

Guidance Note 6

Bringing prisons within the rule of law

Summary

- Prisons should be managed according to international human rights law as well as domestic law and the procedures in them should accord with natural justice.
- Yet in many prisons the law is not respected. Corruption in the prisons, police and judicial system can be deep seated and violence between prisoners and by staff on prisoners can be endemic.
- Sometimes the prisoners control the prisons. Prison systems may be lawless because of state failure generally, neglect of prisons in particular, or because staff have no resources to impose a lawful regime.
- Dealing with violence and corruption in prisons is difficult but it can be done if there is support from the highest levels of government, reassurance and training for prison staff in working differently and involvement of independent monitoring bodies and civil society groups.
- Eliminating torture and reducing ill-treatment requires a substantial commitment from the authorities and a long term programme to change the culture of the staff and the working practices in the prison.

“ 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 six 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

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Prisons must follow the rule of law

Prisons should be managed according to the rule of law. They should operate within the international human rights law framework as well as within domestic law and national instruments and regulations. Procedures used in prison should accord with natural justice. This approach is more than just 'giving prisoners their rights'. Running prisons according to law certainly benefits prisoners and their families; but it also benefits prison staff because in a prison run according to the principles of the rule of law they will be working in safer conditions, can do a more satisfying and professional job and see their own rights as employees and citizens respected.

“ *...the legal order must serve as both the justification and the code of conduct for correctional authorities since the confinement of persons against their will has no other foundation; it is not justifiable on medical, humanitarian, charitable or any other basis. The coercive actions of the State must find their justification in a legal grant of authority and persons who enforce criminal sanctions on behalf of the State must act with scrupulous concern not to exceed their authority.*

Judge Louise Arbour, Canada 1996¹

“ *There must ... be justice in our prisons. The system of justice which has put a person in prison cannot end at the prison doors. It must accompany the prisoner into the prison, his cell, and to all aspects of his life in prison.*

Lord Woolf, England and Wales 1991²

“ *[p]risoners are entitled to all their personal rights and personal dignity not temporarily taken away by law, or necessarily inconsistent with the circumstances in which they have been placed. Of course, the inroads which incarceration necessarily makes upon prisoners' personal rights and their liberties are very considerable... Nevertheless, there is substantial residue of basic rights which they may not be denied; and if they are denied them, they are entitled to legal redress.*

Judge Sachs, South Africa 1999³

Yet many prisons are lawless and corrupt places. Violence and the rule of the strongest prevail. In some countries the authorities have ceded control of the prisons to the prisoners, leaving the staff to maintain perimeter security and ensure that basic services are provided. Meanwhile the strongest prisoners take charge or the prison becomes a battleground between rival gangs or groupings, with the weaker prisoners fearing for their lives. When order finally breaks down and serious violence occurs the prison staff may call the military police or other armed forces to quell the disorder in a violent manner or else do so themselves by resorting to brutal force, sometimes with firearms.

“ *At least four people have been killed and several injured after a riot was sparked over water shortages at a prison in Ivory Coast, officials said. Violence broke out early on Tuesday at the main prison ... The country's top prison official told Reuters news agency inmates were frustrated the water supply had been cut off and they were being rationed... Prison administrator Francois Guei told Reuters that security forces shot dead two prisoners in trying to quell the riot. "There are four confirmed dead and eight were injured. Some prisoners escaped but we don't know how many yet," he said.*

"Two were killed by bullets and it seems two were killed with machetes or knives."

BBC News, Ivory Coast jail riot kills four 2004⁴

Reasons for lawlessness in prisons

Prisons can be lawless because:

- they mirror lawlessness in society outside prison
- they are a neglected part of public administration and there is no constituency interested in bringing them within the rule of law or dealing with the absence of decency and humanity for prisoners
- they are seriously under-resourced and the staff make a decision that they can only keep control by ceding power to the strongest prisoners or letting prison gangs fight it out
- there is no proper training of the staff

All overcrowded prisons, particularly if they are managed by untrained or badly supervised staff, are at risk of becoming lawless, even in countries with good standards of public administration.

Corruption is a symptom of lawlessness

The potential for corruption exists in all prison systems. It is found in different degrees in the East and in the West, in the developing and developed world, in well managed prison systems and in those which are anarchic. Corruption is difficult to prevent when there are large numbers of people held against their will, deprived of access to a normal range of goods and services and looked after by a relatively small number of custodians. Some of the prisoners may themselves have access to considerable resources and in some prison systems the staff will be poorly paid and operate outside a career structure and professional framework.

Corruption can take place at the level of:

- interactions between individual prisoners and prison personnel
- interactions between the administration of an individual prison and prisoners
- interactions with external individuals or groups
- the prison administration where procurement and purchasing of supplies are involved
- judicial officers where decisions, for example to release a prisoner on parole, can be corruptly made



The United States

Two federal corrections officers have been charged with accepting bribes to smuggle cryogenic sperm kits into the minimum-security federal prison at Allenwood so that convicted felons could impregnate their wives and girlfriends on the outside.

A third officer has been charged with offering – for a price – to give inmates documents from their secret dossiers that detail, among other things, personal information about a convict's victims and witnesses against him, according to court records.

ABP News, United States 2000⁵

Almost every aspect of prison life can be the subject of a corrupt transaction. Staff can ask prisoners to pay for the basic essentials for life to which they are entitled, such as food, medicines, contacts with their families through visits, writing or using the telephone or a chance to see the prison doctor.

Some prison systems based on corruption manage to maintain a level of control based on understandings between staff and prisoners about the 'price-list' and the going rate for various levels of accommodation, food and access to the facilities.

“ In the Dominican Republic a magazine, 'The Judicial Gazette' published a price list of the going rate to be paid to the prison for all aspects of prison life, food, air-conditioning, a room, cigars, whisky, drugs, protection, guns, authorisation to see the doctor, certificate of good conduct to get conditional release.

Candido Simon Polanco, *El Negocio penitenciario* 2002⁶

Prisoners with money can pay staff for more favourable treatment such as a particular bed in a better cell, to be admitted to the prison hospital where conditions are likely to be better than in the main prison, or to be transferred to a better prison elsewhere.

Staff can also be corrupted into colluding with illegality such as supplying drugs, permitting prisoners to leave and return or facilitating escapes.

Payment can be by money or by sexual favours. Women prisoners and juveniles are often subject to sexual abuse, sometimes in return for favours. Since money is needed to survive in prison, indigent prisoners may need to raise money by becoming servants to others by prostitution.

Reasons for corruption

Many prison staff are poorly paid and live in conditions that are not much better than those of the prisoners. The prison management can be part of a structure of corruption or know it goes on but be powerless to stop it because guards can inflict serious retaliation on prison managers who try to reform. Disaffected guards can easily allow disturbances to occur that will reflect badly on the management and cause embarrassment to their political masters.

In some places a culture of corruption pervades the country as a whole and prisons are just part of a larger pattern.

“ The nature of prison work means that staff depend upon one another for support and protection, especially in times of emergency. Prisoners too are reliant upon staff for their safety and security, access to services and communication with the outside. It is likely that these types of relationships discourage the reporting of improper practices to management or outside bodies because of the obvious consequences for those who alienate their fellow workers or custodians.

Research and Prevention Division, *Queensland Prison Industries: a Review of Corruption Risks* 2000⁷

How to bring prisons within the rule of law

Bringing prisons within the rule of law is not easily done. Getting control back from the prisoners once it has been ceded requires determination, a strategy and some resources. Eliminating deep-seated corruption in any situation is complex but prisons present particular problems because they are closed, the group ethos that binds prisoner to prisoner and guard to guard makes exposure risky, and the public is likely to be less concerned if prisoners are being exploited. Changing a culture of torture and ill-treatment is a long-term process (see Guidance Note 8).

To turn prisons into law-bound institutions action must be taken that:

- has support from the highest level of the system
- brings a message that things are really going to change
- incorporates a way of making staff feel it can be done and that they can be safe
- builds in some independent monitoring and oversight of the system (see Guidance Note 11)

The danger of colluding with window-dressing

In countries where prisons are lawless and human rights abuses are deep-seated it is important to make sure that the invitation to become involved in a prison reform project is genuine and the project is not being initiated as a figleaf to enable the country concerned to give a good impression of itself and cover up its human rights abuses. Ways of ensuring that the project is genuine and not just window dressing are to:

- seek from the prison administration demonstrable and rapid change that indicates a genuine commitment
- involve civil society organisations by meeting them at the beginning of the negotiations, talking to them about the project and seeking their advice, and asking the hosts to invite them to the project discussions
- ensure that the material that goes out to the media about the project is accurate and that the project is not an excuse to disseminate glowing images of the nation's prison system whilst doing nothing
- require some form of independent evaluation of the project

Dealing with corruption

Dealing with corruption is part of a wider process of bringing the rule of law into prisons. Action is required on many fronts simultaneously.

“...officials ...express concern that the (anti-corruption) effort could stall unless structural changes are made to Georgia's system of governance. .. The new leadership team ...wants to raise government salaries in order to attract and retain skilled professionals. An anti-corruption fund ...will help support civil service wage increases... The fund is expected to be administered by the UNDP.

Karen Madoian, Saakashvili administration presses anti-corruption campaign in Georgia 2004⁸

Tackling the pay and conditions of staff will be one priority. If staff pay is so low that money received from prisoners is a basic expectation within the whole system in order for staff to survive, then corruption becomes inevitable. But corruption can exist even when prison staff are paid at an appropriate level.

Various measures can be taken to deal with corruption.

- One route is to minimise the opportunities which individuals have to become involved in corrupt practices, for example by moving staff regularly to a different part of the prison so that it is more difficult to build up corrupt relationships with other staff and with prisoners. However, this system has the disadvantage that positive work and good relationships with prisoners can be disrupted.

- Closed circuit television cameras have been installed on the prison landings in one country as an experiment to monitor staff's interaction with prisoners.
- Measures for searching staff when arriving and leaving work, when carried out sensitively, can be effective and help them to resist pressure from other staff and prisoners to bring in or take out illicit items.
- Introducing a cashless system in the finance department of prisons can reduce the possibilities for money to disappear.
- Protecting those who reveal corrupt practices is important.
- Setting up a corruption hotline can be effective.



In Rio de Janeiro a new Director of the State prisons tried to stop prison guards taking money from prisoners by issuing a booklet to all prisoners setting out what they were entitled to have without payment.

ICPS Mission Report 2000

Reducing violence between prisoners

Dealing with violence in prisons is a major undertaking and is likely to require a basic change in the whole culture of the prison system. Measures that are taken to deal with specific incidents of violence, which ignore failings in the whole culture, can themselves constitute an abuse of human rights. For example:

- responding to violence with violence
- moving those prisoners who are the victims of violence to isolation or to restricted conditions without tackling the perpetrators
- removing those deemed to be trouble-makers without any due process and holding them in solitary confinement for long periods with no system of appeal
- building special units with ultra-high security and holding prisoners under such extreme conditions that their mental health is affected
- resorting to the use of restraints such as shackles and leg-irons, which are forbidden by the international instruments and standards

Although a limited use of segregation (provided there is due process and a right of appeal) and the creation of small special units may be necessary, making prisons safer and reducing inter-prisoner violence should be approached through a programme of reform of the whole system.

Dealing with gangs

Gang membership in prisons can be a problem in some countries. Gangs that operate on the streets can continue their activities in prison when their members are imprisoned. Joining one of the gangs then becomes essential for a prisoner to survive and be protected from violence, and battles between gangs become a regular feature of prison life.

Dealing with gang membership in prisons usually involves measures such as:

- trying to disperse gang leaders to different prisons
- using segregation for gang members and only allowing a return to the normal prison if gang membership is renounced

- educational measures to break down the gang culture and substitute another ethos
- involving civil society groups in work with gangs in the community

“ Jailed gang members in El Salvador have taken more than 100 people hostage in coordinated uprisings at two prisons, officials say. The inmates are said to have seized both visitors and prison staff. Their demands are unclear.

At Cojutepeque, near San Salvador, an estimated 60 women, six men and three children are being held. At Chalatenango, 150 km (95 miles) north of the capital, the hostages included about 40 people. Friends and relatives were about to leave the prisons at the end of visiting hours when members of the Mara 18 street gang blocked entrances, an official said. Last month 31 people died in fighting between prisoners at San Salvador's La Esperanza prison that involved members of Mara 18.

BBC News, *Salvador jail gangs take hostages* 2004⁹

Eliminating torture and reducing ill-treatment

In a closed setting, where one group of people is under the total control of another, group torture and ill-treatment is always possible. Prisons are particularly likely sites for such abuse because prisoners are stigmatised and prison staff may feel that society expects them to ill-treat those under their charge. Ill-treatment can happen in the most well-managed and transparent prison systems. In systems where it is endemic or the norm, reducing it can be a long process. The reduction of ill-treatment must begin with a decision by the controlling authorities that they intend to change and actions must be taken that communicate the intention to staff.

The first step is to develop and widely promulgate a statement of the ethical basis on which the prison service will operate.

Dissemination can be through:

- posters
- issuing staff with small cards containing the key messages
- producing a booklet for each staff member
- getting the message across in meetings with all staff.

The ethical statement needs to be widely displayed in the prison so that prisoners are aware of it and visitors see it when they visit.

The danger of ill-treatment will be particularly high in the most closed parts of the prison system, in the isolation or punishment cells and the areas where the vulnerable prisoners and those in danger from others are held. Improving the conditions in these more hidden parts of the prison and establishing clear rules about the level of deprivation that is allowed are useful first steps to take.

Some prison systems allow the use of firearms and all permit the use of force in extreme emergencies. There are clear international human rights instruments governing the use of force by law enforcement officers and training in these standards should be provided. Riots and disturbances are often the occasion for considerable violence in prison systems and the repercussions of riots can continue for many months, with prisoners being locked up all day or ill-treated in other ways. Independent monitors have an important role here (see Guidance Note 11).

Prisoners should never be used in a disciplinary position over other prisoners.

“ The workshop generated some debate regarding the post of convict warders... This post is occupied by convicts, who, on the basis of their good conduct, are given charge of certain duties that would normally have been undertaken by the warders. This, according to the prison staff, not only works as an incentive to the prisoner who is entitled to remission of sentence as a holder of the post, but also helps lessen the work load of the prison staff. The prison department is constantly short of manpower and the system of appointing convicts as warders does prove helpful in meeting the shortage of manpower at the grassroots level. This viewpoint ... was challenged by others... It was pointed out that ... the convict warders were generally working as touts of prison authorities, misusing their positions to terrorise other prisoners and thus commit gross human rights violations.

Commonwealth Human Rights Initiative, *Prison and Human Rights report on workshops organised at Bhopal, India 1998*¹⁰

Reform from outside the system

Bringing prisons within the rule of law depends on a change of culture by those managing and working in the system. External influences are also important. Reform can be assisted by the work of legal bodies and civil society organisations who work to bring cases to court to establish what the legal requirements are (see Guidance Note 12).

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