

# Prisons— Transparency and Accountability

## Policy Overview

As jails and prisons are inherently closed institutions, persons detained in them are particularly susceptible to abuse and human rights violations, [violence](#), [overcrowding](#), [sexual assault](#), and [poor living and working conditions](#). The COVID-19 pandemic has further heightened concern for such abuses as [crowded prisons have become hotspots for the virus](#) in many countries while case data related to these outbreaks often remain under wraps. Increased transparency around prisons and prison populations and effective oversight mechanisms can help prevent these harms and safeguard prisoners' human rights.

Increasing prison transparency by publishing information about the basic operation of these systems and demographic information of prisoners and prison staff can help identify policy problems (and their scope) and prevent abuses. For example, basic information about prisoners and prison living conditions can protect those detained by shining a light on human rights abuses and public health crises. In the context of the pandemic, publishing data on infections within prisons helps draw public attention to these crises and ensure that inmates are not put in harm's way and receive the health care they need. Likewise, greater transparency of prison management can enable watchdogs to track spending and flag possible cases of waste or corruption.

Effective oversight is essential to ensure the humane treatment of prisoners, appropriate use of resources, and public accountability for misconduct. Oversight can take many forms, including audits, formal investigations, whistleblowing mechanisms, and external monitoring and inspection. Regardless of the approach, these systems should be independent and public-facing to ensure credible findings. Citizens can also be directly involved, such as through civil society organizations that support prison monitoring efforts.

## Recommendations and Sample Reforms

The following are actions governments can take to improve the transparency of their penitentiary systems:

- **Involve citizens in multistakeholder councils or panels.** Convene prison institutions, civil society organizations, and members of the public to identify priority information for collection and disclosure.
- **Publish basic prison management information.** Start by disclosing information that is already being collected, such as prison budgets, spending, contracting, and recruitment.
- **Disclose information on prison practices.** Create a public register of existing prison policies, such as on the use of solitary confinement, prison labor, and social and legal visitation.
- **Disclose information on actual living conditions.** This goes beyond publishing basic data on occupancy rates. It includes documenting cases of violence, such as the use of force (and excessive force) by prison staff, homicides, self-harm, suicides, and other prisoner injuries. Disclose COVID-19 data.
- **Disclose demographic information about prisoners.** This includes anonymized, aggregated data about prisoners' gender, age, race, marital status, level of education, disabilities, and any mental and physical health-care needs.
- **Disclose inmates' case information.** Most importantly, this should include information about the reason for their conviction. Data on pretrial detainees, the length of their detention, and the number of pretrial detainees as a proportion of prison populations should also be noted.
- **Disclose information about prisoner outcomes.** This can include information about in-prison programming, such as opportunities to complete secondary or postsecondary education, vocational training, and the availability of mental health treatment, among other programs. Prison data should also track early release practices and the recidivism rate for those receiving in-prison programming compared to prisoners who do not.
- **Standardize disclosures of prison information.** Ensure that prisons in different jurisdictions and across various levels of government are using standard definitions that enable cross-comparisons.

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- **Extend disclosures to other forms of detention centers.** In some contexts, disclosure requirements could apply to other forms of prisons, such as private prisons and immigration detention centers.

The following are actions governments can take to improve public oversight of their penitentiary systems:

- **Establish complaint mechanisms.** Clear mechanisms for lodging complaints should be accessible to all prisoners, their families, and legal representatives.
- **Ensure whistleblower protections.** Enable prisoners, their families, legal representatives, and prison officers to file confidential complaints without reprisal that are forwarded to authorities that can effect change.
- **Set up independent oversight.** Ensure that an independent body – such as a human rights commission, an ombudsman, a national preventive mechanism, or a dedicated prison inspection office – can inspect prisons on demand and unannounced, access prison information and data, and interview detainees privately. This body should publish its findings and recommendations, which are to serve as the basis for constructive dialogue.

- **Ensure uptake of recommendations.** Prison officials (and relevant ministries) should be required to publicly respond to findings of inspections, outline how they will act on the recommendations, and report on progress made.

- **Use digital technology to improve public oversight.** Ensure that inspectors can still examine prison conditions, especially during the COVID-19 crisis. Continue on-site visits whenever possible. When not, video visitation and cellular devices can facilitate private virtual communication between inspectors and prisoners.
- **Allow monitoring by international institutions.** Members of the UN should ratify the [Optional Protocol to the Convention against Torture](#) (OPCAT), which requires them to establish a national preventive mechanism to conduct inspections of all places of detention and to allow inspection visits by the UN Subcommittee on Torture.<sup>1</sup>

#### LESSONS FROM REFORMERS

### Italy publishes individual prison sheets

As a result of Italy's 2016 OGP commitment to improve transparency in its penitentiary system, the Ministry of Justice has begun disclosing the transparency sheets of its 190 penitentiary institutions on a new central portal. Each transparency sheet webpage includes information on the institution's structure, capacity, physical characteristics, and policies around work, visitation, and other aspects of prison life. Although progress is slow, this kind of central register of prison information could be an important model for other countries to follow.

#### LESSONS FROM REFORMERS

### Independent prison visitors examine prisons in Western Australia

[Independent prison visitors](#) complement the role of [inspectors](#) by providing prisoners with information on accessing prisoner services, speaking on their behalf, recording complaints, and documenting their visits.<sup>2</sup> They are appointed by the minister for Corrective Services in Western Australia and serve renewable two-year terms. By law, these visitors can examine any prison at any time and are required to carry out inspections at least every three months. Among the stated goals of the program are to ensure the representation of local interests in prison operations, as well as to maintain a diverse cadre of inspectors in terms of age, gender, experience, and ethnic or socio-economic background.

#### LESSONS FROM REFORMERS

### Open prison data and civil society oversight in Argentina

As part of its [2017–2019 Action Plan](#), Argentina created a public database of audit recommendations and compliance information from the Federal Prison Service.<sup>3</sup> Government collaboration with academia and civil society to design the database ensured that the final product significantly increased CSOs' ability to monitor the penitentiary system. The government's [2019–2021 Action Plan](#) will further strengthen public oversight of the prison system by establishing a National Penitentiary Diagnosis.<sup>4</sup> This annual study will be collaboratively designed by the government, CSOs, and academia and evaluate the penitentiary system from a human rights perspective.

## Other OGP Commitments

**Brazil:** Work with civil society to develop an open format national database using data from inspections carried out by several actors in the prison system (2016–2018).

**Denmark:** Establish whistleblower frameworks for employees of the Danish Ministry of Justice, including prison service personnel (2019–2021).

**Mexico:** Centralize public security information, including data on the entry and exit of prisoners in both federal and military prisons (2019–2021).

**Paraguay:** Establish a new public prison information system (2018–2020).

**Scotland, United Kingdom:** Involve CSOs in delivering health and social services to prison patients and develop more transparent reporting on patient outcomes (2018–2020).

### GUIDANCE AND STANDARDS

## United Nations Standard Minimum Rules for the Treatment of Prisoners

The 2015 [United Nations Standard Minimum Rules for the Treatment of Prisoners](#),<sup>5</sup> known as the Nelson Mandela Rules, provide minimum standards for the treatment of prisoners and prison management. Transparency reforms could focus on key areas identified in the rules, such as the following:

- Characteristics (and trends) of the prison population
- Living conditions, including accommodation and health-care services
- Working conditions for prison staff
- Disciplinary sanctions and restrictive measures
- Occupancy rates
- Searches
- Special treatment for prisoners with special needs

The rules also include minimum standards for ensuring accountability in the penitentiary system:

- Prisoners should be able to file anonymous complaints, such as to the prison director, an inspector, the central prison administration, or a judicial body.
- Prisoner complaints should be addressed in a timely fashion and without retaliation, intimidation, or other negative consequences for the prisoner.
- There should be both internal and external systems for prison inspection. External inspection teams should be made up of independent inspectors – including health-care professionals – and may include international or regional bodies, ideally with balanced gender representation.

- Inspectors should be able to access all information on the number of prisoners, places of detention, and prisoner treatment, including their records and conditions of detention. They should be able to make unannounced visits to prisons of their choosing and interview any prisoners privately and confidentially. Written reports with recommendations should follow inspections and ideally be publicly available.

### United Nations Bangkok Rules on Women Offenders and Prisoners and United Nations Standard Minimum Rules for the Administration of Juvenile Justice

The 2010 [United Nations Bangkok Rules on Women Offenders and Prisoners](#)<sup>6</sup> and the [United Nations Standard Minimum Rules for the Administration of Juvenile Justice](#) (Beijing Rules)<sup>7</sup> provide standards for the treatment of women and children in detention, respectively, who are statistically more vulnerable to long-term damage due to imprisonments. To prevent such harm, it is important that justice institutions collect and publish information about detainees, including their age, gender, race, marital status, and mental and physical health-care needs.

In terms of accountability, oversight bodies should consider information about women prisoners and other vulnerable populations when they evaluate whether prison conditions are humane and meet the basic needs of detainees. Accountability reforms could focus on key areas identified in the rules, such as the following:

- The publication of clear and accessible policies and regulations on the conduct of prison staff in relation to women prisoners (Rule 31).
- Complaint mechanisms for women prisoners, including mechanisms for women prisoners to report abuse and support and protection services for women prisoners who report abuse (Rule 25).
- The requirement that all allegations of abuse be investigated by an independent body (Rule 25).
- The inclusion of women members in inspectorates, visiting or monitoring boards, or supervisory bodies (Rule 25).

The 2002 [United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#) establishes the Subcommittee on Prevention, which is charged with visiting prison systems in signatory countries and making recommendations related to the prevention of torture and other cruel, inhuman, or degrading treatment or punishment.<sup>8</sup>

See also the [UNODC Handbook on Women and Imprisonment](#)<sup>9</sup> and the [UNODC Handbook on Prisoners with Special Needs](#).<sup>10</sup>

## Endnotes

- <sup>1</sup> *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, General Assembly Resolution 57/199, December 18, 2002, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>.
- <sup>2</sup> Government of Western Australia, Department of Corrective Services, *Policy Directive 39: Independent Prison Visitors – Protocols*, accessed November 10, 2020, [https://www.correctiveservices.wa.gov.au/\\_files/prisons/adult-custodial-rules/policy-directives/pd-39.pdf](https://www.correctiveservices.wa.gov.au/_files/prisons/adult-custodial-rules/policy-directives/pd-39.pdf).
- <sup>3</sup> “Publication of Audit Recommendations in Argentine Prisons (AR0050),” (OGP, 2017), <https://www.opengovpartnership.org/members/argentina/commitments/AR0050/>.
- <sup>4</sup> “Federal Penitentiary Diagnosis (AR0088),” (OGP, 2019), <https://www.opengovpartnership.org/members/argentina/commitments/AR0088/>.
- <sup>5</sup> *United Nations Standard Minimum Rules for the Treatment of Prisoners*, General Assembly Resolution 70/175, December 17, 2015, <https://undocs.org/A/RES/70/175>.
- <sup>6</sup> *United Nations Bangkok Rules on Women Offenders and Prisoners*, General Assembly Resolution 65/229, December 21, 2020, [https://www.unodc.org/documents/justice-and-prison-reform/Bangkok\\_Rules\\_ENG\\_22032015.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf).
- <sup>7</sup> *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)*, General Assembly Resolution 40/33, November 29, 1985, <http://ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>.
- <sup>8</sup> *Optional Protocol to the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment*, General Assembly Resolution 57/199, December 18, 2002, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>.
- <sup>9</sup> United Nations Office on Drugs and Crime (UNODC), *Handbook on Women and Imprisonment* (New York: United Nations, 2014), [https://www.unodc.org/documents/justice-and-prison-reform/women\\_and\\_imprisonment\\_-\\_2nd\\_edition.pdf](https://www.unodc.org/documents/justice-and-prison-reform/women_and_imprisonment_-_2nd_edition.pdf).
- <sup>10</sup> United Nations Office on Drugs and Crime (UNODC), *Handbook on Prisoners with Special Needs* (New York: United Nations, 2009), [https://www.unodc.org/pdf/criminal\\_justice/Handbook\\_on\\_Prisoners\\_with\\_Special\\_Needs.pdf](https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf).

## Resources and Partners

### Resources

- Fair Trials’ [A Measure of Last Resort?: The Practice of Pretrial Detention Decision-Making in the EU](#) finds instances of misuse of pretrial detention in the EU and provides recommendations to reduce pretrial populations.
- A [report on incarceration during the pandemic](#) by Measures for Justice finds that mass incarceration makes communities more vulnerable to public health crises.
- Penal Reform International’s [Coronavirus: Preventing Harm and Human Rights Violations in Criminal Justice Systems](#) presents recommendations for protecting human rights in the context of the pandemic.
- The UNODC [Handbook on Women and Imprisonment](#)
- The UNODC [Handbook on Prisoners with Special Needs](#)

### Organizations

- [Center for Court Innovation](#)
- [Fair Trials](#)
- [The International Legal Foundation \(ILF\)](#)
- [Measures for Justice](#)
- [Penal Reform International](#)
- [Pretrial Justice Institute](#)
- [United Nations Office on Drugs and Crime \(UNODC\)](#)
- [Vera Institute of Justice](#) (United States)
- [World Prison Brief](#)

This module is part of the Justice Policy Series Part II, Open Justice paper which can be found [here](#).