Module 10. Key areas: Response to prison overcrowding

10.1 Response to prison overcrowding

These materials will help participants to:

- Describe Standard Minimum Rules for the Treatment of Prisoners (SMR).
- Explain how prison overcrowding impacts the physical and mental health of the prisoners.
- Explain what measures can be taken to reduce overcrowding.

One of the primary factors contributing to substandard prison conditions on a global scale is overcrowding. The most recent release of The World Prison Population List in December 2021 indicates that the global prison population may exceed 11.5 million.

Over 118 countries have prisons surpassing their maximum capacity, with 11 national prison systems operating at more than double their intended limits. The consensus is that the prison population is on the rise in the majority of countries worldwide. Ironically, pre-trial detention facilities in most countries experience even worse levels of overcrowding, leading to significantly inferior prison conditions.

OCCUPANCY LEVEL FROM HIGHEST TO LOWEST
(based on official capacity)

RANK	COUNTRY	OCCUPANCY LEVEL %
1	Congo (Republic of)	616.9
2	Cambodia	409.1
3	Uganda	364.3
4	Philippines	c. 362.0
5	Sao Tome e Principe	333.3
6	Democratic Republic of Congo	322.8
7	Burundi	314.6
8	Haiti	302.0
9	Guatemala	299.4
10	Bolivia	287.8

SOLID Social work and strengthening NGOs in development cooperation to treat drug addiction | Source: https://www.prisonstudies.org/highest-to-lowest/occupancy-level?field_region_taxonomy_tid=All

Overcrowding

Overcrowding is defined as the portion of the occupancy rate surpassing 100 percent.

While high imprisonment rates cannot automatically be equated to overcrowding in prisons, in the majority of countries a high rate of imprisonment does lead to overcrowding. On the other hand, low imprisonment rates do not necessarily indicate that prisons are not overcrowded (based on UNODC Handbook on strategies to reduce overcrowding in prisons).

Standard Minimum Rules for the Treatment of Prisoners (SMR)

The first international prison guidelines date back to the 1950s, with preparations having already started in the 1920s. In 1955, the Standard Minimum Rules for the Treatment of Prisoners (SMR) were adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders and, two years later, in 1957, approved by the United Nations Economic and Social Council. The SMR formed a key international standard governing the treatment of prisoners. They were 'designed to spell out the conditions which are thought to be minimal to preserve human dignity, maintain contact with outside society, and encourage a form of classification that protects prisoners and reduces the risk of contamination for those younger and less addicted to crime' (Clifford, 1972).

The original SMR consisted of a set of 94 rules, including minimum standards for accommodation, medical services, complaints, contact with the outside world, quality and training of prison personnel, and prison inspections (reference document). As non-binding rules, the SMR lacked the authority of a convention (Clifford, 1972). Despite this, the SMR were increasingly applied by UN member states. They were also used as a framework for monitoring and inspection bodies engaging in assessment activities. In many countries, the SMR served as a blueprint for developing national prison rules. In other countries, the SMR have remained the only document directly regulating the treatment of prisoners.

Similarly, the guidelines provided by the International Committee of the Red Cross (ICRC) suggest that the minimum space required is 5.4 square meters per person in a single cell or 3.4 square meters per person in a shared cell or dormitory, including where bunk beds are used.

ICRC also suggests taking into account the following factors: condition of the building, amount of time prisoners spend in the sleeping area, number of people in that area,

other activities occurring in the space, ventilation and light, facilities and services available in the prison, extent of supervision available.

Among regional standards, the commentary to Rule 18 of the European Prison Rules indicates that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) considers 4 square meters per person as a minimum requirement in shared accommodation and 6 square meters for a single occupancy prison cell. It notes that, although CPT has never laid down such a norm directly, indications are that it would consider 9 to 10 square meters as a desirable size for a cell for one prisoner.

10.2 Impact of overcrowding

Prison overcrowding has the potential to impact the quality of health care services provided, nutrition, sanitation, and the care of vulnerable groups. As the number of prisoners increases beyond that which the water, sewage, sanitation and heating systems were designed to provide for, these systems come under stress and struggle to meet the basic needs of prisoners and protect their health and well-being.

This is accompanied with poor sanitation and inadequate access to fresh air and exercise - all factors which increase the risk for epidemics of communicable diseases. Lack of space and unsanitary conditions increase the risk of contracting infectious diseases, such as Hepatitis C, TB, and HIV/AIDS (UNDOC, 2021).

The budget for feeding prisoners will rarely increase sufficiently to meet the nutritional requirements of the growing number of prisoners. Indeed especially in low- resource countries there will be no change in the budget allocated for food, thus prisoners will need to rely on additional food from their families and/or suffer the consequences of inadequate and low quality food.

The issue of overcrowding significantly affects the safety and security of both prisoners and staff. As the prisoner-to-staff ratio increases, tensions rise, and inmates may become agitated and frustrated with their living conditions.

Reducing overcrowding

Different documents mention the issue of overcrowding and there are different ideas on hope to cope it: These include the SMR, the UN Standard Minimum Rules for Non-custodial Measures (**the Tokyo Rules**) and the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (**the Bangkok Rules**).

In general, they propose:

- Advocate for depenalization and decriminalization when appropriate.
- Customize sentencing, considering the offender's background and the circumstances of the offense.
- Strike a balance between penalizing the offender, protecting the public, and promoting rehabilitation to prevent reoffending.
- Incorporate a variety of sentencing options in legislation to allow courts flexibility in their decisions.
- Recognize the unique circumstances of female offenders, including mitigating factors and caregiving responsibilities, prioritizing non-custodial measures over imprisonment.
- Establish a distinct framework for the sentencing of children within a juvenile justice system, minimizing institutionalization and favoring alternatives that support the development and rehabilitation of children in conflict with the law.

UNODC tries to convince governments to reduce incarceration rates by arguing that imprisonment is a heavy financial burden (UNDOC, 2013). By reducing incarceration rates, governments can cut costs and, at the same time, improve the conditions in their prison system.

Key recommendations fair social policies and crime prevention

To develop comprehensive national strategies that are evidence-based, respond to local circumstances and needs, and which foresee an alternative response to crime, with imprisonment being seen as a measure of last resort, in accordance with international standards.

Access to education, fair and supportive social policies, strategies to increase employment, crime prevention measures and support to vulnerable groups in the community are typically elements of such strategies, developed jointly by all the relevant ministries, other key state agencies and civil society groups.

Comprehensive criminal justice reform strategies

To adopt comprehensive criminal justice reform policies and programmes, responding to the needs in a coherent and holistic manner, while encouraging the development of small-scale pilot initiatives and creative projects to inform policy development.

Evidence based policies responding to individual country needs

- To ensure that policies are founded on a careful analysis of the precise reasons behind overcrowding in a particular jurisdiction.
- To put in place practical measures to ensure that the public is given sufficient information on who is imprisoned, the consequences of imprisonment, its cost and what the alternatives are, together with statistical data and research results that demonstrate that non-punitive responses to crime are very often the best way to achieve the social reintegration of the offender and public safety.
- To consider developing strategies of cooperation with the media to ensure that the public is better informed about relevant criminal justice topics.

To build mechanisms into the criminal justice system for the collection and analysis of data and statistics relating to the use of pre-trial detention, sentencing practices, non-custodial measures and sanctions, access to legal aid and its quality and effectiveness, the profile of the prisoner population, prisoner rehabilitation programmes and outcomes, early release schemes, parole revocations, and rates of reoffending among others, so that data is produced and analysed on a regular basis, thereby accurately informing strategic plans and decision-making.

To generate relevant information also on crime prevention, social welfare, health care, employment, education and housing policies and outcomes, and to analyse the connections between these different domains on crime and imprisonment rates, for decision makers to have a holistic understanding on which to base new policies.

References

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UNODC (2013). Handbook on strategies to reduce overcrowding in prisons.

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