

CUSTODIAL CRISIS?

AN INTERNATIONAL REVIEW OF GROWING PRISON POPULATIONS

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ABSTRACT

Over the past two decades the number persons incarcerated worldwide has increased by 20 percent. Overcrowding and capacity issues are major challenges in many countries, including countries that have long been considered to be at the forefront of prison and probation services, such as Canada, Norway and New Zealand. Prison operations are complex and it is expensive and time-consuming to increase the number of prison places. Overcrowding also has a number of adverse consequences. The Council of Europe stipulate a moderate occupation rate as key to the ability to safeguard the inmates' rights and conduct humane and rehabilitative corrections operations.

This international outlook identifies a number of factors considered to affect the number of inmates in some countries that are comparable to Sweden. The selection consists of industrialised democracies with well-developed correctional systems — countries that experienced a significant increase in their prison populations between the years 2000 and 2016. The purpose is to contribute to a better understanding of the situation in Swedish and acquire more knowledge about what might affect the population trends onwards.

The analysis shows that several factors interact when populations increase. Two key factors define the size of the prison population: *length of prison stay and inflow of new inmates*. The trends in the countries studied indicate that the prison population is affected primarily by *criminal policy decisions and by the effectiveness and prioritisations of the justice system*. Increased penal values (sentence length) is a relevant issue but equally important is that of postponed or recall of conditional release, often based on risk assessments. Tightened release conditions have a more immediate effect on the number of inmates than does increases in penal values.

Procedural changes such as bail or remand conditions and fast tracks, such as direct execution of sanctions, appear to increase the influx and affect the occupation rates throughout the remand and prison system. Increased migration, with foreign citizens not being offered alternative sanctions, is another factor. Social exclusion among indigenous populations is also an issue in some of the countries.

Another mechanism is that the expansion of the probation system, paradoxically enough, may increase incarceration. This applies, for example, to a stricter application of the recall of conditional release in due to breached conditions as well as to extended probation periods. The report also discusses consequences of more effective prosecution, priorities of the justice system, crime trends, demographic changes and reforms in psychiatric care.

INTRODUCTION

More than 10 million people worldwide are incarcerated in remand centres or prisons. Since the turn of the millennium the world prison population has increased by 20 percent, somewhat exceeding the global population growth of 18 percent. The trend varies within and between continents. In Oceania, for example, the number of incarcerated persons has increased by 60 percent, whereas in North and South America combined it has risen by 40 percent. In Europe, the prison population has declined in recent years, primarily due to declines in Russia and other East European countries.

The Swedish Prison and Probation Service (SPPS) has been working on current and future capacity issues, as overlooking a growing prison population could have serious consequences. Overcrowding in remand or prison directly affects the staff and the inmates' every day life; it also impairs the ability of the SPPS to carry out its mission – namely, to execute sanctions in a secure and humane manner and to reduce the risk of recidivism.

In its *White Paper on Prison Overcrowding* the Council of Europe describes several negative consequences of overcrowding:

- Less room for basic humanitarian needs, such as time outdoors, physical activity, time outside one's cell and contact with friends or relatives.
- Difficulties in meeting inmates' medical needs.
- Heightened level of conflict.
- Impaired conditions for treatment programmes and re-entry measures.
- Increase of prisoners serving prison sentences in remand centres

In addition, the Swedish experience of escapes and violent extractions in 2004 from the SPPS show that overcrowding makes the differentiation of inmates more difficult, which affects security throughout the service. In addition, the maintenance of the real estate is also affected, which has major operational and long term financial consequences.

THE ASSIGNMENT

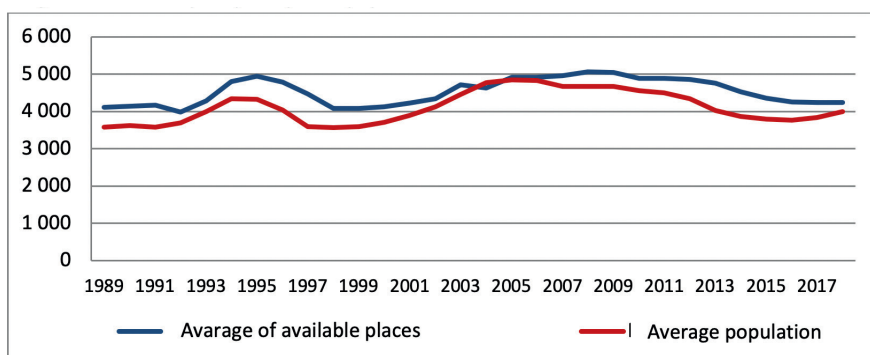
To understand our own development and obtain more knowledge about what drives incarceration numbers, the SPPS decided to conduct a global business analysis. The assignment was to gather knowledge about countries in which the population in correctional facilities has increased in the 2000s. The countries were to be comparable with Sweden regarding their general development level and corrections standard. Based on an initial survey, some of the countries were selected for more in-depth study. The work was carried out by expert Gustav Tallving at the Unit for International Affairs.

This study does not focus on the incarceration rate – a measurement commonly used for between-country comparisons. It is not intended to compare incarceration numbers or even population sizes. The study focuses instead on the trend – more specifically, the increase that has taken place in the countries in question. Primarily, the investigator will look at the total population trend and, as far as possible, attempt to identify specific groups that drive the trend in different countries.

THE TREND IN SWEDEN

Over the past 30 years the average annual population in prison has varied from 3600 to 4800 inmates. During most of this period, the SPPS succeeded in adapting its infrastructure to the size of the prison population, with the exception of a period around 2004 that came to be marked by overcrowding, escapes and violent extractions. Since then, due to a declining occupancy, capacity had to be adapted to a decreasing population. In 2016, however, the trend changed, and today capacity is under pressure in both prisons and remand centres. Consequently, the SPPS has again decided to expand its capacity, primarily through the densification of existing units but also, eventually, through the construction of new facilities.

DIAGRAM 1: PRISON CAPACITY AND PRISON POPULATION 1989—2018*



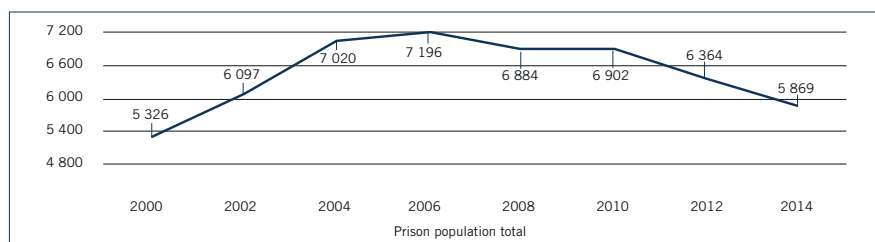
* Population according to the older definition that was used up to and incl. 2016. Population in 2017—2018, translated according to the older definition. The 2018 population estimated per full year based on data up to October, assuming that the population in November and December remained unchanged.

Source: SPPS Statistics Section

Remand centres and prisons are ‘communicating vessels’ in the correctional system and can thus be seen as parts of the same system. Since the 1960s Sweden has had a relatively small client population, in total around 5000 inmates in remand centres and prisons. The mid 1990s saw the first increase,

which perhaps heralded a new situation. After a temporary decline at the end of the 1990s, around the turn of the millennium the population increased once again. Taking the combined measurement of remand centre+prison, which is often used in international comparisons, the increase from the beginning of the 00s was extremely sharp – almost two thousand inmates over six years, which corresponds to an increase of 35 percent (Diagram 2).

DIAGRAM 2: PRISON POPULATION TREND IN SWEDEN



Source: World Prison Brief

DEFINITIONS AND SOURCES

Global statistics on prison populations and incarceration rates have been collected from the World Prison Brief, a database administrated by the Institute for Criminal Policy Research in London. *Prison population* refers to the total number of individuals held in prisons and remand centres. Individuals under police arrest or in migration detention are not included in the measurement. *Prison rate or incarceration rate* is based on the number of incarcerated individuals per 100,000 inhabitants and describes the level of incarceration relative to the size of the general population. For the present study the database searches were made in March 2018 and at that time 2016 was the most recent reference year.

The *crime trend* is based on statistics from the United Nations Office on Drugs and Crimes (UNODC) on reported crimes and relative crime frequency (per 100,000 inhabitants). Data exists for all of the countries selected for the period 2003–2015. The indicators studied are frequency and relative frequency of reported theft, assault, sex crimes and murder, which provides a fairly good picture of the crime trend.

Population growth is based on statistics from the World Bank and has been used to relate the prison population growth factor to general population growth. Note also that it is fair to assume that general population growth to some degree increase total criminality.

The country analyses are primarily based on information provided by the various countries' correctional agencies and other documents to which they themselves have referred. See further under *Analysis and sampling*.

ANALYSIS AND SAMPLING

A search was carried out in the World Prison Brief database to identify which of the comparable countries had increasing prison populations during the measurement period. 'Comparable countries' refers to industrialised democracies with well-developed corrections systems. The aim was to identify countries that have had a long-term increase in their prison population. The search area was

countries in Asia, Oceania, North America and Europe. Several countries were found to have increases during the measurement period. The following table shows that it is only the Netherlands and Japan that had fewer inmates in 2016 compared to in year 2000.

TABLE 1: PRISON POPULATION TREND IN SCREENED COUNTRIES

Table 1: Prison population trend in screened countries					
Country	2000		2016		Population increase
	Population	Incarceration rate	Population	Incarceration rate	
Sweden	5326	50	5639	57	6%
Norway	2548	57	3850	73	51%
Denmark	3382	63	3418*	59*	1%
Finland	2855	55	3174*	57*	11%
Netherlands	13 847	87	10 102	59	-27%
Belgium	8688	85	10 619	94	22%
France	48 049	82	71 190	110	48%
England & Wales	64 602	124	85 348	146	32%
Scotland	5 869	116	7 611	141	30%
Ireland	2 948	77	3 718	80	26%
Italy	53 165	93	54 653	90	3%
Turkey	49 512	73	229 790*	285	364%
Japan	61 242	48	56 805	45	-7%
Australia	21 714	114	38 845	160	79%
New Zealand	5 720	148	9 495	203	66%
USA	1 937 482	683	2 145 100**	666**	11%
Canada	35 533***	115***	41 145	114	16%

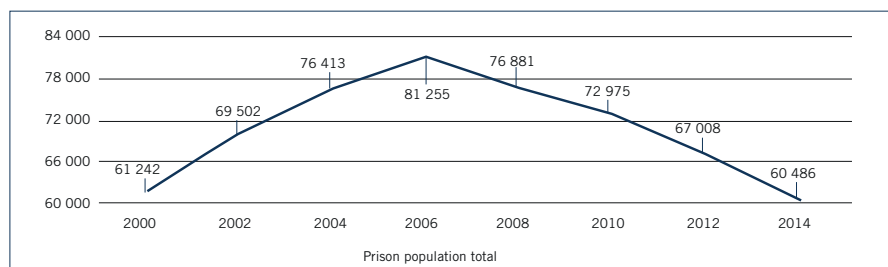
* 2017 figure; ** 2015 figure; *** 2001 figure

Source: World Prison Brief

Some countries, such as Canada, had minor increases on a level with the general population growth. Even so, Canada was specifically included since they have a particularly interesting trend as regards to the distribution between pre-trial detention (remand) and prison inmates.

Several countries also had the trend of a rising population at the beginning of the 2000s, which then declined again starting in 2006. That is a trend that resembles the trend in Sweden. In Japan the population increased by 20,000 clients in only six years, an increase of 33 percent, but then fell to the previous level only eight years later.

DIAGRAM 3: PRISON POPULATION TREND IN JAPAN



Source: World Prison Brief

Japan, Finland, the Netherlands and Spain have also seen similar trends. The USA also had a slight decrease in the past few years. What this tendency is caused by is not within the scope of this study, although the question of declining prison populations is as interesting as that of increases. Over the course of the study it became clear that in certain countries, for example in Norway, the trend seems to show a more *cyclical variation*, whereas in others, for example in France, increases seem to be that of a *structural* or *static* nature.

Regarding countries in which the increase has been essentially constant throughout the measurement period, Australia stands out with an increase of 79 percent between the years 2000 and 2016. It is closely followed by New Zealand (66 percent), Norway (51 percent) and France (48 percent). Somewhat smaller but nevertheless significant increases are found in Belgium (22 percent), Canada (16 percent) and England/Wales (32 percent). The increases in Canada, Belgium and France started somewhat later, resulting in more moderate yearly increases.. Ireland and Scotland also had increases on a level with England and Wales but were excluded from the analysis because of time restraints. These countries can be partially represented by England and Wales, despite the fact that Ireland and Scotland differ in regards to legislation and criminal policy. England and Wales is also where they have conducted the most in-depth analysis of their growing prison population. In Turkey the population increased dramatically after the attempted coup d'état in July 2016. In November 2017, according to information from the Turkish corrections authority, 230,000 individuals were incarcerated in Turkey. The increase is connected with the mass arrests of followers of the so-called Gülen movement, who were accused of being behind the attempted coup.

The following countries were finally selected: Norway, England/Wales, Belgium, France, New Zealand, Australia and Canada. A questionnaire was sent to the correctional agency in each of the countries, asking how they themselves viewed their client trends since year 2000. They were also asked to share reports and analyses that other institutions or universities had produced. Over and above these documents, Internet searches were conducted to confirm that the information provided by the agencies was correct and to obtain a more nuanced picture of their responses.

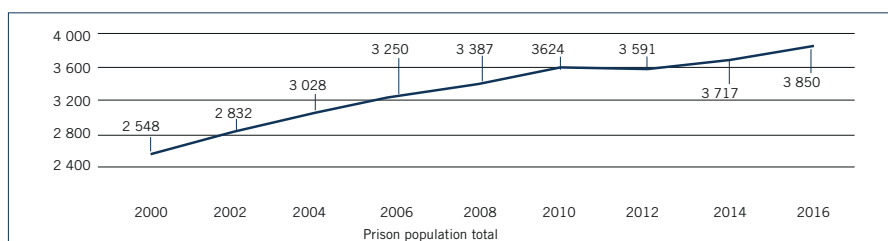
RESULTS

NORWAY

Norway had a steady increase in its prison population and incarceration rate since the 1980s. The increase tapered off at the end of the 1990s but subsequently resumed with an average increase of 2.6 percent per year. The general population growth during the same period varied between 0.5 and 1.3 percent per year.

The crime trend in Norway is fragmented. For theft there does not appear to be any clear trend, which is unusual, given that property crimes are generally declining in the Western world. Regarding violent crime the number of reported assaults per 100,000 inhabitants increased, up to 2007, and then decreased again. The murder rate during the 2000s has declined with the exception of a few years – particularly 2011, the year of the Utøya attack. Sexual offences increased, but a certain tapering off can be discerned. The UNODC statistics cover only up to 2015 but the MeToo movement may have led to a higher reporting frequency in recent years.

DIAGRAM 4: PRISON POPULATION TREND IN NORWAY



Source: World Prison Brief

The main reason for the increase in the number of incarcerated individuals in recent years is, according to the Norwegian Correctional Service, a sharp increase in the number of foreign citizens in Norwegian prisons. When the Schengen agreement was expanded eastward in 2007 the number of incarcerated individuals from these countries rose sharply, and citizens from Eastern states such as Romania and Poland now account for half of all foreign citizens in prison. Foreign citizens have longer sentences as they are more often convicted of serious drug and sexual offenses. At the same time, they lack access to alternativesanctions, to which Norwegian citizens have access. Otherwise, the use of electronic monitoring, for example, is steadily increasing; consequently domestic citizens who are sentenced to prison are channelled away from the prison system, further increasing the proportion of foreigners in prison. Moreover, a number of increases in penalty severity, in relation to sexual offenses for instance, seem to have had an impact on sentencing decisions in recent years.

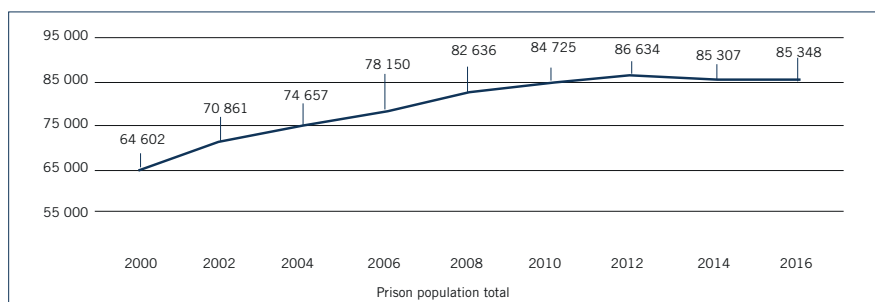
The waiting list that Norway had for several years has now been shortened, partly through renting prison capacity in the Netherlands. The queue consists mainly of Norwegian citizens with fairly short-term prison sentences. The situation in Norwegian prisons in recent years has been made more difficult by insufficient maintenance of existing infrastructure. Some prisons will soon have to be closed unless funds are set aside for renovation and/or new construction.

ENGLAND AND WALES

Her Majesty’s Prison and Probation Service (HMPPS) operates the remand centres and prisons in England and Wales. Both the prison population and the incarceration rate have increased every decade since the Second World War. Since the millennial shift the increase has continued at the rate of approximately 1.8 percent per year. The increase may sound modest on average; however, since 1993 the prison population has almost doubled – from 44,000 to 85,000 incarcerated individuals.

Since the year 2000, the general population increase has accelerated from a low growth rate and is now 0.8 percent per year. Reported crimes in England and Wales indicate a declining trend based upon the four indicators included in this study. Assault, theft and murder have declined during the period and the latter two categories have dropped by almost half. Reported sexual offenses, on the other hand, has increased. But it is difficult to say whether this is due to an increased propensity to report such crimes or to an increase in criminality. However, self-reported victimisation in the UNODC database does not indicate any clear increase of sex offenses in England and Wales.

DIAGRAM 5: PRISON POPULATION TREND IN ENGLAND AND WALES



Source: World Prison Brief

There appear to be two primary reasons for the growing population in England and Wales: *increasing numbers of people are sentenced to direct execution of their prison sentence – Immediate Custodial Sentence – and increasing sentence lengths.* The average prison sentence increased from 14.3 months to 18.8 months during the period 2000–2016. The *length of prison stay*, that is, the actual time spent in prison, also increased, from 8.1 to 9.9 months. The percentage of short-term prison sentences (defined, in England/Wales, as less than four years) declined by 50 percent to 34 percent in approximately the same period.

Consequently, sentence lengths increased markedly, due among other things to the introduction of Imprisonment for Public Protection (IPP), *an indeterminate sentence*, which was removed in 2012. Four years after its removal, 4000 individuals were still serving indeterminate IPP sentences. The IPP was replaced by the Extended Determinate Sentence (EDS), which is now being imposed to an ever increasing extent. EDS implies a long-term *prison sentence without the possibility of conditional release.* Indeterminate sentences still exist, in the form of life sentences. Such sentences can be assigned a time limit by a parole board, but certain life sentences are ‘whole life orders’, for which no release from prison is granted. The number of individuals sentenced to life imprisonment has risen by 40 percent since 2002, which also increase the population.

Recall of conditional release is also increasing, which has led to longer times spent in prison. The number of incarcerated persons who are serving a forfeiture of release increased by 600 percent during the period. There are two types of recall of conditional release in England/Wales: Fixed Term Recall entails the forfeiture of 28 days at a time. If the sentence is shorter than 12 months, 14 days are forfeited at a time. Standard Recall means the person convicted may return to the prison and that a supervision board then decides whether or not to allow a release, based on the risk of recidivism. In the case of a limited-time sentence the client may be held in prison no longer than to the end of the sentence. Three reforms lie behind the sharp rise in recalls:

- The Crime and Disorder Act of 1998: Clients with medium-term sentences came to be included in Executive Recall, which means that *the correctional agency may make recall decisions*. Previously this was a matter of a court.
- The Criminal Justice Act of 2003: *The probationary period was extended from 2/3 of the sentence period (half-time release is standard) to encompass the entire sentence period*. Recall due to misconduct during the probationary period was extended from 2/3 of the sentence period to the entire sentence period. *All releases from recalled conditional release would now be examined by the supervisory board*, which led to few releases.
- The Offender Rehabilitation Act of 2014: *Everyone given a prison sentence receives one year's supervision upon release*. Previously, this only applied to those with sentences of more than one year's imprisonment.

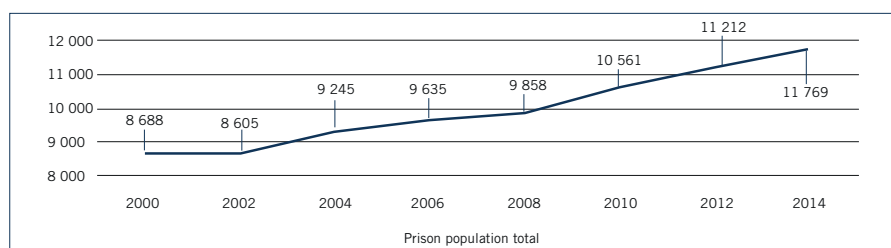
To mitigate the rapid growth in forfeited prison years, in 2008 the above-mentioned Fixed Term Recall system was introduced. This led to a temporary decline in the number of clients under recall; however, in 2014, the number began to increase again.

BELGIUM

During the second half of the 20th century Belgium had a small, stable prison population; however, in the beginning of the 1990s it began to grow in size. Since the new millennium, Belgium's prison population has risen by 22 percent, entailing an average increase of approximately 1.3 percent per year. The population increase in the same period was under one percent, with the exception of one single year.

Assault and sex crimes increased up to 2011, after which assault declined somewhat and sex crimes remained stable. As in the rest of the Western world, theft declined over time. The number of murders also declined during the period.

DIAGRAM 6: PRISON POPULATION TREND IN BELGIUM



Source: World Prison Brief

In Belgium the client population has increased moderately, but over a long period – that is, since the early 1990s.

The Belgians have been active in developing alternatives to both remand and prison sentences. For remand, electronic monitoring may be used, as can release under certain conditions, while a trial is pending. A large proportion of prison sentences have been converted to electronic monitoring but this has not stabilised the prison population. The Belgians themselves report that new alternatives actually tend to increase the total volume of individuals in the corrections system. They report that the alternatives drive prosecutors and judges to use the new alternatives instead of conditional sentences or release pending trial.

The release procedure appears to depend on what security class an inmate is released from. If an inmate has shown that he or she has coped with living in an open correctional facility prior to release, the release board would view that as a protective factor. If he or she would be released from a higher security class, that would be viewed as a risk factor in itself. How the flow of incarcerated individuals is steered within the correction system and what alternatives may be provided can thus affect the length of time spent in a corrections facility. This of course presupposes that it is possible to reschedule a planned release to an earlier or later date. Similar effects have been observed in the case of parole.

Recalled conditional release and postponed releases have also increased. The Belgian researchers in this area maintain that they can discern an increased risk-awareness among the decision-makers. That, in turn, leads to postponement of release or a tightening of release conditions. Since the 1990s, an increasing number of incarcerated individuals have served the maximum time of their sentence.

Since 2015, the population has declined, which is primarily attributable to the following factors:

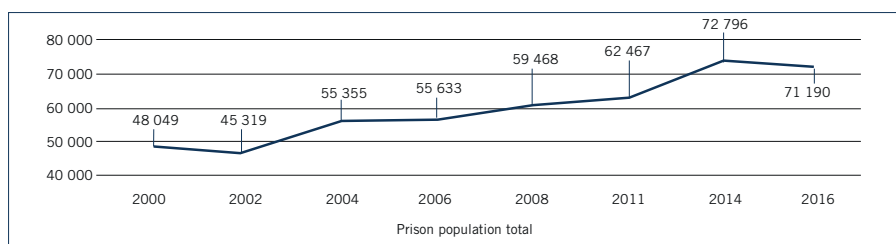
- The increasingly prevalent use of electronic monitoring
- A stricter application of the deportation of foreign citizens, through both the EU's 909 framework decision and transferral to the migration authority prior to release for further deportation to outside the EU.
- The establishment of closed psychiatric care. Until recently, mentally ill inmates had been held in regular correctional facilities (for which Belgium has been criticised).

FRANCE

Unlike Belgium, the French prison population has grown sharply since the middle of the twentieth century. Up to the millennial shift, this involved almost a doubling of both the population and the incarceration rate. The increase subsequently accelerated, with a 48-percent increase during the measurement period. During the period 2002–2014 the prison population increased by an average of 2.5 percent per year. The general population increased during the same period by less than one percent per year. The most dramatic increase was between 2002 and 2004, when France registered a total of 10,000 additional incarcerated individuals.

The French crime trend indicates an increase in both assault and thefts. The latter is surprising, given that the general trend in the Western world is toward lower numbers of property crimes. Sex offenses declined during the period 2006–2010, but are now significantly higher than at the start of the measurement period. The murder rate has been declining, except for in 2015 after the terror attacks in Paris.

DIAGRAM 7: PRISON POPULATION TREND IN FRANCE



Source: World Prison Brief

Overcrowding in French correctional facilities is more the rule than the exception, and the problem is characterised as structural, rather than cyclical. The European Committee for the Prevention of Torture (CPT) reported a few years ago that more than half of the French prison population is held in correctional facilities with overcrowding of more than 120%. The situation is worst in the French-administrated overseas territories, such as Guadeloupe (191 percent), Martinique (226 percent) and Tahiti (466 percent). Remand centres and so-called short-term prisons are the worst affected, since they cannot refuse to accept new inmates. The increased use of so-called preventative detention (*garde à vue and détention provisoire*) also results in more persons being held on remand. This type of deprivation of liberty is used to handle high-risk individuals who may perhaps not yet have committed any crime. Available information indicates that the increase is attributable to the terrorist threat and that the legislation in question is used to incapacitate potential perpetrators.

Combined with the fact that criminality seems to have increased in recent years, the French prison population has been affected by factors similar to those in, say, England and Wales. Due to public demand for tougher sanctions and a political determination to implement such changes, minimum sentences were introduced in penal legislation in 2007 as part of the election promises of Nicolas Sarkozy. The minimum sentence was abandoned as early as 2014; despite this the prison population continued to increase.

A fast track for juveniles – *immediate appearance* – has led to the prioritisation of cases involving young people at risk of a prison sentence, which has led to more prison sentences. Campaigns to combat ordinary crime, such as domestic violence and traffic offences, have also led to an increased inflow of cases in the legal chain.

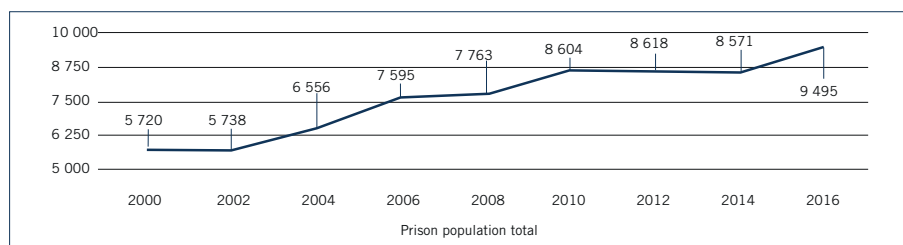
To stem the rise in its prison population, France introduced the opportunity to impose electronic monitoring as an alternative to remand. The adoption of this application, however, is proceeding slowly. President Macron is currently promoting the issue of more alternatives to prison sentences, both surveillance and increased use of electronic monitoring anklets. It remains to be seen whether these reforms go through and whether they will have any effect.

NEW ZEALAND

Historically, the prisoner population in New Zealand has grown steadily, as has the incarceration rate, which is currently four times higher than in 1950. After Australia, New Zealand had the sharpest increase in this study, with a prison population 66 percent larger in 2016 than in 2000. The average increase is 3.2 percent per year. The prison population increase during the same period varied between 0.5 and 2 percent per year.

The crime trend largely resembles that of other Western countries as regards property crime. Reporting of assault increased during the second half of the 00s, but subsequently returned to the lower levels of the years around the millennial shift. The murder rate has remained essentially unchanged, unlike in Australia and England/Wales, where the murder rates have dropped sharply. The number of reported sex offenses has increased sharply – an increase that does not appear to be slowing.

DIAGRAM 8: PRISON POPULATION TREND IN NEW ZEALAND



Source: World Prison Brief

The New Zealanders have produced a careful analysis of the trend, and there are several factors that distinguish New Zealand from other countries. New Zealand stands out in this respect on account of primarily two factors. First, the country has *higher levels of criminality as regards violent crime and sex offenses*. Even *domestic violence* is more common here than in other Western countries. Second, the *police clearance rate* in New Zealand is relatively high. Combined, a high level of criminality of a serious nature and many arrests has led to an increased number of individuals incarcerated in correctional facilities. The UNODC statistics on reported violent crime shows that there was an increase during 2005–2009. The same applies to the number of prosecutions. Since 2010 the number of reportings has declined as had the number of prosecutions. One interpretation could be that the New Zealanders’ analysis refers to a crime trend that is no longer equally current, but that is still has consequences further downstream the legal chain, primarily in the correctional system.

Another factor is the social problems affecting the indigenous population, the Maori. For Maori, the propensity of going to prison is six times higher for non-Maori. The risk is on a level with the Canadian aboriginal peoples, but significantly lower than among aboriginals in Australia, for whom the risk is 15 times the risk for non-aboriginals. However, since the Maori make up such a large proportion of the total population of New Zealand – approximately 15 percent – the group is significant in the country’s correctional facilities. Gang related crimes are common among convicted Maoris, which makes rehabilitation and reintegration more difficult.

After several high-profile acts of violence at the end of the 1990s, in 1999 the initiative was taken to hold a referendum. That resulted in a more repressive criminal policy, whereby ‘the victim’s right to compensation, minimum sentences and hard labour for violent criminals’ became the guiding principle. As a first step in this new policy, in 2000 the government enacted a new Bail Act. Bail is a common system in Anglo-Saxon countries. It permits a suspect to be released from custody for a guaranteed sum of money. Under this new Act, bail conditions were based to a higher degree on the risk of recidivism.

Police prioritisation of *domestic violence* has led to an increased influx of such cases. These are often cases in which the risk of recidivism can be considered high. Combined, these two changes have led to an increase in the number of persons held in remand.

The Sentencing Act of 2002 was intended to provide clearer guidance to judges in sentencing. This legislation assigns highest priority to the protection of the public, but seems not to have led to longer sentences for a given crime. However, since the influx of suspected perpetrators of serious violent and sex offenses has increased, the proportion of individuals given long sentences in the system has increased.

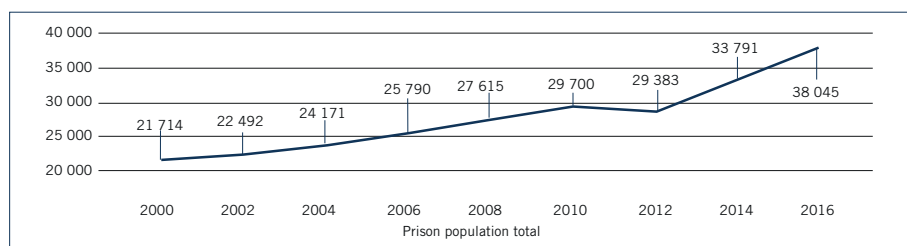
The Parole Act of 2002 was designed to provide clearer guidance to judges when making decisions on granting parole. Automatic half-time release was abandoned and the parole board acquired much greater influence over the length of time spent in a correctional facility. This has led to *fewer and later-occurring conditional releases*. At year-end 2010 it was considered that the Parole Act alone had contributed to the need for 1500 new prison places.

AUSTRALIA

In the later part of the twentieth century, Australia’s prison population began to increase, virtually doubling between 1980 and 2000. Since then the increase has continued, with an accentuation of the trend occurring since 2012. On average the prison population has grown by 3.7 percent per year since 2000. The general population increase during the same period varied between 1 and 2 percent per year.

Generally, the crime trend in Australia is declining: assault crimes are decreasing, thefts are decreasing, as is also the murder rate. But as in many other Western countries, the reporting of sex offenses is increasing in Australia as well.

DIAGRAM 9: PRISON POPULATION TREND IN AUSTRALIA



Source: World Prison Brief

Australia accounts for the most extreme trend of the countries in the study. While criminality is declining in most crime categories, the prison population has grown by 79 percent. The Australians themselves point to the sharp increase in non-convicted detainees – that is, persons held in remand. A similar trend can be seen in most Anglo-Saxon countries, which is likely related to the bail system that is of widespread use in these countries. Apart from remand detainees, women are a rapidly growing group in Australia’s prisons.

The growing prison population also seems to be the result of tougher criminal policy, similar to the situation in New Zealand. *Stricter guidelines for judges* (mandatory sentencing), leading to an increasing number of prison sentences (compare ‘type crimes’ [Swedish: *artbrott*] in Sweden), and *more stringent bail rules* have been factors that have doubtless affected the population. *Release procedures have also been tightened.*

One change that is in line with the trend in many countries is an increasingly uncompromising attitude to sex offense. Some territories have removed the prosecution period limitations for sex offenses, which has allowed for an influx of older cases.

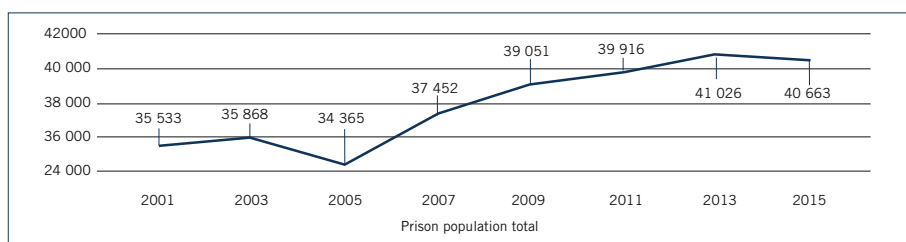
The Northern Territory has introduced legislation whereby the police may arrest and detain individuals without suspicion of crime (‘paperless arrest’) in conjunction with the public consumption of alcohol or disruptive behaviour. The same state has also introduced legislation that criminalises alcohol consumption if you have a court order to avoid alcohol or undergo drug detoxification. Both laws are being criticised for increasing the incarceration rate and because they to a great extent affect the indigenous population, among whom drug problems and social exclusion are more common.

CANADA

Canada has had a stable incarceration rate since the Second World War and its prison population has followed general population growth. In recent years, however, Canada has seen a trend similar to that of the other countries in the study, even if its increase started somewhat later. Between 2005 and 2016 the number of incarcerated persons increased by 20 percent, which means an average increase of 1.8 percent. During the measurement period, the general population increased by about one percent per year.

Canada’s crime rate has been fairly steady. Assault, sex offenses and murder remained unchanged during the measurement period. Theft, on the other hand, declined sharply.

DIAGRAM 9: PRISON POPULATION TREND IN CANADA



Source: World Prison Brief

Canada is distinctive in its unusually large remand population, as well as its strong over-representation of indigenous persons in prisons. More than half of Canada's incarcerated individuals are in remand centres. The 50-percent mark for persons incarcerated on remand was passed as early as 2004; by 2016, six of every 10 incarcerated individuals were in remand. The increased remand population may be a sign that *the increasingly harsh economic conditions for certain groups* render bail as impossible.

As regards Canada's indigenous population the situation is alarming. For men in that group the increased risk of being incarcerated in a remand/correctional facility is 9 times higher than for the rest of the population. For women the situation is even worse: for indigenous women, the overrepresentation is 13 times higher. Individuals from the indigenous population currently make up one-quarter of all admissions, despite the fact that they account for only 3 percent of the general population.

CONCLUDING DISCUSSION

CONSEQUENCES OF CRIMINAL POLICY DECISIONS

The size of the prison population is a function of two key figures: *influx of new inmates and length of prison stay*. In the countries studied here, criminal policy affects these key figures in several ways: For example, a repressive spirit conveyed by the media and public debate affect political decisions. In that sense New Zealand is the most evident example of where a referendum in 1999 set the stage for a more repressive criminal policy. The referendum was followed by several sharpenings of the legislation, which, according to the New Zealanders, came to increase the number of incarcerated persons. The other countries, too, have seen similar developments.

PROCEDURAL CHANGES

Changes to *bail conditions* is a common measure when a tougher approach is to be manifested in political decisions. We have no bail system in Sweden; however, put somewhat simply, we could say that it corresponds to Sweden's 'grounds for pre-trial detention'. If we widen/expand the grounds for detention, more individuals will end up in remand. In the bail system, tightened bail requirements entail the same thing: fewer people can afford to post bail and must thus remain in custody.

Fast-tracks such as *direct appearance in court and direct sentence execution* result in fewer non-custodial sentences. This creates queue effects throughout the system. A certain waiting list could otherwise create flexibility and a more steady flow throughout the year. Direct appearance in court and direct sentence execution, on the other hand, tend to choke the system.

INCREASES IN PENALTY SEVERITY

Increases in penalty severity may refer to increased penal values (longer sentences), but also to legislation based on zero tolerance or minimum sentences. Higher crime rates of a particular type of crime often triggers increases in the severity of the penalties for that crime. This suggests that the legislator believes in the deterrent effect of the sanction (general prevention) and/or its incapacitating effect (individual prevention). Several of the countries studied seem to share these basic assumptions.

The length of the sentence affects the size of the prison population more than does the influx of clients. This means that tougher sanctions increase the population. Legislation that limits the court's discretionary power – so-called *mandatory sentencing* – prevents the court from taking the circumstances around the crime into consideration. This appears to have contributed to the growth of the prison populations, for example in England/Wales and France.

Sharpening of sanctions and minimum sentences and conditional prison sentences are on the increase. Previously referred to as internment (sv: *internering*) – abolished in Sweden in 1981 – are now called *Imprisonment for Public Protection* (England/Wales) or *Forvaring* (Norway). Release from such sentences is based on assessments of danger to the public, which during times of risk minimisation seems to keep many inmates in prison. Real life sentences are relatively uncommon but are applied in some countries, among them being England/Wales.

Altogether, all of the countries in the study can be said to have implemented one or more of the above mentioned measures. However, the effect of these measures does not appear until several years later. On the other hand, changes in parole conditions affects the *outflow from prison* more rapidly.

POSTPONED OR TIGHTENED CONDITIONS FOR CONDITIONAL RELEASE

Forfeiture of conditional release may occur both prior to and after release. Prior to – owing to misconduct or the risk of recidivism – and after – owing to breach of release conditions. Fewer and postponed conditional releases are common in several of the countries studied. *Executive recall* – transferral of the responsibility for parole decisions to the executive authority – leads to more forfeitures. Automatic rules for forfeiture – *fixed term recall* – may have a reducing effect but may nevertheless increase the prison population, depending on the initial situation before the fixed intervals are introduced. *Standard recall*, whereby a board sets a new parole date following misconduct, based on the risk of recidivism or new misconduct, also tend to affect the size of the prison population. Automatic rules for misconduct and recidivism might sound reasonable in the individual case but such legislation tends to increase both recalls and sentence severity.

Another parole condition that affects the number of prison sentences is *extended parole periods*. In Sweden, recidivism during the parole is an aggravating circumstance, which in turn presumes a prison sentence. If the time window for recidivism within the parole period is expanded, probably more individuals will be affected by this principle.

In Belgium, researchers have found that the parole procedure can be affected by the corrections service's prison security classification. A stay in an open correctional facility without misconduct is seen by the release board as a protective factor. A stay in a higher-security facility would, on the other hand, be seen as a risk factor. Hence, the availability of places and the prison service's classification system can also affect the length of prison stay.

NET WIDENING

A common argument is that probation alternatives reduce the need for incarceration. Community supervision or electronic monitoring have been implemented as alternatives to remand, in Belgium, for instance. There, they find that the alternatives have driven the courts to employ the anklets 'at both ends' – sometimes referred to as *net widening*. Suspects who would previously have been released pending trial are now under supervision or electronic monitoring instead. And upon receiving a court judgement the client who previously would have received a conditional sentence is now sentenced to electronic monitoring. Consequently, the number of individuals in corrections is increasing, even as alternative sanctions may relieve some of the pressure on the prison system.

RIGHTS OF FOREIGN NATIONALS

The phenomenon of a high percentage of foreign nationals in prison is very common, also in this study. Foreign nationals are often excluded from alternative sanctions, such as community supervision, electronic monitoring or community service. Some has deportation as part of their sentence, which of course has

consequences for the release preparations. In some cases, incarcerated persons who have served their sentence have to remain in prison while waiting to be deported. Altogether these factors affect the percentage of foreign citizens in prison. During times of increased mobility and migration this trend may be accentuated and may increase the prison population – as for example in Norway.

THE EFFECTIVENESS AND PRIORITIES OF THE JUSTICE SYSTEM

As mentioned earlier, the size of the prison population is a function of length of prison stay and influx of clients. If length of prison stay depends primarily on the penal legislation, influx is something that is highly related to the ability of the justice system to apprehend and prosecute offenders.

MORE EFFECTIVE PROSECUTION

In New Zealand the clearance rate is higher than in other countries. Why this is the case will not be investigated here; however, the fact that it is an island nation with relatively low mobility could be an explanation. Another reason could be the working methods employed by the police. A third factor could be the marginalised group, the Maori, who are heavily over-represented in New Zealand's prisons. If a socially vulnerable group with a relatively high crime rate is being targeted by the police, this should result in more prison sentences.

In the other countries of this study more effective prosecution has not been cited as a key factor in the growing prison populations. But again, if the police focus on vulnerable groups and have access to broader coercive measures, arrests will tend to increase. This has occurred in Canada where so-called paperless arrests have led to increased incarceration, primarily among the indigenous population. Focusing on problem areas – so-called hot-spot policing – is an established policing method in many countries, including Sweden. If the crime rate is linked to social vulnerability, unemployment and poverty among those who live in a particular area, one-sided police interventions can lead to a spiral of prison sentences and ongoing social exclusion.

THE PRIORITIES OF THE JUSTICE SYSTEM

The priorities of the police and the prosecutors affect the influx of different types of cases. In the short term this seems to affect the influx more than do changes in the actual crime rate. An increased focus on domestic violence is one example. In New Zealand this is described as a 'reservoir' of criminality. By that they mean that domestic violence to a large extent is a hidden problem and the detection requires active efforts, and once the justice system finally shines a spotlight on this type of crime, the number of imprisoned tend to increase.

In France, the terror legislation has been sharpened in recent years and opportunities to apply *preventative detention* have been expanded. The direct effect on the prison population is difficult to determine; however, generally, if the number of incarcerations increases, it puts pressure on the entire system. Additional to this are a broadened anti-terror legislation and expanded mandates given to the police and to prosecutors, which ultimately also increases the number of prison sentences.

ALTERNATIVE FACTORS

There are of course several other factors that affect the number of individuals sentenced to imprisonment in a particular country. There are local, regional and national phenomena that can arise as regards both the crime trend and other factors. International mobility was mentioned earlier as yet another factor that affects not only the composition of the prison population but also its size.

Two factors that the present study has taken into consideration are *population growth* and the *crime trend*. The demographic trend, however, involves more factors than population growth alone. Intense urbanisation, for example, can create social vulnerability and affect the crime rate. The proliferation of ‘ghettos’, as they are called in Denmark, or ‘vulnerable communities’, as we prefer to call them in Sweden, are examples of zones in which the crime rate is high. If these zones grow or multiply and the police apply more resources there, that will have effects on the population in prison. The demographic trend is also a question of generations and the size of various cohorts. A large youth generation can lead to more crimes, since that is the most criminally active age.

The crime rates have essentially been similar among the countries in this study and are also similar to the trend in Sweden. In total, crime throughout the Western world has declined since the 1990s when the top levels were recorded – a phenomenon often referred to as the *crime drop*. “Volume crime”, such as theft and traffic offences, has declined in most countries. As regards crimes against health and life, the trend is less straightforward. Assaults recently increased, or are increasing, in New Zealand, France and Belgium. Sex offenses are increasing in Norway, England/Wales, Belgium, France and New Zealand, as is in Sweden

The crime trend described here is based, with a few exceptions, on reported crimes – an indicator that has both strengths and weaknesses. Reporting propensity and detection rates varies, depending on crime type and cultural context; overall, however, crimes against health and life have been increasingly noted over time, and this trend has been accentuated by the MeToo movement. In the coming years, the reporting of violence against children, partner violence and sex offenses may increase further if increasing numbers of people choose to report this type of offenses.

A third factor worth mentioning, but one that the present study has not taken into account, is changes in psychiatric care. In most Western countries the trend has been similar – a trend that can be described with the so-called *Penrose Law* – an inverse relationship between the number of places in closed psychiatric care and the number of prison inmates – a connection that has been confirmed by several studies. The strong growth in the number of persons incarcerated in prison in the Western world cannot be explained solely by the dismantling of in-patient psychiatric care. At the same time, the fact remains that several of the world’s prison agencies report that mental illness is a growing problem among prison inmates, including more serious forms of illness, such as developmental disorders and psychosis.

IMPLICATIONS FOR THE SWEDISH PRISON AND PROBATION SERVICE

The first question we might ask ourselves is whether the prison population trend in Sweden is cyclical or structural. Based on the picture given in the introduction, we can note that the trend has fluctuated over time and seems to be cyclical – and that we are now in a situation in which the prison population is once again rising. The last time the corrections system was in the same situation was at the end of the 1990s.

In Sweden, the current political rhetoric supports a more repressive approach, although in an international perspective it still retains strong elements of a desire to understand the problems that give rise to criminality. However, several proposals have been put forward, suggesting changes to the parole system, abolition of the ‘juvenile discount’ (reduced sentences for 18-21 year olds) and major investments in crime-fighting agencies. Risk-based release procedures have recently been the subject of intensive debate in Sweden, and is an issue that has also been investigated by the Swedish government. Altogether this points to increased populations in Swedish correctional services.

Historically speaking, probation measures have been considered the solution to reducing or redirecting the influx to prisons. As mentioned earlier in reference to the Norwegian example, the proportion of foreign nationals in correctional facilities is increasing in several countries. In Sweden this rate has already been high for some time. In 2017, 30,802 refugees were rejected asylum in Sweden and later the border police reported that over 17,000 individuals who were to be deported had disappeared. How many of them that are still in Sweden is unknown, but there is a growing group of paperless individuals after the past few years’ refugee influx. The police now report that they are seeing paperless individuals in various constellations – some have committed crimes, some have developed addictions, and some have been exploited by criminals. Whether this will affect the situation in the SPPS is unclear, but the criticism concerning the difficulty of sentencing foreign citizens to alternative sentences is also relevant in Sweden. Community supervision, electronic monitoring and community service are sanctions that are designed to replace prison sentences and thus avoid the adverse consequences of deprivation of liberty. In many cases, paperless individuals are in practice excluded from these alternatives..

Prison alternatives have also led to a general trend referred to as *bifurcation*. Bifurcation, meaning ‘splitting in two’, refers to a group of convicts who are given probationary sentences involving varying levels of control, and another group that is given prison sentences including post-sentence supervision or extended sentences based on recidivism risk. In Sweden, the trend is perhaps not as clear as in some other countries, since we still have a high percentage of short-term prison sentences. If the short sentences were eventually to be converted to probation sentences, bifurcation would be a fact here as well. That would create a new set of conditions by which the SPPS designs its facilities and the nature of its operations.

The present study shows there are several factors that increase the prison population in comparable countries. It is often a matter of a combination of reforms, reactions and response measures implemented over time and whose combined consequences are hard to foresee.

In light of the time required to expand the capacity of the correctional system, all increases, even those that merely reflect general population growth, will entail challenges for the SPPS. Given that several of the factors identified in the study can be recognised in Sweden, it is likely that the growth will be substantially higher than that, and the increase since 2016 that has already been observed implicate such a scenario.

However, countermeasures do exist, as do examples of countries that have reduced their prison population – such as Japan and the Netherlands. It would therefore also be interesting to investigate the antecedents of the reductions in these countries. This would expand the knowledge obtained by this study and provide a greater understanding of how we might handle the trend of a growing prison population.

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