

Guidance Note 11

External inspection monitoring and redressing grievances

Summary

- Independent monitoring is a basic and essential element of ensuring human rights compliance in prison systems. External independent inspection highlights abuses, protects prison staff from unfounded criticism, strengthens the hand of staff who want to resist involvement in brutality and helps keep prison conditions in the public eye.
- Independent complaints mechanisms to which prisoners have easy access are also essential.
- Independent monitoring can take many forms, as can complaints procedures. Judges can have the function of monitoring individual prisons and also hearing complaints from prisoners. Inspectors can be appointed at the national level and oversight and complaints mechanisms can be created at the level of each prison. Civil society organisations can play a part.
- There are international monitoring mechanisms in place and a UN protocol under ratification.
- Establishing a monitoring mechanism and good complaints procedures needs political will, parliamentary support, proper resourcing for the machinery to run the system and good training for the inspectors and complaints investigators.

“ All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

— *Article Ten, United Nations International Covenant on Civil and Political Rights*

Guidance Notes on Prison Reform

This guidance note is number eleven in a series designed to give practical help to those developing and delivering prison reform projects. All the guidance notes:

- are set within the international human rights framework
- apply in a variety of cultural and political environments
- propose solutions that are likely to be sustainable in a variety of socio-economic situations and do not involve a significant increase in resources
- take account of the realities of prison management

The production of these guidance documents on how to undertake prison reform projects is supported by the UK Foreign and Commonwealth Office.

Why independent monitoring and control is essential

A key ingredient of any prison system which aims for human rights compliance is a structure of external monitoring and control. The international human rights instruments require that such a system be established. Some body or bodies not under the same administrative authority as the prison system should be able to inspect the conditions of imprisonment, assess whether there is ill-treatment, and report on their findings to a part of government that has the power to act on their findings.

“ “ *The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*

- 29.1 *In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.*
2. *A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.*

Having a strong and credible oversight mechanism is an essential part of any prison system.

- Prisons are by nature closed institutions often far from the public eye where one group of people has considerable power over another group. However well they are run, the potential for abuse is always present.
- A strong inspectorial and complaints system is also a protection for prison staff who may be the subject of false accusations. Independent inspection and complaints mechanisms can establish when such accusations are unfounded and the finding will carry credibility.
- The strong possibility that abuses will eventually be uncovered is also a protection for prison staff who want to resist a culture of ill-treatment and inhumanity but who may be under pressure from other staff to join in or collude.
- If the inspectors' reports are published they can keep prisons and prison conditions in the public and political eye.
- When finances are tight and prisons are politically sensitive, reports highlighting bad prison conditions and shortage of resources can give politicians a reason to make improvements that might be politically contentious.

“ “ *In all places where persons are deprived of their liberty, for whatever reason, there exists the potential risk of being subjected to torture, cruel, inhuman or degrading treatment or punishment.*

Elizabeth Odio Benito, Former Chairperson of the UN Working Group to draft the Optional Protocol to the UN Convention Against Torture 2004¹

Independent inspectors' role during and after disturbances

When there are disturbances in prisons the potential for abuse and ill-treatment is particularly great. Many prison riots have ended with large numbers of unlawful killings by those sent in to quell the riot, who are often not prison staff but armed groups of police or military. The presence of inspectors or monitors can be a protection in the

immediate aftermath of disturbances to prevent reprisals by these special forces and also to encourage a return to normal as soon as possible.

“... the dignity and safety of prisoners are absolutely central to a proper custodial environment and therefore to a prisons inspectorate. And that is why internationally, as well as nationally, there are obligations to have independent monitoring and inspection processes with the power to enter, observe and report on all places of detention; and why that monitoring is grounded in standards that are set outside and independently of current practice, prison standards, efficiency and performance.

Anne Owers, HM Chief Inspector of Prisons, England and Wales,
lecture to the British Institute of Human Rights 2003²

The right to complain

Prisoners should have the right to complain when they think that they have been wrongly treated by the prison authorities. The person to whom they complain should not be the member of staff who made the original decision which led to the complaint. Complaints mechanisms need to have the confidence of the prisoners, who should not face reprisals for complaining. Making complaints about staff behaviour is often contentious. The system should not contain disincentives to complain, such as punishment for making complaints that are not proven or are deemed to be ‘false and malicious’.

Different approaches

The form taken by prison monitoring and complaints systems varies considerably depending on the legal background and political culture of the state. In many countries judges have a formal prison oversight role and hear prisoners’ complaints.

“The ‘Law on Penal Execution Institutions and Pre-trial Detention Centres Monitoring Councils’ was adopted on 14 June 2001 and published in the official gazette on 21 July 2001... 130 monitoring councils are to be set up within six months of the approval of the Law ...in each judicial region of Turkey. The selection of monitoring council members is being undertaken by judicial commissions in each judicial region. ..Training of monitoring council members is to take place within three months of their appointment...

ICPS Mission Report 2001

Often the public prosecutor is required to ensure the legality and conditions of detention. Public prosecutors may also be the final point of complaint for prisoners who have exhausted other mechanisms.

“The position of the custodial judge is a recent development in Central America. These judges monitor and assess the application of the sentences of the convicted. They ensure the judiciary applies a sentence which is in keeping with the ultimate goal of social rehabilitation. They also ensure that when applying the sentence, the rights of those deprived of liberty are observed.

Penal Reform International, *Annual Report 2003*³

In the UK and some states in Australia the post of Chief Inspector of Prisons has been created as a function independent of the prison administration. The inspector publishes reports and makes recommendations, has no executive power but can muster

significant influence to require change to be implemented. Human Rights Commissions and ombudsmen often have the power to investigate and report on prison conditions and hear prisoners' complaints.

“ *The Government of the Republic of Korea (South Korea) formally established a National Human Rights Commission in November 2001, marking a big step forward in guaranteeing human rights in the Republic. The terms of reference of the Commission allow it to enter any place of detention in order to investigate cases brought to its attention. Where it considers that a case is urgent it has the right to demand action to provide immediate relief pending its formal decision.*

In its first year of operation the Commission dealt with 1,113 complaints about the correctional services. The major grounds of complaint raised by those in detention included abuse of punishment, cruel treatment, improper medical treatment, restriction on sending letters or writing, and the use of abusive language by prison guards.

Adapted from the National Human Rights Commission of the Republic of Korea's Report on Main Activities in 2002 and Plan in 2003⁴

Specialist inspections, for example, by the governmental bodies that have responsibility for inspecting health and education are also carried out in some countries. Non-governmental organisations are often permitted to visit prisons for monitoring purposes (see Guidance Note 13).

“ *SEMPRI's project – Família de Preso: Cidadania Castigada (Families of Prisoners: Punished Citizenship) – aims to foster humane conditions in prisons and restore the citizenship of prisoners and their families. Família de Preso offers training in penal law and human rights to the relatives of prisoners in Pernambuco. Those who participate in the project, 99% of whom are women (the prisoner's wives, girlfriends, mothers, or sisters), assume the role of critical monitors of the state's prison system.*

Brazil Foundation 2003⁵

Effectiveness

Not all inspection and complaints mechanisms are effective. Judicial inspection systems may be concerned to ensure that the letter of the law is followed but may be limited by their remit from responding to inhumanity in the treatment of prisoners. Official inspectors may produce excellent analyses and their reports may be widely read. However, their recommendations can easily be ignored by the authorities on the grounds of shortage of resources or when politics dictate other priorities than prison reform.

“ *At first there was objection to my speaking to the suspects, but it was resolved with my being able to do so. One of the suspects informed me that he had been in custody for three weeks without trial. Another let me know that he had been in detention without trial for 90 days...All the other suspects had been in custody without trial beyond 72 hours...I was also informed by the inmates that in the early hours of the day of my visit, the total number of suspects in the cell was 39. About 26 of them were taken away... There was only one suspect in [the second] cell. He, however, informed me that there were 35 suspects in the cell earlier in the day of my visit...*

Professor E.V.O. Dankwa, Special Rapporteur on Prisons and Conditions of Detention in Africa, Prisons in the Gambia: Report on a Visit 1999⁶

Inspectors may face problems of access. They may be prevented from making unannounced visits. The prison they see when they visit may still smell of new paint, with brand new sheets on the prisoners' beds, a pile of freshly baked bread on a table and prisoners sitting in clean clothes round a television set.

“...the human rights commissioners in Zambia... made concerted efforts to gain access to persons detained following the failed coup attempt in October 1997 but were continually rebuffed by state security officials. It was several weeks later before they were able to gain access and they later reported evidence of physical torture perpetrated against several of the detainees. In Malaysia, the Visitation Sub-working Group was established in 2001 to carry out the human rights commission's duty to visit places of detention. The Group has also reported that its work has been seriously hampered by a series of problems with the prison authorities. These include prison authorities requiring the Commission to seek permission or give ample notice of its intention to visit a place of detention. As the Commission has noted, the relevant legislation is silent on the issue of permission...

John Hatchard, *The Inter-Relationship Between Commonwealth Human Rights Commissions and Other National Human Rights Institutions 2003*⁷

Many prison visitors have had the experience of prisoners passing them little notes confidentially, conveying information about the reality of what they are being shown and the amount of window-dressing that has been done. Prisoners may be prevented from speaking to the inspectors in private and those who do speak may face victimisation afterwards. Prison complaints machinery may be seen as toothless by prisoners. The answers they receive to their complaints may leave them feeling the risk of complaining was not worth taking.

International inspection mechanisms

Inspection mechanisms are well developed in some regions. The Special Rapporteur on Prison Conditions in Africa works under the aegis of the African Commission on Human and Peoples' Rights, and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is a body of the Council of Europe. Both have the right to visit places of detention and report to the government of the country they have visited on what they find. These regional mechanisms provide a standard against which newly established domestic mechanisms can be measured.

The Inter-American Commission on Human Rights can investigate abuses in individual countries and receive petitions from individuals.

“From August 18 to August 22, 2002, the Commission's First Vice-President and Rapporteur for Peru ...conducted a working visit to Peru in order to hold working meetings...during its visit, the Commission delegation travelled to the Challapalca prison in the Department of Tacna in connection with numerous complaints received by the Commission concerning inhumane and degrading prison conditions. In its Second Report on the Human Rights Situation in Peru, the Commission had recommended that the Challapalca prison be closed and reiterated this request as part of its August 2002 visit.

Inter-American Commission on Human Rights, *Annual Report 2002*⁸

A new international inspection mechanism is being set up under the Optional Protocol to the UN Convention against Torture. Under the Optional Protocol a new international expert visiting body, a Sub-Committee of the UN Committee Against Torture, will be

created. States that ratify the Optional Protocol must also have in place national bodies to carry out inspection visits. The international and national bodies will work together to conduct regular visits to places of detention and make recommendations to the authorities. The Optional Protocol will enter into force upon the 20th ratification. On 22 November 2004 there were 29 signatories to the Protocol and six states had ratified it.

Complaints procedures

One important way of ensuring the protection of prisoners' rights is through effective complaints procedures and there are various models such as a Prison Complaints Commissioner (Scotland) or a Correctional Investigator (Canada).

“ ... the primary function of the Correctional Investigator is to conduct investigations into the problems of offenders related to the operations and activities of the Correctional Service Canada (CSC) and promote resolution. Inquiries can be initiated through direct complaints by offenders, on request of the Solicitor General or at the Office's own initiative... The Office of the Correctional Investigator also has a central role in reviewing policies and procedures of the CSC associated with the areas of offender complaints and ensuring that systemic issues are identified and appropriately addressed...

Office of the Correctional Investigator 2002⁹

The international human rights instruments require effective remedies to be in place for citizens who feel their rights have been infringed and prisoners do not lose this right when they are incarcerated. They should be able to complain about unjust or abusive treatment to the prison administration and, if not satisfied, to higher levels in the state hierarchy. Normally prisoners should be able to send complaints to legal representatives in a sealed envelope.

Not all prisoners' complaints are about matters constituting human rights abuses. Prisoners will also complain about matters which are less fundamental but which are important to them. These might include cell allocation, transfers and matters about daily life in prison. Responding to these might not seem to be at the forefront of protecting human rights. However, a well-functioning complaints system can:

- contribute to prisoners' sense of being treated with justice and fairness
- ensure that prison personnel do not forget their responsibility to treat prisoners with respect for their inherent dignity
- defuse tension and add to the sense that the prison is an ordered community working on the principles of natural justice

Is the external inspection and complaints machinery effective?

Important features of an effective complaints system include publicity and ease of access.

- The existence of the complaints system and the way to access it should be publicised and known to all prisoners. Many systems have notices pinned up around the prison giving details of how to communicate with the complaints investigator or ombudsman's office.
- Prisoners should have easy access to the complaints machinery, both orally and in writing. Where the prison population is diverse the information should be available in the relevant languages.

To be effective, a complaints system will need to consider the following:

- to whom is the complaint made in the first instance? It should not be to the person against whom the complaint is being made
- is there a form to fill in for written complaints? If so, are the forms available at all points where prisoners can get them without making it very obvious to staff that they are about to make a complaint?
- can prisoners get their complaints out of the prisons to the appropriate authorities?
- have the bodies hearing the complaints been given the power to change a bad decision?
- are measures in place to prevent the victimisation of complainants?
- do prisoners get full answers to their complaints, in person or in writing, depending on how the complaint was made?

Questions to be asked of an inspection/monitoring system are:

- how independent is it? Who are the members? Who appoints them?
- what standards is it measuring its inspections by? Is it clear that it is not simply an auditor of the prison service to ensure it spends its money according to law and follows government requirements on other matters but is really a human rights monitoring body?
- what training is provided for prison inspectors and monitors so they can assess what they are seeing and know what they are looking for?
- to whom do the inspectors report and are their reports published?



A prison visit

Large reception room, throughput of about 30 a day. 25 prisoners recently arrived; all on hunkers against the wall, heads bowed and hands behind back. 6 guards and one female administrator processing. Large room off. Official said it was previously used for beating; Staff said no longer the case but unusual to have such a large area lying empty.

ICPS Mission Report 2000

- what structures have been set up to ensure that there is proper liaison with the prison authorities about the rules for inspections and the rights of the inspectors?

Setting up external inspection and complaints systems



The Judicial Inspectorate of Prisons is an independent office, under the control of the Inspecting Judge, established in terms of Section 85 of the Correctional Services Act 111 of 1998. The core business of the Judicial Inspectorate of Prisons is to conduct independent, efficient and effective monitoring of prisons and to promote prisoners' detention under conditions of human dignity. In order to achieve this objective, the Inspecting Judge appoints Independent Prison Visitors (IPVs) in all prisons. The main duty of an Independent Prison Visitor is to deal with the complaints of prisoners by:

- *Regular visits to the prison*
- *Interviewing prisoners*
- *Recording complaints and monitoring the manner in which they are dealt with.*
- *Discussing complaints with the Head of Prison with a view to resolve them internally.*

It is envisaged that public-spirited persons of integrity who are interested in the promotion of the social responsibility and human development of prisoners will be appointed as Independent Prison Visitors. Independent Prison Visitors are appointed on

contractual basis for a period of 12 months and are remunerated... Persons who are in the full-time or part-time employment of the state i.e. Public Service may not apply. Proof of community work and affiliation to an NGO will add value to your nomination.

Advertisement calling for nominations for the appointment of Independent Prison Visitors in Gauteng, Limpopo and Mpumalanga Provinces, South Africa 2002¹⁰

International guidelines have been developed for the structure and functioning of monitoring mechanisms. The UN's Paris Principles¹¹ call for human rights bodies to:

- be set up under legislation on a firm legal basis
- have the power to decide for themselves what they should publish
- be protected from governmental pressure
- have adequate funding with their own staff and premises to carry out their task
- maintain contact with civil society organisations

References

- 1 *Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: a Manual for Prevention*, Association for the Prevention of Torture and Inter-American Institute of Human Rights, Geneva and San José, 2004
- 2 Anne Owers, HM Chief Inspector of Prisons, England and Wales, lecture to the British Institute of Human Rights, www.bih.org, 22 October 2003
- 3 *Annual Report 2003*, Penal Reform International, p.22
- 4 *Report on Main Activities in 2002 & Plan in 2003*, National Human Rights Commission of the Republic of Korea, Seoul, 2003, p. 13
- 5 www.brazilfoundation.org, 2003
- 6 Professor E.V.O. Dankwa, Special Rapporteur On Prisons and Conditions Of Detention In Africa, *Prisons in the Gambia: Report on a Visit June 21 – 26, 1999*, African Commission on Human and People's Rights, Banjul, 1999, p.14
- 7 John Hatchard, *The Inter-Relationship Between Commonwealth Human Rights Commissions and Other National Human Rights Institutions*, Open University Law Programme, www.britishcouncil.org, 2003
- 8 *Annual Report 2002*, Inter-American Commission on Human Rights, Washington DC, para 38
- 9 Office of the Correctional Investigator 2002, www.csc-scc.gc.ca
- 10 Advertisement published by the South African Judicial Inspectorate of Prisons calling for nominations for the appointment of Independent Prison Visitors in Gauteng, Limpopo and Mpumalanga Provinces, www.judicialinsp.pwv.gov.za, 2002
- 11 Endorsed by the Commission on Human Rights in March 1992 (resolution 1992/54) and by the UN General Assembly in its resolution A/RES/48/134 of 20 December 1993

KING'S
College
LONDON

**International Centre
for Prison Studies**

International Centre for Prison Studies

School of Law
King's College London
26-29 Drury Lane
London WC2B 5RL

© International Centre for Prison Studies, 2004

Tel: +44 (0)20 7848 1922
Fax: +44 (0)20 7848 1901
Email: icps@kcl.ac.uk
www.prisonstudies.org



Foreign &
Commonwealth Office
London