

EXECUTIVE SUMMARY

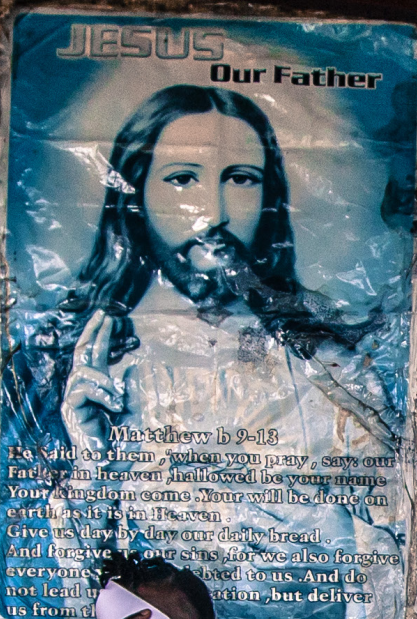
GLOBAL PRISON TRENDS 2020



Including
Special Focus

**Alternatives
to imprisonment**





This executive summary includes extracts from the full report published in English.

Global Prison Trends is Penal Reform International's annual flagship publication (since 2015), published in partnership with the Thailand Institute of Justice. The report provides insights and analysis on recent developments and challenges in criminal justice, prison policy and practice.

The 2020 edition includes analysis on:

Trends in prison policy and practice

Such as:

- Crime and imprisonment, recidivism, drug policies and the response to violent extremism and radicalisation
- Prison budgets
- Pre-trial detention and the use of capital punishment and life imprisonment.

Prison populations, and issues for people belonging to specific groups in custodial settings

Such as:

- Women
- Children—including children living in prison with their mother
- Persons with disabilities
- LGBTQ people
- Foreign nationals, minorities and indigenous people; as well as people without proof of legal identity.

Prison management issues and challenges

Such as:

- Health in prison—including the response to the COVID-19 global pandemic and the use of drugs in prisons
- Security, violence and deaths in prison, including in contexts of self-government; as well as equipment and use of force
- The situation for prison staff
- Issues and challenges in fragile and conflict-affected states, as well as in the event of natural disasters
- Rehabilitation of people in prison—including through sport.
- Role of new technologies in prison policy and practice.

The full report can be downloaded at:
www.penalreform.org/resource/global-prison-trends-2020

INTRODUCTION

This sixth edition of *Global Prison Trends* is jointly published by Penal Reform International (PRI) and the Thailand Institute of Justice (TIJ) at a crucial time, with prisons and justice systems facing unprecedented challenges, alongside their communities, brought by the COVID-19 global pandemic.

As detailed in *Global Prison Trends*, despite widely documented challenges in creating fair and effective criminal justice systems, there have been some positive steps taken towards the practical implementation of international human rights standards related to criminal justice, such as the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). As many prison and probation systems face common challenges, such efforts should be looked to for inspiration and replicated.

Many challenges are a result of the increasing number of people in prison and so 30 years on from the adoption of the UN Standard Minimum Rules on Non-custodial Measures (the Tokyo Rules) this year's *Special Focus* focuses on alternatives to imprisonment. We take a look at the implementation of alternatives to imprisonment used and some challenges facing governments. We also look at the barriers to their expansion, a cause and consequence of prison remaining a response to crime in many countries. It is clear that non-custodial measures and sanctions should be part of wider reforms to limit the reach of the criminal justice system. Crime prevention, decriminalisation of certain offences and diversion

schemes, all aim to limit the number of people coming into contact with the criminal justice system to begin with.

The *Special Focus* is even more relevant as we mark the 10th anniversary of the Bangkok Rules in December this year. We must reflect on measures taken to address the growing number of women entering criminal justice systems. The Bangkok Rules themselves recognise that prison is usually an ineffective, and often damaging, solution to offending by women, hindering their social reintegration and ability to live productive and law-abiding lives following release.

As we look forward, we must more generally interrogate ourselves on the continued growth of the overall prison population, documented again in this year's *Global Prison Trends*. The few countries that have low numbers of people in prison allow us to see that it is possible to prevent crime without using custodial sentences as the primary tool. These countries remain an exception, however, with too many states reporting incredibly high rates of prison overcrowding. Overcrowding can be life-threatening with major health issues arising due to the poor detention conditions in overburdened prison facilities – today's coronavirus pandemic is a grave reminder of these long-standing issues. Furthermore, overcrowding prevents prisons from fulfilling their proper function in the rehabilitation of offenders. Many governments have looked to reducing prison populations amid the COVID-19 pandemic. Such measures should be part of a long-term reform strategy to address overcrowding and the disproportionate numbers of marginalised people in detention.

At the end of this decade, states' commitment to improve the criminal justice system will be measured against the 2030 Agenda for Sustainable Development's commitment: 'No one will be left behind.' Given the trends highlighted in this year's report, it is crucial for member states to give special attention to populations, including women, children and others who are marginalised in justice systems, and often in the wider community.

We continue to publish *Global Prison Trends* as a tool for policy-makers, practitioners, a reference for academics, and an inspiration for penal reform activists and human rights defenders. Limited publicly available data remains a challenge for us—and for all stakeholders who rely on evidence-based policies—however thanks to PRI's research and operations in many parts of the globe and TIJ's expertise we are able to count on first-hand information informing the trends we document in this year's report.

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GLOBAL PRISON TRENDS

Prison populations

THE GLOBAL PRISON POPULATION IS INCREASING.



700,000+
WOMEN

+50%
SINCE 2000



19,000

CHILDREN
LIVING IN PRISON
WITH THEIR
MOTHERS

410,000+

CHILDREN IN
DETENTION
FACILITIES



1 million

CHILDREN IN
POLICE CUSTODY

PEOPLE IN
PRE-TRIAL
DETENTION



MORE RESEARCH AND DATA NEEDED ON:



LGBTQ persons
Foreign nationals
Ethnic and religious minorities
Poor and socially excluded populations
People in police custody

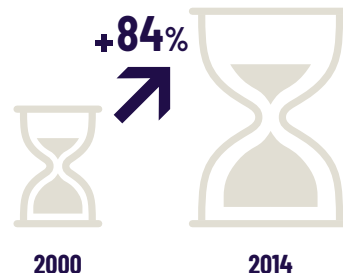
MANY CRIMINAL JUSTICE SYSTEMS
CONTINUE TO BE DISCRIMINATORY.

Sentencing trends

IMPRISONMENT IS OVERUSED AND SENTENCES ARE GETTING LONGER.

0.5

million
PEOPLE
SERVING
LIFE
SENTENCES



20,000+

PEOPLE ON DEATH ROW



OFFENCES
PEOPLE ARE
IN PRISON FOR:

Estimated
50+
NON-VIOLENT



7%

HOMICIDE



20%

(0.5 million)
OF THESE FOR
POSSESSION FOR
PERSONAL USE

IMPRISONMENT IS A
CYCLE HARD TO BREAK



RECIDIVISM RATES
REMAIN HIGH



MASS IMPRISONMENT IS EXPENSIVE.

KEY FACTS & FIGURES

Funding

Detention conditions



FUNDING FOR MOST CRIMINAL JUSTICE SYSTEMS IS TOO LOW.



DETENTION CONDITIONS ARE SUBSTANDARD IN MANY COUNTRIES.

JUSTICE IS UNDERFUNDED



THIS IMPACTS:

Courts
Probation
Prisons
Police

MAJORITY OF PENITENTIARY BUDGET IS SPENT ON:



Infrastructure

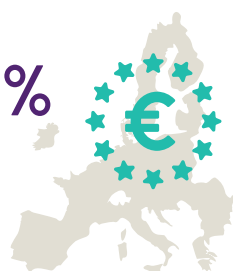


Staff



Security

0.2%
OF GDP



AVERAGE TOTAL EXPENDITURE ON PRISONS IN THE EUROPEAN UNION

FOOD BUDGET



AS LOW AS

€1

PER DAY PER PRISONER IN:

Cambodia
Central African Republic
Kazakhstan

LOW FUNDING LEADS TO POOR DETENTION CONDITIONS AND A LACK OF HEALTHCARE.

PRISONS IN

124+
countries



EXCEED THEIR MAXIMUM OCCUPANCY RATE



THIS LEADS TO:

Violence
Higher rates of death in custody
Lack of healthcare
Low rehabilitation opportunities

SUICIDE RATE IN PRISONS IS HIGH

25
per 100,000
PRISONERS

SUICIDE IN CUSTODY

11
per 100,000
PERSONS

SUICIDE IN THE COMMUNITY

USE OF FORCE IS A RISING TREND



Expanding involvement of the private security sector

Expanding use of special interventions

Increasing use of heavy equipment lethal weapons

POOR DETENTION CONDITIONS LEAD TO HUMAN RIGHTS VIOLATIONS.



ALTERNATIVES TO IMPRISONMENT PROVIDE A SOLUTION.

- THEY DO NOT SEPARATE FAMILIES
- THEY HELP REDUCE COSTS OF CRIMINAL JUSTICE SYSTEMS
- THEY BETTER ADDRESS INDIVIDUAL OFFENDING TRAJECTORIES
- THEY HELP REDUCE OVERCROWDING
- THEY AVOID THE DAMAGE OF IMPRISONMENT
- THEY BETTER REDUCE RECIDIVISM

KEY MESSAGES

These key messages do not cover all of the trends identified in *Global Prison Trends 2020*, but they represent some of the most pertinent and pressing issues facing criminal justice systems that require urgent attention.

- 01 Record levels of people in prison**

Over 11 million people are imprisoned globally, the highest number yet. Around 102 countries reported prison occupancy levels of over 110 per cent. The magnitude of issues and associated human rights violations stemming from over-imprisonment became clear in efforts to prevent and contain outbreaks of COVID-19 in prisons.
- 02 Women face gender-based discrimination in prison and the wider criminal justice system**

Almost ten years since their adoption, the UN Bangkok Rules on women prisoners and non-custodial alternatives for women remain largely unimplemented. The global female prison population doubled in twenty years, yet justice systems and institutions remain largely designed for a homogeneous male population.
- 03 New data confirms children are not detained 'as a measure of last resort'**

While some countries have made strides towards child-specific justice legislation, child-friendly courts and specialised procedures, new data estimates that at least 410,000 children remain detained in remand centres and prisons every year, with an estimated 1 million children held every year in police custody.
- 04 Non-violent offences attract too many prison sentences**

A large majority of people caught in criminal justice systems are arrested for, charged with or convicted of non-violent offences. Some legal reforms, particularly in Africa, stemmed from efforts to decriminalise petty offences.
- 05 Pre-trial detention is too often the norm, not the exception**

People who have not been found guilty of a crime outnumber convicted people in prison in at least 46 countries. Minorities, foreign nationals, women and the poorest people of our societies are all more likely to be detained on remand.
- 06 Drug policies contribute to growing prison populations**

Prohibition-based drug policies have driven prison populations up. Over 2 million people are in prison for drug-related offences, 83 per cent of them serving a sentence for drug possession for personal use. A larger proportion of women than men are imprisoned for drug offences.
- 07 Imprisonment continues to be a discriminatory cycle that is hard to break**

Punitive systems contribute to rising prison populations by failing to fulfil the rehabilitative purpose of imprisonment and by further marginalising people from vulnerable groups. This, alongside a lack of individualised rehabilitation and sentencing plans for people in prison, results in high recidivism rates in many countries.
- 08 Massive use of life sentences leads to human rights violations**

Almost half a million people are serving a formal life imprisonment sentence, with many more effectively serving life *de facto*. Reform towards more proportionate sentences remains slow and several countries are looking to introduce life sentences, towing the 'tough on crime' line. People serving life usually face harsh regimes.
- 09 Abolition of the death penalty continues but with some setbacks**

While progress towards abolition of capital punishment continues to be seen, most notably in Africa, long-time abolitionists are seeing a resurgence of calls for the reinstatement of capital punishment. More than 20,000 people are detained on death row worldwide living in inhumane detention conditions and often following unfair trials.

- 10 Funding for penitentiary systems generally remains low**

A comparative overview of government expenditures on prisons across 54 countries shows that it usually amounts to less than 0.3 per cent of their gross domestic product (GDP). Staff and infrastructure appear to receive the greatest share of funds allocated, with many countries spending alarmingly low amounts on food and rehabilitation programmes.
- 11 Alternatives to imprisonment offer a solution to global challenges, including COVID-19**

A wide range of diversion and alternatives at the pre-trial and post-conviction stages are available. Alongside crime prevention initiatives and adequately funded rehabilitation programmes, they can help tackle key challenges. The political backing of alternatives to imprisonment as a response to the coronavirus pandemic need to be harnessed for longer-term reform.
- 12 There are a number of structural barriers to the expansion and implementation of alternatives to imprisonment**

The key barriers to the expansion of alternatives include inexistent or inadequate legal frameworks, lack of resources and infrastructure, and lack of trust in them from judicial authorities and the wider public. There are also certain groups that have unequal access to community-based measures, such as foreign nationals.
- 13 Marginalised people are over-represented and neglected in prison**

People belonging to marginalised groups, including foreign nationals, minorities, indigenous peoples, people with disabilities and LGBTQ people, are disproportionately arrested and imprisoned. They face greater risks of human rights violations at the hands of authorities.
- 14 Prison health is deprioritised despite the magnitude of negative impacts**

In a large number of countries there is inadequate healthcare provision in prisons due to underresourcing and a lack of healthcare staff. Various approaches were taken by authorities to prevent COVID-19 disease outbreaks in places of detention to protect both staff and people detained, but some have occurred.
- 15 Prison and probation systems lack adequate numbers of trained staff**

Low levels of job satisfaction among prison and probation staff, coupled with low pay, are common issues faced in recruiting and retaining sufficiently educated staff. Budget cuts, staffing shortages, and increasing prison populations often lead to deteriorating working conditions for staff that also affect the detention conditions of people in prison.
- 16 Violence in detention is on the rise**

High levels of prison overcrowding contribute to the increasing number of violent incidents in prisons globally, as does institutional impunity and a lack of transparency. In the past decade there has been an increase in the use of 'special intervention forces'—riot squads or 'emergency response teams'—being employed to respond to major incidents like riots.
- 17 Deaths in custody are common and preventable**

The mortality rate for people in prison is as much as 50 per cent higher than for people outside. The most common causes are suicide and fatal violent clashes, with other reasons being torture or ill-treatment, and infectious diseases and ill-health. Investigations into all deaths remain lacking and, where undertaken, fail to achieve reform.
- 18 New technologies and AI bring benefits and new challenges**

Technological innovation provides many opportunities in criminal justice systems, although a 'digital gap' excludes some countries, particularly in Africa. Tools using Artificial Intelligence (AI) technologies have led to calls for greater regulation and consideration of impacts before further expansion.

CRIME AND IMPRISONMENT

There are more than 11 million people estimated to be in prison on any given day globally. This figure excludes police or administrative custody and also does not show the actual number of people that move in and out of prison in a given year, which remains undetermined. Global prison rates remain stable, although there have been 'substantial changes' in some countries and regions. The World Prison Population List of 2018 reports that prison population levels per head of population rose less than 1 per cent over three years between 2016–2018.¹

The United States has the highest absolute number of people in prison globally, with over 2.1 million people in prison at a rate of 655 people per 100,000 of the national population, yet rates of violent crime continue to fall.² The country has witnessed a 700 per cent imprisonment population increase since 1970, with a peak in 2009, and a small decline overall each year since then owing to reductions in some states and recently at the federal level.³ China has the second highest prison population globally, with an estimated 1.7 million people imprisoned, followed by Brazil where, based on figures from June 2019, the prison population approaches 760,000.

Studies strongly suggest that there is no link between the number of people in prison and levels of crime. Some research has suggested that links can be made between reduced welfare systems and increased imprisonment rates, and correspondingly between levels of social inequality and increased imprisonment rates. There has also been a link made between inclusionary or exclusionary political frameworks and increased imprisonment rates.⁴ Low acquittal rates, including due to a lack of procedural rights, in some countries serve to consistently feed people into prison systems.

Data suggests that a significant proportion of people caught in criminal justice systems are arrested for, charged with or convicted of non-violent offences. In 2017, the estimated number of people arrested or suspected of drug possession globally was 1.9 million, with 860,000 of those people being convicted for drug possession for personal use, resulting in just under half a million in prison for that offence.⁵ Conversely, data from 93 countries suggest that roughly one out of every 14 prisoners worldwide (7 per cent) had been convicted of homicide.⁶

Understanding and measuring levels of crime at the global level is complex and an ongoing area of research. One crime where comparisons are possible and undertaken is intentional homicide, which is used as an indicator on violent deaths and therefore can suggest levels of crime and violence in a society. In 2019, the UN published a new *Global Study on Homicide*, analysing data collected in 2017. While at the global level there is an ongoing decline in intentional homicide, in the Americas there was a historic high recorded in 2017 (since data collection began in 1990), with a rate of 17.2 victims of intentional homicide per 100,000 population.⁷

CORONAVIRUS PANDEMIC AND PRISONS

As the COVID-19 pandemic affects more people in an ever-increasing list of countries, there are legitimate concerns about outbreaks to places of detention, with hundreds of cases reported in prisons in China and Iran, and other countries reporting cases and deaths from Kenya, India to Belgium and Spain. The World Health Organization has warned that ‘the global effort to tackle the spread of disease may fail without proper attention to infection control measures within prisons’.

The difficulties in containing a large outbreak in detention facilities are clear. People in prison and the personnel who work with them are in close proximity and in many cases in overcrowded, cramped conditions with little fresh air. People in detention also have common demographic characteristics with generally poorer health than the rest of the population, often with underlying health conditions. Hygiene standards and infrastructure are often below that found in the community, impeding the ability to follow recommended sanitary measures.

The most common measures taken by authorities to prevent cases of the disease in detention facilities relate to limiting contact with the outside world through stricter visiting rules or outright bans. Such measures have in some cases been accompanied by increased opportunities for phone calls and other means of contact like in France and several US States.

Authorities have quarantined wings or whole facilities and placed individuals into isolation. In China, where 500 reported cases of the virus affected people in prison, facilities were placed on ‘lock-down’ and prison leaders were dismissed where outbreaks had occurred. There has also been a wave of urgent steps taken to reduce prison populations. In France, courts were asked to delay short-term prison sentences. Other states, such as Iran and Kenya, opted for the emergency release of people in prison.

On 16 March 2020, PRI published a briefing, *Coronavirus: Healthcare and human rights of people in prison*, summarising the responses that criminal justice systems, including prisons and courts, have taken in response to COVID-19—and the impact of these in light of the UN Nelson Mandela Rules and other key standards.

There have been concerns that that access to justice will be limited by some measures. Quarantine can in effect prevent people from attending their court hearings, meeting with parole boards or their legal counsel. International bodies have called for monitoring bodies to have access to detention facilities, even where regular visits are prohibited, as is the case in Kazakhstan.

ALTERNATIVES TO IMPRISONMENT

Commitments and aspirations

Thirty years ago, the UN Standard Minimum Rules on the use of Non-custodial Measures, known as the Tokyo Rules, were adopted, committing governments to use alternatives to imprisonment. The rationale of the Tokyo Rules is still as relevant today as ever. Governments wrote that they were convinced that alternatives to imprisonment can be effective and ‘to the best advantage of both the offenders and society.’ They also stated that ‘non-custodial measures should be part of the movement towards depenalisation and decriminalisation.’

The Tokyo Rules link increasing prison populations and prison overcrowding, which ‘create difficulties for the proper

implementation’ of the UN Nelson Mandela Rules. Those difficulties are even more apparent when places of detention are hit by disaster, seen recently with the COVID-19 global pandemic.

The Tokyo Rules should guide responses to the coronavirus pandemic to prevent the dire consequences of the disease ‘rampaging through places of detention’ as warned by the UN High Commissioner for Human Rights.¹ Some governments have released significant proportions of prison populations and brought prison admissions to a minimum through the use of alternatives. Such policies need to be swiftly replicated

and expanded.² (See Coronavirus pandemic and prisons, Global Prison Trends 2020)

Looking ahead, the political backing of alternatives to imprisonment in such a time of emergency need to be harnessed for longer-term reform. Implementation of the Tokyo Rules will prevent over-incarceration which puts people in prison and prison staff alike at high risk, in cases of disaster or the spread of an infectious disease.

In this Special Focus, we highlight why pre-trial detention and prison sentences remain the typical response to crime in many jurisdictions, detailing the barriers that need to be overcome both in the short- and long-term.

A solution to global penal policy challenges

Around 102 countries and territories are reported to have prison occupancy levels of over 110 per cent, and 22 operate at occupancy levels of over 200 per cent.³ Alternatives to imprisonment have been shown to be a **primary tool to lower prison populations, thereby reducing prison overcrowding.**

Jurisdictions which have successfully sustained lower prison occupancy rates through the use of non-custodial measures include Finland, Norway, Denmark and Sweden. Evidence shows that such measures need to be combined with

crime prevention initiatives and adequately financed rehabilitation and reintegration programmes.

It is widely recognised that alternatives to pre-trial detention better protect the human rights of people accused, but they also have been shown to **reduce the number of custodial sentences** subsequently. This correlation between the use (and length) of pre-trial detention and the imposition of a custodial sentence has been found in various studies, most recently in the Netherlands and the US.⁴

Evaluations of rehabilitation-focused alternatives to imprisonment prove that they can **reduce reoffending rates**, more so than prison sentences, by better addressing the reasons why people offend and making communities safer. An international review showed that recidivism rates are typically lower than those reported among people who had served prison time.⁵ Research from Victoria, Australia, has shown that a greater use of police diversion in recent years could have prevented tens of thousands of offences.⁶

The human rights and economic impact of imprisonment are widely documented and far reaching, affecting children, families, communities and wider society. At the individual level, the rights to liberty and security, health, to be

free from torture—even the right to life—are put at risk when someone is detained, particularly in overcrowded prisons. **Non-custodial measures and sanctions can eliminate these impacts and human rights violations.**

The **cost of imprisoning someone is generally far higher than the cost of a non-custodial sentence.** (See Funding of penitentiary systems, Global Prison Trends 2020).

Range and use

Alternatives to pre-trial detention

There is a wide variety of non-custodial options for the pre-trial stage, and the most common include bail (cash bail or bail guarantor), travel bans (including seizure of documents) and other geographic and residence limitations (including house arrest), judicial or police supervision, and electronic monitoring. Diversion strategies are also alternatives to detention, in that they avoid the formal processing of people by the criminal justice system altogether. Other conditions of liberty pre-trial may include agreeing to substance testing and treatment, restrictions on communication with

specific persons, or a ban on specific activities such as driving or carrying alcoholic beverages.

Many of these options are provided by law but remain underutilised, or simply ignored. One of the indicators for measuring progress against Goal 16 of the UN 2030 Sustainable Development Agenda is the proportion of pre-trial detainees in prison populations. As of 2019, the UN has confirmed little progress has been made.⁸ Three million people are in pre-trial detention globally, and at least 46 countries have more people (presumed innocent) in pre-trial detention than those convicted—mostly in Africa and southern and western Asia.

The Inter-American Commission on Human Rights has noted that for the last two decades, the use of pre-trial detention as a standard practice is one of the most serious and widespread problems in the region. It stated, ‘The fact that many criminal codes refer first to pre-trial detention and then provide what they call “alternatives to pre-trial detention” suggests and fosters an interpretation whereby pre-trial detention is the first measure deemed applicable.’⁹

Alternatives to prison sentences

Some initiatives have emerged in recent years to address the lack of comparative data on the number of people serving non-custodial sentences, as well as on their use by type of measure.¹⁰ From available data, huge national and regional variations can be seen in the proportion of people convicted and serving non-custodial sanctions compared to prison sentences.

Most countries in Europe, North America and Oceania have a higher proportion of people receiving non-custodial sanctions than prison sentences. For instance, across 36 member states of the Council of Europe, there were over 1.76 million persons under supervision of probation services in January 2018, representing an average rate of 202 people on probation per 100,000 inhabitants.¹¹ This is almost double the rate of people in prison at 102 per 100,000 inhabitants.¹²

Suspended sentences remain one of the most commonly used non-custodial sanctions globally, involving the dismissal of the sentence after a certain period if the person convicted successfully fulfils specific conditions and does not commit further crime. Such sentences are the most commonly employed non-custodial sanction in the Gambia, Kenya, Malawi, Nigeria, and Tanzania, and 15 of 28 European countries regularly suspend sentences for drug-related offences.¹³

Other common non-custodial sanctions include supervision by a probation officer, electronic monitoring, house arrest, verbal sanctions, economic sanctions and monetary penalties, confiscation of property, restitution to a victim, participation in rehabilitation programmes and community service orders. In Kenya, Uganda and Tanzania, PRI found that community service orders involving unpaid work make up the majority of non-custodial sanctions, followed by probation orders requiring supervision by a probation officer.

There is also a range of sanctions and diversion measures that take victims of crime into account,

Probation

The term ‘probation’ entails different things in different countries and ‘is not easy to define simply or precisely’.⁷ It is used as a term for a government body which executes sanctions, or pre-trial measures. It can also refer to the sentence itself (and may involve reporting to a ‘Probation Officer’). There are many organisational forms with varying levels of involvement—from the state at the executive level and different governmental agencies to non-governmental organisations and the private sector. Responsibilities of probation agencies vary widely but most commonly involve assessment of risk and needs and supervision of people subject to non-custodial measures or sanctions. In some regions, such as Europe, probation services also carry out responsibilities in relation to victims of crime.

such as restorative justice and victim-offender mediation programmes. In South Korea, victim-offender mediation was used to divert around 111,000 cases from court in 2016.¹⁴

Family group conferences are available in numerous jurisdictions, usually for children, based on the notion that communities and families can come up with solutions to address offending behaviour. Traditional tribal processes are also used in some countries, such as Malawi, Nigeria, and Tanzania.¹⁵

There are also some sanctions used to release people from prison before their term finishes, such as parole or conditional or early release. These systems often impose post-release conditions, and a breach of any condition can result in a return to prison.

Common barriers to the use of alternatives to imprisonment

Legal limitations

Even where multiple alternatives to imprisonment are available, the legal framework in many countries does not allow judges to consider alternatives or to exercise discretion at the pre-trial or sentencing stage. Mandatory prison sentences are often applied to specific offences, and they are not limited to violent crimes but can include non-violent offences. Drug laws in Mexico and Guatemala, for instance, make no distinction as to the nature of the offence, automatically imposing pre-trial detention for any drug-related offence.¹⁶ Such policies are a contributing factor to prison overcrowding and have a disproportionate impact on certain populations, including women.¹⁷

While legislative reform to allow for the use and implementation of alternatives to imprisonment is often required, the assumption that such alternatives always require complex resources and major legislative overhauls is regularly misplaced. Many significant reforms have taken place without any legal revisions, instead requiring slight adjustments to existing institutions and expansions of existing services.¹⁸

Wide discretionary powers of the judiciary can allow for a greater number of people avoiding prison through alternatives. For example, eliminating mandatory minimum sentences for drug crimes was one measure, among others, identified as a factor that led to the reduction in prison numbers in the state of Rhode Island in the US.¹⁹ However, discretion can also lead to bias and

a failure to engage with practical alternatives to pre-trial detention, as found in several European countries with judges being unable to properly elaborate why detention was necessary and alternatives were insufficient.²⁰ (See 'Tough on crime' and lack of trust in alternatives to imprisonment)

Lack of resources and institutional capacity

One of the primary challenges in the expansion and success of alternatives to imprisonment is a lack of resources. Low budgets for criminal justice also impact the ability to put infrastructure in place to implement a system with non-custodial measures and sanctions. The availability and the operation of rehabilitation programmes as part of alternative sanctions is reliant on financial support. Inadequate funding of drug treatment services, for instance, was found to be a common barrier to the use of non-custodial sanctions for drug-related offences across EU member states.²¹

Probation staff shortages are commonly reported due to financial restrictions, with some countries addressing this through schemes involving volunteer probation officers. Japan engages volunteer citizens, known as volunteering probation officers, to support the work of professional staff, aiming to bridge the gap between the community and offenders while addressing the needs of both. As of 2017, there were 47,909 volunteer probation officers in Japan.

Inadequate financing, slow and congested court systems and a general lack of operational capacity have been, among others, cited as factors for the prevalent use of pre-trial detention. Also in the Americas, a lack of operational capacity, independence, and resources among public defence offices are common issues in the use of alternatives to imprisonment.

'Tough on crime' and lack of trust in alternatives to imprisonment

Research has found that harsh political discourse—adopting 'tough on crime' stances—fuelled by sensationalist media approaches are contributing factors to prison sentences being favoured over non-custodial alternatives.²² These factors are closely linked to distrust in non-custodial alternatives among police and the judiciary, especially in countries where the independence of judicial officials is compromised. Decision-making can be shaped by prevailing public discourse and media pressure (some linked to populist or conservative rhetoric).²³

The use of alternative sanctions for drug-related offences could depend on the individual beliefs of prosecutors and judges as to drug treatment, the nature of, and motivations for drug use.²⁴ Disregard for the presumption of innocence, where judges presume that the accused is going to be found guilty, has also been found to influence court decisions. In Chile, 70 per cent of the judges interviewed in one

Mass supervision and net widening of criminal justice through alternatives to imprisonment

Warnings that mass supervision has not replaced, but supplemented 'mass incarceration', and the resulting detrimental effect on individuals and society continue unabated.²⁵ Data from most Western countries shows a growing number of people under supervision or criminal justice 'control', while prison population rates continue to rise as well. This 'net-widening' phenomenon can be explained by the fact that alternatives to imprisonment are being increasingly used in cases which would not have normally

attracted custodial sentences in the first place (such as warnings, fines or even recognisance). These measures further come with more severe compliance conditions that often lead to imprisonment when breached. As a consequence, because of the legislation or the judicial practice, alternatives to imprisonment can paradoxically bring more people into the criminal justice system and ultimately into prison.²⁶

The starkest example is in the US where the issue of mass supervision is becoming a political issue with civil society raising alarm at the findings from the statistics. At the end of 2015, there were more than 6.7 million people under 'correctional control' with more than 4.6 million of them on probation or parole (representing 1 in 37 adults).²⁷

Foreign nationals and minorities may not be able to prove 'their roots in the community (which is usually done by showing the existence of a stable job, owned property, formal family ties)' required for some alternatives.³¹

One study in Europe found that, in 2015, the percentage of foreign nationals placed on probation was much lower than those in prison.³² Another study concluded that minority children are often perceived as more dangerous than children from the majority population and face discrimination in accessing diversion and non-custodial measures.³³

Common alternatives to pre-trial detention and prison sentences often require defendants to secure financial means for bail or even electronic monitoring equipment, which excludes socially and economically disadvantaged people. In Western Australia, thousands of people have been imprisoned in the last decade for unpaid fines. This practice, which disproportionately affected people in a situation of vulnerability, was ended by a 2019 bill.³⁴ Efforts to make alternatives more accessible to disadvantaged communities were undertaken through Thailand's bail reform policy in 2019, which now stipulates that for sentences less than 10 years, no bail bonds would be required for release from remand.

study agreed that pre-trial detention is sometimes used as a form of anticipated sentence.²⁸

Although widespread community resistance to non-custodial alternatives has been reported, some studies suggest that this is not necessarily the case. Research in the UK found that victims of crime and the wider public are open to the use of community sentences in dealing with lower level offences, but they have doubts about how these sentences are implemented in practice.²⁹ In East Africa, an evaluation of a project by PRI noted

that local communities 'need(ed) to know that community service is happening around them and how they are benefiting from it.'³⁰

Bias and discrimination in criminal justice decision-making

Several studies reveal racial disparities and other discriminatory practices in pre-trial and sentencing decisions, which result in indigenous communities, black, and ethnic-minority defendants being more likely to receive a custodial rather than a community sentence.

Experiences of alternatives to imprisonment

While alternatives to imprisonment have brought a multitude of benefits, there has been a growing body of research looking at the negative impacts of such measures. This has been in recognition of the fact that supervision measures can place significant constraints on a person's life, infringe on privacy rights and entail considerable stigma and social isolation. One researcher has noted that, for the most marginalised, supervision is like a 'conveyor-belt', carrying them deeper and deeper

into the penal net.³⁵ There is also increasing concern that a lack of monitoring and oversight may conceal many detrimental impacts.

Some people on community service have reported that it comes at significant personal cost, impacts childcare responsibilities, and causes (further) financial hardship.

Rigid community sanctions have been found to impact people's abilities to find employment and housing in addition to disruption

to private and family life and to the right to freedom of association. In Kenya, women serving community service orders reported that the length and scheduling of community service work required them to give up critical casual jobs that brought income.³⁶ A report on community supervision in France found that the hours during which people were allowed to leave their home were too limited to socialise and that prohibition from frequenting certain areas limited employment opportunities.³⁷

There have also been criticisms that people ordered to perform community service could be subject to mistreatment and exploitation. One report from the US found that community service sentences often exacerbate the financial hardship of people already struggling to provide for themselves and their families, and that the work amounted to coerced, unpaid labour, with workers unprotected against job site dangers, harassment or discrimination.³⁸

In some contexts, people serving community sentences regularly report high levels of stigmatisation, although this can be avoided where community service work is not necessarily recognised as such.³⁹ Stigma has also been associated with electronic monitoring as it is a visible condition of their sentence.⁴⁰

Electronic monitoring

Many countries around the world already use electronic tags, or bracelets, on those accused or convicted, and such devices are becoming more widespread. Where Electronic Monitoring (EM) is used, the number of people subjected to it tend to rise year-on-year.⁴¹

Some authorities alongside private companies supplying the devices hail EM as an effective means to reduce prison populations, both at pre-trial and post-conviction stages. However, studies show that there is a need for risk assessments and systematic data collection as to the use and impact—particularly where private companies are involved. One recent report noted a lack of evidence from the perspective of people subject to EM, particularly from rural and minority populations, women, and people who did not comply with the conditions.⁴² Other research suggests that less extensive use of EM is associated with long-term reductions in prison populations.⁴³ Payment for the equipment by the person subjected to it is sometimes required, like in the vast majority of states in the US. Those who cannot afford it may be forced to choose between going into debt or going to prison.⁴⁴

Women

Given the harmful impact of imprisonment on women and their children and women's unique pathways into criminal justice systems, the UN Bangkok Rules seek to avoid their imprisonment wherever possible. However, the Rules are largely yet to be implemented, with female prison populations growing in many areas of the world. (See Women, Global Prison Trends 2020).

Many countries fail to take account of gender-specific issues in their laws, with the exception of limits on the detention of women who are pregnant or with young children. Provisions to this effect are found in the laws of Georgia, Germany, Poland or Colombia, among others. However, even where existing, they are not always utilised by the courts, as seen in Brazil and Cambodia where recent reforms have not yielded significant results to date.⁴⁵

Overall, there has been little effort dedicated to mainstreaming gender aspects in judicial decision-making or in the implementation of non-custodial measures. Courts tend to overlook the typical characteristics and backgrounds of women and their roles in the relevant crimes, demonstrated by the high rates of women in prison for minor offences committed in a context of poverty and vulnerability.⁴⁶ Gender bias has been particularly noted with regard to cases involving women in drug-related crimes.⁴⁷

It is widely understood that non-custodial measures enable women to better meet their caretaking obligations and address the root causes of their offending. However, many alternatives to imprisonment available are not suitable for women. For instance, many women cannot pay fines due to poverty and marginalisation. There have also been some common barriers identified for women in their ability to successfully fulfil alternatives with challenges in meeting such conditions and fulfil their role as sole or primary caregiver, including their ability to work.⁴⁸

Positive moves to adapt or establish specific programmes and support for women serving non-custodial sanctions have been documented in a number of countries, although they remain limited and are often under

pressure with budget cuts. One such example can be found in England where justice and health authorities work with civil society and social enterprises to divert women from prison towards a community-based sentence, which includes mental health treatment at a 'Women's Centre'.⁴⁹

Children

The UN Global Study on Children Deprived of Liberty published in 2019 estimated that approximately 410,000 children are held in detention facilities, with a further estimated 1 million children in police custody. (See Children, Global Prison Trends 2020). The Global Study also found that in the vast majority of these cases, non-custodial solutions would have been available. It concluded that children in many countries, and especially boys, have inadequate access to non-custodial alternatives.

This data shows that in many countries, detention is the first—not the last—resort for children. Where non-custodial measures do exist, in many countries their application often relies on civil society to build the infrastructure and the institutional capacity required.⁵⁰

Diversion schemes to prevent children from entering the formal system in the first instance—including restorative justice processes such as in Jordan—are becoming more common. Diversion schemes can be found in most of Europe, the Americas and 23 countries of the Asia-Pacific region.⁵¹ However, there is little information available concerning the frequency with which these alternatives are in fact used in the individual states.⁵²

Where non-custodial sentences are available for children, their implementation has not been without criticism. In many cases, they are not available for children in rural areas, and funding for programmes is inadequate. The Inter-American Commission on Human Rights has raised concern at programmes that risk children being put into vulnerable positions. This includes alternatives to imprisonment that require their participation in a programme that affects their schooling, health and well-being, or involving fines that may force children into work that could expose them to violence and exploitation.⁵³

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Endnotes

For endnotes please refer to the full edition of *Global Prison Trends 2020* at www.penalreform.org/resource/global-prison-trends-2020

About Penal Reform International

Penal Reform International (PRI) is a non-governmental organisation working globally to promote criminal justice systems that uphold human rights for all and do no harm. We work to make criminal justice systems non-discriminatory and protect the rights of disadvantaged people. We run practical human rights programmes and support reforms that make criminal justice fair and effective.

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