



University of London

International Centre
For Prison Studies

**Penitentiary Policy Reform
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1. The aim of this paper is to stimulate debate about priorities for penitentiary reform. After a short introduction about the work of ICPS, the paper looks at two key issues. First the use and role of imprisonment with specific reference to Central and South America and the Caribbean; and second the practice of imprisonment in the region. The paper finishes with some case studies based on the work of ICPS in the region.
2. ICPS is based in the Law School at King's College, University of London. (Slide 2) The aim of the Centre is two fold - first to build up knowledge about the use and practice of imprisonment across the world through research, study and data collection. And second to undertake practical work with governments, prison administrations and other criminal justice agencies to assist them to improve the way their prisons are used and run. And by improve I do not mean make them more like the prisons we have in the UK but in ways which achieve greater compliance with the body of

international human rights standards developed over the last 50 years or so to provide a universal frame of reference within which prison should operate. Our key documents are A Human Rights Approach to Prison Management: Handbook for Prison Staff, and Guidance Notes on Prison Reform. (Slide 3 and 4)

3. Two year ago, we organised a round table discussion on Human Rights and Prison Reform in Guatemala with senior representatives from the prison administrations in Honduras, El Salvador, Belize, Nicaragua and the Dominican Republic as well as the host country. They were joined by representatives from the United Nations High Commission for Human Rights, the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD), the United Nations Development Programme, the European Commission and Embassies of Norway, Finland, Mexico, France and Italy.
4. After two days of discussion the participants produced a declaration which confirmed that the human rights approach provides the best framework for prison management. Four key principles were identified as being particularly significant in the region:
 - a) ensuring the safety and well being of prisoners and staff
 - b) respecting the dignity of prisoners and providing decent living conditions
 - c) providing constructive activities so that prisoners can improve themselves
 - d) maximising opportunities for effective reintegration after release.(Slide 5)
5. The round table identified a number of key obstacles to implementing these principles. These included:

- a) levels of overcrowding, particularly among pre-trial prisoners
- b) violence and other problems caused by gang members
- c) corruption and lack of training among staff
- d) Lack of resources for education and other rehabilitative activities.(slide 6)

6. There may of course be other priorities and obstacles. But I give these as an example of the way we try to work at ICPS, not seeking to impose an internationally devised solution but assisting, where we can, those with responsibilities in the prison field to identify key challenges and develop solutions which meet human rights obligations in ways which are appropriate to and achievable in their own political, economic and cultural environment.
7. There are some respects in which the prisons in this region have things to teach the rest of the world. The importance attached to maintaining contacts with families – not just through intimate visits but welcoming wives, parents and children into the prison community for a decent length of time puts us in Europe to shame. Slide 7 shows entertainers at a packed show for families in a Mexican prison.
8. In this part of the world the Inter American Human Rights Commission approved earlier this year an important set of Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. These include important requirements not only about conditions of detention but also the circumstances in which imprisonment should be used. They state for example that as a general rule, the deprivation of liberty of persons shall be applied for the minimum necessary period. Preventive or pre trial detention should be applied only as an exception. Measures which act as an alternative to or substitute for imprisonment should be established in law and properly resourced. In imposing penalties on members of

indigenous peoples, the principles say preference shall be given to methods of punishment other than confinement in prison, in conformity with their customs or customary laws, where these are compatible with the legal system in force.

9. The statistics about the use of prison suggest there is a long way to go before the principles are applied across the Americas. Three things stand out about the use of prison. First of all the substantial variation in rates of imprisonment which are conventionally measured per 100,000 of the national population. They vary in the Caribbean from 588 in St Kitts to 78 in Haiti; in Central America 468 in Belize to 57 in Guatemala; and in South America from 365 in French Guiana to 79 in Venezuela. (Slides 8-13)
10. The second feature is the high proportion of pre trial prisoners. (Slides 14 and 15). In most countries pre trial prisoners represent fewer than 40 per 100,000 of the population but in the Americas 80% of countries exceed that level. There have been falls in several countries, notably Chile with changes to criminal procedure and options available at the pre trial stage.
11. The third feature is the growth in prison numbers over the last 15 years or so. Slides 16 and 17 shows the trend in four big countries. The trend is not universal but it is common – according to our data prison populations have risen in the last few years in all but three of the 26 countries of Latin America and the Caribbean where the IADB finances programs and projects.
12. Given the focus of this training seminar on citizen security policies, it is important to consider what role prisons do and should play in bringing about increased safety and reductions in crime and violence. A number of recent studies are helpful in this respect. For example, the Joint Report by the United Nations Office on Drugs and Crime and the Latin America and the Caribbean Region of the World Bank on Crime, Violence, and Development: Trends, Costs, and Policy Options in the Caribbean

concluded that:

“In general, there has been an over-reliance on the criminal justice approach to crime reduction in the region, to the detriment of other complementary approaches which can be effective in reducing certain types of crime and violence.” The report argues for more investment in a preventive approach while recognising that a robust criminal a justice response is needed to tackle organised crime and drug trafficking.

13. The UNODC report on Crime and Development in Central America points out that some countries in the region boast large prison populations relative to their capacity to care for them. Large shares of these prison populations have not been convicted of anything - they are incarcerated awaiting trial. Aside from being very expensive, large prisoner populations are difficult to manage without vast resources and compromise the prospects of real rehabilitative work”.

14. There are some experts (Cohen and Rubio Violence and Crime in Latin America 2007) who have argued that because offenders who are released from prison have extremely high recidivism rates, comprehensive Prison Treatment and Reintegration Programmes can have a high payoff in terms of security. They point to evidence from the developed world that drug treatment, educational and vocational programs, and cognitive behavioural therapy have all been shown to reduce re-offending. A counter view from the World Bank has suggested that not only has that evidence become less compelling in recent years, but also “the infrastructure of prisons in Latin American countries is so precarious that significant investments in improving the physical environments in prisons would be needed before investments in rehabilitative services for inmates would have any possibility of being successful. “ This calls into question whether such programs are an attractive investment for crime prevention in Latin America. (Morrison 2007).

15. The balance of the evidence suggests that investment in more and more prison places will bring limited benefits compared to more preventive measures which build social capital, support poor families, mentor at risk youth and engage with non state justice systems. The World Bank concludes that community centred approaches to preventing crime and protective strategies rather than mechanisms of control and harsher sanctions are likely to have more success in breaking the cycle of crime, inequality and violence at lower cost and contribute to pro poor governance. Specific studies have found that “premature or excessive punishment, including incarceration and social stigma, can lead young people to continue to participate in criminal activity or violence” and that harsher prison conditions are associated with higher recidivism rates. (Gauri and Lundberg, Youth and Citizenship World bank 2007)

16. Turning to the question of prison conditions and regimes themselves, there is no question that there are prisons in the region where these not only fail to meet regional human standards but are life threatening- because of risks and realities of fires and riots; levels of violence between staff and prisoners and between prisoners; or because of the prevalence of infectious diseases.

17. In Venezuela, it is estimated that 500 prisoners met a violent death in prison last year. Fires killed 30 prisoners last year in incidents in Santiago del Estero in Argentina and 25 in Ponte Nova in Brazil. Tuberculosis is up to 100 times more common in Peruvian prisons than among the free population, while AIDS is about six times easier to contract in Peru's largest prison, Lurigancho, than in the streets of Lima, according to Doctors Without Borders. The diseases are spilling into the public at large due to the vast amount of traffic in and out of prisons. For example, at Lurigancho which holds some 8,500 prisoners (but is designed for just 1,500), about 4,000 visitors come and go on an average visiting day, a spokesman for Peru's National Prison Institute stated in 2006.

18. Each of these risks is made worse by overcrowding. Slide 18 shows the occupancy rates in the countries where total numbers of prisoners most exceed capacity. Whatever the total picture of course, in parts of many systems, overcrowding can be gross. Slide 19 shows a cell in El Salvador. I have visited a prison in Guatemala “El Infernieta” with similar overcrowding notwithstanding the system’s total occupancy level of a modest sounding 107%,
19. The regional human rights principles recognise the crippling effect which overcrowding has on the capacity of prison to fulfil their role. They thus require governments to set and publish a maximum capacity for each place of deprivation of liberty according to international standards related to living conditions; and to prohibit the occupation of an institution over its maximum capacity.
20. Effective curbs on overcrowding are necessary if not sufficient to ensure that many of the rights of prisoners set out by the Inter American Commission can be met- the rights to food and drinking water, accommodation hygiene and clothing, to education and cultural activities, and to work. Necessary too are sufficient and qualified personnel with access to fair and equitable remuneration, decent living conditions and appropriate basic services; and regular visits and inspections by national and international organisations.
21. This last element – national and international inspection could become a key driver for prison reform through the workings of the Optional Protocol on the UN Convention against Torture. Ten countries in the region have ratified and a further three including Chile have signed but not yet ratified the protocol. Of those who have ratified three have designated their national preventive mechanism. This is the body that will inspect and report on all places of detention in the country - the Human Rights Commission in Mexico, Defensoria in Costa Rica and a National

Committee for the Prevention of Torture in Honduras.

22. If this preventive approach is to work then it will be important for the responsible authorities to respond constructively both to the findings of the national body and those of the international committee from the UN who will make periodic visits. Donor bodies will have an important role in assisting countries to develop their systems.
23. In our work we have come across many examples in the region where the social rehabilitation of convicted prisoners is being taken seriously. Among examples we have identified at ICPS are:
- a) Work opportunities which lead to genuine jobs on release (Slide 20- a fish filleting factory in Mar Del Plata Argentina)
 - b) Therapeutic Communities in Prisons – Quito No 2 Prison (Slide 21)
 - c) Mental health treatment – Equine Therapy Queretaro (slide 22)
 - d) A system of juvenile justice detention separate from the prison system in Ecuador (slide 23)
24. There is no shortage of individual projects or initiatives which are worthy of support. What is needed however is a more structured and comprehensive approach to reform.
25. Two current examples are Ecuador and the Dominican Republic. (Slide 24) In Ecuador the new Constitution has important articles relating to prisons and prisoners. Article 51 on the rights of persons deprived of their liberty forbids the use of isolation as a disciplinary measure. Articles 201-3 on social rehabilitation restrict the placement of prisoners to specified social rehabilitation centres with an emphasis on training and reinsertion and a provide judicial guarantees of rights. They also mandate the establishment of a new governmental department to run the system, with a

decentralised and autonomous system of prison management.

26. There is also a section on indigenous justice (article 171) which recognises traditional conflict resolution provided that women can participate and the procedures respect constitutional and human rights. Article 90 recognises mediation.
27. There have been already been major changes since November when the Ministry of Justice was created and assumed responsibility for prisons.
28. The prison population is down from a peak of 18,000 to about 12,000, with the proportion of pre trial prisoners down from over 60% to 40%. This has partly been achieved by greater adherence to time limits (6 months or 12 for grave cases) by the defensoria.
29. There has also been a one off programme of pardons (indultos) for which two categories of prisoner have been able to apply- those with terminal illnesses and also first time offenders convicted of drug trafficking of quantities less than two kilos. There are some criteria relating to the length of time served and behaviour but most of those who have applied have been approved. Posters encouraging applications are prominently displayed around the Quito prison.
30. There is also a policy of enabling prisoners to earn remission – rebaja de penas. This is in the process of being implemented- 80 prisoners have been released early so far. (Slide 25)
31. In the Dominican Republic, the reform of a corrupt and militaristic prison service has been driven through the creation of New Model Prisons staffed by a new cadre of personnel trained at a newly formed training school. In return for better training pay and status, staff are expected to be scrupulously honest – corrupt practices are met with instant dismissal. The new model prisons are gradually being introduced across the estate- with

almost a third of the establishments now run in this way. (Slide 26)

32. What both countries have in common is support for reform from the every top of government.
33. In conclusion, the key messages appear to be the need to improve prison conditions for those that need to be detained but to look warily at the value for money in expanding prison capacity to enable more people to be locked up. At ICPS we have been exploring the idea of Justice Re-Investment, a term first coined by the Open Society Institute in the USA.
34. Slide 27 shows the numbers of people in prison and under probation in the various neighbourhoods that make up Gateshead, a town in the North East of England. The concentrations are closely related to the most deprived areas. There is an important question about whether the resources spent on imprisoning and supervising offenders from these neighbourhoods are producing the best dividends in terms of community safety. A Parliamentary committee in the UK has picked up on the question and is in the midst of an inquiry into the cost effectiveness of prisons and an examination of potential alternative policies. These are the kind of questions which donors and development agencies need to ask in the international context.