

# OVERCROWDING: CAUSES, CONSEQUENCES AND REDUCTION STRATEGIES

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## I. INTRODUCTION: 'DOING MORE WITH LESS'

All correctional services face the challenge of 'doing more with less'. *Doing more* means that they are expected not only to 'house' prisoners in a safe and secure environment but also to deliver rehabilitative programmes and to prepare prisoners for release. Importantly, they must also meet the growing expectations of external accountability agencies including human rights organizations. Doing more *with less* reflects the fact that the number of prisoners is generally increasing at a faster pace than the resources that are allocated to corrections. The current global financial crisis is likely to exacerbate the problem. There may well be an increase in some types of crime and a consequential increase in the number of prisoners but it is unlikely that there will be a commensurate increase in available resources.

It is therefore especially timely for UNAFEI to be examining the topic "Effective countermeasures against overcrowding of correctional facilities". This paper analyses the causes of overcrowding (including the question of what statistical data is required to obtain an accurate picture). It then itemizes and discusses the negative consequences of overcrowding, which extend far beyond questions of 'bed numbers' before concluding with some suggestions about possible legal options to reduce overcrowding.

My second paper will examine some ways in which to ameliorate the negative effects of overcrowding. First, it notes some of the measures that can be used to manage overcrowded facilities and discusses the importance of developing and monitoring standards for service delivery. Building out of this, it then outlines the role that independent accountability agencies, such as human rights agencies, may be able to play. In this part of the paper I will be discussing, amongst other things, the role of the Office of the Inspector of Custodial Services in Western Australia and the implications of countries ratifying the Optional Protocol to the Convention against Torture (OPCAT).

## II. OVERCROWDING: UNDERSTANDING THE CAUSES

If we are to have any chance of developing effective countermeasures to overcrowding, we must first understand the precise causes of overcrowding in the particular jurisdiction. Most people assume that prison populations rise in response to two factors, namely, rising crime rates and/or longer sentences imposed by the courts. Although these factors are obviously important, the causes of overcrowding are multi-factored and multi-layered. Good quality statistics are essential if we are to understand the effect of these different factors.

### A. Crime Rates and Imprisonment Rates

One of the most interesting points to emerge during the annual conferences of the Asian and Pacific Conference of Correctional Administrators (APCCA) is that *there is no simple link between crime rates and imprisonment rates*. For example, both Singapore and Japan are 'low crime' countries according to official crime statistics. However, on international scales, Singapore has a high imprisonment rate whereas Japan has a low imprisonment rate. Some parts of the USA appear to have both a high crime rate and a high imprisonment rate. And some European countries, such as the Netherlands, which have a low imprisonment rate, are reporting problems with some types of crime. Thus, international comparisons show that all four permutations are possible: high imprisonment rate/low crime rate; high imprisonment rate/high crime rate; low imprisonment rate/high crime rate; and low imprisonment rate/low crime rate.

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Presentations to APCCA reveal *very variable patterns in terms of the extent to which changes in imprisonment rates reflect changes in crime rates*. For example, Japan and Malaysia have attributed their increasing rates of imprisonment to increased crime rates (and, in the case of Japan, to more foreign prisoners). However, in other countries there is no clear link between crime rates and imprisonment rates. In Australia and New Zealand, recorded crime rates have been relatively constant in recent years but imprisonment rates have gone up dramatically. This appears to be partly due to an increase in the seriousness of some offences (see below) but is also due to a general 'tightening up' on law and order issues.

In Canada, crime rates have been declining but the imprisonment rate has remained constant rather than declining. In some countries, including Cambodia and Indonesia, the increasing rate of imprisonment appears to be due to more efficient policing and prosecution practices as well as to a probable increase in some crimes.

Korea, Singapore and Thailand have seen a significant decline in the rate of imprisonment. In Korea, this seems to reflect changes to prosecution and parole practices not just changes in crime rates. Singapore's recent sharp decline does not seem to reflect an equivalent drop in the crime rate; rather, it seems to be attributable to the development of a number of alternative sentences, a system of home detention, and reduced recidivism rates (see below). Thailand's reduced rate of imprisonment is due to a large extent to the increasing use of drug rehabilitation centres rather than prisons; in other words, some of the decline in imprisonment really involves a displacement to other facilities.

## **B. Unsentenced Prisoners**

Prisoners may be either sentenced or unsentenced. The term 'unsentenced' is used here to refer to people who have been remanded in custody awaiting trial or who are currently on trial. The proportion of sentenced to unsentenced prisoners varies dramatically between countries. Most countries are between 10% and 30%. However, the figure is less than 10% in some places (including Brunei and Singapore) and more than 50% in others (65% in India and 75% in Sri Lanka).

Thus, in some places, there is very limited potential to reduce overcrowding through measures targeted at unsentenced prisoners. In others, however, there is considerable potential for appropriate countermeasures. However, statistics tend only to refer to the number of unsentenced prisoners. To develop effective countermeasures, we need more detailed data to work out whether the problem is:

- (i) Inflow: in other word, the number of people being remanded in custody and the reasons for this. For example, were they refused bail or were they granted bail but unable to meet the conditions set by the court?
- (ii) Duration: in other words, the length of time for which people are held in custody as unsentenced prisoners; or
- (iii) Both inflow and duration.

Across Australia, bail laws have been tightened up, leading to problems of both flow and duration but there also appear to be some differences between different States and Territories. In India, it would appear that the most pressing problem is duration not flow. India's annual presentations to APCCA indicate that the proportion of suspects remanded in custody is relatively low, but that there can be a very long wait for trials to be finalized.

It is only by undertaking research that identifies the exact nature and extent of the problem that we can develop appropriate jurisdiction-specific solutions (see below).

## **C. Pressure Points (Including Female Prisoners)**

Overcrowding and pressures on prisoner numbers are not spread neatly and evenly across prison systems and there tend to be particular pressure points. For example, in many Australian prisons, the least overcrowded parts are the highest security sections of maximum security prisons and punishment areas. This is because prisoners are managed, in part, through reduced association with others. In many countries, the demand for beds for unsentenced prisoners outstrips supply more than with sentenced prisoners.

Another very significant global trend has been the increase in the number of women committing serious

crimes (often drug-related) and therefore in the number female prisoners and their proportion relative to the number of male prisoners. Most jurisdictions now have between 3% and 7% female inmates (including Japan, Korea, Australia, Canada, India, Indonesia and New Zealand). However, the figure is higher in a number of other jurisdictions, including Malaysia, Singapore, Brunei, Hong Kong and Thailand. Importantly, *in most places, the rate of female imprisonment has risen faster than the male population over the past decade*. This is the case in Canada, China, Japan, Indonesia and Singapore and a number of other countries. Australia's figures are particularly dramatic; the number of female prisoners has doubled in the last ten years and the number of male prisoners has increased by around 50% over the same period. Unfortunately, women therefore quite often face more significant overcrowding problems than men.

#### **D. Police and Prosecution Practices**

The criminal justice process is best seen as a 'funnel' or 'pyramid' because the courts only deal with a small proportion of the total number of crimes. In other words, there is an 'attrition rate' between the number of crimes committed and the number sentenced.

This situation comes about in a number of ways. Some crimes are never reported to the police (the so-called 'dark figure' of crime). Some crimes are reported to the police but are not 'cleared up'. And some crimes are cleared up in that the police find the person they believe to be responsible but, as a result of the exercise of police or prosecutorial discretion, the case is never taken through the courts. This may, for example, happen in countries with practices of 'diversion' through cautioning, prosecutor's fines, referrals to 'restorative justice' processes.

The 'attrition rate' varies between crimes and between countries but it is often estimated that the courts deal, at most, with 10% of some crimes. For example, in countries where such research has been done, it is generally found that sexual offences are under-reported (often because the parties are known to each other or for other reasons). Some estimates put the figure of reported sexual assaults at around 25%. Of these 25 cases, some will not be solved by the police and others will not proceed to trial because the prosecuting authorities believe the evidence is weak and that there is 'no reasonable prospect of conviction.' It is easy to see how the number of offences that result in conviction may be less than 10%.

The same is true of burglaries. In Australia, the majority of burglaries (probably 90%) are reported to the police because victims tend to be insured and a police report is a precondition of making an insurance claim. Historically, however, only around 15% of burglaries were cleared up by the police. Again, some did not result in a conviction so that, like sexual offences, the end result was probably that no more than 10% were convicted and sentenced.

However, changes in police and prosecution practices and advances in policing techniques can lead to an increase in the number of offences that result in a conviction, even when even the actual number of offences has not changed. The best recent example is probably the use of DNA as a means of identification. This has led in many parts of Australia to a significant 'DNA catch-up' involving previously unsolved burglaries and other crimes. This occurs when a person is arrested and charged for an offence and his or her DNA is then checked against DNA samples obtained from earlier crime scenes. If they get a match, the suspect is likely to be charged with the earlier offences as well as the more recent ones. Given the DNA evidence, he or she is also more likely to plead guilty or be found guilty. Similarly, in cases of rape, DNA evidence makes it easier to prove that the suspect had sexual contact with the victim (though it does not address other critical issues such as whether she consented to sexual contact).

#### **E. Sentencing Practices**

International experience suggests that there are at least five factors at the sentencing stage that may contribute to increasing numbers of prisoners. The relevance of these factors in each jurisdiction will vary.

##### **1. More Crime**

The number of people being sentenced to imprisonment by the courts will sometimes reflect the simple fact that there is more crime being committed, cleared up by the police and prosecuted.

##### **2. Seriousness of Offences**

We have already noted that in some countries, the imprisonment rate is going up even though the

overall crime rate is not. However, one of the problems with recorded crime statistics is that they generally refer to broad offence categories and do not give a clear indication of the seriousness of the offences in that category. For example, in the Penal Codes of India, Sri Lanka, Malaysia and Singapore, the word 'hurt' means any 'bodily pain, disease or infirmity.'<sup>1</sup> The more serious offence of 'voluntarily causing grievous hurt' is rather narrowly defined. This means that the offence of 'voluntarily causing hurt' will therefore include some relatively trivial matters and some very serious ones. General statistics on the number of offences of causing hurt will not reveal the actual amount of injury that was caused. There is certainly a perception in several countries (including Australia, New Zealand and Canada) that although the statistics do not show any more crimes of violence in numerical terms but that the levels of violence are increasing. Inevitably, this will lead to longer sentences.

### 3. Offender Attributes

There is a good deal of evidence that criminal justice systems are now dealing with more complex offenders who have more complex problems and needs. Substance abuse, mental illness and other forms of mental impairment are on the rise and are often associated with higher levels of violence and more difficult management problems in prisons. Some countries also face a growing problem with gangs.

### 4. Alternatives to Imprisonment

There are many possible alternatives to imprisonment based on ideas such as supervision, community work and undertaking rehabilitative programmes in the community. The extent to which judges will use such alternatives will depend on whether they are seen to be realistic options (see below).

### 5. Law and Order Politics

In many countries, the media tend to focus on crime and usually focus on dramatic examples of violence. Public concern is heightened, even if the 'real' crime rate is not escalating, and this can lead to political responses such as mandatory minimum sentences, higher maximum penalties and reduced access to early release schemes such as parole. At times, this can also lead to conflicting and confused messages to sentencing judges. For example, in Western Australia, some innovative new alternatives to custody were introduced in the 1990s and judges were encouraged to use them. But at almost the same time, they were being criticized for leniency and mandatory minimum sentences were introduced for 'third strike' home burglars.

## **F. Releasing Practices**

Another critical part of the 'jigsaw' concerns releasing practices. There is a wide variety of potential early release options.

### 1. Pardons or Amnesties

These are used *inter alia* in Thailand, the Maldives, Mongolia, Vietnam and Indonesia and are ad hoc, not governed by legislation and unconditional (the person is free and is not subject to compulsory supervision or monitoring on release).

### 2. Remission Systems

These are statute-based but are again unconditional (for example, Malaysia and Singapore have statutory schemes allowing remissions of up to one third of the sentence imposed by the court). However, in the interests of 'truth in sentencing', some countries (including Australia) have abolished remission on the basis that it distorts the real meaning of the sentence imposed by the court.

### 3. Parole Systems

These are statute-based and are very different from remissions in that (a) release on parole tends to be discretionary; and (b) the offender is subject to supervision and monitoring on release, with the ultimate sanction being a return to prison. The conditions that are placed in parole orders typically include conditions not to re-offend, to report regularly to a community corrections/parole officer; to undertake certain programmes in the community; and (if the person is a drug user) to submit to drug testing. Parole involves both a 'carrot' (an incentive) and a 'stick' (a threat). It can be of either short or long duration.

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<sup>1</sup> Generally see Stanley Yeo, Neil Morgan and Chan Wing Cheong, *Criminal Law in Malaysia and Singapore*, LexisNexis, Singapore, 2007 chapter 11.

#### 4. Home Detention

This generally involves the use of electronic monitoring. It can be either a 'front end' sentencing option or a form of early release. When used as an early release scheme it tends to be of relatively short duration (up to six months) because of its intensity.

#### **G. Breaches of Parole and other Orders**

The final element in understanding imprisonment rates (and, therefore, overcrowding) concerns the way in which the system responds to breaches of conditional orders such as parole, probation and other community based sentences. In the United Kingdom a very large number of people are returned to prison each year for breaching orders. Sometimes this is because of serious offending but it is often because the person has failed to comply with the conditions of the order itself. A number of senior judges and others have expressed their concern that many of the 'failure to comply' breaches, such as failing to report to a probation officer, are attributable to the person's 'disorganized circumstances' and not to real 'villainy'.

There is no doubt that the flow into prison for breaches of orders can be dramatic. The question of 'failure to comply' breaches raises some particularly interesting questions with respect to the aims of community-based orders, the conditions that should be placed in such orders and the consequences that should flow from a breach.

Take the example of urinalysis testing as a condition of parole. First, it should be noted that there are very different approaches to the use of such conditions across Australia. In Western Australia, a condition of 'regular and random urinalysis' is routinely imposed in parole orders if the offender has any history of drug use. In practice, this means urinalysis is a condition of the vast majority of parole orders. In Victoria, on the other hand, urinalysis is not routinely used but may be imposed if the person is undertaking a specific drug rehabilitation programme where monitoring is considered desirable. A second question concerns what should be done if the person returns a positive urinalysis result. At one time, the Western Australian Parole Board was hesitant to hold the person in breach and return them to prison simply for returning a positive result, unless there was also evidence of further offending, or of the drug use being very serious (eg Class A drugs) or escalating. In other words, the Board saw urinalysis as a *monitoring tool*. However, Board membership has changed and the Board now views urinalysis much more as a *breaching tool*, with a single positive test for any drug being very likely to lead to a return to prison.<sup>2</sup>

#### **H. Summary and Case Study**

Understanding imprisonment rates and overcrowding requires careful analysis. The factors will vary between different jurisdictions and there is no single-hit solution. The normal assumption is that higher imprisonment rates reflect higher crime rates or tougher sentencing practices by the courts. However, the preceding analysis has shown that the situation is much more complex.

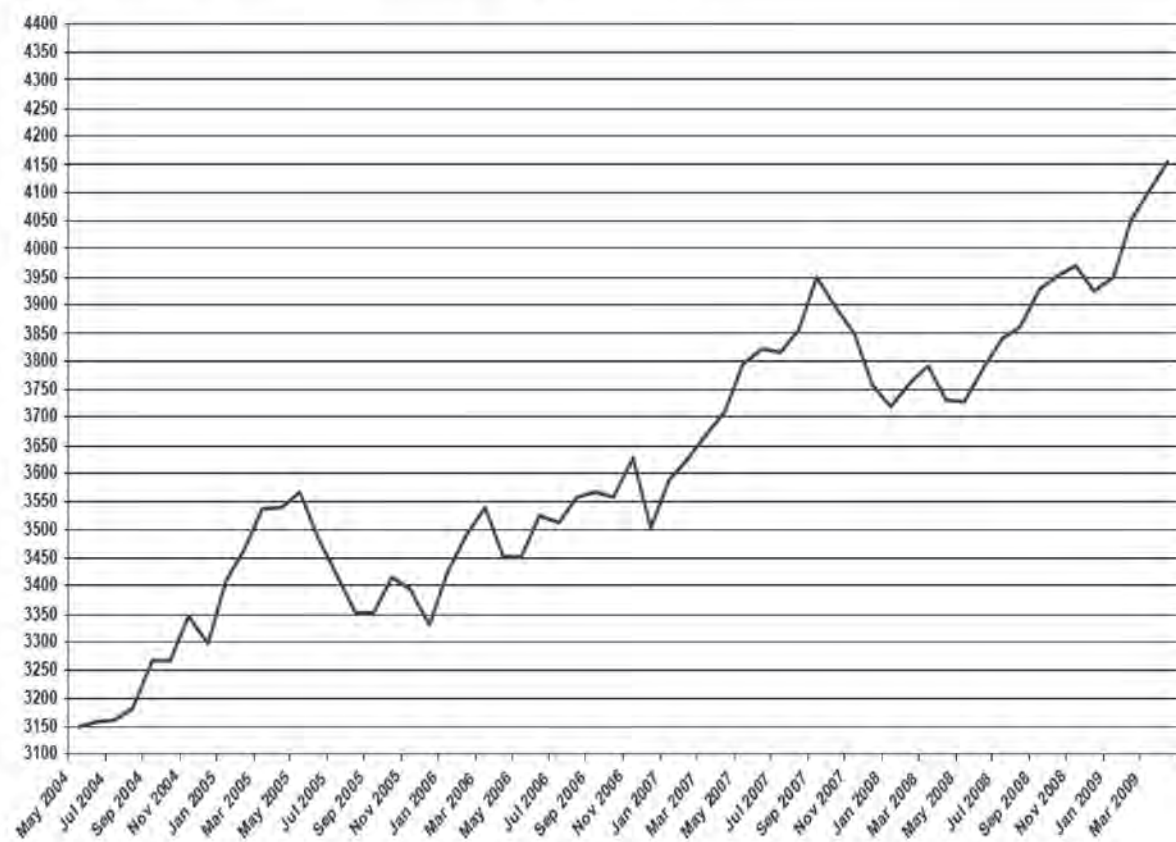
Western Australia provides a particularly good example of the points that have already been made. The following table shows the rate of imprisonment over the past five years.

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<sup>2</sup> Some interesting issues arise from such policies. Cannabis stays in the system far longer than some of the harder drugs such as heroin, amphetamines and 'ice'. Consequently, the person who takes cannabis will be at risk of returning a positive urinalysis result for longer than the person who uses 'worse' drugs such as heroin or 'ice'.

### Thursday Census of State Prisoner Count

Count includes prisoners in hospital and trustees in Lock Up - Rolling 5 year history period.



The table shows that the rate of imprisonment has increased dramatically, from 3,150 in May 2004 to 4,150 in April 2009, an increase of 30%. The increase from June 2008 to April 2009 is particularly dramatic (420 prisoners, or an 11% increase, in just 10 months).

These increases are of such a magnitude that they cannot be attributed simply to changes in the crime rate, in the number of people coming before the courts or in judges' discretionary sentencing practices. Instead, the increases reflect a number of factors. These include the DNA back-catch; an election in which 'law and order' was a big issue and there was pressure on the judiciary to 'get tougher'; the implementation of an election promise to reduce the 'discounts' that judges had previously given to offenders to compensate for the abolition of remission (see above); a very dramatic tightening up on the number of people released on parole; and an increase in the number of people returned to prison for breaching parole.

In other words, the neck of the criminal justice 'funnel' in Western Australia has become wider, the exit routes have been squeezed, and there is more chance of a person quickly re-entering the prison system for breaching orders.

## III. CONSEQUENCES OF OVERCROWDING

### A. Introduction

Overcrowding presents numerous challenges for prison management. Some of these are well-known but others are less commonly-understood. In my view, it is essential to clearly identify these consequences and to articulate them to government. The crucial point is that it is not just a question of finding places for people to sleep but a question of safety, security, human rights standards and meeting correctional goals such as rehabilitation. It is also essential to explain to governments that the matters discussed below have a cumulative and incremental effect.

The following list is not necessarily complete but covers some of the key ways in which overcrowding will impact on staff and prisoners in terms of day to day arrangements and on more systemic considerations.

## **B. Facets of Overcrowding**

### 1. Capacity and Cell Space

The most immediate problem that people associate with overcrowding is that prison cells (or, when they are used, dormitories) need to house more and more people. The focus is usually on 'bed-space'. Sometimes it can be difficult to get a precise assessment of the extent of this problem because 'bed-space' and 'capacity' can be rather flexibly interpreted. For example, in Western Australia, most prison cells were originally designed with the intention that they would be single-occupancy (usually called the 'design capacity'). However, it is physically possible to put bunk beds in most cells and rather than being a necessary exception at certain times, it seems that 'double bunking' is becoming an acceptable norm. These double bunks are now counted in prison capacity charts to give a figure that is termed 'current actual beds'. Official 'head office' figures claim that one of the State's prisons currently sits at 95% capacity (based on comparing the number of prisoners with the 'current actual beds'). The prison superintendent regards it as being at over 160% capacity (based on comparing the design capacity with the number of prisoners).

### 2. Development of Unit Infrastructure for Increased Numbers

It is rare for additional facilities such as showers, toilets and better eating/recreation areas to be put into housing units when numbers are increased. Indeed, it is impossible to undertake renovation work when the place is full!

### 3. Staff Resources

Staff resources may not keep pace with rises in prisoner numbers. There are two potential aspects to this problem. First, the *number* of staff per head of the prisoner population may decline. Secondly, the *quality and experience* of staff may well drop off.

### 4. Safety and Security

Overcrowding is likely to increase the risks of assaults and bullying between prisoners (for example, undetected in-cell behaviour). Unless the necessary additional staff resources are injected (both number and quality), staff are also likely to feel less safe.

### 5. Dynamic Security

The combined effect of the previous points is likely to be that staff will lapse into a less positive role: they will become gaolers rather than correctional officers and will retreat into their secure areas rather than interacting more positively with prisoners. This means that many of the benefits of 'dynamic security' (such as reducing pressure and gathering useful intelligence through positive interactions) may well fall away.

### 6. Education, Programmes and Work

Each of the above play a crucial role in modern correctional systems. First, they aim to assist prisoners' rehabilitation and reduce the chances of a return to prison (thereby repaying the investment in such activities). Secondly, they keep prisoners busy and thereby improve security in the institution. Busy prisoners who have access to positive activities are less likely to cause trouble than idle and frustrated prisoners. Computer access for study and recreation purposes is also increasingly valued. However, experience suggests that it is unlikely that the necessary resources will be allocated to developing the physical infrastructure and staff resources to meet a full level of service delivery. This will mean reduced rehabilitative effects and enhanced tension in the institution.

### 7. Recreation

Recreation helps keep prisoners fit and is a valuable safety valve for reducing tension. Opportunities for recreation frequently drop back at times of overcrowding.

### 8. Contact with the Outside World

Contact with the outside world is recognized as being integral to improving the chances of prisoners successfully 're-entering' society at the end of their sentences. Again, the infrastructure (such as more telephones, more facilities for video-links and internet visits and additional visiting times) must be provided if prisons are to meet such goals. But at times of financial constraint and staff pressures, this is unlikely to be the case.

#### 9. Hierarchical Regimes

Hierarchical regimes are a core feature of good modern correctional systems. The idea is that prisoners should be able to work their way up through the system, from a basic regime to a more enhanced regime. For example, in Australia, the aim is for prisoners to earn the right to move to higher levels of privileges and more enhanced regimes, ideally culminating in 'self care' (sometimes, but not exclusively, in minimum security). Hierarchical regimes that reward good behaviour have a good effect on discipline and security but they simply cannot be achieved if the prison is full. For example, if all the 'self-care' units are occupied, prisoners will have to remain at lower levels even when they have earned the right to advance. For this reason, it is often said in Australia that prisons should ideally be at 90% of their design capacity.

#### 10. Food and Health Services

These inevitably come under great stress at times of overcrowding because, again, experience suggests that the full complement of additional resources (both physical and human) is rarely provided.

#### 11. Sewerage and Other Issues

If a prison was designed with a population of 500 in mind, there is an obvious risk that sewerage systems and other resources such as water recycling will come under stress as a result of increased numbers.

### **C. Summary**

The individual, cumulative and systemic effects of overcrowding are dramatic. Even if places are found for prisoners to sleep, staff resources and the resources required for food, health, education, programmes, work, recreation are likely to drop back relative to the number of prisoners. It will no longer be possible to offer a proper hierarchical regime, the benefits of dynamic security are likely to be lost, and the human rights of prisoners (which attract increasing national and international scrutiny) will be adversely affected. Tension is likely to increase and the prison regime may become more assertive and more confrontational as the system tightens up and drifts into 'survival' mode. It is not melodramatic to conclude that the risks of a loss of control or riot are thereby magnified.

## **IV. MEASURES TO REDUCE OVERCROWDING: A BLUEPRINT**

### **A. Introduction**

It follows from what has already been said that the measures that are pursued to reduce the extent of overcrowding should reflect a careful statistical analysis with respect to the precise reasons behind overcrowding in the particular jurisdiction. The following section sketches some of the possible options, most of which will require legislative attention and not just the setting of policy directions.

### **B. Unsentenced Prisoners**

#### 1. Inflow

Measures to tackle the problem of inflow include greater use of bail (though in many places, the political reality is that the focus on 'law and order' is seeing more restrictive bail laws and less weight given to the presumption of innocence); the development of options such as electronic monitoring or bail hostels; and employing 'bail co-ordinators' in prisons to assist people to meet their bail conditions.

#### 2. Duration

Measures to tackle the problem of the duration of stay before sentence include more prosecutors, more courts, more judges and more efficient court processes. Ideally, perhaps, there should be a limit on the time that a person can be held pending the outcome of a trial. The Indian Supreme Court has ruled that people should not be held for longer than the maximum sentence for the offence with which they have been charged. In Scotland a stricter limit applies: there is a general limit of 140 days (increased from 110 days in 2003)<sup>3</sup> on the time a person can be held before a trial commences.

### **C. 'Community Based Sentences' and Prison as the Last Resort**

#### 1. Realistic Modern Sentencing Options

Realistic modern sentencing options should be given to the courts if prison is to become, as it should

<sup>3</sup> <http://www.scottish.parliament.uk/business/committees/justice1/reports-04/j1r04-02-vol01-02.htm#11>



be, the option of last resort. Across much of the Asian and Pacific region, this does not seem to be the case. Courts still seem often to operate with a limited number of alternatives such as fines and probation. Fines may be unrealistic and probation is often conceptualized as an order that is imposed *'instead of sentencing'* the person. There is a good deal to be said for developing community-based *sentences* where there is a focus on punishment and reparation (for example through community work) as well as rehabilitation.

## 2. The Right Administrative Infrastructure

Correct administrative structures must be put in place to support community-based sentences. There is room for debate as to whether such services should be located (a) in welfare departments, separate from prisons (as has historically been the case with many probation services) or (b) in an integrated department of correctional services that covers both prisons and community corrections. In my view, the latter option is generally preferable as it better recognizes that community based-sentences are 'real sentences' not just 'welfare' measures. It should also help to ensure a continuum of services (and in some systems, there may be an opportunity for correctional staff to work for periods of time in both the custodial and non-custodial sections).

## 3. A Statutory Hierarchy of Sentencing Options

Such a system has been adopted in most Australian jurisdictions. This means, in essence, that the judge must not impose a sentence of imprisonment unless all other options (which are 'ranked') have been ruled out as inappropriate.

## 4. Limitations on Short Sentences

Some jurisdictions have abolished short term sentences. The theory behind this was sound: it was to make imprisonment truly the last resort by encouraging judges to use the alternatives. However, it has proved problematic. Western Australia has abolished sentences of six months or less. But this means that when judges do reach the conclusion that there is no alternative to imprisonment, their starting point is now seven months (or, legalistically, six months and one day) – sometimes rather longer than they consider necessary.

## **D. Police and Prosecutorial Discretion**

*Where possible, efforts should be made to divert appropriately selected minor offenders out of the mainstream criminal justice system to reduce (a) the risks of 'contamination'; (b) the problems that can result from a formal criminal record and (c) the costs of and pressures on the traditional criminal justice system. Typical options here include formal cautioning, referrals to 'restorative justice' programmes and financial penalties. To date, in many countries, formal cautioning and referrals to 'restorative justice' programmes have tended to focus on juveniles. In my view there is scope for such options to be more fully developed for both juveniles and adults.*

## **E. Parole and other Forms of Early Release**

Parole systems have come in for some criticism in a number of countries on two main grounds. The first is a general complaint that parole weakens the sentence and makes the system too 'soft.' The second is that on the occasions when people on parole commit serious crimes of violence, there is criticism of the decision to grant parole to that person.

*However, there is a good deal to be said in principle in favour of a system where the person spends part of the sentence in custody and is then released back into the community under supervision and with the threat of being recalled to prison rather than releasing the person without such constraints at the end of their sentence. It is impossible to totally eliminate the risk that the person will offend again because parolees are generally serious offenders who lead high risk lifestyles (that is why they are in prison!). However, careful risk assessments by a Parole Board will help to reduce community risk. Ideally, legislation should set out the parameters of parole decision-making.*

I noted earlier the question of people coming back into prison – potentially for the whole balance of the sentence – because of 'failure to comply' breaches (for example, failing to report as required) rather than further offending. If this is the case, it is worth considering an approach that caps the period for which a person can be returned to prison for such breaches – perhaps at a maximum of 28 days. This provides the person with a real incentive to comply but reduces the problem of long-term returns.

### **F. Prison-Based Rehabilitation Programmes**

For most of the past 40 years, there has been a focus on delivering rehabilitation programmes in prisons. The main focus these days is on courses that are built out of a behavioural psychology/cognitive skills framework. This is not the place to debate the success or otherwise of such programmes but two points must be made in the context of the topic 'reducing overcrowding'. The first is that Parole Boards are likely to place significant weight on 'programme completion' as this is seen as a way to reduce the risk of re-offending. *It is therefore essential that programmes are delivered in a timely manner and are completed by the time the person is eligible for parole.* Secondly, even if a programme has been assessed as successful in other jurisdictions, *it is essential to ensure that the assumptions on which it is built are relevant locally, that the process of delivery is appropriate to the particular offender group, and that evaluations of programmes are carried out.*

### **G. Re-Entry Initiatives**

Over recent years, there has also been growing interest in the development of initiatives that ease a person's 're-entry' back into society. This approach is not based on any complex theory but is essentially a matter of common sense. As such, it should be something to which every system can aspire and work. *The three main areas of concern to prisoners on release are generally accommodation, family and employment.* Many prisoners have struggled with one or all of these issues in the past and correctional services should therefore try to address them as best they can (a) before the person is released and (b) after release (perhaps using the opportunities presented by a supervised parole system).

There are a number of possible models but in the Asia Pacific region, Singapore probably provides the most interesting case study. As noted earlier, Singapore has a high imprisonment rate and the country is renowned for being very tough on crime. However, it was recognized that this was having the effect that criminals were 'demonized' and not accepted back into society. The Yellow Ribbon Campaign, combined with more prison-based rehabilitative programmes and a concerted effort to link offenders into work on release have made major inroads. Recidivism rates have dropped and the rate of imprisonment has declined substantially. So much so, that Singapore will not need all of its projected new prison capacity – an enviable position indeed!