

International Experience in Reform of Penal Management Systems

A Report by the International Centre for Prison Studies

Introduction

1. This report opens with an overview of the organization and management of criminal justice around the world and a description of recent trends and of International norms and issues. There follow four brief case studies about the experience of countries in which responsibility for prisons has been moved to the Ministry of Justice: Russia, Thailand, Vietnam and England and Wales. The report finishes with concluding observations

Responsibility for Penal Systems A Global Overview

2. Responsibility for prisons and the wider criminal justice system is located in a number of different government organs in different countries of the world. Within the machinery of government, the majority of prisons and detention facilities fall under a central ministry of justice, a ministry of the interior and/or a ministry of public security. In many countries, there may be additional detention facilities run by the military (for dealing with breaches of military discipline); the ministry of health (for psychiatric patients who pose a danger)

and social welfare/education departments (for minors).

3. In addition in some federal countries, responsibilities for prisons may be devolved to state, provincial and or local levels; in the Philippines for example local jails are managed by the Department of the Interior and local government while national prison institutions are managed by the Department for Justice.
4. Annex A shows the responsible ministries in 219 countries.
5. In recent years there has been a trend towards moving responsibility for prisons into the Ministry of Justice (MoJ). The MoJ is responsible for prisons in all 47 countries of the Council of Europe, except Spain. This is the position in most of the Americas, much of Africa and some of Asia. In the Middle East, prisons are more commonly part of the interior ministry. Some countries of the former Soviet Union have moved prisons to the Ministry of Justice while in others the Ministry of the Interior has retained control. In Kazakhstan, the MoJ is responsible for sentenced prisoners and the Ministry of Interior for pre-trial detainees.
6. While international law does not prescribe in detail the ways in which criminal functions should be organised, the requirement for a civilian as opposed to a military prison system is at the heart of the international human rights framework.
7. The International Covenant on Civil and Political Rights (ICCPR) states that “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.” (ICCPR Article 10)
8. The UN Standard Minimum Rules for the Treatment of Prisoners state that “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.”

9. These requirements sit alongside international norms which emphasise 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; 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 .
10. These requirements are impossible to meet if prisons are 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.
11. It is also the case that 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 can jeopardize and compromise the necessary civilian nature and human rights culture of a civilian prison system as well as put at risk the fairness of the criminal process and the chance of a fair trial.
12. This has been recognized in the European Prison Rules 2006¹. Rule 71 states that “Prisons shall be the responsibility of public authorities separate from military, police or criminal investigation services.”
13. The accompanying commentary to the Rules² says that “It is important that there should be a clear organisational separation between the police and the prison administrations. In most European countries the administration of the police comes under the Ministry of the Interior while the administration of prisons comes under the Ministry of Justice. The Committee of Ministers of the Council of Europe has recommended that ‘There shall be a clear distinction

¹ Council of Europe Committee of Ministers Recommendation N° R (2006)2, The European Prison Rules

² CM(2005)163 Addendum 2 November 2005

between the role of the police and the prosecution, the judiciary and the correctional system.” (Recommendation N° R (2001)10, The European Code of Police Ethics).

14. Particular dangers can arise if there is not a clear distinction between the department responsible for the police and the administration of prisons. The police are 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 where necessary should thereafter be remanded into prison service custody.
15. If prisons are under the control of the police or within the same government department, there is a risk that investigating authorities may 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 opens the possibility of abuse, torture or other degrading treatment.
16. Police responsibility for prisons also carries other dangers. 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.
17. 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 may 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.

18. Placing responsibility for criminal justice in a Ministry of Justice can bring more positive benefits. Locating the development of criminal justice policy and practice alongside responsibility for strengthening democracy, rights and responsibilities and delivering fair and simple routes to civil and family justice can produce important innovations in policy. As Yuri Kalinin, then deputy Minister of Justice of the Russian Federation put it when speaking in 2002, the transfer of responsibility to the MoJ in Russia:

“was one of the most significant steps aimed at ensuring more reliable guarantees for compliance with norms of legality and with human rights. The Ministry of Justice is more free to act in this respect, since it is not burdened with the legacy of the past and has not been associated with bringing psychological pressure to bear on those who have violated the law and are serving custodial sentences.”³

19. With suitable safeguards, the MoJ can enable the judiciary to play a role in the development of criminal policy and to reach shared objectives between the executive and judicial systems about, for example, sentencing and the use of imprisonment. The Ministry of Justice is more likely to give consideration to the development of sanctions which do not involve the deprivation of liberty.

20. The Ministry of Justice may be better placed to work across government to ensure other relevant departments (e.g. health, education, local government) can contribute to an agenda of rehabilitation; it may also be able to work to improve public confidence in criminal and other forms of justice in ways which fit with its overarching values.

21. While there are strong arguments for the Ministry of Justice taking lead responsibility, there are important roles for other ministries. International norms make it clear that “Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.” This is usually best accomplished by giving responsibility for those under 18 to the Ministry of

³ Kalinin, Y.I. (2002) *The Russian penal system: past, present and future*. London: ICPS.

Social Welfare or Education. They also make it clear that medical care in prison should be of an equivalent nature to that in the community - best achieved by making prison health care part of the responsibility of the Ministry of Health.

Case study one: Russia

Current Situation

22. The Russian Federation had a prison population of 894,855 in June 2008, a rate of 635 prisoners per 100,000 of the population. Prisoners are accommodated in 1,051 establishments, comprising 766 corrective colonies, 216 pre-trial isolation facilities or SIZOs, 7 prisons and 62 juvenile colonies.
23. The prison system is the responsibility of the Federal Service for the Execution of Sanctions (FSES) which was established by Presidential Decree no 314 of 9 March 2004. The Ministry of Justice is responsible for drafting legal texts relating to penitentiary issues but the FSES is a separate institution in charge of implementing them. It has a reporting line to the Office of the President.
24. Inspectorates for penal execution, also part of FSES, are responsible for those sentenced to alternative sanctions and released from prison. Alternatives include community work and house arrest.

25. The FSES is responsible for providing education and psycho-diagnostic treatment in prisons. As for resettlement the inspectorates work in close cooperation with centres for employment and local communities to find solutions to the social problems of those sentenced to alternative sanctions or released from prison.
26. As for the death penalty, Boris Yeltsin decreed a moratorium on executions in August 1996 and in June 1999 signed a decree commuting the most recent death sentences passed in Russia.
27. Subsequently, the Constitutional Court has prevented the courts from pronouncing any more death sentences in the absence of a national system for trial by jury to judge the crimes that carried this sentence. A life sentence or a sentence of 25 years in prison have replaced the death penalty.
28. While the death penalty has now been abolished in practice, it has not been in law. There is still a need for legislation to prevent a future president from reintroducing capital punishment.
29. To date, Russia has still not ratified Protocol 6 of the European Convention on Human Rights, on abolition of the death penalty, and it has not signed Protocol 13 on abolition of the death penalty in all circumstances.⁴

Transfer of Responsibility

30. One of the conditions for Russia's admission to the Council of Europe was the transfer of all institutions and agencies administering the punishment of convicted persons from Russia's Ministry of the Interior to the Ministry of Justice of the Russian Federation. This condition was met on 31 August 1998 when the penal system became part of the Ministry of Justice, (with the exception of military disciplinary sanctions)

⁴ <http://www.fiacat.org/en/spip.php?article89>

Consequences of Transfer

31. The prison population in 1998 stood at just over a million or 688 per 100,000 of the population. According to Yuri Kalinin “an excessively harsh criminal system had given rise to an unjustifiably wide use of restrictive measures, which had led to convicted prisoners who did not need to be isolated from society being detained and then deprived of their liberty.”
32. This had led to these institutions being seriously overcrowded and prisoners not receiving the food, clothing, footwear, medicines and other basic necessities which they required. The situation was especially grim in remand prisons (SIZOs) where persons suspected and accused of having committed crimes are held while preliminary and judicial investigations are being carried out. In some of these institutions prisoners had no more than one square metre of living space each (although the established norm was four square metres). One consequence of this was that prisoners had to take it in turns to sleep.
33. The consequences of transfer fall into five main categories. First, there has been much greater political recognition of responsibility for the prison system. In 1999 Vladimir Putin, then Prime Minister, was the first Head of government to visit a SIZO and two years later as President used an address to the nation to mention the need for prison reform; a year later he emphasized the need for humanizing the penal system, in particular encouraging the legislature to develop alternatives to imprisonment.
34. Second the transfer has increased awareness of society’s duty of involvement in the prison system, and relations with both municipal authorities and NGO’s working in the field have improved.
35. Third, the Ministry of Justice has been able to oversee a programme of reform of the institutions and agencies of the penal system. Since 1998 there have been improvements in the legislative and normative basis for the penal system, which serves to regulate the activity of the institutions and agencies administering

punishment. The necessary infrastructure for the system has been put in place, a range of services has been placed on a firmer footing and new subdivisions of the system have been created. The reform achieved decentralization by giving regional prison administrations greater autonomy. Training of prison staff has been improved.

36. Under the MoJ, the penal system has increased its range of duties, becoming responsible for escorting prisoners when they are outside a penal establishment, providing medical services for prisoners, undertaking major building projects, training staff in the system's own staff training establishments in both the specialised secondary and tertiary sectors, and providing pensions.⁵

Amendments to the criminal code have allowed the enforcement of sentences in settlement colonies i.e. semi open establishments.

37. Fourth, the transfer has seen a heightened commitment to human rights. A new directorate responsible for ensuring compliance with the law and respect for human rights was created in the MoJ in 2002 and an independent human rights ombudsman was given responsibility for recommending organisational measures for ensuring compliance with human rights standards in prisons, suggesting remedies for violations of these standards, guaranteeing the legal and social protection of staff and developing cooperation with municipalities and NGO's. Human rights advisers have been appointed in each of the 89 prison service regions.

38. Fifth, and the key factor enabling the reforms, has been the substantial fall in the prison population (figure 1).

⁵ Kalinin, Y.I. (2002) *The Russian penal system: past, present and future*. London: ICPS.

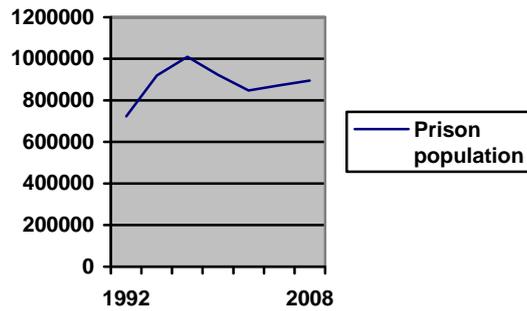


Fig 1 Russian Prison Population 1992-2008

Prison Population in Russia

39. The fall in the prison population is due to three main factors. Most important has been the reform of the criminal procedure code (which entered into force in 2002) which provided for judicial control over investigations and prosecutions, the mandatory provision of defence counsel and the order of house arrest as an alternative to pre trial detention. Most significantly among its provisions was that the decision to place suspects in pre-trial detention became a matter for the courts rather than the prosecutor.
40. Second legislative changes have reduced the lengths of periods for pre trial detention and some prison sentences especially for women and juveniles. In addition, from 2003, time spent in custody pending trial has been deducted from the prison term. Third the Ministry of Justice has introduced some alternative sentences, such as community work and restriction on freedom of movement. There have also been periodic amnesties.

Issues Arising

41. The most important issues relate to resources. The penal system was in a very difficult situation at the time of the transfer to the Ministry of Justice. The material conditions of many buildings and the technical equipment needed to guard prisoners had not been appropriately maintained nor updated for many

years. The situation was made worse by chronic underfunding.

42. Over a number of years the penal system had been allocated funds from the state budget on a scale which only covered 60 per cent of its actual requirements. Some items of expenditure, such as the medical care of convicted prisoners, were covered up to a level of no more than 20 per cent. During the three months prior to the transfer of the penal system to the Ministry of Justice no funds at all were made available from Russia's Ministry of the Interior for the upkeep of penal institutions and agencies.
43. The problem was overcome by the development of a more realistic level of funding with the budget in 2002 some three times higher than in 1998. A four year federal reform programme was also adopted in 2001 including 45,000 new pre trial places, arrangements for enterprises aimed at creating work for 40,000 inmates.
44. A second issue relates to staffing. After the move to the Ministry of Justice, the recruitment, status and training of staff were initially regulated by the rules on the status of staff working at the ministry of the interior. Work was undertaken on the preparation of a federal law on Law Enforcement services alongside a law on civil servants and on the military service. The laws provide for a uniform centralized system of staff with grades and classes comparable to the military service plus labour contracts and competitive recruitment examinations. Some additional guarantees were included for staff and their families such as free medical treatment, social insurance pension schemes, earlier retirement and higher compensation in case of physical injury.⁶ These measures plus rises in staff salaries helped to reverse a trend towards staff leaving the prison service.

⁶ Council of Europe SG –RUS(2004) 17

Case study two: Thailand

Current situation

45. Thailand had a prison population of 165,316 in July 2007, a rate of 253 per 100,000. There are 137 establishments run by the Department of Corrections which since October 2002 has been part of the Ministry of Justice, after 69 years in the Ministry of the Interior. Juvenile offenders are the responsibility of the Department of Juvenile Observation and Protection, also in the Ministry of Justice, which is also responsible for the Department of Probation.

46. Courts in Thailand can impose non-custodial sanctions, including fines, community work in lieu of a fine and suspended sentences with or without conditions. Community work is supervised by probation officers, public officials or organisations with social service or charitable objectives. In addition,

depending on the risk and need of the offenders and the circumstances of their offence, the Court may add any condition to them in order to rehabilitate, or prevent further offences. The Department of Probation is responsible for supervising any conditions imposed as part of suspended sentences.

47. Enforcement of civil judgments is performed by the Department of Legal Execution, Ministry of Justice.
48. As for the death penalty, the Thai authority resumed executions in 1995 after an eight-year moratorium.
49. In October 2001 the execution method changed from death by shooting to lethal injection. To implement lethal injection, the Department of Corrections train staff to carry out the execution.⁷

Transfer of Responsibility

50. The transfer of responsibility for prisons to the Ministry of Justice formed part of a machinery of government change which saw the Office of the Narcotics Control Board transferred from the supervision of the Prime Minister to the Ministry of Justice. In addition, new agencies in the justice system were established such as the Office of Justice Affairs, Special Investigation Department, Rights and Liberties Protection Department and the Central Institution of Forensic Science.
51. The principal objective of streamlining the state bureaucracy has been to enable it to function efficiently and transparently with a higher degree of public accountability. Agencies that perform the same duties are grouped in the same cluster. The Department of Corrections as a significant unit in the criminal justice system, therefore, has been transferred and works closely with the Department of Probation and the Department of Juvenile Observation and

⁷ From Department of Corrections website <http://www.correct.go.th/eng/deathpenalty.htm>

Protection under the supervision of the Justice Minister.

52. The Courts and the Royal Thai Police Bureau are still independent from the Ministry of Justice.
53. According to the Thailand Department of Corrections, there have been no major problems caused by the transfer of responsibility for corrections to the Ministry of Justice but there have been reports of issues arising from internal reorganization such as the transfer of general administration units like the Personnel Division, Financial Division, and Bureau of Correctional Inspectors to the general administration cluster at the Ministry of Justice headquarters. In addition, there has been consideration of whether the parole system, one of the main duties of the Department, will be transferred to the Department of Probation. “As a result of these transfers, a great number of staff of the Department of Corrections will need to be rotated. Some will be moved to the Ministry headquarters while others will be rotated to work in prisons. Undoubtedly, it will intensify the problem of personnel shortage.”⁸
54. The most significant issue facing the Ministry has been coping with the extraordinary rise in prison numbers, which peaked in 2003 with more than a quarter of a million prisoners. Since then the Ministry of Justice has presided over a continuous decrease. (see Figure 2) According to the Ministry, one of the main reasons for this has been the enforcement of new law on the rehabilitation of drug addicts which treats them as patients rather than criminals. Up to 20 per cent of drug related offenders have been diverted from prison each year.⁹

⁸ From Asian and Pacific Conference of Correctional Administrators 2002 Thailand National Report on Contemporary Issues in Corrections. <http://www.apcca.org/News&Events/Discussion%20Papers%20-%20agenda%201/Thailand.htm>

⁹ Speech by Mr Wanchai Rouanavong at Opening of 9th ICPA Conference October 2007

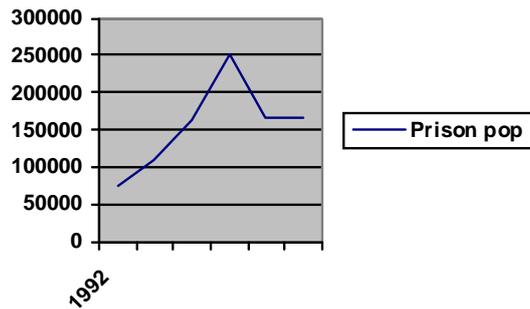


Fig 2. Prison Population in Thailand 1992-2007

55. The transfer to the Ministry of Justice has led to other reforms based on a recognition that “safe custody is not merely to keep prisoners under control but to provide necessities and treat them fairly.”¹⁰
56. Prison standards have been improved through the introduction of inspection and audit at national and local level; prisoners have been granted rights to file complaints about ill treatment and there have been reforms to criminal procedure designed to protect women and children.
57. The Department of Corrections has also sought to apply a Ministry of Justice wide policy on community justice through its “Ratchathan Tambol” initiative which seeks to involve private and public agencies at a local level in activities to rehabilitate and resettle offenders. Restorative justice programmes are also being introduced.
58. There have not been any significant issues in relation to the transfer of responsibility for the death penalty to the Ministry of Justice, except the law amendment needed. The provisions of Chapter 7 (section 259 – 262) of the Criminal Procedure Code regarding Royal Pardon were revised by the Act amending the Criminal Procedure Code (No.23) B.E. 2548 (2003) to shift the duty of putting forward to petition to the King and other relevant duties from Interior Minister to Justice Minister.¹¹ If a female prisoner facing the death

¹⁰ Ibid

¹¹ From personal correspondence with Sirilawan Panmadee, Legal and Foreign Affairs Officer, Thailand Department of Corrections. 8 August 2008.

penalty is pregnant, the law has been amended to suspend the execution until the child is three after which the sentence is commuted to life imprisonment.

Case Study three: People's Republic of China (PRC)

Current situation

59. At the end of 2005, China had 1,565,771 sentenced prisoners in prisons under the auspices of the Ministry of Justice. These prisoners were serving fixed terms of imprisonment, life imprisonment or the death penalty with a two year reprieve¹². There are 674 prisons including 30 establishments for juveniles and

¹² According to a Supreme People's Court document on improving criminal trials said, "All criminals that can be sentenced without the need for immediate execution should be given a death sentence with

29 prisons for women.

60. “The MOJ is responsible for directing and supervising sentence execution and reformation of prisoners, directing and administering prison affairs. It carries this out through the Bureau of Prison administration which is responsible for supervising and inspecting enforcement of laws, regulations and policies with regard to criminal reformation; planning nationwide establishment and distribution of prisons; directing execution of sentences, management of prison affairs and reformatory education; and directing manufacturing, infrastructure construction and facilities of the prison system.”¹³

61. In addition in 2005 there were an estimated 100,000 pre trial detainees in facilities run by the Ministry of Public Security and more than 800,000 held in administrative detention. There are two types of administrative detention: according to Chinese government statistics there were more than 500,000 serving administrative detention in re-education-through-labour camps in 2005, and it is reported (U.S. State Department Human Rights Report 2005) that in 2004 there were 350,000 in a second type of administrative detention, which is for drug offenders and prostitutes. If this is correct the total prison population in China is about 2,500,000. The sentenced population under the MOJ’s prison bureau has risen steadily since the mid 1990’s (figure 3). The MoJ also has a bureau responsible for directing and supervising the work of re-education-through-labour (RTL) although the Ministry of Public Security (MPS) also plays the predominant role.

62. The MoJ started to be involved in the administration of the RTL in 1983 when the MPS and the MoJ divided their respective work in the various institutions of detention. According to the various pieces of legislation that have been issued from 1983 to 2008, it emerges that the MoJ is mainly responsible for supervising the RTL, for administrative work, education of RTL police

a two-year reprieve. Death sentences with a reprieve can not only punish the guilty but effectively reduce death sentences. In certain cases, after two years of good behaviour a verdict of death can be commuted to life in prison, or sentences of 15 or 20 years, if restitution is made.

<http://en.invest.china.cn/english/China/224399.htm>

¹³ An Introduction to China’s Prison Management Liu Fuchen at Sino-British workshop on prison management 26th September 2005

and professional training of detainees.

63. In practice, the MoJ and the MPS have progressively established collaboration for the management of the RTL although the "Committee for the Examination and Approval of RTL" (劳动教养审批委员会 laodong jiaoyang shenpi weiyuanhui) predominantly comprises officials from the MPS Legal Bureau (公安局法制处). Most of the legislation related to the RTL is issued by the MPS.

64. The supervisory power of the MoJ is not purely formal and it seems that its Bureau of Re-education Through Labour is quite proactive in the process of reform of the system, with some officials advancing proposals for the judicialization of the system. The RTL Bureau of the MoJ is one of the organs responsible for collecting statistical data about the population of detainees in RTL.

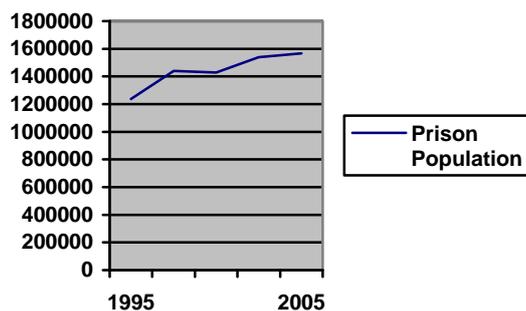


Figure 3 China Prison Population (sentenced Ministry of Justice) 1995-2005

65. In the provinces (municipalities directly under the central government and autonomous regions), offices of justice are responsible for managing prisons in their own jurisdiction through their prison administration arms. Thus almost all prisons are run by provincial justice departments, although the MOJ runs one prison itself.

66. Rehabilitation has always been a central issue in prison work in China. Since ancient time, Chinese prisons were considered places for reforming the character of the prisoners. In contemporary China great emphasis is put on education which is carried out in different ways. Great emphasis is still put on ideological

and political reform of prisoners. Nowadays, new courses have been tailored and designed for detainees which include teaching English or professional skills.

67. Public surveillance is a type of criminal penalty unique to China, under which criminals have restricted freedom but are not put in jail, so that they can be reformed under the control of the public security organ and the supervision of the public. The term of public surveillance is not less than three months but not more than two years.
68. In accordance with the Criminal Law, if the circumstances of a person's crime are minor and there is no need to impose a criminal penalty, he may be exempted from it; however, he may, depending on the different circumstances of the case, be reprimanded or ordered to make a statement of repentance, offer an apology or pay compensation for the losses, or be subjected to administrative penalty or administrative sanction by the competent department. The MoJ is experimenting with various types of probation and restorative justice
69. Suspension of sentence is a system under which the specific criminal penalty imposed upon a convicted person may be suspended under certain conditions for a probation period if the person meets the statutory requirements. Suspension of sentence is applied to a convicted person who meets the following two conditions: (1) he is sentenced to criminal detention or to fixed-term imprisonment of not more than three years; (2) based on the circumstances of his crime and his demonstration of repentance, it is certain that suspension of the sentence will not result in further harm to society.
70. Courts are responsible for civil judgment enforcement. In particular, there is an execution chamber or department specializing in the execution of civil judgment. The law requires particular personnel to be put in charge of the execution work.
71. The main responsibility for the death penalty remains with the courts which decide about capital punishment. The responsibility for executions is in part given to the Ministry of Justice and in part to the Ministry of Public Security,

depending on where the detainee is actually detained, either in a prison (under the MoJ) or in a criminal detention centre (*kanshousuo*, under the MPS).¹⁴

Transfer to the MOJ

72. In an effort to professionalize and place the system within a legal framework , in May 1983 prisons and labour reform camps were removed from the jurisdiction of the Ministry of Public Security (MPS) and transferred to the Ministry of Justice (MoJ) and the provincial justice departments. Prior to the adoption of the 1994 Prison Law, the prison system in the PRC was called the Reform through Labour system. In the first half of the 1980's, some provinces began to use the hitherto little used term of "prison" (this change, however, did not become widespread until the mid-1990's, when, for example, even *laogai* institutions in the northwest were for the first time officially called prisons).

73. It is not clear whether particular problems have arisen as a consequence of this transfer of responsibility.

74. As early as the 1980's, prison education has formed part of the national education plan, seeing prisons as special schools. The main challenges facing the prison system have related to settling the problem of resources. Historically a proportion of the prison budget has been raised through enterprise and the fruits of prisoners labour. A trial reform is underway to separate prisons and enterprises. Programmes are also underway to relocate prisons to centres of population and to modernise methods of reform and resocialisation.

¹⁴ From personal correspondence with Elisa Nesossi, Research Assistant at the Rights Practice.

Case Study four: Other countries (including England and Wales)

75. Until May 2007 the oversight of prison administration in England and Wales lay within the Home Office. This made it one of only two jurisdictions within the 47 member states of the Council of Europe in which prisons were not the responsibility of the Ministry of Justice. The other one is Spain, where the prison system is part of the Ministry of the Interior, although in the autonomous government of Catalonia it is within the Ministry of Justice. On 9 May 2007 the newly created Ministry of Justice took over accountability for the prison system in England and Wales. (In Scotland the prison service has been accountable to

the Justice Department since 1999.) This change has brought England and Wales into line with most other countries in the world where a Ministry or Department of Justice has oversight of the administration of prisons, often through some form of executive agency.

76. The prison and probation services are managed by the National Offender Management Service (NOMS) which is an executive agency of the Ministry of Justice. Its task is to deliver the sentences and orders of the courts of England and Wales by commissioning adult offender services in custody and the community from public, private and third sector organisations; providing the public prison service; and overseeing the Boards and Trusts which provide the public probation services. Details of how the Agency works are provided in an Agency Framework Document.¹⁵

77. In most European jurisdictions there are close links between the prison administration and the agency responsible for supervision of offenders in the community. Relatively few have probation services along the model in England and Wales¹⁶. There are several other organisational models for achieving synergy between work with offenders in prison and in the community. In Italy, for example, the Department of Penitentiary Administration is responsible for both elements of this work and fulfils this through a Directorate of Detention and Treatment and a Directorate for the Execution of Community Penalties. Most of the Scandinavian countries have joint Prison and Probation Departments. In practice, this usually means a joint headquarters with policy making and supervisory functions and separate operational units. In the English translation the word 'Probation' is used but the delivery is different from the model used in England and Wales.

Summary and Conclusions

¹⁵ <http://www.justice.gov.uk/publications/noms-agency-framework.htm>

¹⁶ A. van Kalmthout & J Derks. 2000. Probation and Probation Services: A European Perspective. Nijmegen: Wolf Legal Publishers

78. International experience suggests that moving responsibility for prisons to a Ministry of Justice can bring substantial benefits. A Ministry of Justice tends to be a more fertile locus for reform than a Ministry of Security or Interior. The case studies have shown that Ministries of Justice have been able to drive programmes of policy reform covering criminal procedure, the development of alternatives to prison and the improvement of prison conditions. Measures have included:

- a) an increased role for the judiciary in decision making in and oversight of criminal justice and prison matters
- b) amended criminal procedure to reduce the reliance on imprisonment both for pre-trial detention and as a sentence
- c) infrastructures of alternative sanctions including community based sentences, and drug treatment
- d) more humane conditions for pre trial prisoners and a more rehabilitative ethos for those serving sentences
- e) Greater involvement of the community in the rehabilitation of prisoners, scrutiny of prisons and the development of policies

79. These developments do not necessarily flow from a simple switch of departmental responsibility within government. They require a comprehensive governmental commitment to bringing the criminal justice and penal system into line with international norms and standards.

80. Most controversy has centred on shifting responsibility for pre-trial detention away from the Security or Interior Ministry. While this happened in Russia, it has not in China. Where such a change is made, there are implications for the way in which the police bring offenders to justice, evidence gathering, powers of arrest and processes leading to conviction and sentence.

81. For convicted offenders, the implications relate to the need for careful planning of measures to limit the use of imprisonment and develop alternative measures.

Demilitarisation

82. There are also a number of important issues that need to be considered in relation to the demilitarization of prisons. The first is the status of staff. In all societies, prison staff have a relatively low status within their community. Within the post communist countries the close association with the military helps to offset this low status. Any structure that replaces what already exists must ensure that a professional member of the prison staff has at least the same status in the community, if not a better one. Many staff believe that “civilianisation” will diminish their status and for that reason they are resistant to change.

83. The term “civilianisation” is used loosely to describe the alternative to the military structure. Understandably where the only alternative is a civil service administrative bureaucracy, there is a perception amongst many prison staff that this will mean a change from a professional military role to that of an administrative clerk. There is a lack of understanding that a modern, professional prison service structure is totally different from a military structure and, equally, is totally different from a civil service administrative bureaucracy, and is the desired outcome of demilitarisation. Such a civilian prison service would remain disciplined and could be uniformed. There is a need to develop a set of principles and a model structure which can be understood as a goal and an incentive to change.

84. The second issue is financial resources. There may have been a misconception that a change from a military structure to a civilian structure would mean a cheaper option. One of the prime problems is that salary costs could increase significantly with civilianisation. 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, overtime or the equivalent

has to be paid for hours worked beyond the standard working week. Thus to civilianise would mean either a significant increase in staff and therefore salary costs, or a significant increase in overtime costs. Either way most of these countries cannot afford such increases. One of the main reasons for Ministry of Interior troops managing the perimeter security of penal establishments is that the prison services can not afford to employ their own staff to do this. As these troops are normally conscripts, there is no possibility of transfer of funds with a transfer of responsibility. Another significant factor is that, generally speaking, Ministries of the Interior are well financed and have more resources to draw upon than Ministries of Justice.

85. The third issue relates to conditions of Service. As part of the military organisation prison staff have comparatively good conditions of service. For example, many staff are entitled to free travel, to receive free meals when they are on duty and have excellent pension schemes. Shift systems are often based on military style shift systems, such as working continuously for 24 hours and then having three days off duty. This arrangement allows staff to supplement low incomes by having additional part time jobs. In a professional prison service, where staff are expected to do more than just guard, 24-hour shifts are unacceptable. Somewhat naively these conditions of service have been regarded as “privileges” that can be done away with at no cost, as if they are illegitimate or corrupt. Salary and conditions of service in any job, in any society, have to be considered as a legitimate package. Any change has to involve re-negotiation of that package to ensure that human rights for prison staff are met in accordance with the International Covenants and Instruments, and that could mean extra funding. This was the experience in the prison services in the United Kingdom in 1987 when the management system was restructured, staff shift patterns were changed and new conditions of service were introduced in order to remove outdated staff roles and inappropriate/inefficient systems (this was known as “Fresh Start”).

86. Finally there are basic questions that need to be addressed about the roles of prison staff. Any major change of a management and staffing system in an organisation has to begin with a definition of the vision and goals of that

organisation. Only then can one begin to re-define the roles that the staff are required to carry out. One of the fundamental differences between Western European prison systems on the one hand and those in communist and post communist countries on the other is that the latter often retain a close association with police and policing duties. One Eastern European Deputy Minister responsible for Prisons described the prime function of his prison service as “solving crime”. This is reflected in the “operations staff” that work within prisons (“Operativnick”). They are an integral part of the criminal justice investigative process. Their role is to solve crimes committed not only within the prison but also outside prison prior to imprisonment. This should be a function of the police, not of prison staff.

87. Prison staff should not be expected to perform military or policing duties as assistants to armed services or police services in times of emergencies as they have, or are trained to do, in communist and some post communist countries. Prison staff should be appropriately trained to manage disorder inside prisons, but these are specific techniques significantly different to those used in wars or civil disturbances. Thus demilitarisation not only involves changing ranks and uniform but also significantly redefining roles of staff within the prison system.
88. The creation of a new personnel structure for a professional prison service would mean introducing a new law in the majority of these countries. The current law for the military organisation is inappropriate, and the existing law for civilian employees in the Ministry of Justice will not meet the needs for such a reform. It is clear when considering all the issues and the changes required that there will need to be a radical change in staff training. For example, many of the four year graduate courses for new senior staff in the countries of the former Soviet Union include up to 50% of the time on military training. Currently changes in curriculum tend to be additions to existing curriculum. Fundamental changes in structure and ethos will require an equally fundamental change in the curriculum and training approach.

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