Briefing note | 31 March 2022

Input to the UN Independent Expert on the enjoyment of all human rights by older persons’ report on older persons deprived of liberty

**Penal Reform International (PRI) welcomes the initiative of the Independent Expert to dedicate her report to the Human Rights Council in 2022 to older persons deprived of liberty, and the opportunity to input to the report. This submission relates to the human rights of older persons in prisons.**

*Key human rights risks and violations affecting older persons in prison*

Older persons face heightened risk of human rights violations at all stages of imprisonment, from admission and classification to accommodation, the provision of adequate healthcare, rehabilitation, and reintegration upon release. Prison staff interacting with older persons without training on age-related health and needs may struggle to identify common health problems in older persons, which can have a detrimental effect on how the criminal justice system responds to their needs. This could place older persons in prison at significant risk of discrimination; physical, psychological, or sexual abuse amounting to torture and ill-treatment; or harsher treatment and penalties for seemingly poor behaviour or difficulty cooperating with prison staff caused, for example, by sensory impairment.

In addition, older persons may experience intersecting human rights risks in prison. The needs of older persons with physical disabilities are often not reasonably accommodated for in the physical prison environment and layout. Older women and transgender persons in prison have specific needs and face risk of ill-treatment in prison, often linked to experience of trauma and gender-based violence. Further, older women may have specific gynecological, hygiene and other healthcare needs, and failure to provide for them may amount to ill-treatment.

A more detailed exploration of the human rights risks and violations faced by older persons in prison is set out in [*Older persons in detention – A framework for preventive monitoring*](https://www.penalreform.org/resource/older-persons-in-detention-a-framework-for-preventive/) (2021).

*Figures and data on older persons in prison*

In places of detention, people over 50 are often considered older due to their typically poorer health status, behavioural health risk factors, poor prior access to healthcare, and the ageing effect of prison itself. Global data on older persons in prison is not available as many countries do not disaggregate data on people in prison by age, as well as differences in the age group that is considered ‘older’ in prison (ranging usually from 50 to 60 years). Where data is available, it shows steady increases in the number of older people in prison globally. The causes of the increasing proportion of older persons in prisons are sometimes country-specific but overall due to a hardening of sentencing practices, including increased use of imprisonment and life imprisonment, especially for less serious, non- violent crimes; reduced mechanisms for early release; and isolation, poverty and lack of family support.

Older persons constitute a substantial and growing part of the prison population in some high-income countries where data is available. According to WHO, around 5% of the prison population in Europe are aged 55 years and above.[[1]](#footnote-2) In the **UK**, the proportion of persons in prison aged over 50 years has increased from 7% in 2002 to 16% in 2018.[[2]](#footnote-3) Women in prison aged over 60 years has risen by 470% since 2002 even as the overall female prison population fell by 18% during this period.[[3]](#footnote-4) In **Ireland**, 14% of the prison population in **Ireland** is above the age of 55, and in **Switzerland** the number of people aged over 50 years in prison has doubled between 2007 and 2017.[[4]](#footnote-5) Persons over 50 years account for 25% of the federal prison population in **Canada** and half of those over 50 years are serving a life sentence.[[5]](#footnote-6) In **Singapore**, the number of people in prison over 60 years increased by 50% between 2013 and 2018.[[6]](#footnote-7) **Japan** has by far the highest proportion of older persons in prison (aged over 50 years), which rose from 19% in 2016 to 35% as of December 2020.[[7]](#footnote-8)

In countries with large prison populations, the number of older persons in prison is especially significant. As of December 2020, 14% of men and 9% of women in prison in the **US** were over the age of 55, totaling 165,700 persons;[[8]](#footnote-9) it is predicated they will account for one-third of people in prison by 2030. In **India**, 13% of the prison population, amounting to 63,687 individuals, are over 50.[[9]](#footnote-10) In **China**, older people (over 60 years of age for men and 55 years for women) constitute around 3% of the prison population, totaling almost 50,000 people.[[10]](#footnote-11)

The proportion of older persons in prisons varies between countries, however, and does not seem to be increasing everywhere. Persons aged over 60 years constitute 5% of the prison population in **Peru,** around 2% in **Indonesia**, **Thailand** and **Pakistan,**[[11]](#footnote-12) and persons aged over 65 years constitute around 1.7% in **Turkey**. In contrast, persons over 50 years are considered older persons in prison in **Georgia** and **Argentina** and constitute 17.6% and 11% of the prison population, respectively.[[12]](#footnote-13)

*Specific measures taken in the context of the COVID-19 pandemic*

In the context of the pandemic, WHO made clear that advanced age is a significant risk factor for COVID-19 and that in detention settings, each additional decade of life is associated with a threefold increase in the risk of death.[[13]](#footnote-14) For instance, 46% of COVID-19 cases recorded in prisons in Ireland in February 2021 were among older persons. In the UK, the COVID-19 infection rate among people aged above 60 years in prison was 15.5 per 1,000 in September 2020 – twice as high as among the general population.[[14]](#footnote-15) Recognising the heightened risk faced by older persons, some prisons in Indonesia and New Zealand moved older persons to less crowded areas of the prison or housed older persons separately as a precautionary measure.[[15]](#footnote-16) In Ireland, such measures were found to have impacted mental and physical health, communication and social connection within prisons.[[16]](#footnote-17)

A review of emergency release mechanisms implemented in response to COVID-19 found that 38% of the 53 countries surveyed included age-based criteria that prioritised older persons for release, in line with WHO guidelines.[[17]](#footnote-18) Release mechanisms in Afghanistan, Azerbaijan, Bolivia, Peru and Colombia, among others, explicitly included older people.[[18]](#footnote-19) Honduras, South Africa, and El Salvador prioritised persons aged 60 years and above for early release.[[19]](#footnote-20) As most countries do not publish disaggregated data on who is released from prison, however, it is difficult to know how many older persons globally benefitted from early release. Turkey, however, released over 65,000 persons aged 65 years and above who had been convicted of ‘ordinary crimes’ and were near the end of their sentence.[[20]](#footnote-21)

Not all countries explicitly included older persons in release mechanisms, however. In India, the guidelines set by all but four states did not specifically prioritise the release of older persons. In the four states that did consider cases of older persons for release, the age that applied ranged from 60-65 years.[[21]](#footnote-22) In the Philippines, out of 3,000 older people in prison, only 409 were released from prison between April and July 2020 (among 21,000 people released in total).[[22]](#footnote-23) In England and Wales, compassionate release of low-risk detainees was introduced in April 2020 and those with extreme medical vulnerabilities could apply for compassionate release on a case-by-case basis.[[23]](#footnote-24)

Despite calls by PRI and others to prioritise prison populations and staff for COVID-19 vaccination, only 56 out of 131 countries where national vaccination plans could be identified explicitly mention people in prison as priority groups. In cases where countries carried out vaccination in prisons following the same risk groups as in the general community (usually based on age and other risk factors), the age at which people are prioritised for vaccination is usually higher than the 50 years recommended by WHO for detention settings.[[24]](#footnote-25) Such was the case in Russia, where vaccines were rolled out in prisons following the same criteria used for the general population, prioritising those over 60 years.[[25]](#footnote-26) Similarly, vaccination of persons aged 70 years and above commenced in prisons in Honduras in May 2021.[[26]](#footnote-27) In Israel, a Supreme Court order meant people in prison over the age of 60 and those with pre-existing conditions were prioritised.[[27]](#footnote-28) In some countries like Egypt, where 5,000 older and chronically ill persons in prison have reportedly received the vaccine, the eligibility criteria is unclear.[[28]](#footnote-29)

Annex: Examples of good practices aimed at ensuring older persons deprived of their liberty can exercise their human rights [[29]](#footnote-30)

Ensuring that older persons deprived of liberty can exercise their human rights requires sentencing practices and opportunities for release that reflect the particular risks and needs associated with older age, a physical environment that is safe for older persons with access to age-responsive healthcare, rehabilitation and reintegration opportunities, accurate and regular data collection on older persons and effective oversight of places of detention. Examples of promising initiatives are listed below.

*Sentencing practices and compassionate release*

* Judges in **Argentina** have the discretion to order house arrest for persons aged 70 years or above who are in pre-trial detention or have been convicted of an offence.[[30]](#footnote-31)
* In **Russia**, life imprisonment cannot be imposed on persons above the age of 65 years at the time of delivering the verdict and in 2015, older people in prison – men over 50 and women over 55 − were one of the categories eligible for amnesty.[[31]](#footnote-32)
* In **Peru**, under Legislative Decree No. 1322, the use of electronic monitoring mechanisms should be prioritised in the case of people with disabilities and older persons.
* **In Georgia**, conditional release can be considered upon reaching 60 years of age.[[32]](#footnote-33)
* In **Pakistan**, a law that came into effect in 2019 in Sindh allows for the release of men over 65 years and women over 60 years from prison who have served half their sentence as well as those with life threatening illnesses.[[33]](#footnote-34)
* In the **Philippines**, 127 persons were awarded executive clemency on the basis of their age and illness in 2017 and their sentences were commuted or pardoned.[[34]](#footnote-35)
* In **Thailand**, the annual ‘Royal Pardon’ grants unconditional release to people in prison who are aged over 70 and in prison for a first offence, and those who are 60 years or older with less than three years of their sentence left to serve.[[35]](#footnote-36) In **Cambodia** people in prison over the age of 65 are eligible to request a royal pardon.[[36]](#footnote-37)
* **Mexico** announced in 2021 that a decree would be passed authorising the release of persons over 65 years in federal prisons, among others, who had chronic conditions like diabetes or high blood pressure.[[37]](#footnote-38)
* **Armenia** considers an individual’s state of health as well as detention conditions as criteria to determine compassionate release on health grounds, following a recommendation of the National Preventive Mechanism (NPM) to amend legislation which prescribed specific medical conditions as grounds of release, which excluded many older persons in prison.

*Infrastructural and safety concerns[[38]](#footnote-39)*

* The infrastructure of a penitentiary centre for older persons in **Costa Rica** is designed to meet the specific needs of older persons in a less repressive way. Bedrooms do not have bars, there are handles in the corridors, restrooms and showers for support, single-level beds, hot water, a dedicated kitchen and doctor’s office, a library, computer area, and green spaces to spend time during the day.
* In **Switzerland**, where the number of older persons is projected to increase threefold by 2030, Lenzburg prison has a dedicated ‘60-plus’ unit which aims to meet the specific needs of older persons. There is no obligation to work, the unit offers courses for skills and knowledge development to reduce the risk of isolation, and all those residing in the unit are eligible to receive a pension. However, the unit is not yet equipped with a dedicated care section, specialised staff or facilities to accommodate end-of-life care.[[39]](#footnote-40)
* A dedicated unit for older people in prison in **Hong Kong** displays notices in large print, provides warm showers throughout the year, barrier-free access and ramps, easy access to bathrooms and toilets, wheelchairs, walking frames and crutches, and handrails for support.

*Healthcare*

* **Argentina** has developed a new programme in 10 penitentiary units for persons over 60 years of age to provide personalised care and activities based on their physical abilities and state of health. It involves a comprehensive assessment upon admission by a multidisciplinary team on their ability to perform daily tasks and activities for independent living, such as preparing meals and taking medication.[[40]](#footnote-41)
* In **Japan**, specialist staff with expertise in gerontology and aged care assist older persons in prison. A new policy was implemented in prisons in 2019 aimed at early detection of dementia and provision of treatment to ensure effective reintegration upon release. Kasamatsu women’s prison also provides older women with exercise classes to reduce their dependency on nursing care when they leave and younger persons in prison learning nursing care as part of vocational training assist the older women.[[41]](#footnote-42)
* Prison officers in **Scotland** have been given training on how to work with people suffering from Alzheimer’s and dementia, how it impacts their capacity for communication and their memory.[[42]](#footnote-43)
* In **England and Wales**, the Dying Well in Custody Charter was launched in 2018 which sets out standards and guidelines for palliative and end-of-life care in prisons and, in October 2020, the government committed to developing a strategy on the ageing prison population.[[43]](#footnote-44)

*Rehabilitation and reintegration*

* **Japan** instituted a Special Coordination programme in 2009 through which volunteers in the community, under direction from probation officers, support the reintegration and self-reliance of older persons and persons with disabilities in prison by working with correctional institutions and community support centres to assist older persons in accessing housing, welfare, and social support services provided by local governments.[[44]](#footnote-45)
* The Peterborough Reintegration Services in **Canada** opened the ‘Haley House’ in 2016 to meet the needs of older persons transitioning from federal correctional institutions to the community. Designed to meet the needs of those with chronic physical and mental health issues or who are nearing end of life, the facility provides all meals, access to healthcare, community support, transport and accompaniment to appointments, resident action plans, and collaboration with parole officers.[[45]](#footnote-46)
* Some prisons in **England** have been working with NGOs to provide older women in prison with pre-release support and guidance, help older persons maintain contact with their families, run peer networks and organise day trips to help them become comfortable with life in the community and assist with practical support for bus pass applications.[[46]](#footnote-47)

*Data collection*

* In **Luxembourg**, the Ombudsman expanded the definition of an older person in prison to include those age 55 and above rather than 60, in part because interviews found that people aged 55-60 raised the same considerations as those put forward by the over 60 group, which was explained by the fact that those in detention age faster than people outside.[[47]](#footnote-48)

*Monitoring practices*

* In **Switzerland**, the NPM ensures that a sample of older men and women are included in their private meetings and that questions are age-relevant – such as whether they have easy access to fresh air, contact or interaction with other detainees, appropriate food, and for those under sentence, whether they have an obligation to work and what type of work is available.
* In **New Zealand**, the inspection methodology of the Chief Ombudsman which assesses whether the conditions and treatment of all detainees are effective in preventing torture and other ill-treatment, includes a focus on the needs of older people, such as access to health services and appropriate equipment such as hospital beds, walking frames and hearing aids.
* The NPM in **Costa Rica** assesses the condition of prison infrastructure, including kitchen and food supply, diets, medical care, and the punctual delivery of medicines, and during the COVID-19 pandemic, was in regular communication with the authorities of the older persons centre regarding health protocols, medical care, preventive measures, and responses in the case of an outbreak.
* In **Armenia**, the NPM affords special attention to older persons, those who are ill and persons with disabilities as groups in situations of vulnerability during both general and special visits to places of detention, with particular attention to medical treatment and care, including the provision of prescribed medication and, where necessary, mental health support. Conditions of detention of older persons and persons with disabilities are monitored with a special methodology, such as the humidity of cells, support for independent movement, outdoor exercise, contact with the outside world, personal hygiene, accessibility of toilets and vehicles used for transport.
* The NPM in **Finland** conducts several thematic monitoring visits concerning accessibility in prison and has found that some prisons visited were not accessible or capable of housing people with physical disabilities, which also affected older persons. For example, some prisons did not have a built-in induction loop system for hearing-impaired persons while in others, people with physical disabilities were unable to work as facilities were not accessible.
* The NPM in **Ukraine** observed that many prisons lack barrier-free environments which deprives older persons and persons with disabilities of opportunities to leave the residential building. Recommendations were provided to the Ministry on Social Policy regarding standard regulations for residential facilities for older people, which have not yet been approved.[[48]](#footnote-49)
* In **Luxembourg**, the NPM noted a deterioration in the behaviour of younger people in prison which can put older at risk or in fear of violence and recommended the creation of geriatric units (one floor of a detention block) which would be available, on a voluntary basis, to those of a certain age and subject to security considerations.
* Calls for dedicated attention to the situation of older persons have been made by prison inspectors, human rights organisations, and others in **Western Australia**,[[49]](#footnote-50) **New Zealand**,[[50]](#footnote-51) **France**,[[51]](#footnote-52) **Colombia**,[[52]](#footnote-53) and **Mexico**.[[53]](#footnote-54)

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