

**Speech by Baroness Vivien Stern to International Colloquium on Carrying out
Decisions in the Penal Context in Europe: From the Visible to the Invisible
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It is an enormous honour for me to be here. I want to congratulate the French Government and the Administration Penitentiaire under the wise leadership of M. Claude d'Harcourt for the work they have done during the French presidency of the EU to highlight the situation in prisons in Europe and establish closer collaboration between European prison administrations.

I must also congratulate M. d'Harcourt and the Administration Penitentiaire for their attention to the European Prison Rules as the basis for ensuring that the penitentiary system in France operates within the ethical framework set out in the international human rights instruments.

This afternoon I have been asked to talk to you about that ethical framework; the ethical framework that calls for dignity in the treatment of all people in detention and what it means for us in Europe.

But I will begin not in Europe but in Texas. I will tell you about something that happened to me there. Two years ago I was in Texas. I was able to take part in a visit with some other people from Europe to a prison. It was in a little town called Gatesville – there was nothing there but prisons, about five different ones. Gatesville was a town with only one industry, only one large employer - the Texas Department of Corrections and its prisons.

First we visited death row and met the five women there. They were there for one purpose: to wait, to wait for the message to arrive from the State Government to tell them that their time had come to be killed. So we visited death row and talked to the women there.

After visiting death row we went to a unit in the prison called administrative segregation. This held 78 women each in a cell on her own with a heavy door. The door had a panel about 15 centimetres by about one metre covered with netting. Some of the women were looking at us through this slit in their door. It was very dark.

Architecturally it was like a huge animal cage, like in a zoo. There was little light, no colour, just wire and rolls of razor wire inside between each of the three floors. Before we went in we were told we had to wear what they called a stab vest, a very heavy padded jacket. So we did, though we wondered why, since this was a place with 78 women in it, each one locked behind a heavy door. Why did we have to wear a vest in case we were stabbed?

They discussed whether we should be issued with gasmasks as well but decided it was not necessary. And we wondered – why do they want us to have gasmasks?

We went in and talked to some of the women in the semi-darkness through these narrow little slits in their doors. I talked to a woman called Joanna who said she had been there in that segregation block for 3 years. The decision to release the prisoners from segregation is made by a committee that meets in the headquarters. That was

what Joanna told me. She wasn't sure how they made the decisions she said; she wasn't sure what information they used but she was hopeful, she said.

The prison personnel - the guards - showed us the exercise cage where the women get out of their cells maybe once a day on their own, one at a time. This was also inside the building. Not in the fresh air. Just a cell inside the building with wire walls, like a cage. It was about 2 metres by 3 metres. The people who worked there told us about the problem they faced. Sometimes the woman in this cage, they said, refuses to go back to her cell.

When the time for her exercise is finished and she has to return to her cell she climbs the walls of the exercise cell and hangs onto the wire. When this happens the prison guards put on their gas masks they said. They spray the woman with gas and when she falls off the wall of the exercise cell onto the floor they strip her naked, take off all her clothes and carry her back to her cell. They use gas 'nearly every day' they said. On the day we made our visit all the prison guards on duty were men..

What can we say about that experience in Gatesville Texas, that experience which was so shocking to the European visitors? Does it give us something to say about dignity in detention? I think there are quite a few things to say. I shall mention just some of them.

First it reminds us of a fact that people who are responsible for detention must always remember. That fact is this. Nice, good, worthy, decent human beings can find themselves doing terrible things. The ill-treatment, humiliation and abuse of other human beings is not only done by torturers and people in regimes run by oppressive dictators. These men who sprayed gas at the women in the cage and stripped them of all their clothes, what were they thinking? I am sure they were not thinking that they were torturers. They were thinking that this is a normal respectable job. It is a job that protects society.

In fact the women in that prison unit did not seem to be danger to society. They seemed to be the usual women one sees in prisons everywhere - poor, drug addicted, had suffered much violence and abuse in their lives, were mentally ill and were more likely to harm themselves than to harm other people.

So I think that is one lesson from that experience in Texas. You do not have to be a terrible person to do terrible humiliating things to people in your care, in detention. You can be just an ordinary person and still do terrible things.

Lets us think for a moment about what happened at Abu Ghraib prison in Iraq. I am sure we all remember with horror and disbelief the publication of photographs showing the treatment of Iraqi prisoners by their American jailers. As it all came out into the public domain and into the newspapers and onto the television we saw pictures of naked prisoners piled on top of each other; a prisoner being led around on a leash like a dog; prisoners being made to wear women's underwear.

After all this happened and some of the Americans who carried out the ill-treatment were taken to court, convicted and imprisoned an American journalist tried to find out how this happened. He spent hundreds of hours interviewing the low-level soldiers

involved in these events. One of these soldiers was talking to the journalist, trying to explain to the journalist and to himself how it had happened that they had treated people in that way. How had it happened that they had taken so many photographs of it as if it were something entertaining to show their friends when they went home on leave?

This soldier said to the journalist, 'On the photos it seems like it's actual real torture. The worst thing that was done to the prisoners physically was they had to crawl on the floor, and they were naked. So,' the man said 'it was really, really uncomfortable. I can't call it torture. It was a really, really bad case of humiliation, but that's about it'.

Not torture, just a very bad case of humiliation. This is an ordinary person trying to explain to himself how he did such things.

I want to say one more word about the soldiers in Abu Ghraib who inflicted this treatment and in the end who took the blame. And this is an important point for people who are responsible for the management of prisons and the management of prison personnel. These soldiers in Abu Ghraib kept trying to tell their superiors about the treatment they were inflicting on the detainees. They talked about it to their bosses. They showed some of their photos to their superiors. Why did they do that? Why? Because they wanted someone to tell them 'this is wrong – stop it'. They wanted someone to say that this is not in the rule book: it should be stopped. But no one did.

The leadership shut their eyes to it and pretended it was not happening. And that is one of the reasons it is important {and all those here today in leadership positions in penitentiary administrations know this} it is important to make it clear through the sort of measures being taken by the Administration Penitentiaire here in France, by the stressing of the European Prison Rules, by issuing the booklet *Un cadre éthique*, that the leadership believes in dignity in detention and will follow policies to implement it.

A clear line by the leadership reinforces the ethical instincts of all those who work in law enforcement and in detention. Most people know when something they are being asked to do is wrong. They want the leadership to set a clear line and say 'that line must never be crossed.' So we can all do bad things to other people, can we not, if the moral environment requires it or allows it.

The next thing to be said about the experience in Texas is that if those women in that segregation unit in that prison in Texas lived in those conditions in Europe under the jurisdiction of the European human rights framework the women and those who care about them would be able to seek redress. They would have access to some justice. They could claim that they were being subjected to inhuman and degrading treatment. They could claim there was an absence of transparent process by which extra punishment is inflicted without a time limit.

The European Committee for the Prevention of Torture would visit that prison and immediately ask to see the Government and would recommend to the Government that this stops immediately. If Texas were in Europe not only the European Committee for the Prevention of Torture would be concerned and would visit and call

on the government to change the practice. Civil society organisations would be concerned. And they would complain and get some publicity.

But I think that in Europe a situation like the one I saw in Texas would not happen at all. I am confident the situation would not happen in Europe because the personnel in the prisons would not do it. They would refuse. They would know such treatment was wrong. They would know it was against the basic ethical codes of their service for male prison guards to gas women prisoners and take their clothes off and so it would not happen.

So let me now spend a few moments on the meaning of these ethical codes that we in Europe follow and make some suggestions about what is at their heart. The foundation stone of the European framework for dignity in detention is the way one human being is treated by another. There are 108 rules in the European Prison Rules covering all areas of detention - Admission, conditions, legal advice, prisoners' property, transfer and release, discipline and punishment, inspection, untried prisoners, hygiene, work and much more ... But at the core are the rules about how the person with power, the personnel, the prison guard treats each detainee.

In the Texas unit I described to you there was no overcrowding. The prisoners were given food regularly. I am sure they got their basic rights as set down in the American Constitution. But the guards treated them not as fellow human beings but as enemies, as subject people in a war, as people who could be humiliated and shamed, gassed and stripped naked by men in gas masks and bulletproof vests. These guards did what they would not permit to happen to their own mothers, wives or sisters. They did not see the prisoners as human beings like themselves.

That is why the Director-general of the English penitentiary administration always says to the staff 'the basic rule of this organisation is to treat prisoners as you would wish a member of your own family to be treated.' That is why the little book *Un cadre éthique* issued by the French Administration Penitentiaire has selected 13 out of the 108 rules as the basis of the ethical code the administration expects them to follow.

These 13 rules have been chosen carefully and these are the rules which say - prisoners must be treated with humanity and respect. There shall be no discrimination. Prisoners who are vulnerable because of past abuse in their lives must receive particular care. Maintaining security is important but must be balanced with living conditions that respect human dignity and a programme of activities. Security that comes from bars, high walls and technical means must be complemented by the security that comes from good relationships with detainees. Force must only be used as a last resort. Measures of restraint must only be used when strictly necessary. Prison personnel must maintain high standards of behaviour. Staff must be selected on the basis of their integrity and humanity. Staff should receive training in the human rights standards.

These are the core standards which protect detainees from measures that can lead to humiliation, a loss of dignity and perhaps ill-treatment.

When we understand the meaning of the ethical framework we can see immediately why the European Committee for the Prevention of Torture has been critical of the Netherlands for its treatment of prisoners placed in an isolation cell. The Committee's report on the Netherlands, published in 2008 said 'The delegation noted that all detained persons placed in an isolation cell, whether prisoners, irregular immigrants or juveniles, are made to wear a short gown without trousers or even underwear, making it difficult for inmates to preserve their personal dignity. The Committee recommends that more suitable clothing be provided to detained persons placed in isolation.'

This practice adapted by the Netherlands was humiliating and degrading. So one of the pillars of our framework for detention is humanity and respect at all times.

The other pillar is lawfulness. There must be the possibility of challenging decisions. There must be an opportunity to balance the power of the penitentiary system with the rights of the detained person. That is why the Committee for the Prevention of Torture criticised the Netherlands also in the report published in 2008 for their system of placing prisoners in what is called a 'high-security terrorist department'. The Committee recommended that this placement should not be automatic for everyone convicted of a terrorist offence. It should be based on a risk-assessment and should be reviewed.

So, in Europe we have a framework for detention that prevents ill-treatment and demands a lawful process in making decisions about detainees. It is certainly the most developed framework in the world.

Where does this ethical framework come from? Well let us be honest, it comes from the depths of the barbarity of European history, of our shared history. We have this framework in Europe, this ethical framework because we know better than many others what terrible things human beings can do to each other and particularly what terrible things can happen when one group of human beings decides that another group is not worthy of being treated as human, because that other group is different in some way and the group in power decides that they don't like people who are different in that way. These differences are many. They may be differences of skin colour, may be of ethnic origin, may be of sexual orientation.

We have this framework demanding dignity in detention because we know what can happen, and from those terrible events the human family learnt that we have to try and build a new world order, built on a view derived from all the great religions of the world, a view of the intrinsic worth and dignity of each human being. That was what the United Nations agreed was the standard for the world when people are deprived of their liberty.

From that basis came the European ethical framework that governs what we should do to detained people in all the places of detention in Europe and which led to the latest articulation of that principle, the revised European Prison Rules, accepted by the Council of Europe in 2006.

So as citizens and inhabitants of Europe we should be proud. But if we work in prisons we should not just be proud. We should also be grateful that no-one will ask

us to put on a gasmask and spray teargas at a poor defenceless woman in a cage and then take all her clothes off. We should be proud that we have a Court that hears cases against all our countries and interprets for us what the framework means and how detained people should be treated.

We can be proud because this framework covers the whole of Europe. It takes the principle of dignity in detention and through the instruments of the Council of Europe and through the work done by the penological professionals in Europe, many of whom are here today, the principle of dignity in detention has been transformed into guidelines of good practice in every aspect of penitentiary activity.

So we should celebrate the progress. We should celebrate the great change that has been brought about not just in Europe but in most parts of the world in understanding what is acceptable in the treatment of detained people.

But when we are thinking about human rights and their implementation it is a good idea not to celebrate too long. After celebrating we should have a look and ask have we reached the state that the originators of the human rights framework wanted. Can we say, we have reached the goal of dignity in detention?

Well, I think all of us here today will agree with the answer I shall give to that question. The answer is no, not yet. Not yet at all. We still have a long road to travel. We are not perfect yet. You will all know what is wrong in your countries better than I know.

Last month prisoners in Greece were on hunger strike and sewing their mouths shut to protest about overcrowding, drug dealing and lengthy pre-trial detention periods. I have read about prison personnel on strike in Belgium last year because of overcrowding, poor conditions and unsafe unhealthy buildings. The Human Rights Commissioner of the Council of Europe has just reported on his visit to France and commented adversely on the bad conditions, lack of privacy and sub-standard hygiene as well as concern about the measure called *rétenion de sûreté* (“re-detention for security reasons”), which requires the greatest possible vigilance’.

We also see that the prisons in many of our countries have become more like hospitals - hospitals for people who are mentally ill, hospitals for people who are addicted to illegal drugs. Much of the work of the prison staff now is not security or rehabilitation. It is trying to deal with people who need to be cared for, looked after and given medical treatment. It is noteworthy now many of the judgements of the European Court about our Western European countries are about mentally ill people who have died in custody or about a prisoner killed by another prisoner who is mentally ill.

So we have done well. We do not have the cruelty and ill-treatment that we see in some other parts of the world. But we do have a new form of ill-treatment. Perhaps we have reached the stage when we should be asking ourselves if this too is a human rights issue. It must be wrong to put a sick person whose sickness leads them to an act that can be classed as a crime in a place of punishment and not a place of care.

When I was born in 1941 none of the protections that we now have existed or were dreamed of. All over Europe people were being reduced to objects, to disposable items to be used, enslaved, made to work till they dropped dead. Our parents and grandparents made great efforts to ensure that Europe became a place where all human beings were valued and respected whoever they were and whatever they had done.

We owe it to them to keep on the struggle to get out of prison the people who should not be there - the sick, the addicted, the marginalised, inadequate people and to endeavour to ensure, as the French Administration has been doing, that those in prison are treated according to the standards that we in Europe have all signed up to.

I thank you for your patience, I thank you for listening and I thank you, the interpreters, who have enabled us to communicate.

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