Joint submission to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions on "deaths in custody"

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Reporting organisations:

Harm Reduction International (HRI) envisions a world in which drug policies uphold dignity, health and rights. We use data and advocacy to promote harm reduction and drug policy reform. We show how rights-based, evidence-informed responses to drugs contribute to healthier, safer societies, and why investing in harm reduction makes sense. is a leading NGO dedicated to reducing the negative health, social, and legal impacts of drug use and drug policy.

HRI is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

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Promo-LEX Association is a non-governmental, not-for-profit, and politically independent human rights and advocacy organisation established in 2002 and registered with the Ministry of Justice of the Republic of Moldova on July 19, 2002. Promo-LEX's Mission is to advance democracy in the Republic of Moldova through promoting and defending human rights and strengthening civil society. Promo-LEX does its work through two Programs: Human Rights Program and Monitoring Democratic Processes Program.

The European Prison Litigation Network (EPLN) was founded in 2013 by law practitioners, prisoners' rights defenders and researchers with the aim to enhance the protection of fundamental rights of the detained persons in Europe, diminish the use of incarceration and decrease the length of sentences. The network brings together 25 organisations from 19 European countries.

1. Introduction

Harm Reduction International (HRI), the European Prison Litigation Network (EPLN), and Promo-LEX welcome the opportunity to provide input to the Special Rapporteur on "practices for the investigation, documentation and prevention of deaths in custody in the criminal justice context."

This submission focuses on **deaths in custody of people in detention because of drug-related offences and/or with a history of drug use, and on deaths classified as 'drug-related'**. Primary attention is paid to gathering and availability of data; and policies and practices aimed at, or which could have a significant impact on, the prevention of such deaths. Information is also included on widely observed flawed in processed and measures for prevention of deaths, particularly suicides and transfers of seriously ill patients. Pursuant to the call for inputs, information will be limited to situations of custody in the "criminal justice context"; however, it is worth noting that hundreds of thousands of people are detained, globally, in **compulsory drug detention centres**, in many cases pursuant to administrative rulings or to judicial orders, including as an 'alternative' to incarceration.[1] Civil society as well as media routinely report of deaths of people detained in such centres, either because of poor health and/or conditions of detention, or as a result of ill-treatment, sometimes as a form of non-evidence based drug treatment or punishment; with patterns and underlying causes similar to those witnessed in other situations of custody.[2] In the case of detention pursuant to judicial decision, deprivation of liberty could arguably be defined as a situation of custody "in the criminal justice context"; thus, we encourage the Rapporteur to take those instances into consideration (and we remain available to provide more information and resources).

2. Data gathering, analysis and reporting on drug-related deaths in custody

Any assessment of drug-related deaths in custody must take into account the **widespread lack of official, updated, disaggregated information on deaths in custody as they relate to drug use**. In early 2022, Harm Reduction International (HRI) disseminated a survey to community and civil society organisations and experts around the world, as part of its research to update the Global State of Harm Reduction,[3] which included one question on the availability of data on drug-related deaths in prisons. Based on the findings of that survey, it was concluded that "data on drug-related deaths in prison is not available (and often not in the community either), with at least 40 countries around the world publishing little or no data."[4] This glaring gap in data collection and dissemination obstacles a well-rounded reconstruction and review of the phenomenon, and thus any analysis and tackling of root causes.

A 2023 WHO report provides an updated overview of availability of prison data in the WHO European region, revealing that out of 53 countries in the region, 35 (66%) could provide data on causes of death

[1] Among others, see A/HRC/47/40, para. 82 onwards.
[2] Among others, see A/HRC/47/40; Ambika Satkunanathan (2021), 'A Broken System: Drug Control, Detention and Treatment of People who Use Drugs in Sri Lanka' (London: Harm Reduction International), https://hri.global/wp-content/uploads/2022/10/HRI_Report_-_Sri_Lanka_Drug_Control.pdf
[3] HRI (2022), 'The Global State of Harm Reduction 2022' (London: Harm Reduction International), https://hri.global/wp-content/uploads/2022/11/HRI_GSHR-2022_Full-Report_Final-1.pdf,
[4] Reported in PRI and University of Nottingham (2022), 'Deaths in prison: Examining causes, responses, and prevention of deaths in prison worldwide' (London: Penal Reform International and University of Nottingham), https://cdn.penalreform.org/wp-content/uploads/2022/12/Deaths-in-prison-briefing.pdf.

in prison. The same report also provides information on data transfer and death certification-training programs in countries in the WHO European region.[5]

In some cases, lack of data is due to **limited transparency**. An example is that of Russia. Russian authorities very sporadically provide statistical data on deaths in custody and do not provide disaggregated analysis. Therefore, the only regular sources of statistical information on deaths in custody are the international reports for which Russian authorities provided data, such as Council of Europe Annual Penal Statistics - SPACE I.[6] Russian authorities, however, did not provide disaggregated data on mortality in custody for SPACE I reports, limiting themselves only to the percentage of prisoners who died of suicide. With Russia's expulsion from the Council of Europe in 2022,[7] even this non-exhaustive source of information appears to have become unavailable. According to the human rights NGOs, HIV remains the most common cause of death in prison (roughly 30% of all cases).[8]

In others, lack of data is to be attributed to **inadequate death examination policies of practices**. For example, Promo-LEX reports that in Moldova, in cases of deaths occurring outside medical and sanitary institutions, the toxicological examination for the presence of drugs in the blood is not automatic, but rather carried out only upon request by the representative of the deceased or the coroner. The law does not require the medical examiner to carry out a toxicological analysis in the case of all corpses submitted to the medico-legal examination. Other reasons for the low number of toxicological investigations aimed at identifying illegal substances in the samples examined by the Forensic Medicine Center are insufficient and outdated equipment in the Forensic Toxicology laboratory, and the lack of human resources. Further, as of the time of writing the Republic of Moldova did not have data for reporting following the standard definition of "death associated with drug use (DAD)". As of 2020, no progress has been made in standardising the definition of death related to drug use.[9]

The fact that death inquiries involve the control of state services, on which the criminal justice system depends, and that the relatives of the deceased do not, in the vast majority of cases, have the procedural, social, emotional and/or financial resources to conduct legal proceedings, means that, almost everywhere, **deaths remain under-investigated**.

A recent example is that of the death of nine people detained in the Sant'Anna Correctional Facility of Modena (Italy), in the context of a prison riot that took place on 8 March 2020, at the beginning of the COVID-19 pandemic.[10] The unrest was triggered both by the announcement of the suspension of family visits, and the inadequacy of the overcrowded facility to cope with a pandemic scenario. During the riot, some incarcerated people entered prison pharmacy and took possession of methadone and other pharmaceutical substances, the absorption of which have caused the death of the nine prisoners (five

[5] WHO Regional Office for Europe (2023), 'Status report on prison health in the WHO Europan Region 2022' (Geneva: World Health Organization), https://apps.who.int/iris/bitstream/handle/10665/365977/9789289058674-eng.pdf?sequence=1&isAllowed=y.

[6] Marcelo F. Aebi et al. (2022), 'Space I – 2021 – Council of Europe Annual Penal Statistics: Prison populations' (Strasbourg: Council of Europe), https://wp.unil.ch/space/files/2022/12/SPACE-I_2021_FinalReport.pdf. According to this report there were around 2,400 individuals who died in penal institutions in 2020. Earlier SPACE I Reports (https://wp.unil.ch/space/space-i/annual-reports/) have provided roughly the same figures.

[7] Council of Europe (16 March 2022), 'The Russian Federation is excluded from the Council of Europe'. Available at: https://www.coe.int/en/web/portal/-/the-russian-federation-is-excluded-from-the-council-of-europe (last accessed 09/03/2023).

[8] Kommersant. "Причиной смерти стало игнорирование прав" (The cause of death was ignoring the rights), 22 July 2019, available at: https://www.kommersant.ru/doc/4038943

[9] Illegal drug consumption and trafficking annual report 2021 https://ansp.md/wp-content/uploads/2022/12/Raport_anual-privind-consumul-si-traficul-de-droguri_2021_final.pdf.

[10] https://www.antigone.it/rivista-archivio/Rivista_anno_XV_N2/08_Valerio%20Pascali%2C%20Tommaso%20Sarti%2C%20Luca%20Sterchele.pdf.

during the riot, four following transfer in another facility). In a 2021 decision, the Preliminary Investigation Judge ordered to close the case concerning eight of the nine victims, on the grounds that the riot context relieved the State from its obligation to protect the lives of prisoners, and that the deaths (which "unique and sole cause" was the use of methadone) was the result of self-harm committed by prisoners. In the same decision, the judge denied locus standi to the Italian NPM and the NGO Antigone, who opposed to the case closure and pointed out a number of fallacies in the course of events (in particular concerning the promptness of medical intervention) and shortcomings in the conduct of the investigations.
In Russia, the phenomenon is exacerbated by the absence of any specific legal provisions and protocols regulating the procedure following prisoners' death. Pursuant to the Russian Code of Criminal Procedure (Article 144), the opening of criminal investigations in these cases is left to the unfettered discretion of investigative authorities. Neither the Russian authorities follow the existing international protocols and recommendations related to the effective investigation and recording of deaths in custody. Correctional colony no. 16 (Krasnoturyinsk, Sverdlovsk Region), is a penitentiary facility for women known for its high death rate among prisoners, in particular in 2018-2019, due to the total lack of essential medicines. At least 14 women died before 2020. Despite numerous criminal complaints, criminal investigation against medical personnel and the colony administration has not been opened.[11]

Even in cases in which information on deaths in custody and their causes are available, there is a **risk of misclassification**; which appears to be particularly high in cases of deaths where illicit drug use is found, especially where a 'zero tolerance' approach to drugs in prison is followed. For example, suicide deaths may be classified as accidental overdoses, or vice versa; or, overdose-related deaths may be attributed to cardio-respiratory arrest, without a further investigation of its causes. In the case of an accidental death, an important but difficult contributing factor to assess is the availability *and* accessibility, in the custody setting, of harm reduction or other essential health services which may have prevented such death. In cases where this cannot be ascertained, deaths will be officially attributed to the health conditions, or to drug use, concealing the role of prison services and/or of policy failures to ensure essential services in those settings.

Finally, the very **definition of 'deaths in custody'** affects how figures are collected and reported. For example, the abovementioned SPACE I reports collect data on 'inmates who died inside the penal institutions', defined as "the number of deaths of inmates while in detention/imprisonment. In principle, figures do not include (1) inmates who died or committed suicide in community hospitals, and (2) inmates who died outside prison (e.g. during a prison leave or a period of absence by permission)."[12] As shown by the same report, most authorities from Council of Europe countries use the same definition. According to EPLN, the consequence is that penitentiary systems in countries such as Russia in processes driven by management rationales, tend to mitigate risks of death in custody (and the related administrative burden that the investigation of death causes would cause to the administration), by putting in place strategies of last resort release or transfer to civilian hospitals of ill persons at terminal stage of their diseases, thus artificially decreasing statistics of deaths in the penitentiary system. Taking this in consideration, any analysis of the phenomenon and causes of deaths of custody, should not only look at statistics of deaths occurring in custody, but also analyse mechanisms of release and transfer of severally ill prisoners, and their impact on death statistics in the penitentiary system.

[11] Novaya Gazeta, "Гиблое место" (A dead place), 25 July 2020, available at: https://novayagazeta.ru/articles/2020/07/24/86395-gibloe-mesto
[12] Marcelo F. Aebi et al. (2022), 'Space I – 2021 – Council of Europe Annual Penal Statistics: Prison populations'.

3. Drug use and deaths in custody

Accidental or intentional intoxication are recurring causes of deaths in custody, and – including for the reasons highlighted above – it can be difficult to aptly classify intoxication-related deaths as overdoses (accidental) or suicides (intentional).

A recent report by European Monitoring Centre for Drugs and Drug Addictions (EMCDDA) concluded that suicide is the leading cause of death among incarcerated people in Europe, and that "a considerable proportion of people who commit suicide in prison have drug-related problem."[13] The European agency cites several studies on deaths in prisons in European countries. These include a study on deaths in French prisons in 2011, which found that "11 % of [deaths] were attributed to intentional or accidental drug overdose or intoxication." [14]

These findings are echoed by other sources. For example, research in the USA identified overdose as the third leading cause of death in jails.[15] A similar study found a 600% increase in deaths due to drug or alcohol 'intoxication' in state prisons in the US between 2010 and 2018.[16] A study in Ireland published in 2018 "found drug use to be a major contributory factor to deaths in prison, with 26 unnatural deaths (68%) associated with drug use. Post-mortem toxicology reports showed all deaths by overdose (16), 53% of self-inflicted deaths (8 of 15), and 29% of deaths from other causes (2 of 7) were positive for illicit drugs."[17] A recent review of deaths in Scottish prisons between January 2020 and September 2022 found that suicide and drug-related deaths are the "driving forces in rising levels of death" and the main causes of deaths in 2022. The report noted that "a sharp rise in fatal and non-fatal drug overdoses in 2021 led the [Scottish Prison Service] to institute a ban on prisoners receiving letters directly in most prisons from late that year, thereby restricting one method of supplying drugs. This rule correlates with a fall in drug overdose deaths so far in 2022. However, there have been as many suicides in prison in nine months of 2022 than in all of the previous year. This suggests that while restricting the supply of drugs into prison reduced overdoses, the underlying issues driving demand for drugs – boredom, despair, distress and isolation – have not been addressed to the same extent. This is important as these factors of demand for drugs also commonly underlie motives of suicide."[18]

In Moldova, the most common illnesses among people in prison are mental and behavioural disorders, and a high share of suicides is being reported.[19] This is confirmed by statistical data provided by National Administration of Penitentiary (NAP),[20] showing that self-harm and suicide are becoming increasingly widespread among people in prison. In 2021, 800 self-mutilations were recorded, representing an 18% increase from the previous year. There was also a 42% increase in the number of suicide attempts between 2020 (18) and 2021 (31), both in penitentiary institutions and in pre-trial detention.

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[13] Linda Montanari et al. (2022), 'Prison and drugs in Europe: Current and future challenges' (Lisbon: European Monitoring Centre for Drugs and Drug Addiction), https://www.emcdda.europa.eu/system/files/publications/13904/TDXD21001ENN.pdf.
[14] Ibid.
[15] Vera Institute of Justice, 'Overdose Deaths and Jail Incarceration: National trends and racial disparities'. Available at:https://www.vera.org/publications/overdose-deaths-and-jail-incarceration/national-trends-and-racial-disparities (last accessed 09/03/2023).
[16] Beth Schwartzapfel and Jimmy Jenkins (15 July 2021), 'Overdose Deaths In State Prisons Have Jumped Dramatically Since 2001' *NPR,* https://www.npr.org/2021/07/15/1015447281/overdose-deaths-state-prisons-increase.
[17] PRI and University of Nottingham (2022), 'Deaths in prison: Examining causes, responses, and prevention of deaths in prison worldwide.'
[18] Sarah Armstrong et al. (2022), '*Still* nothing to see here? One year update on prison deaths and FAI outcomes in Scotland' (Glasgow: The Scottish Centre for Crime & Justice Research), https://www.sccjr.ac.uk/wp-content/uploads/2022/11/Still-Nothing-to-See-Here-2022.pdf.
[19] 2021 ANP Report, see https://drive.google.com/file/d/1ltu2_qZ8BYQznVTuSEvjVPPfO0j67MOr/view
[20] 2021 ANP Report; see: https://drive.google.com/file/d/1ltu2_qZ8BYQznVTuSEvjVPPfO0j67MOr/view

Experts point to several factors contributing to 'accidental drug-related deaths', such as: loss of tolerance to drugs because of forced abstinence in a closed setting; low purity of substances available in detention; fear of punishment if asking for help by the person using drugs in custody or their peers; the ageing trend of the opioid-using population (including those in custody); and, new psychoactive substances in detention. On the latter, the EMCDDA concluded that "since 2013, the appearance of new psychoactive substances in prison in several European countries has been associated with deaths. Despite difficulties in determining the cause, deaths in prison directly or indirectly related to the use of new psychoactive substances have been reported in Germany, Latvia, Poland and the United Kingdom. In England and Wales, between June 2013 and September 2016, there were 79 cases in which the person was known or strongly suspected to have taken new psychoactive substances before death or where use of such substances was a key issue during imprisonment. Of these, 56 were self-inflicted."[21]

With regards to suicides, recurring triggers are withdrawal symptoms, particularly in the first days of detention.[22] For example, a study on suicides in prisons in England and Wales between 1999 – 2007 found that "of 22% prisoner suicides considered to be drug dependent (primary or secondary psychiatric diagnosis), 46% died within the first week of prison. Drug dependent suicides were significantly more likely to occur within [seven] days of reception into prison compared with those without drug dependency", "suggesting that these deaths may be closely related to the period of withdrawal, when prisoners are receiving a detoxification plan or immediately post-detoxification."[23]

In both instances, an underlying cause of – or contributing factor to – drug-related deaths is the non-availability or non-accessibility in custody settings of adequate **harm reduction and other essential health services for people who use drugs**.[24] This is confirmed by the literature: a 12-year cohort study on deaths in Australian prisons found a 74% reduction in all-cause mortality among opioid-dependent individuals in Opioid Agonist Therapy (OAT). The percentage increased to 94% for the first four weeks of detention. The same study also found an 87% reduction in suicide, violent or overdose deaths.[25] In spite of this, harm reduction services in prisons are extremely limited. The 2022 Global State of Harm Reduction found that OAT is present in at least one prison in only 59 countries, and Needle and Syringe Programs (NSP) only be found in at least one prison in only nine countries.[26] Even in cases where these services are available, they may only be accessible to certain groups of individuals in prisons or only in some phases of detention. People in custody may also face informal obstacles to accessing them, sometimes linked to discriminatory attitudes of prison staff or fellow prisoners.

A particularly effective policy for preventing both accidental and intentional opioid overdoses would be the introduction of naloxone in detention settings, particularly if made accessible to peers. Naloxone is an opioid antagonist drug which reverses and blocks the effects of opioids, and is thus effective in 'reversing' opioid overdoses. Despite its effectiveness,[27] as of 2022 there were virtually no countries where naloxone was available *inside* detention settings (as opposed to distributed upon release).

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[21] Linda Montanari et al. (2022), 'Prison and drugs in Europe: Current and future challenges.'
[22] Among others, Adrienne Rilvin et al., 'A typology of male prisoners making near-lethal suicide attempts' *Crisis* 34(5) (2013):335-347. DOI 10.1027/0227-5910/a000205.
[23] Naomi Humber et al., 'Characteristics of and trends in subgroups of prisoner suicides in England and Wales' *Psychological Medicine* 41 (2011):2275-2285. DOI: 10.1017/S0033291711000705.
[24] Among others see: Vera Institute of Justice, 'Overdose Deaths and Jail Incarceration: National trends and racial disparities'; Beth Schwartzapfel and Jimmy Jenkins (15 July 2021), 'Overdose Deaths In State Prisons Have Jumped Dramatically Since 2001.'
[25] Sarah Larney et al., 'Opioid substitution therapy as a strategy to reduce deaths in prison: retrospective cohort study' *BMJ Open* 4 (2014), https://bmjopen.bmj.com/content/4/4/e004666.
[26] HRI (2022), 'The Global State of Harm Reduction 2022.'
[27] 'Naloxone' *Drugs.com,* https://www.drugs.com/naloxone.html# (last accessed 09/03/2023).

Also essential to a harm reduction approach is the adequate training of prison staff around non-discriminatory and evidence-based responses to drug-related health issues. Among others, this was highlighted by the Human Rights Commission of Sri Lanka (HRCSL) in its 2020 Prison Study. The HRCSL identified the "inability of prisons to manage and treat prisoners with alcohol/drug withdrawal symptoms" as a factor in many cases of unnatural deaths in prisons;[28] and recounted cases of individuals experiencing withdrawal symptoms dying as a consequence of violence and ill-treatment at the hands of prison staff.[29] In these cases, the Commission concluded that "the lack of practices in place to prevent unnatural deaths, such as screening for suicidal tendencies, proper management of prisoners with psychiatric illnesses and persons with withdrawal symptoms, was observed to be common elements in most of the cases […]. These shortcomings coupled with structural problems, such as the severe lack of staff and resources, have resulted in preventable deaths occurring in prison."[30]

The impact of policies and structural deficiencies such as those highlighted above clearly emerges in a case reported by Promo-LEX, of the death in custody of a person with a drug dependence who was enrolled in opioid agonist therapy.[31] On 21 September 2022, V.P. (a Moldovan citizen) was detained on suspicion of committing the crime of "illegal drug circulation for alienation". The next day, emergency medical assistance was requested, reporting opioid withdrawal as the issue. One day later, on September 23, V.P. died in custody. The case was investigated by the local ombudsman, the Office of the People's Advocate (OAP). At the end of the investigation, this concluded that the State had failed to ensure the right to life of the person in custody as guaranteed by Art. 2 of the European Convention on Human Rights (ECHR). The OAP denounced the absence of specific processes to involve psychiatrists, psychologists, or other specialists in the evaluation of the detention of individuals with high degrees of vulnerability (for example, because of drugs or alcohol use). Further, no monitoring mechanism was in place for competent authorities to monitor the quality of medical services provided to people in detention, in violation of the right to health of people in detention in terms of quality, accessibility, acceptability, and equity. The OAP thus concluded that in the case of V.P., systemic issues fallacies have led to death of the person, due to the lack of clear and effective procedures for addressing cases of prisoners suspected of problematic drug use. The OAP also found organisational deficiencies in the medical supervision of detained people with a drug dependence who are in pharmacological treatment with opioids.

4. The 'war on drugs' and deaths in custody

More broadly, it is worth highlighting the **impact of punitive drug policies on health in prisons and other detention settings worldwide, and in turn on deaths of people in custody**. UNODC estimates that one in five people – and one in three women – in prison globally are incarcerated for drug offences;[32]

[28] HRCSL (2020), 'Prison Study by the Human Rights Commission of Sri Lanka' (Colombo: Human Rights Commission of Sri Lanka), pp.303 onwards, https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf.
[29] Ibid.; also Satkunanathan (2021), 'A Broken System: Drug Control, Detention and Treatment of People who Use Drugs in Sri Lanka', p.33.
[30] HRCSL (2020), 'Prison Study by the Human Rights Commission of Sri Lanka', p.312.
[31] The Special Report of The Ombudsman http://ombudsman.md/wp-content/uploads/2023/01/Raport_special_deces_Inspectoratul-de-politie-Chisinau.pdf
[32] PRI (2022), 'Global Prison Trends 2022' (London: Penal Reform International), https://cdn.penalreform.org/wp-content/uploads/2022/05/GPT2022.pdf.

meaning, punitive drug policies are a key contributor to prison overcrowding, and to the incarceration of individuals at higher risk of contracting communicable diseases such as HIV, tuberculosis, and hepatitis (such as people who use drugs).[33] These factors, coupled with poor conditions of detention and lack of adequate health services, make prisons and other custody settings high-risk environments for the spread of potentially deadly diseases (such as the ones mentioned above and, more recently, COVID-19).[34]

One of the most extreme examples of this dynamic is that of the Philippines. As of September 2022, over 180,000 people were detained in Filipino jails; resulting in an over 360% occupancy level.[35] Since the launch of the anti-drug campaign in 2016,[36] the government has exacerbated the very conditions that facilitate the spread of communicable diseases, including HIV and since 2020 COVID-19, thus failing to protect the right to health but also the right to life of people in prison.[37] Between 2016-2018, people deprived of liberty increased from 96,000 to 160,000 (+64%), resulting in the country having (one of) the world's most overcrowded prison system(s). As of 30 June 2022, jails managed by Bureau of Jail Management and Penology (BJMP) (where people in pre-trial detention, facing trial, or sentenced to max. three years are detained) hosted 131,193 prisoners, of which 90% in pre-trial detention or awaiting judgment; 68.6% were incarcerated for drug offences alone.[38] In 2018, local public officials admitted that over 5,000 prisoners died at the New Bilibid Prison in Metro Manila each year (20% of prisoners) because of violence and disease, ultimately due to overcrowding which accelerates the spread of infectious diseases.[39] In 2016, the Chief of the Public Attorney Office admitted that up to "one to three inmates in every jail cell are affected by HIV-AIDS."[40] Despite that, the government continues to refuse implementing key public health interventions recognised as essential for HIV prevention, treatment and care in prison, such as HIV testing and treatment and other harm reduction services.[41]

Finally, prison overcrowding increases insecurity and **exposure to violence**, both from other prisoners and prison staff (as also noted in the example from Sri Lanka reported in the previous paragraph), in some cases with lethal consequences. In the Philippines, two deaths were reported in October 2019 alone as a result of riots at the Manila City Jail, and more are routinely denounced by NGOs.[42]

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[33] UNAIDS (2019), 'Communities at the Centre: The Response to HIV in Asia and the Pacific' (Geneva: UNAIDS), p.27, https://www.unaids.org/en/resources/documents/2019/2019-global-AIDS-update_asia-pacific.
[34] Among others, see HRI and PRI (2021), 'COVID-19 vaccinations for prison population and staff: Report on global scan' (London: Harm Reduction International and Penal Reform International).
[35] Philippines, *World Prison Brief*. Available at: https://www.prisonstudies.org/country/philippines (last accessed 09/03/2023).
[36] Among others, see A/HRC/44/22.
[37] Also see CCPR/C/GC/36, para. 26.
[38] Data on the BJMP population is available here: https://www.bjmp.gov.ph/index.php/data-and-statistics (last accessed 09/03/2023).
[39] Among others, see: Jessie Yeung (18 October 2019), 'More than 5,000 Inmates Die at This Prison Every Year' *CNN*, https://edition.cnn.com/2019/10/04/asia/philippines-inmate-deaths-intl-hnk-scli/index.html.; Jamie Fullerton (4 October 2019), '"We Don't Need the Death Penalty": 20% of Inmates Die Each Year in Philippines Jail' *The Guardian*, https://www.theguardian.com/world/2019/oct/04/we-dont-need-the-death-penalty-20-of-inmates-die-each-year-in-philippines-jail.
[40] Joseph Tristan Roxas (24 August 2016), '1 to 3 Inmates in a Jail Cell Affected by HIV-AIDS —PAO Chief' *GMA News Online*, https://www.gmanetwork.com/news/news/nation/578774/1-to-3-inmates-in-a-jail-cell-affected-by-hiv-aids-pao-chief/story/.
[41] For more details, see: UNODC (2013), "Policy Brief: HIV Prevention, Treatment and Care in Prisons and Other Closed Settings: A Comprehensive Package of Interventions" (Vienna: UNODC), https://www.unodc.org/documents/hiv-aids/HIV_comprehensive_package_prison_2013_eBook.pdf.
[42] Al Jazeera (30 September 2019), 'Gang Riot in Overcrowded Prison in the Philippines Turns Deadly', *Al Jazeera*, https://www.aljazeera.com/news/2019/09/gang-riot-overcrowded-prison-philippines-turns-deadly-190930045152121.html.; Michael Mudoon (23 October 2019), '5,200 Deaths This Year in Overcrowded Philippines National Penitentiary' *Addiction Center*, https://www.addictioncenter.com/news/2019/10/deaths-philippines-national-penitentiary/.

A particularly troubling scenario is that of deaths in custody of people arrested for drug offences where wrongdoing by law enforcement is suspected, particularly in countries pursuing violent 'wars on drugs'. One example is that of Sri Lanka, where a recent report notes an increase in deaths in police custody of persons suspected of drug offences, following a similar pattern whereby "persons are taken by the police to recover weapons/evidence, during which the detainee reportedly tries to escape and/or attacks police officers. Or they are waylaid by accomplices, resulting in the police using lethal force."[43] It is reportedly unclear whether any death investigations are conducted, and no independent investigations appear to have taken place.[44]

5. Flawed approaches to the prevention of deaths in custody

5.1 Suicide prevention

In several contexts, suicide prevention is put forward to justify derogations from the essential principles of medical secrecy (through the requirement to transmit medical information to the prison administration) and independence of doctors (through the obligation for doctors to carry out acts relating to the management of detention); thus going against the interest of the people in detention. In France, a software program invites doctors to provide information on the psychiatric follow-up history of their patients, to reveal if they have "addiction problems" or a family history of suicide. In 2015, the National Council of the Order of Doctors, the highest medical body, warned that "these provisions seriously undermine the rights of detainees to medical confidentiality, privacy and freedom."[45]
In parallel to this system, since the end of the 2000s health professionals have been called upon to sit on "single multidisciplinary commissions" responsible for examining the individual situation of people in prison, particularly concerning risk of suicide or self-harm. These same commissions are also involved in deciding whether to place the person in high-security units. In other words, doctors are called upon to take part in processed related to the management of detention, rather than healthcare. The doctor's knowledge of their patients is thus mobilised to facilitate the work of the prison administration, from a predictive and risk management perspective. The fact that doctors exchange individual assessments of their patients, without their knowledge, with the prison administration risks undermining the trust necessary for the care relationship, weakens the ethical guarantees and the quality of care in detention, and is against best practice and standards on confidentiality. It was precisely the impact on the quality of care of the absence of a guarantee of medical confidentiality that justified the attachment of prison medicine to the Ministry of Health.[46]

The same system, involving doctors and prison staff discussing the prisoner's situation in their absence, is promoted by a methodology guide in Ukraine.[47]

[43] Ambika Satkunanathan (2021), 'A Broken System: Drug Control, Detention and Treatment of People who Use Drugs in Sri Lanka.'
[44] For more information on investigation process in Sri Lanka, we refer to the input submitted by Ambika Satkunanathan on 6 March 2023.
[45] Circulaire no. 2015-112, available at: https://sante-prison.fr/upload/cnom_cir-15-12.pdf.
[46] The attachment of prison medicine to the Ministry of Health was decided by a law passed in 1994, after the so-called contaminated blood scandal linked to blood collections in prisons, which revealed the disastrous state of medical care for prisoners. See *Santé en milieu carcéral : rapport pour l'amélioration de la prise en charge sanitaire des détenus*, Haut comité de santé publique, 1993, p.37.
[47] At the initiative of an expert on behalf of a European programme, Guidelines for the implementation of the policy on the prevention of prevention of suicidal behaviour in penal institutions prisons in Ukraine, June 2020.

It is a characteristic of contemporary suicide prevention policies that, under the influence of the case-law, they develop a technical approach to the issue. Pursuant to this approach, the **focus is on preventing suicidal acts rather than seeking to improve the well-being of the detained population**. In this way, «if the general over-suicidity in prisons questions the pathogenic character of the institution, this character will not be related to the global structure of the institution but rather to specific population profiles, times and places that constitute the 'risky' moments."[48] The introduction of plain cells, in-cell video surveillance and high frequency visual checks are all examples of an approach based on a control and coercive logic. The methodological guide developed in Ukraine in 2020, mentioned above, provides for the placement of the person in an observation cell and/or visual checks by the guards every 15 or 30 minutes. In France, the Consultative Commission on Human Rights was alarmed by the introduction of video surveillance measures in cells as a means of preventing suicides, observing in particular that such a system contributes to the psychological fragility of the person observed and can "lead to a severe state of depression, autistic withdrawal or even a psychotic evolution which, in a caricatured way, translates into an inability to distinguish between the other and oneself. One way of protecting oneself from this intrusion is to develop a hatred of the other, who is then perceived as a permanent persecutor."[49]

5.2 Shortcomings of medical release mechanisms

In cases of persons with severe pathologies requiring specialised care not available or accessible within the penitentiary system, the absence or ineffectiveness of mechanisms for transfer to civilian hospitals of release on medical grounds is a major factor in premature death in many states.

In many countries, the examination of applications for medical release is often purely formal, with non-health related considerations such as the risk to public order often being put forward without taking into adequate consideration the reality of the person's access to care. As one activist in Russia noted, "regarding medical release, in our Kalinigrad region, it functions quite well. It even often happens that the administration itself submits a petition to the court for medical release. But of course it usually happens when the person is half-dead, and you need to get rid of him."[50]

In Ukraine, the problem is so critical that even interim measures decided by the European Court of Human Rights on the basis of Article 39 of its Rules to ensure the transfer of seriously ill prisoners to a civilian hospital are often not implemented, to the point of raising the concern of the Council of Europe's Committee of Ministers.[51]

The problem of the failure of release mechanisms to prevent premature deaths in custody is exacerbated by the constant increase in prison populations, which also means an increase in people in detention with complex health needs, which puts a strain on healthcare services. As noted by a recent study: "the prison population is ageing and England's prisons are overcrowded. Prisons are caretakers for those with health and social care needs whose needs might be better fulfilled outside of the carceral

[48] Cliquennois and Chantraine (2009), « Empêcher le suicide en prison : origines et pratiques » *Sociétés contemporaines*, 2009/3 (n° 75), p. 59-79. https://www.cairn.info/revue-societes-contemporaines-2009-3-page-59.htm
[49] Opinion on the monitoring of the state of emergency and the counter-terrorism measures of the law of 21 July 2016, Official Journal of the French Republic, 4 March 2017, https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034133907.
[50] https://20.europeanprisonlaw.info/library/mobilisation-of-pud/ Interview with Anastasiia Schevchuk, minute 21'44''
[51] CM/Del/Dec(2021)1406/H46.

environment."[52] The management of advanced age and debilitating illnesses is a point of particular contention for achieving equivalence of care. Namely, incarcerated people who are critically ill often do not have access to the same specialised care as those in the general population.[53] The rapidly rising average age and, correspondingly, incidence of non-communicable diseases among Europe's prison population adds urgency to the need for a timely solution.[54] Indeed, studies estimate that incarcerating people who are 55 years and older is three times as costly to the state.[55]

6. Conclusions

International human rights law imposes a heightened responsibility on states to protect the life of people deprived of liberty. This obligation is clarified, among others, by General Comment no.36 of the Human Rights Committee, according to which:

a) "States should take adequate measures […] to prevent suicides, especially among individuals in particularly vulnerable situations, including individuals deprived of their liberty".[56] As noted above, people with a history of drug use are at heightened risk of suicide in custody, particularly in the first days of detention, and particularly if they do not have access to harm reduction services such as OAT;
b) Adequate measures should be taken to protect "persons in vulnerable situations whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence."[57] These should include instances of people in custody who use/are suspected of using or otherwise engaging with drugs in countries pursuing particularly violent anti-drug campaigns, such as those recounted in previous paragraphs;
c) This heightened responsibility implies a duty to provide people in detention with "the necessary medical care". This, read in conjunction with standards on the right to health, must be understood as including harm reduction services and evidence-based drug treatment.

In line with this standard, and with the information provided throughout this submission, we encourage the Special Rapporteur to recommend Member States to:

a) On data gathering, analysis and reporting:
    a. Systematise the definition of 'deaths in custody' as well as the collection of epidemiological data on drug-related deaths in all situations of custody in the criminal justice context, disaggregated by cause of death, ethnicity, gender, age; and,
    b. Ensure this information is periodically updated and publicly available;

[52] Nasrul Ismail and Nick de Veggiani, 'How do policymakers interpret and implement the principle of equivalence with regard to prison health? A qualitative study among key policymakers in England' *Journal of Medical Ethics* (2018). DOI 10.1136/medethics-2017-104692.
[53] What do they know (2011) 'Elderly prisoners and compassionate release'. Available at: http://www.whatdotheyknow.com/request/elderly_prisoners_and_compassion; also http://www.whatdotheyknow.com/request/deaths_in_prison.
[54] I.A. MacFarlane, 'The development of healthcare services for diabetic prisoners' *Postgrad Med J.* 72 (1996): 214-217. DOI: 10.1136/pgmj.72.846.214.
[55] PEW Charitable Trust (2018), 'Prison Health Care: Costs and Quality' (Philadelphia: PEW Charitable Trust), https://www.pewtrusts.org/-/media/assets/2017/10/sfh_prison_health_care_costs_and_quality_final.pdf%20Pew%20costs%20and%20quality.
[56] CCPR/C/GC/36, para 9.
[57] Ibid., para. 23.

b) On measures to ensure the effectiveness of death investigations:
   a. Fully implement the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the Minnesota Protocol on the Investigation of Potentially Unlawful Deaths:
   b. recognise the locus standi of human rights organisations to act in cases concerning deaths in custody where the cause is questionable;
   c. Provide free legal aid to relatives of the deceased in conditions that allow their lawyers to intervene effectively throughout the proceedings;

c) On measures to prevent deaths in custody:
   a. Ensure the availability, accessibility, acceptability and quality of harm reduction services in all situations of custody in the criminal justice context. These should include, while not being limited to, OAT, NSP, context-sensitive drug testing,[58] and naloxone in custody.[59] Among others, Among others, harm reduction and other health services should be gender-sensitive, as also clarified by the 'Bangkok Rules'[60];
   b. Ensure an adequate, evidence-based assessment of drug dependence and suicide risk upon entering custody, and regularly throughout the detention; in strict compliance with the requirements of medical ethics, in particular respect for medical confidentiality and the independence of doctors from the prison administration;
   c. Adopt an approach to suicide prevention respectful of the standard of confidentiality and other essential healthcare standards, and focused on addressing root causes and underlying conditions that increase the risk of suicide in situations of deprivation of liberty;
   d. With regard to crisis situations, develop measures to promote the restoration of self-esteem, ranging from the adaptation of individual conditions of detention (relations with the outside world and adapted activities) to care in an outside hospital;
   e. Ensure the presence of an adequate number of trained healthcare professionals in custody, and promote training of all prison staff on non-discriminatory, non-stigmatising, and evidence-based approaches to drug use and drug-related health issues;
   f. Ensure the responsibility for prison health sits with Ministry of Health or its equivalent and is transferred out of the penitentiary administration; and that healthcare services in situations of custody are provided by independent, trained healthcare staff (vis-à-vis law enforcement officers or guards);
   g. Review release mechanisms and procedures to ensure their effectiveness, and their primary focus on the health of the person. Particular attention should be devoted to the

[58] Claire Toomey et al. (2022), 'Mapping Drug Use, Interventions and Treatment Needs in Scottish Prisons: A literature review' (Glasgow: The Scottish Centre for Crime & Justice Research). https://www.sccjr.ac.uk/wp-content/uploads/2022/03/Mapping-Drug-Use-Interventions-and-Treatment-Needs-in-Scottish-Prisons-A-literature-review_Final.pdf.
[59] For more detailed standards on OAT in prison, see Sarah Larney et al., 'Opioid substitution therapy as a strategy to reduce deaths in prison: retrospective cohort study': "opioid dependence and enrolment in OST immediately prior to entry to prison should be assessed during intake medical examinations. Prisoners enrolled in OST prior to prison entry should be able to continue this treatment without interruption, and other opioid-dependent prisoners should be assessed for OST and offered treatment if clinically indicated. Although there are challenges to the implementation of OST programmes in prisons and other correctional settings, these can be managed through strong executive leadership, ongoing training and education for health and custodial staff, and careful attention to issues of safety and security."
[60] A/RES/65/229, Rule 15.

right of persons deprived of liberty to have their health and care promptly reviewed by independent experts and have their findings effectively discussed in court;

h. Guarantee and promote alternatives to incarceration/detention consistent with human rights standards (including the principle of voluntariness) and best scientific evidence for people who use drugs and/or with a drug dependence, and/or other health conditions – including seriously ill-people or those beyond a certain age; and
i. As a structural intervention, review domestic drug policies with a view to reducing or abolishing incarceration, or other forms of detention, of people who use drugs, including by decriminalising drug use and possession,[61] as well as status offences.

[61] For more on drug control and incarceration, see HRI (2021), 'The Harms of Incarceration' (London: Harm Reduction International, https://hri.global/wp-content/uploads/2022/10/HRI_Briefing_Prisons_June2021_Final1-1.pdf.