 40, No. 1 (May 2018).
- <sup>31</sup> Prevention of torture and ill-treatment of women deprived of their liberty (CAT/OP/27/1).
- <sup>32</sup> See A/74/136, chap. 10.
- <sup>33</sup> Eric Martin, “Hidden consequences: the impact of incarceration on dependent children”, *National Institute of Justice Journal*, No. 278 (2017); Adele D. Jones and Agnieszka E. Wainaina-Woźna, eds., *Children of Prisoners: Interventions and Mitigations to Strengthen Mental Health* (Huddersfield, United Kingdom, University of Huddersfield, 2013); Peter Scharff-Smith and Lucy Gampell, eds., *Children of Imprisoned Parents* (Copenhagen, Danish Institute for Human Rights, European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre, 2011).
- <sup>34</sup> See footnote 6.
- <sup>35</sup> Reports of the United Nations High Commissioner for Human Rights on human rights in the administration of justice (A/HRC/42/20) and on human rights implications of overincarceration and overcrowding (A/HRC/30/19).
- <sup>36</sup> Such as tuberculosis, hepatitis C, sexually transmitted infections and blood-borne diseases, including HIV.
- <sup>37</sup> Including mental health and substance use disorders.
- <sup>38</sup> Justice Project Pakistan, COVID-19 and Prisoners, “COVID-19: infected prisoners and deaths across the world”. Available at [www.jpp.org.pk/covid19-prisoners/](http://www.jpp.org.pk/covid19-prisoners/).
- <sup>39</sup> International Covenant on Civil and Political Rights, art. 10; the Nelson Mandela Rules, rule 11.
- <sup>40</sup> Alison Liebling, David Price and Guy Shefer, *The Prison Officer*, 2nd ed. (London, Routledge, 2012).
- <sup>41</sup> United Nations Office on Drugs and Crime (UNODC), *Handbook on Anti-Corruption Measures in Prisons*, Criminal Justice Handbook Series (Vienna, 2017).
- <sup>42</sup> In addition to Goal 16 (peace, justice and strong institutions) and Goal 10 (Reducing inequalities), these include Goal 1 (Ending poverty), Goal 2 (Ending hunger), Goal 3 (Good health and well-being), Goal 4 (Quality education), Goal 5 (Gender equality), Goal 6 (Clean water and sanitation) and Goal 8 (Decent work and economic growth).
- <sup>43</sup> Including, in particular, target 16.3 (Promote the rule of law at the national and international levels and ensure equal access to justice for all) and its indicator 16.3.2. (Unsentenced detainees as a proportion of the overall prison population), as well as target 10.3 (Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard) and its indicator 10.3.1 (Proportion of population reporting having personally felt discriminated against on the basis of a ground of discrimination prohibited under international human rights law).
- <sup>44</sup> United Nations System Chief Executive Board for Coordination, *Leaving No One Behind: Equality and Non-discrimination at the Heart of Sustainable Development* (New York, 2017).
- <sup>45</sup> António Guterres, Secretary-General, “The highest aspiration: a call to action for human rights” (February 2020).
- <sup>46</sup> United Nations Office on Drugs and Crime, *COVID-19 Guidance Note: Emergency release mechanisms for detainees and prisoners during COVID-19: Findings and recommendations* (Vienna, 2021).
- <sup>47</sup> Particularly the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including its Optional Protocol, and the Convention on the Rights of the Child.
- <sup>48</sup> Particularly the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the basic principles on the use of restorative justice programmes in criminal matters.
- <sup>49</sup> It being understood that alternatives are not being used in addition to, but instead of, imprisonment.
- <sup>50</sup> The Tokyo Rules, rule 2.7.
- <sup>51</sup> *Ibid.*, rules 3, 5, 6, 8 and 9.
- <sup>52</sup> Under no circumstances should business interests involved in privatized prisons, where applicable, create a pressure to incarcerate or undermine efforts to implement alternatives to incarceration (Rob Allen and Paul English, “Public-private partnerships in prison construction and management”, *Justice and*

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- Development Working Paper Series*, No. 25 (Washington, D.C., World Bank, 2013).
- <sup>53</sup> The Bangkok Rules, rules 57–58, 60, 61–64. Particular attention will be paid to pregnant women, mothers and women accused or convicted of drug-related offences.
- <sup>54</sup> Convention on the Rights of the Child, arts. 3, para. 1, 37 (c) and 40, para. 3 (b).
- <sup>55</sup> International Covenant on Civil and Political Rights, art. 14; United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.
- <sup>56</sup> That is to say, only when there is reasonable grounds to believe that the individual has been involved in the commission of the alleged offence and that there is an evidence-based risk of the person absconding, committing a further criminal offence or interfering with the course of justice if he or she is set free or subjected to alternative measures.
- <sup>57</sup> United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, arts. 3, paras. 2 and 3, para. 4 (d), art. 3, para. 1 and 3, and para. 4 (d).
- <sup>58</sup> Including education, rehabilitation and social reintegration, as well as evidence-based treatment and aftercare, where applicable.
- <sup>59</sup> Also see the United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration (CEB/2018/2).
- <sup>60</sup> The Nelson Mandela Rules, preliminary observations 1 and 2, para. 1. With regard to children, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty provide additional guidance.
- <sup>61</sup> Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 57/199, annex, parts III–IV).
- <sup>62</sup> Human Rights Committee, general comment No. 21 (1992) on humane treatment of persons deprived of their liberty (HRI/GEN/1/Rev. 9(Vol.I), para. 4).
- <sup>63</sup> International Covenant on Economic, Social and Cultural Rights, art. 12; the Nelson Mandela Rules, rules 24–35; the Bangkok Rules, rules 6–18.
- <sup>64</sup> As related to, inter alia, language, nutrition, religion and beliefs, as well as suitable prison infrastructure and access to specialist care.
- <sup>65</sup> Including women prisoners with increased vulnerability, such as pregnant women, breastfeeding mothers and mothers with children in prison or with dependent children outside of prison.
- <sup>66</sup> Security Council resolution 2482 (2019), preliminary para. 15, operative para. 20.
- <sup>67</sup> The Nelson Mandela Rules, rule 74, para. 3; Principles and Best Practices on the Protection of Persons Deprived of their Liberty in the Americas, principle XX; European Prison Rules, rules 71 and 78.
- <sup>68</sup> In general, prison staff should be employed on a full-time basis with security of tenure (the Nelson Mandela Rules, rule 74, para. 3).
- <sup>69</sup> Including in areas such as human rights, and further encompassing specialized training for all staff that come in contact with women prisoners or children deprived of liberty.
- <sup>70</sup> The Nelson Mandela Rules, rule 74, para. 2.
- <sup>71</sup> *Ibid.*, rule 74, para. 3.
- <sup>72</sup> CCPR/C/NZL/CO/5; see also Draft articles on responsibility of States for internationally wrongful acts (*Yearbook of the International Law Commission*, 2001, vol. II, part two (United Nations publication, 2004), art. 5).
- <sup>73</sup> Human Rights Committee, general comment No. 35 (2014), art. 9.
- <sup>74</sup> Allen and English, “Public-private partnerships in prison construction and management; James Byrne, Kimberly R. Kras and Lina Marmolejo, “International perspectives on the privatization of corrections, *Criminology and Public Policy*, vol. 18, No. 3 (May 2019).
- <sup>75</sup> The Nelson Mandela Rules, rules 4, para. 1 and 91; see also art. 10, para. 3, of the International Covenant on Civil and Political Rights, which prescribes that the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.
- <sup>76</sup> This rationale applies to all prisoners, including those serving life sentences. Dedicated bodies authorized to review the progress of life-sentenced prisoners during their imprisonment and to recommend or grant release or remission, if appropriate, should therefore be in place (e.g., after a fixed minimum time as required by national law).
- <sup>77</sup> Including ministries and associated entities in charge of education, vocational training, labour, health, social services and justice.
- <sup>78</sup> It being understood that the primary responsibility for the rehabilitation and social reintegration of offenders remains with the State.
- <sup>79</sup> For example, with regard to educational curricula, working conditions, health and safety precautions and medical treatment.
- <sup>80</sup> The Nelson Mandela Rules, basic principles, rules 3 and 5.
- <sup>81</sup> Continuity of health-care services is crucial to ensuring that the benefits of treatment, started before or during incarceration, are not lost upon release, to preventing the development of resistance to medication and to reducing the risks of drug-related overdose or the transmission of disease from prisons to communities.
- <sup>82</sup> Guterres, “The highest aspiration” (see footnote 45).
- <sup>83</sup> Such as the General Assembly, the Security Council, the United Nations Congress on Crime Prevention and Criminal Justice, the Peacebuilding Commission, the Human Rights Council, the Commission on Crime Prevention and Criminal Justice and the Commission on Narcotic Drugs.
- <sup>84</sup> In this regard, due consideration should be given to the decriminalization of drug possession for personal use (see CEB/2018/2, annex I).
- <sup>85</sup> General Assembly resolution 70/175, para. 7.
- <sup>86</sup> As the custodian of the Nelson Mandela Rules and other United Nations standards and norms related to the treatment of offenders and the three international drug conventions, UNODC provides expert advice and technical assistance on the basis of both a network of field-based prison reform programmes, the Global Programme on Addressing Prison Challenges and the continued publication of relevant technical guidance.



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- <sup>87</sup> The Office of Rule of Law and Security Institutions in the Department for Peace Operations works as a United Nations system-wide provider with other partners to support the implementation of justice, police and corrections efforts in peace operations and other field presences, focusing on activities that are key to preventing violent conflict and sustaining peace and security while establishing the foundation for longer-term rule of law reform.
- <sup>88</sup> OHCHR advocates for the respect, protection and fulfilment of human rights for all persons deprived of their liberty and the non-discriminatory use of criminal law, including through thematic reporting, the monitoring of detention facilities and the provision of technical advice to improve detention conditions and oversight mechanisms.
- <sup>89</sup> Including the United Nations Development Programme, the United Nations Entity for Gender Equality and the Empowerment of Women, the United Nations High Commissioner for Refugees, the United Nations Office for Project Services, the World Health Organization, the United Nations Children’s Fund (UNICEF), the United Nations Office of Counter-Terrorism, IOM, and the World Food Programme.
- <sup>90</sup> Pursuant to the Secretary-General’s Decision No. 2012/13 on the “Rule of Law Arrangements”, para. (ii), this will include special representatives or executive representatives of the Secretary-General or, in non-mission settings, resident coordinators.
- <sup>91</sup> Specific research on children in contact with the criminal justice system should be aligned with the *Manual for the Measurement of Juvenile Justice Indicators*, jointly published by UNODC and UNICEF in 2007.
- <sup>92</sup> Available at [www.unodc.org/unodc/data-and-analysis/](http://www.unodc.org/unodc/data-and-analysis/).
- <sup>93</sup> Available at <https://apps.who.int/gho/data/node.prisons>.
- <sup>94</sup> Security Council resolution 2447 (2018), para. 1.
- <sup>95</sup> Encompassing peacekeeping operations, special political missions and priority non-mission conflict-affected countries responding to field requests and priorities (Secretary-General’s Decision No. 2012/13 on the “Rule of Law Arrangements”, para. (iv), annex).