

Guidance Note 1

Penal reform projects and sustainable change

Summary

- Prisons run according to human rights principles are an integral part of a justice system that maintains the rule of law.
- To be successful and sustainable prison reform projects need political will, an administration able to deliver change and champions to support it.
- Prison reform needs a trigger, such as the spread of disease, a scandal, the possibility of joining a regional body with human rights requirements, or a new government committed to human rights.
- Prison reform projects should be strategic and take account of the criminal justice, social and political context.
- Some quick outcomes give encouragement.
- The model of imprisonment being promoted should derive from the international human rights instruments rather than from a particular culture.
- The credibility of those bringing the prison reform message should be high with the recipients.
- The impetus for continuing the reform should be built into the political environment by gaining support from civil society and parliament.
- Co-ordination with other reforming bodies can increase the impact.

“ 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 one 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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Penal reform projects and the rule of law

Safe and orderly prisons that respect the human rights of those who live in them and treat with respect those who work in them are an integral part of the maintenance of the rule of law. Yet, in many parts of the world prisons are lawless places riddled with corruption, holding people in dangerous conditions which can lead to death. Overcrowding is widespread and abuses take place in both rich and poor countries. Equally, good prison management and respect for human rights can be found in all socio-economic environments.

Prison reform is important because prisons can be places of gross human rights abuses. Also they can constitute a threat to public health. A term in prison can be socially damaging and add to the number of marginalised people in society. Moreover, a reliance on imprisonment as a major contribution to crime control is unsupported by the evidence. In most countries those who end up in prison are the poor and marginalised whose crimes are often the less serious. The contribution of the penal system as a whole to ensuring a safer society is vital but limited. To reduce crime, investment in social measures and the fostering of social cohesion are more likely to be cost-effective.

“ *The projected increase in the prison population is not the result of increasing crime. It comes at a time when New Zealand’s crime rate, and total recorded crime, has dropped substantially ... There has also been little change in the average seriousness of offences ... Tougher sentencing comes at a high cost ... It’s money we’d much rather spend on areas like health and education. ... Over the longer term, it will be measures to address the causes of crime, rather than simply prisons, which will bring down crime.*

Hon Phil Goff, Justice Minister, New Zealand 2004¹

Deciding whether to do a project

Three basic conditions are necessary if prison reform projects are to have a good chance of success.

- **Political will and support from the top of the government ministry responsible for the penal system or from a powerful part of the government such as the presidential administration or a high-ranking official.**

Prison reform is not a high priority for most governments. It does not have the appeal of health, education or economic reforms. It rarely brings many short-term political benefits. If there is no part of the government machine committed to a reform project it will struggle to make any impact. If a project is operating in such unsupported circumstances it will need to build into its work some activities aimed at generating a wider public understanding of the need for change.

- **An administration sufficiently well-organised to deliver some change and carry it through.**

Even if there is genuine commitment to change, the government might not have the capacity to deliver reform. If, for example, the prison system operates through deep-rooted corrupt practices at all levels, reform will be needed at the wider governmental level.

- **Some champions working in the system.**

The project will need the support of some people who are well placed to help the project achieve its ends, prepared to show publicly their support of the changes proposed and likely to remain in the post for enough time to see a project through.

“ Aid providers are coming to appreciate that will to reform must exist in state institutions if change is to occur. They are learning how to assess when such will is present, and when it is absent, so that they can either try to generate it or stay away. They are also starting to accept that resistance to reform in at least some levels of any given state institution is more the rule than the exception and must be dealt with.

Thomas Carothers, *Aiding Democracy Abroad* 1999²

Triggers of prison reform

Prison reform is widely needed but not often sought. For prison reform to become a practical possibility a trigger is needed, some pressure point or spur to action that gives a reason for setting out on a politically unrewarding path. Possible triggers include:

- the coming to power of a political party with a commitment to human rights or whose leaders have been in prison
- the spread in prisons of an infectious disease like TB that causes alarm because it is a threat to public health
- the exposure of some prison-related scandal such as prison deaths or brutal treatment

“ Three former inmates of Nagoya Prison and the family of a dead prisoner jointly filed a civil suit Friday, demanding a total of 233.5 million yen from the state and 12 prison guards over alleged assaults.

It is the first time that former inmates have jointly sued the government for a suspected injustice inside prison walls, lawyers for the plaintiffs said.

According to the lawsuit filed at the Tokyo District Court, guards separately assaulted the three former inmates on several occasions between October 2001 and September 2002.

These assaults, which incorporated the use of controversial leather restraining devices, left the trio with serious injuries to their intestines or posttraumatic stress disorder, the plaintiffs claimed.

The fourth inmate died in May 2002 after being placed in the device on the day he arrived at Nagoya Prison after being transferred from Shizuoka Prison.

Hiroshi Matsubara, *Nagoya prisons guards face damages suit* 2003³

- concern about the costs of maintaining the prison system

“ According to the National Center on Institutions and Alternatives, a release policy targeting nonviolent prisoners over 55 who have served at least one-third of their sentence would save more than \$900 million annually.

Vincent Schiraldi and Judith Greene, *Cutting Prison Costs is Tempting in Times of Fiscal Crisis* 2002⁴

- a recognition that adherence to international human rights standards is important for the status of the country
- political impetus to join a regional body such as the Council of Europe or the European Union

“ The Copenhagen Criteria for admission to the European Union require that the candidate country has achieved ‘stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;’

Turkey in Europe: more than a promise? Report of the Independent Commission on Turkey 2004⁵

The way projects are carried out will affect their chances of success. (See Guidance Note 3 for suggested measures of success and methods of evaluation).

A strategic and system-wide approach

The different elements of the criminal justice process are interconnected and interdependent.

Working on individual aspects of the system in isolation can be counter-productive. For example, reform of the police to make them more effective could lead to a better detection rate of crimes and to more suspects being charged. Without reforms in the other parts of the system the result could simply be more people detained before trial in inhumane prison conditions. Prison reform therefore needs to be set within some understanding of the whole criminal justice system.

“*... life in Haiti at the end of the 1990s was marked by ... an increase in crime. More proficient policing had contributed to a surge in arrests, but Haiti's courts, continually plagued by backlogs, were unable to keep up. This was particularly true in the Port-au-Prince region, where nine out of 10 prisoners were awaiting trial. Shoplifters and the falsely accused languished next to major criminals, in some cases for years, and three-quarters of the inmate population did not even have a bed to sleep on.*

Anne Fuller et al, *Addressing Prison Overcrowding in Haiti* 2003⁶

Real prison reform is likely to take several years. A worthwhile project should have a lifetime of at least three to five years. Even a modest project should be seen within a framework of short, medium and long term goals.

Short non-strategic interventions can sometimes do more harm than good. For example, it is unlikely that a one-off training course for prison personnel will have much positive impact. But it could have a negative impact by raising levels of discontent amongst prison staff working with very few resources if they see money spent on an event which seems to them to have little relevance.

Quick outcomes

Within a long-term strategic programme it is desirable to have some quick outcomes. For example, it is helpful if a few results that bring tangible benefits to staff and prisoners are seen within a short time. In countries with few resources, activities to improve the food available to both staff and prisoners can meet this need, for example, by installing a greenhouse in a prison yard to grow fresh vegetables or cultivating a small piece of land. It could also be useful to recognise prison staffs' professionalism, for example, by involving them in a consultation process about how to implement their recommendations for change. Information leaflets for prisoners, more posters around the prison telling prisoners about sources of help, or more respectful admission procedures are all changes that are relatively cheap and uncomplicated.

The messengers

Those bringing the penal reform message should be credible message bringers. Ideally, they should have worked in prison or have had relevant experience. The prison

authorities in the country where the project is taking place should have reasons to trust the motives of those doing the project.

Whose standards?

The style of imprisonment in any country is closely related to culture and history. There is no model prison system. Examples of good practice can be found in many systems and most systems have strengths and weaknesses. The only standards that are universally applicable are those of the international and regional human rights bodies and the practice documents that have grown out of the experience of putting those standards into effect. Most countries where reform is undertaken will have in their constitution and possibly also in their criminal and penal law measures that call for the humane treatment of prisoners. These national legal requirements can be used as the legitimacy for reform programmes. Changes to the criminal and penal law may be needed to take account of international standards if those standards are to be achieved.

“ (In carrying out the twinning project between prisons in Northern Ireland and the pre-trial prisons in Moscow) ...the building of trust, both personal and professional has been essential for the process of change in attitudes. What had to be demonstrated to both groups of partners was that their new partners were knowledgeable, enthusiastic people and dedicated professionals. At this level of trust, discussions of difficult issues such as the removal of shutters are easier, since it is known that the other person's intention is not to undermine, but to assist. Evidence of similarity of problems and professional cultures has helped with this too. When managing a project such as this it is important to ensure that the Western partners do not come across as saying that everything that is done in their system is the only correct practice.

ICPS Project Report 2003⁷

Building on strengths

When designing a project there is merit in beginning with the strengths of the prison system concerned and building on them. For example, some states, particularly small ones, can have relatively good relationships between prisoners and staff built on a close community outside the prison which will have given staff the ability to defuse tension and minimise violence. Many prison systems have talented personnel working at intermediate levels, who do not progress in the hierarchy for political reasons but who can become leaders of change. Some states have a vibrant civil society with many groups interested in prisons and prisoners.

“ UNDP's approach to justice sector programmes follows a capacity development perspective in both substance and process ... A capacity development approach opts for building on existing strengths, rather than substituting them.

Ramaswamy Sudarshan, *Rule of Law and Access to Justice* 2003⁸

Study visits

Visits to other countries are often used as a technique for spreading an awareness of different ways of running prisons. Such study visits can be very productive when the visit is planned in detail, specific aspects are being studied and the lessons reflected upon. They can also be counter-productive when visitors from a very different culture see a prison system out of context. Without good planning there is a real danger that

the visitors can meet an enthusiast for one approach, such as conducting remand hearings by video link or carrying out computerised risk assessments of all prisoners, and they take this idea home with them. They then apply it in a very different and inappropriate environment. When visiting a foreign country it is helpful if the visitors meet not only official representatives but also organisations that might have criticisms of the system being visited.

Study visits between countries of a similar socio-economic level can be productive.

“ A joint delegation of officials from the Malawi and Kenya Prison services visited Rajasthan, India, from 7-15 October 2002 to study the open prison camps that have been in operation for over 40 years and are being initiated all over the sub-continent.

Penal Reform International 2002⁹

Prison twinning

Setting up a relationship between prisons in different countries, usually between a prison in a rich country and a prison in a poor country, can be effective if it is based on equality of respect, solidarity between the prison staff in both countries and concentrates on exchange of knowledge and experience. If it is a one-way process, passing wisdom from the rich country to the poor country, it is unlikely to be well received or effective.

A regional approach

Some states may be willing to undertake reform but because of their small size or high levels of poverty might not be able to sustain a reform programme. It may be that the state is in a region where a natural regional leader is available with prison reform experience and the capacity to provide confidence-boosting and culturally appropriate support, information and training.

Ensuring sustainability

Prison reforms are always difficult to sustain. Penal systems are buffeted by changes in the political and public mood. A heinous crime or a serious escape can knock any project off course.

Therefore the impetus for continuing the reform needs to be built somehow into the political environment. In the short term it can be risky and not very rewarding for elected governments to propose penal reform. The issue is often highly polarised. Reform can be described as a liberalisation and may allow political opponents to make the accusation that the government is soft on crime and puts concern for criminals above concern for their victims. So politicians and their advisers who are committed to penal reform are taking risks. Part of a penal reform programme therefore is to identify, support and nurture committed politicians and senior officials and make available to them the tools they need, such as information and arguments, examples of what other governments are doing and contacts with others similarly placed.

In democratic countries support from parliament is very important. Most parliaments have a justice committee or similar body that should keep debate about the value of a well-run prison system on the political agenda and provide a basis in parliament for support of the reforms. It is also important to work simultaneously with organisations in civil society with an interest in human rights and/or social welfare (see Guidance Note 12).

Projects in resource-poor countries



Prison reform is too often a low priority in countries with scarce resources.

Ramaswamy Sudarshan, *Rule of Law and Access to Justice* 2003¹⁰

Most countries where penal reform projects are undertaken by outside bodies face resource problems, of either extreme or relative poverty, and an under-resourced government machine. Solutions therefore need to be found which do not require unrealistic injections of resources and which will be sustainable in the longer term.



In Ekiti State, it (a donor's justice reform programme) takes credit for computerising the operations of the Ministry of Justice. It is not clear what happens when there is no electricity to power the computers, which, it is understood, is the rule rather than the exception.

Chidi Anselm Odinkalu, *The problem with DfID Access to Justice Programme in Nigeria* 2003¹¹

Building new prisons and smart staff training schools is probably not cost-effective. In one Latin American state an international donor provided substantial funds for a new prison for juveniles under the age of 18 so that they would not be held with adults. However, the provision of the expensive building with its extensive educational facilities was not part of a strategic reform programme. The management of the prison system continued as before. In protest against ill-treatment the juveniles rioted and caused extensive damage to the building. As a punishment they were moved back into the adult prison. The expensive young people's prison stood almost empty.¹²

In resource-poor countries the emphasis of prison reform programmes will often be on:

- attitude change to bring about better human relations between staff and prisoners
- management change to reduce bureaucracy and decentralise power and control so as to liberate local prison managers to seek resources and make the best use of what they have
- increasing prisoner activities to make constructive use of the prisoners to produce goods, create valuable revenue, improve maintenance of the prison infrastructure and increase time spent out of overcrowded cells
- involvement of civil society groups in various aspects of work to help prisoners and generate resources

It is often said by reformers that attitudes are all-important and buildings are less important. However, this might not be a compelling argument to prison staff who have to step over overflowing sewage as they go about the prison or give prisoners food to eat that is full of weevils. The tension between improving the physical conditions and improving the performance of the staff has to be recognised. Prison conditions that are a threat to health and welfare cannot be ignored. Living in them can of itself constitute inhuman and degrading treatment or punishment.

Improving physical conditions is no guarantee that treatment will improve without a parallel effort to give the staff a new vision. Understandably the prison administration may be concerned with the living and working conditions of the staff and the health and safety of all. A project that combines the short term need for perhaps a well to improve the water supply or the installation of cooking facilities with some longer term aims such as improving the performance of the staff and reducing the number of prisoners is a reasonable approach.

Change is not necessarily reform

Changing a system is not necessarily reforming a system. Interventions can sometimes be counter-productive. To provide money to replace a prison consisting of ramshackle low level buildings round a courtyard with a state of the art brick and concrete modern prison may well look like a reform to planners in a faraway place. It will not feel like a reform to the personnel or the prisoners who then have to move to the new building.

Co-ordination with other reforming bodies

Other governments, intergovernmental bodies, or aid agencies might also be working on a project in the same country. Co-ordination of penal reform activity is poor. It is therefore worth checking that other organisations are not undertaking the same, similar or contradictory projects.

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