

# Guidance Note 7

## Moving prisons to civilian control: demilitarisation

### Summary

- One legacy of a period of totalitarianism is often a prison system that is under the control of the military or the police and that is seen as part of the security machinery of the state.
- A basic tenet of the international human rights instruments is that prisons should be civilian institutions, run on rehabilitative lines, and seeing prisoners as citizens rather than enemies.
- Prison reform often has to begin by transforming prisons into civilian institutions administered by the civil power and in a separate part of government from that which controls the police.
- The governance of pre-trial detention should be separated from the police to ensure that pre-trial detention is not used as part of police investigating processes.
- Transferring the administrative control of prisons away from the military or police can be controversial since, for example, prison personnel may lose benefits and feel downgraded in status.
- Transfer of control is only the first step towards a fully civilian prison system run according to human rights principles.
- Legislative change, attitude change, a training programme and detailed personnel restructuring will also be necessary.

“ 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 seven 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 as part of the civil authority

A most basic prison reform is to transfer responsibility for the administration and management of prisons from control by army and police to civilian control. In totalitarian regimes crime is often linked to dissent (or categorised as dissent) and the same apparatus that represses dissent also deals with non-political crime. When such totalitarian regimes come to an end and political prisoners have been released, the police and the army are often expected to continue to deal with criminal prisoners and pre-trial detainees because that is what they have always done and no other structures are available. Reforming the prison system, therefore, becomes a key part of the transition to democracy.

“ “ *The prison system was militarised in the 1950s, when warders adopted military-style uniforms and ranks, and developed the use of convict labour for the development of the country, in building roads, harbors and in mine work ... The penal system was also used extensively from the 1960s to detain people without trial and those who were convicted of crimes related to apartheid opposition. Under the regime of apartheid, the main objective of prisons was to keep their inmates out of the community.*

Amanda Dissel and Stephen Ellis, *Reform and Stasis: Transformation in South African Prisons* 2002<sup>1</sup>

The requirement for a civilian prison system is at the heart of the international human rights framework. This requires that:

- criminal offences should be dealt with as part of the due process protections that are contained in a civilian justice system
- as part of that system, the prisons should be run by the civilian power
- the prison system should aim to be rehabilitative
- detainees should retain all those rights not necessarily taken away by the fact of their imprisonment and whilst they are in prison they should be prepared for life as free citizens
- prisons and information about them should not be a state secret but should be open to independent monitoring and oversight, subject to some form of parliamentary scrutiny and to access by civil society groups

If these requirements are to be met, it is inappropriate that prisons should be under military control. The task of the military is to protect society from external enemies and perhaps to assist with internal emergencies, but prisoners are not enemies of the state.

Locating the administration and control of prisons in the same ministry that has responsibility for the police, internal security and other functions such as immigration control is also likely to jeopardise and compromise the necessary civilian nature and human rights culture of a civilian prison system.

“ “ *The functions of criminal prosecution and the detention of suspects are performed today by one institution – the Ministry of the Interior – which, no doubt, is more interested in crime detection than in ensuring observance of all proper legal safeguards. That is why, in my opinion, the main issue in deciding which Ministry should manage pre-trial detention facilities is: what is our priority: the interests of crime detection or the rights and freedoms of citizens?*

Pyotr Posmakov, Chairman of the Penitentiary Committee of the Ministry of Justice, Kazakhstan 2003<sup>2</sup>

## Separation of police and military functions from prison administrations

It is particularly important that there should be a clear distinction between the department responsible for the police and the administration of prisons. The police are usually responsible for investigating crime and arresting criminals. Once a person has been detained or arrested, he or she should as soon as possible appear before a judicial authority and should thereafter be remanded into prison service custody.

The police and investigating authorities should not use pre-trial detention as a tool of the investigative process or as a means to force prisoners to confess to the charges made against them. This argument should not be used by the Ministry of the Interior as a justification for retaining control of pre-trial prisons.

“ One deputy minister with responsibility for prisons in an Eastern European country recently described the prime function of his prison service as “solving crime”. A good example of this attitude is the role of the “operations staff” (“operativnic”) who work within prisons. They are an integral part of the police investigative process. Their role is to work with the investigating police to help build a case against those who have been detained prior to trial. This should be a function of the police, not of prison staff.

ICPS Mission Report 2000

Another reason for encouraging this transfer is the fact that in some countries the police are in effect military units, carrying army ranks, organised on a military basis and liable to be called on by the government when necessary to act as an internal military force. This does not sit easily with the requirement that prison personnel should have civil service status. It also makes it very difficult to have a professionally trained prison staff.

When the prison system is part of the police structure, appointment to work in a prison can be seen as a form of punishment or informal discipline. Police who are sent to work in prisons are often those who have failed in other types of police work. In addition, prisons run by the military or internal militia can often use conscript soldiers as prison staff. These young conscripts have little understanding of the complicated world of the prison and will do whatever it takes to have a quiet life. Another consequence of this arrangement is that the majority of the staff will change within short periods of time.

## Setting up civilian prison systems

“ In any democratic society, work in prison is a public service. Prisons are places, like schools and hospitals, which should be run by the civil power and with the objective of contributing to the public good. Prison authorities should have some accountability to an elected parliament and the public should be regularly informed about the state and aspirations of the prisons. Government ministers and senior administrators should make clear that they hold prison staff in high regard for the work they do and the public should frequently be reminded that prison work is an important public service.

Andrew Coyle, *A Human Rights Approach to Prison Management* 2002<sup>3</sup>

A number of countries have recently moved to set up civilian prison systems as they become democratic. The way this is done depends on culture, political traditions and socio-economic levels. For example, the process is likely to be very different in Eastern Europe from Latin America or the Caribbean.



**UN Standard Minimum Rules, Rule 46(3):**

*(To secure the foregoing ends,) personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness.*

**European Prison Rules, Rule 54 (2):**

*Personnel shall normally be appointed on a permanent basis as professional prison staff and have civil service status with security of tenure subject only to good conduct, efficiency, good physical and mental health and an adequate standard of education.*

**The European Code of Police Ethics, Recommendation (2001)10,  
Committee of Ministers of the Council of Europe**

*There shall be a clear distinction between the role of the police and the prosecution, the judiciary and the correctional system*

## The experience of the countries of the former Soviet bloc

The move to demilitarisation has been a major part of the justice reform process that started in the 1990s in the countries of the former Soviet bloc. One of the requirements imposed by the Council of Europe on states applying to join that body was that the administration of the penitentiary system should be moved from the Ministry of the Interior to a more appropriate location, usually the Ministry of Justice.<sup>4</sup> This process is now complete in almost all of the countries which have joined the Council of Europe since the beginning of the 1990s.

In many countries there was initially strong opposition from vested interests. In some, the Ministry of the Interior objected to losing a large part of its empire. Prosecutors and others feared that the task of investigating crime and securing convictions would become much more complicated. In many countries the Ministry of Justice was previously a small department with relatively little power and so there was a fear that there would be reductions in budgets and in influence.

In Russia the transfer to the Ministry of Justice from the Ministry of Interior took place in 1998. It has been regarded as a model for the region because it was done as part of a much wider programme of criminal justice reform rather than an isolated change.

In Kazakhstan the management of the prisons and colonies for convicted people was moved to the Ministry of Justice in January 2002 but the management of the pre-trial prisons was retained in the Ministry of the Interior. Only after much intense political activity was the decision taken at the end of 2003 to transfer the pre-trial prisons to the aegis of the Ministry of Justice.

In Ukraine the government found a middle way by setting up a new Penal Executive Department reporting directly to the Presidential Office and separate from the Ministries of Interior and Justice.

## The transfer from military, police or Interior Ministry control

The actual process of transferring responsibility from one ministry to another can often be achieved, at least on paper, without a great deal of difficulty, provided new legislation is approved. There will be a clearly defined organisational objective. The administrative process of transferring responsibility can be relatively straightforward in terms of personnel, management and finance. The same people will continue to work in prisons

and in the national administration. The only difference will be that they report to the Minister of Justice instead of the Minister of the Interior.

It is sometimes thought that this transfer is in itself sufficient to achieve a process of demilitarisation. This is not the case. It is only the first step in a process towards creating a civilian prison system.

## Incomplete demilitarisation

Unless there is radical reform, it is likely that a system which has been nominally transferred to a civilian authority will retain most of its military features. For example:

- staff will still have military ranks and will retain the conditions of employment of military personnel. Importantly, they will retain a military ethos and attitude towards their work and the treatment of prisoners
- some prison systems will still have special units which remain closely linked to the police and which can be called on to undertake military roles in times of civil unrest or in other emergencies
- prison staff at management level will have little control over their budget or staff resources
- staff training will still involve a considerable amount of traditional military style exercises, with marching, drill and training in the use of a variety of weapons that will never be used in the management of prisons
- training staff in topics such as human rights and prisoner rehabilitation will be added to the existing curriculum rather than replacing subjects which are no longer appropriate

## Staff reaction to a move from a military to a civilian model

There are a number of complex elements in this process. For many prison staff the change is likely to raise strong feelings and many anxieties. Their major concern will be that it will involve a major cultural change and that it will directly affect for the worse the lives of many employees and their families. They will be worried about many issues, including the following.

### Status

In almost all societies prison staff have a relatively low professional status. In a number of countries close association with the military or the police helps to offset this low status. Many staff believe that moving to a civilian organisation will diminish their status and for that reason they are resistant to change. Therefore any structure that replaces what already exists must ensure that members of the prison staff will have at least the same status in the community as before, if not an improved one.

### Becoming civil servants

The alternative to a military structure is a civilian one. There will be a fear among prison staff that they are moving from a quasi-military role, which they regard with some professional pride, to one in which they will become little more than administrative clerks working in a bureaucracy and subject to civil service constraints.

## Loss of benefits

In many countries the military and their immediate family members are entitled to a wide range of benefits. Civilian public servants are not entitled to many of these benefits. Losing them will have a very real and detrimental effect on the standard and quality of life for prison staff and their families.

## Implementing a civilian model

If the move to a civilian model for the prison service is to be successful, certain clear messages will need to be communicated to those involved at all levels. A modern, professional prison service structure, which is the desired outcome of demilitarisation, is different from a military structure. However, it will be important to reassure staff that this does not mean that they have to move into a civil service administrative bureaucracy. Prisons need to be places where there is firm and fair discipline and clear lines of authority. A civilian prison service will remain a disciplined organisation. There may still be rank structures and it may be decided that personnel will continue to wear some form of uniform. It will, however, have different reference points because it will be linked closely to the judicial process and to the rest of civil society.

The following elements will need to be considered.

### Conditions of Employment

In some countries members of the military have certain privileges. For example, they and the members of their immediate family may be entitled to free accommodation, to free travel within the country, to free medical care and to free holiday accommodation. They may also receive free meals when they are on duty and have specially favourable pension schemes after relatively short periods of employment. In a military prison system personnel may be entitled to all or some of these privileges, which may in total be more important than their salaries.

These conditions of employment need to be taken into account when there is a move to a civilian prison system. It is not sufficient to regard these conditions of employment simply as privileges that can be done away with at no cost. Salary and conditions of employment have to be considered as a legitimate package. Any change has to involve re-negotiation of that package to ensure that the legitimate expectations of personnel are met. This may require additional funding. Redefinition of work in prisons as an essential service, to be ranked alongside the police and fire services, is one way of solving this problem.

### Daily working patterns

Military style shift systems may require staff to work continuously for several days and then to have multiple days off duty. One such pattern might be that staff work continuously for 24 hours and then have three days off. Such an arrangement can enable personnel to supplement low incomes by having additional part time jobs. In a professional prison service such working patterns are unacceptable, but changing them is likely to require delicate negotiation.

## Finance

There is sometimes a misconception that a change from a military structure to a civilian structure will lead to a reduction in overall expenditure. This is unlikely to happen for a variety of reasons. One is that the overall salary budget may have to be increased for the reasons given above. In a military structure a member of staff can be ordered to work as many hours as are necessary with no additional payment beyond the basic salary. Thus many prison staff in military structures work very long and unpredictable hours. In a civilian structure it will usually be necessary to make additional payments to staff for working in excess of the standard working week. Alternatively, it may be necessary to recruit new staff to ensure that staff do not have to work excessive hours.

In some countries troops from the Ministry of the Interior, police or some other agency guard the external perimeter security of penal establishments. There may be historical reasons for this but one current reason may be that the prison authorities cannot afford to employ their own staff to do this. As these troops are often conscripts undergoing obligatory national service, there is often no possibility of a transfer of funds between ministries for this work.

It also has to be borne in mind that in many countries Ministries of the Interior and the police tend to be well financed and to have more resources to draw upon than Ministries of Justice. It is quite possible that when responsibility for prison administration is transferred from the Ministry of the Interior some of the budget will be held back.

## Ways of moving to a civilian structure

### Changing the Law

The creation of a new organisational and personnel structure for a professional prison service may well require changes in legislation, especially if the existing law or regulations have been framed for a military organisation.

### Careful preparation

Moving a prison system from a military model to a civilian one involves complex organisational change, careful planning and an analysis of all the issues involved. International or regional conferences, seminars and study visits can raise awareness of these issues but these are not sufficient on their own to achieve the radical change of attitude which is necessary. The real change of attitude has to come from within the organisation.

“ In the Dominican Republic, a state which moved to democracy in 1978, prisons were under the control of either the police or the military. A project was set up to assist with transfer to civilian status. Two ‘change agents’ were appointed, a university professor and a senior prison governor. With minimal resources they set up a prison training school in December 2003 to train civilian prison staff. The first 430 to be trained were deployed in a new wing of a prison to start the civilisation process. Four other civilian run prisons were planned. Other activities as part of the process were the first ever collective meeting of all the volunteers working in the prison to secure their co-operation with the new system and sessions at the law faculties of two major universities to interest tutors and students in working with the civilian prisons, as volunteers, teachers and in other roles.

ICPS Report 2004

Experience indicates that it may well be necessary to provide international expertise to achieve the necessary change and to help a country to move from the traditional military structure to one that is required to run a modern prison service. Such expertise can be found in the increasing number of countries which have already been through this process. Such support may well have to be long term. It may include the following features:

- an information collection exercise indicating what has been achieved in different countries with a similar historical legacy and how other jurisdictions have dealt with the range of problems that one faced
- support to develop a new working model and to facilitate change from the current model
- evaluation of projects which have offered other countries models of good practice to achieve a suitable structure and a process for change

Considerable experience from countries which have already gone through the process of change from a military to a civilian structure is now available. The lessons learned indicate that the key elements of any change plan will include the following elements:

- the definition of a core structure for the new organisation
- an agreed hierarchy for the management and staffing of the prison system at national and local levels
- carefully negotiated changes to salary arrangements
- an assurance of no deterioration in conditions of employment
- professional systems for supporting personnel
- arrangements for staff to express their opinions through representative bodies

## References

- 1 Amanda Dissel and Stephen Ellis, *Reform and Stasis: Transformation in South African Prisons*, paper first published in *Ambitions réformatrices et inertie du social dans les prison sud-africaines*, *Critique Internationale* No. 16, July 2002
- 2 *Open letter to General-Colonel K. Suleimenov, Minister of Interior, Kazakhstan* September 2002
- 3 Andrew Coyle, *A Human Rights Approach to Prison Management: Handbook for Prison Staff*, ICPS, London, 2002, p.13
- 4 See *The Russian penal system: past, present and future*, a lecture delivered by Yuri Ivanovich Kalinin at King's College, University of London, November 2002, International Centre for Prison Studies