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## Survey of United Nations and other Best Practices in the Treatment of Prisoners in the Criminal Justice System

Proceedings of the workshop held at the Twelfth United Nations  
Congress on Crime Prevention and Criminal Justice  
Salvador, Brazil, 12-19 April 2010

Edited by Kauko Aromaa & Terhi Viljanen

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## Introduction/Foreword

The United Nations Standard Minimum Rules for the Treatment of Prisoners have in many instances deemed to be in need of updating. The argument has been that the Rules are incomplete in regards of technological development, but also that they have, in some instances, been felt to represent idealistic goals that are beyond the reach of many countries struggling with financial difficulties. In the face of such dilemmas, the topic was included in the official programme of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, held in Salvador, Brazil, in April 2010.

The programme of the workshop was shaped in several preparatory meetings, and the outcome is many-faceted and rich. In order to allow also those who could not participate in the event to share the message, HEUNI is publishing the proceedings with the sincere hope that this will also provide material for further debate concerning the Standard Minimum Rules.

Helsinki 23 December

Kauko Aromaa  
Director

# Report from the Rapporteur

## Survey of UN and other best practices in the treatment of prisoners in the criminal justice system.

Rob Allen  
Director International Centre for Prison Studies  
United Kingdom

There is enormous variation in the way the world's ten million prisoners are treated. Some young men do drill in military style boot camps while others are counselled in therapeutic communities. Prisoners deemed dangerous may be held in almost total isolation in the highest "supermax" conditions of security; low risk prisoners approaching their date of release go out to work during the day from open establishments. Some convicted prisoners can spend years in remote labour colonies, pre trial detainees a few weeks in city centre lock ups. In consequence of this almost infinite variety, any attempt to survey best practices in the treatment of prisoners within the criminal justice system in the course of a one day meeting is destined to be partial at best. Yet the presentations and discussions in this workshop make an important contribution to identifying priorities for UN member states and the international community in the field of penal reform.

The context of the workshop was set by Professor Nowak's sobering assessment of the reality of the world's prisons based on his five years experience as UN Special Rapporteur on Torture. The picture of human suffering which he so vividly painted are a reminder that whatever "best practices" might be developed in prison settings, the experience of very many prisoners – perhaps the majority – continues routinely to involve often gross violations of basic human rights and seemingly scant contribution to either the rule of law or to the creation of safer communities.

Many of the failings he outlined reflect chronic problems of prison administration, chiefly under resourcing in terms of buildings and staff, compounded by often severe overcrowding and failures of management. In principle these are matters that can be put right. But the unspoken question that lay behind his presentation and indeed many of those at the workshop is this. How much are the obvious failings of imprisonment due to inherent flaws in the nature of the institution itself rather than weaknesses in its practical elaboration. This is surely something that should receive greater attention as member states seek to develop their societies in ways which meet the aspirations of the Millennium Development Goals.

Notwithstanding this disturbing context, the workshop heard many inspiring examples of innovative efforts being made to improve the humanity and effectiveness of the institution of imprisonment, so that at least the experience of those who endure it will be less harmful than it otherwise would be. Passion, commitment and imagination shone through the various presentations of work from across the globe aimed at making a positive difference in the penitentiary field.

The substantive themes addressed in the workshop fall into three broad categories. The first concerns the best framework of international law and regulation which governs the treatment of prisoners and the practice of detention. The second concerns the way these international norms are implemented in reality, particularly in respect of the way prisons seek to rehabilitate offenders, promote their good health and meet the needs of the most vulnerable prisoners. The third theme is the contribution that wider society makes to the treatment of prisoners and the ways in which both prison systems and individual prisons relate to the broader community which they serve.

## International norms

As for the framework of international law and regulation, the workshop heard a number of suggestions about how this could be strengthened. One proposal would thoroughly update and revise the UN Standard Minimum Rules for the Treatment of Prisoners which date back to 1955. A draft prepared over several years by the Latin American Standing Committee of the International Penal and Penitentiary Foundation was presented to the workshop with the purpose of contributing towards the inauguration of a new style of prison. A second proposal would add specific new standard minimum rules for women in prison and under community supervision to address the lack of gender specific provisions in the existing standards. A third proposal would seek to introduce a new and binding convention on the rights of detainees- along the lines on the UN Convention on the rights of children.

There was not the opportunity at the workshop for in depth consideration of the relative merits of the three approaches or whether they might be combined in some way. Two main questions arise about such proposals. The first is whether they are in fact needed. The Convention against Torture , and in particular its Optional Protocol represent a recent instrument designed to prevent torture and inhuman and degrading treatment in places of detention. The combination of international and more importantly, independent domestic scrutiny through the so-called national preventive mechanism therefore provide an existing trigger to improve prison conditions.

The second question is whether the process of agreeing any additional or new standards could result in the watering down of what is currently required. While more detailed consideration is clearly needed, there appeared general support for some action to strengthen the international normative framework.

## Implementing norms

The second substantive theme relates to what one participant described as making rules a reality. There is clearly an important role for tools and instruments to assist member states to develop the kinds of policies and practices which comply with norms, whatever form those norms take. The tool created by the ICLR and HEUNI illustrated how such instruments can be made relevant to the diverse conditions which apply in prisons around the world. In post conflict situations there is a particular need to address the justice and corrections components early in the peacekeeping process. Experience suggests that if this is not done, progress towards building safety, democracy and good governance can be adversely affected.

A particular focus of the workshop was on how prisons make a reality of the requirement to be places of reform and rehabilitation in line with Article 10 of the ICCPR which states that “the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.”

Almost all people who go to prison return to the community sooner or later. Involving members of the community in the supervision of non custodial measures, rehabilitation initiatives within prisons, and efforts to support reintegration post release therefore seems a high priority. The workshop heard examples of such initiatives from Fiji and Canada. In the latter, promising data was emerging about the impact of community supervision on re-offending rates.

Promising data too was emerging about the impact of initiatives to promote the health of prisoners in particular by adopting a public health and harm reduction approach. Strategies to prevent the spread of blood-borne diseases such as HIV/AIDS and Hepatitis had shown demonstrable effects in Spain and Moldova while Argentina had brought health care in the federal penitentiary system onto the agenda of the health ministry. Yet the workshop was reminded forcefully of the generally negative impact which prisons make on the physical and mental health of those who live in them – as places of violence, and incubators of diseases.

The negative impacts of detention bear particularly heavily on particular categories of prisoners. Prison can prove a harsher experience for women than for men, particularly when they are separated from dependent children. Women’s experience of imprisonment can be characterised by a combination of invisibility – they usually represent between 4 and 10% of a country’s prison population – and discrimination. Initiatives to ensure separation of women from men and to enhance the lives of women in prison were presented by representatives from Afghanistan and Thailand. In both countries these impressive efforts at improvement are jeopardised by the need to cater for increasing numbers in prison.

For juveniles, international norms make it clear that detention should be avoided if at all possible and where it is imposed it should be for the shortest time and



characterised by an educational rather than a punitive approach. The Workshop heard about efforts in the Lebanon to achieve these objectives. But perhaps more so than with any other category of prisoner, the fundamental question needs to be raised; however constructive the prison experience can be made, should there not be a more suitable institutional or non institutional response to their delinquency?

## Prisons and wider community

The third theme centres on how prison relates to the community. As well as highlighting the important role of community organisations in the treatment and rehabilitation of prisoners, the workshop heard about the importance of informing the public about what is being done in their name. A rational public debate about imprisonment, based on data and evidence is much more likely to serve policy development well than the often distorted media driven frenzies that can often drive the politics of punishment. Of course the interests of victims of crime must be properly addressed in the criminal justice system but evidence in several countries suggests that many victims of crime are not necessarily as punitive – certainly in respect of the response to non-violent offenders – than is often supposed. Ensuring that the public are informed not only about imprisonment but also alternative methods of tackling crime – such as through economic regeneration, targeted prevention, improved drug treatment is an important task for governments.

The community dimension includes the important role of monitoring and scrutinising what happens in prisons. As mentioned above OPCAT provides an opportunity to establish monitoring National Preventive Mechanisms (NPM's) which ensure that prisoners are not forgotten citizens in exile. The 150 odd countries which have not yet ratified the Protocol were urged to do so and those who have done so were urged to ensure that the necessary mechanisms are established promptly. It appears that the twelve month target period for doing so is proving challenging particularly in Federal jurisdictions. But the process of engagement between government and non governmental bodies which is necessitated by the creation of the NPM is serving to raise the profile of penitentiary issues and the interest of the broader community in what happens behind the prison walls.

## Conclusions and recommendations

The subject of prisons often arouses strong views and emotions and in some cases a mixture of competing attitudes. This workshop provided a valuable set of examples of what can be done to improve the practice of imprisonment, accepting that it is an institution that will be with us until we can find a better one. Inevitably the deliberations pointed in the direction of further work for

member states and the international community; towards considering a revised framework of norms; towards giving greater priority to meeting existing standards; and to finding better ways of involving the wider community in the penitentiary task.

The Workshop agreed that developing better practices in prisons should be seen as a matter of urgency. This is not simply a question of improving the functioning of penal institutions. It is a question of broader reform of the criminal justice system which ensures that imprisonment is used as a last resort. The revised standard minimum rules for the treatment of prisoners prepared by the Latin American Permanent Committee proposed the introduction of concrete measures for controlling overcrowding, with an impartial agency determining the maximum number of detainees in each facility. Whether such a strong measure is introduced, it was clear that best practices can only be developed if the scourge of overcrowding is dealt with. Ways of doing this were the subject of a complementary workshop whose proceedings are to be published by UNAFEI.

# Keynote Address

Manfred Nowak  
UN Special Rapporteur on Torture

Mr. President, Excellencies, Ladies and Gentlemen,

Since I was appointed as UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment in December 2004, I have conducted official *fact finding missions to 16 States in all world regions*. As torture takes place behind closed doors, my terms of reference provide for *unannounced visits to all places of detention* (prisons, pre-trial detention centres, police lock-ups, psychiatric hospitals, special detention facilities for children, drug-users, migrants and asylum seekers etc.) and for *unsupervised interviews with detainees*. If Governments cannot guarantee private interviews with detainees (such as the Russian Federation and the US in respect of Guantánamo Bay and other detention facilities under their effective control abroad), I unfortunately have to deny their respective invitations. But I wish to express my sincere gratitude to those Governments that invited me and, in principle, respected my specific fact finding methods: China, Denmark, Equatorial Guinea, Georgia, Indonesia, Jordan, Kazakhstan, Moldova, Mongolia, Nepal, Nigeria, Paraguay, Sri Lanka, Togo, Uruguay, and most recently Jamaica. These terms of reference provide me with the unique opportunity to not only assess on the basis of first hand information, and with the help of a forensic doctor, the extent of the practice of torture, but also the conditions of detention in general. I spend most of the time during my missions in closed institutions, inspecting punishment cells, conditions on death row and the situation of particularly vulnerable groups (persons with disabilities, drug users, children, the elderly, detainees with tuberculosis, AIDS and other infectious diseases; gays, lesbians, bisexuals and transgender persons), talking to detainees, prison staff, prison chaplains, prison doctors and others.

When I took up this function more than five years ago, I knew that torture was widely practiced in many countries in all regions. But I was not aware of the *appalling conditions of detention in most countries of the world*. Torture is one of the worst human rights violations one can imagine and constitutes one of the most direct and brutal attacks on the core of human dignity and personal integrity. Many victims of torture are traumatized by this terrible experience for the rest of their lives. Nevertheless, I was told time and again by detainees that their daily suffering during many years of detention, before and after conviction, is much worse than the physical torture they were subjected to by police officers after their arrest for the purpose of extracting a confession. In my assessment, the majority of the roughly 10 million human beings detained worldwide, are subjected to appalling conditions of detention, which can only be qualified as inhuman or degrading treatment or punishment. Many of them might be innocent and simply victims of a corrupt and dysfunctional system of criminal justice.

They usually belong to the most disadvantaged, discriminated and vulnerable groups in society, such as the poor, minorities, drug addicts or aliens. Within detention facilities, there is a strict hierarchy, and those at the bottom of this hierarchy, such as children, the elderly, persons with disabilities and diseases, gays, lesbians, bisexuals and trans-gender persons, suffer double or triple discrimination.

*Human beings may be deprived of their right to personal liberty for various reasons.* Most importantly, they may be punished by a court to a prison sentence for having committed a crime. In addition, they may be detained for certain precautionary or security reasons, such as preventing the spreading of infectious diseases or preventing the escape of a person suspected of having committed a crime or against whom an expulsion order was issued. The aim of the punishment or precautionary measure is achieved by the deprivation of personal liberty, which is one of the most precious human rights. *Detainees should, therefore, continue to enjoy all other liberties and human rights,* unless further restrictions are absolutely necessary for upholding prison discipline or similar justified reasons.

These principles are laid down in the *Standard Minimum Rules for the Treatment of Prisoners* and other soft law instruments, many of which have been developed by the UN Commission on Crime Prevention and Criminal Justice and adopted during earlier Crime Congresses. But only few States implement these principles and human rights obligations in practice. The *best practice* which I found during my fact finding missions is the “*principle of normalization*” on which the prison system in *Denmark and Greenland* is based. It means to create conditions of detention which resemble, as much as possible, life outside prison. Most prisons are open institutions, where prisoners are free to walk around, to engage in meaningful work and education programmes, to do sports and recreational activities and to feel as least restricted in their freedom and privacy as possible. In Greenland and in certain Danish prisons, prisoners may even leave the prisons during daytime in order to go to work or to educational institutions. They usually live in single rooms with all necessary facilities but are not locked in these rooms, even during the night. Prison authorities often refer to detainees as their “clients” rather than “inmates”. In accordance with the principle of informed consent, men and women may even live together in various Danish prisons, they find partners and marry them while serving their prison sentence. A corollary of the *rehabilitative aim of imprisonment*, in accordance with Article 10(3) of the International Covenant on Civil and Political Rights, is that prisoners should receive treatment that takes into account to the greatest extent possible the individual needs of every prisoner and is tailored to their individual sentence and rehabilitation plan. Needless to say, the “principle of normalization” not only serves the interests of prisoners to rehabilitation and re-socialization, it also serves the wider interest of society to reduce the risk of recidivism and, thereby, the overall crime rate. This principle is not just an invention of the Government of Denmark; it derives from Article 10 of the Covenant and is explicitly laid down in Rule 60(1) of the Standard Minimum Rules, in Rule 5 of the revised European Prison Rules and in similar soft law instruments. Unfortunately, only

very few countries in the world, above all in Northern Europe, follow this important principle aimed at the re-integration of prisoners into normal society life.

As I described in my most recent reports to the General Assembly and the Human Rights Council, the *reality in most countries looks totally different*. In many countries I was simply shocked by the way human beings are treated in detention. As soon as they are behind bars, detainees lose most of their human rights and often seem to be forgotten by the outside world. Apart from corporal punishment and other forms of violence, I am most concerned about the *structural deprivation of most human rights, mainly the rights to food, water, clothing, health care and a minimum of space, hygiene, privacy and security necessary for a humane and dignified existence*. It is the combined deprivation and non-fulfilment of these existential rights which amounts to a systematic practice of inhuman or degrading treatment or punishment. For me, the way how a society treats its detainees is one of the best indicators for its human rights culture in general.

Cells in *police stations* are usually designed to keep criminal suspects for a few hours until they are brought before a judge who shall decide whether they are to be detained in pre-trial detention facilities or released. That is why they are in most cases not equipped with any kind of furniture. In most countries I visited, people in police custody sat or slept on the concrete or mud floor without anything but the clothes they were wearing when arrested. They did not have beds, mattresses or blankets, no toilets apart from a hole or a bucket in a corner, no toilet paper, water or food. All too often, these cells were dirty, overcrowded and without adequate light and fresh air. Such conditions might perhaps be tolerable if persons were kept there for no longer than a few hours or one night. In reality, however, detainees are locked up in such conditions for many days, weeks, months or even years, partly in violation of domestic laws, but all too often in conformity with domestic laws which allow for extended periods of police custody under ordinary or emergency legislation. In *Jamaica*, e.g., detainees enjoy the right to habeas corpus, but the judges send them back to police detention since the country lacks sufficient space in remand prisons. Some detainees I interviewed had spent up to four years in absolutely appalling police lock-ups, in dark and filthy cells infected with insects, confined to their overcrowded cells for 24 hours per day, subjected to constant violence and aggression by other detainees and police officers.

Police officials often claim that it is not their responsibility but rather *the task of families to provide detainees with the minimum necessary for survival*. In *Equatorial Guinea*, for example, the families had to bring bottles with water and plastic bags with food. Since most police lock-ups simply had no toilets, detainees had to use the same bottles to urinate and the plastic bags to relieve themselves. If they had no families in the vicinity, detainees had “bad luck” and were dependent on their fellow-detainees to ensure their survival. Unfortunately, Equatorial Guinea and Jamaica are by far not the only countries where I found such appalling conditions of police custody.

Conditions in *correctional institutions* are usually much better. Convicted prisoners often have their own beds or mattresses, may walk outside their cells during the day, may interact with other prisoners and sometimes engage in meaningful activities, such as work, vocational training, sports and other forms of recreation. Nevertheless, many prisons are severely *overcrowded*; they lack sufficient staff and financial resources. As a consequence, work, education and recreation are only available for a few privileged prisoners who “cooperate” and/or pay the necessary *corruption* fees. In *Paraguay* and *Indonesia*, it is not uncommon that prisoners had to pay a daily “fee” for the very fact that they were “accommodated” in a cell. Often, prison regimes are not aimed at the rehabilitation and reintegration of prisoners into society but follow purely *punitive policies*. In many post-Soviet countries, including Georgia, Moldova and Kazakhstan, long-term prisoners are under a special or strict regime which means that they are locked up in cells most of the time, sometimes even in solitary confinement, and family visits are subject to severe restrictions. In *Mongolia*, long-term prisoners are kept in strict solitary confinement for up to 30 years, and most of those whom I interviewed in these maximum security cells were in a state of mind that no longer allowed for any meaningful interaction. *Prisoners sentenced to death* were kept in Mongolia for several months in a dark cell, shackled and handcuffed, and could only be visited by one family member before they were executed. In *Abkhazia, Georgia*, I found a woman in an overcrowded cell who had already spent several years on death row without being able to leave her bed because she was paralyzed. Male prisoners on death row were kept in isolation cells, and prison guards had serious problems to open the locks which had not been opened for more than a year prior to my visit. In *Transnistria, Moldova* death row prisoners are also kept in total isolation although nobody has been executed for years as capital punishment is absolutely prohibited in Council of Europe Member States. In *China*, death row prisoners are not isolated, but shackled and partly handcuffed all the time. In a prison in *Togo*, I discovered three prisoners with severe mental disabilities who were simply left unattended in a dark cell. In the Ciudad del Este Prison in *Paraguay*, I found prisoners with open tuberculosis held together with other prisoners in a dark, dirty and overcrowded wing. In *Chinese* “re-education through labour” camps, Falun Gong practitioners and other “asocial” individuals were kept for years without any judicial proceedings and were subjected to various psychological and physical “re-education” measures that can only be regarded as brainwashing. In the infamous Al-Jafr prison in the *Jordanian* desert, which was closed soon after my visit, in Bogambara prison in *Sri Lanka*, in the juvenile prison of Kutoarjo in *Indonesia*, in the children’s temporary isolation and adaptation centres in *Kazakhstan*, in the notorious Black Beach prison in *Equatorial Guinea*, as in many other prisons around the world, *corporal punishment* constitutes a routine sanction for any violation of prison rules and is often applied as a reprisal against prisoners who complain about inhuman conditions. In the infamous “Libertad Prison” in *Uruguay*, which had served as a major torture centre during the military dictatorship, hundreds of convicts and pre-trial detainees spent several months or even years in tiny metal boxes called “las latas” (tin cans) in conditions so appalling that it is difficult to describe

them. The sewage system was not functioning; detainees used the water in the toilets for drinking and plastic bags which they later threw outside their cells for defecation; during the summer the heat in these metal boxes might reach 60° C; there was little ventilation, and detainees had to sit in shifts in front of tiny openings to breathe; they had to cut themselves in order to get attention and medical assistance; the noise and smell were unbearable and must be regarded as inhuman, even for the prison guards working there.

One of the most vulnerable groups is *pre-trial detainees*. Although they are entitled under Article 14(2) of the Covenant to be presumed innocent until found guilty by a competent court, and even though Article 9(3) requires that pre-trial detention should be the exception rather than the rule and as short as possible, pre-trial detainees are kept together with convicted prisoners in most countries, often for many years and usually under much worse conditions than convicted prisoners. The percentage of pre-trial detainees among the total prison population is one of the best indicators for the well-functioning or malfunctioning of the administration of justice. If more than 50% of all detainees, and in some countries more than 70% are in pre-trial detention (according to the International Centre of Prison Studies at Kings' College in London, this is the case of Pakistan, Liberia, Mali, Benin, Niger and Congo (Brazzaville)), something is wrong. It usually means that criminal proceedings last far too long, that the detention of criminal suspects is the rule rather than the exception, and that release on bail is misunderstood by judges, prosecutors and the prison staff as an incentive for corruption.

It is also a sign that the function of sentencing human beings to imprisonment has shifted from judges to prosecutors and the police. In many countries, even the language used indicates that it is the police, together with the prosecutors, who in practice "sentence" a suspect to pre-trial detention, and many detainees do not even know whether they have already been convicted by a court. It simply does not matter as the judge, in the end, pronounces a sentence equivalent to the time already spent in pre-trial detention. In *Nigeria*, where almost 70% of prisoners are in pre-trial detention, mixed with convicted detainees in totally overcrowded cells, I recommended that more than 20,000 persons be immediately released as the time they had already spent in police custody and pre-trial detention had exceeded the maximum penalty possible in relation to the crime they had been suspected of. Such practices lead to a profound change in the function of pre-trial detention. In far too many countries, pre-trial detention is no longer a precautionary measure aimed at preventing the escape of highly dangerous persons suspected of having committed a serious crime, but in reality serves as a type of preliminary punishment for all criminal suspects who lack sufficient money to bribe corrupt police or prison officials, judges and prosecutors. This attitude might also explain the fact that in the majority of the prisons I visited, pre-trial detainees were not separated from convicted prisoners.

Most of these inhuman conditions of detention are not the result of lack of budgetary resources and poverty, but of punitive policies of criminal justice, corruption, a dysfunctional system of criminal justice, a lack of respect of human

beings behind bars and a lack of clearly defined and legally binding rules on the human rights of detainees. The Standard Minimum Rules on the Treatment of Prisoners and other soft law instruments contain such rules, but they are not binding and, therefore, little known among lawmakers, politicians, judges, prosecutors, police and prison staff. In the light of some 10 million human beings deprived of personal liberty and their alarming conditions of detention, the need for a legally binding and enforceable human rights instrument is pressing. Irrespective of what they have done, detainees are among the most vulnerable, discriminated and forgotten human beings in contemporary societies. Like other vulnerable groups, including children and persons with disabilities, they deserve the protection of a specific treaty, similar to the Convention on the Rights of the Child and the Convention on Rights of Persons with Disabilities. As I have proposed in my latest report to the Human Rights Council I, therefore also call on the 12<sup>th</sup> United Nations Congress and Commission on Crime Prevention and Criminal Justice to consider the need of drafting a **United Nations Convention on the Rights of Detainees** to codify in detail all human rights of persons deprived of liberty and to provide for effective implementation and monitoring mechanisms.

Mr. President, Excellencies, ladies and gentlemen, I thank you for your attention and look forward to a fruitful discussion.



## Session I: International Standards: Implementation and Review

### Presentation of the General Report of the Latin American Permanent Committee for the Revision and Update on the UN Standard Minimum Rules for the Treatment of Prisoners

Eugenio Raúl Zaffaroni  
Professor  
Minister of the Supreme Court of Justice of Argentina  
Vice President of the Committee

Resulta para mí una enorme distinción haber sido seleccionado por los miembros del Comité Permanente de América Latina para la Revisión de las Reglas Mínimas de la ONU para el tratamiento de los presos, a fin de exponer sucintamente las ideas nucleares del proyecto de actualización que dicho Comité ha venido elaborando a lo largo de tres años, a partir de las valiosas contribuciones recogidas tanto de los seminarios internacionales como de los foros de expertos desarrollados sobre la cuestión penitenciaria.

Sin dudas que dicho Comité ha llevado a cabo su tarea partiendo del alto piso que significó el documento aprobado por Naciones Unidas mediante Resolución 663-C, en aquel agosto de 1955. No obstante, el vertiginoso mundo actual, las nuevas problemáticas sociales, las crisis internacionales y la globalización llevan a juzgar imperiosa la labor de actualización de aquel instrumento internacional orientado a la tan humana misión de dignificar la persona privada de libertad.

Ya no parece discutible que el sistema penal ejerza su poder represivo valiéndose de un proceso de selección que capta seres humanos sobre la base de un estereotipo criminal conformado a partir de un mecanismo de estigmatización social materializado desde distintas categorías de desigualdad que, por obra de los medios de comunicación social, culminan por cristalizar en el imaginario colectivo un claro perfil negativo.

En este sentido, la coyuntura regional indica que en América Latina se opera con una generalizada medida de seguridad por peligrosidad presunta (bajo la forma de prisión preventiva) y sólo excepcionalmente con penas; por lo que aproximadamente tres cuartas partes de los presos latinoamericanos están sometidos a medidas de contención por reputárselos sospechosos (prisión o detención preventiva).

Este mecanismo utilizado por una agencia judicial que a menudo se vale de términos prolongadísimos para el agotamiento del proceso y que incluso en muchas ocasiones suele ser absurdo, termina convirtiendo a la excarcelación o cese de la prisión preventiva en una verdadera absolución, a la vez que genera el hacinamiento en todos los centros de reclusión; situación ésta en la cual suelen estar incluidos presos condenados y presos no condenados.

Ahora bien, aun cuando la primera y mejor solución para el problema de la superpoblación carcelaria es, sin dudas, la reducción de la criminalización primaria, deviene también indispensable contar con la capacidad del sistema carcelario para asegurar un mayor respeto a la dignidad de las personas que son sometidas a encarcelamiento, mejorando sus condiciones existenciales. En consecuencia, el límite de alojamiento debe estar preestablecido al momento de la planificación estratégica del Estado (*numerus clausus*), para lo cual resulta indispensable que se determine el número de detenidos y la capacidad receptiva del establecimiento.

Para ello resulta menester sancionar una ley de cupos que se valga de una comisión interdisciplinaria a efectos de determinar, de acuerdo a las normas internacionales, cuál es el cupo real de cada unidad penal y cuáles son las condiciones sanitarias que la unidad presenta

Entonces, el recurso a la privación de la libertad no deberá nunca exceder la capacidad real de las unidades carcelarias. Por lo tanto, al superarse en un preso la capacidad máxima del establecimiento penitenciario, el operador judicial deberá escoger entre los internos más próximos a la obtención del cumplimiento de la pena para generar una vacante mediante su soltura sujeta a determinadas reglas, o, de lo contrario, no deberá habilitar el ingreso de un nuevo detenido.

Se trata de un sistema de control de cupo penitenciario, a los efectos de dotar de un mecanismo de corrección las situaciones de detención que no se ajusten a las reglas internacionales, como así también de un sistema de comunicación con los jueces a cuya disposición se encuentren los detenidos que estén en condiciones de obtener su libertad o de ser incluidos en un régimen atenuado o alternativo de la prisión.

Edmundo Oliveira  
Professor  
Brazil

The present General Report of the Latin American Permanent Committee containing the Revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners has the purpose of contributing towards inaugurating a new style of prison, that resonates with the Millennium Development Goals Project set out in 2000 at the UN Millennium Summit, which has the objective,

beginning in 2015, of implementing strategies for lasting solutions to the conditions of misery, exclusion and insecurity that affect billions of people in different parts of the globe.

The first UN Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva, Switzerland in 1955, had the important task of adopting a set of Standard Minimum Rules for the Treatment of Prisoners, approved by the UN Economic and Social Council, Resolution 663 CI (XXIV) of 31 December, 1957, added by Resolution 2076 (LXII) of 13 May 1977.

During the 55 years that have elapsed from 1955 to 2010, there have been many efforts made by the United Nations to ban the well-known crises and difficulties seen in the history of prisons, for which reason the General Report of the Latin American Permanent Committee allows us to experience the opportunity of promising initiatives in the multiple aspects of penitentiary systems in the globalization process. This presupposes international cooperation in order to facilitate the assimilation of experiences that can bring changes and that are in harmony with the values of citizenship in each region.

It is hoped that there will be positive receptivity to the General Report of the Latin American Permanent Committee as well as the gathering of positive results for the prosperity of balanced human life in all nations.

Irrespective of one's country, language, traditions and customs, one of the great characteristics shared by all humankind is the desire to achieve dreams. Life is too short to be small.

The Delegations of the UN Member States attending this Twelfth Congress have come to Bahia with scientific legitimacy to offer their talents in favor of a more decent life within the universe of prisons, for this reason the organizers of this Congress are to be congratulated for the decision of choosing as the central theme of this meeting the strategies for crime prevention and Criminal Justice systems in a changing world.

The present moment is a luminous one for our meditation on the efficiency of the Standard Minimum Rules for the Treatment of Prisoners in as much as the initiative of reviewing and updating these rules strengthen the conviction towards social peace, and promotes conciliatory balance between values of the individual and values of society. Such balance must be understood as a real system of public policies communicating vessels consolidated by the dynamic of three essential components: training and equipping police forces, promptness of the judiciary administration, and reliability of prison deprivation systems.

Academic records show that the progress of Penal Law has consolidated the proclamation of efforts geared to the pedagogical treatment of offenders, their readjustment to family life and to their communities.

This trend of forming concrete bonds able to overcome varied problem barriers related to imprisonment, motivated, in 1950, a proposal to substitute the International Penal and Penitentiary Commission (IPPC) for the International Penal and Penitentiary Foundation (IPPF).

The drawing up of the Minimum Rules for the Treatment of Prisoners became the focal point for the International Penal and Penitentiary Foundation. It is worth remembering the significant participation of IPPF's member jurists in the debates that led to the adoption of the Minimum Rules Project at the First UN Congress on Crime Prevention and the Treatment of Offenders held in Geneva, Switzerland in 1955. After being adopted at the Congress in 1955, the body of Minimum Rules was approved by the UN Economic and Social Council through Resolution 663 CI (XXIV) of 31 December 1957, added by Resolution 2076 (LXII) of 13 May 1977.

From 1955 to 2010, fifty-five years have elapsed in which there have been advances as well as enormous difficulties in the field pertaining to penitentiary policies, and a reflex of this is seen in the accentuated crisis occurring in regions stigmatized by the filter of symbolic delinquency that is represented by the poor filling up prisons and making up the system's clientele. Such is the case of Latin America.

But the Latin American continent is not the only one that awaits the effecting of new instruments, with more efficient pedagogical orientations and perspectives than the secular colonial regime of penalizing merely for punishment. Criminal conviction can only set a good example of coherence when it builds human dignity in answer to the understanding between State and convict, opening doors for the social integration and ethical behavior of the offender through creative education and productive work.

In harmony with these noble intentions and in the face of the current situation dictated by the effects and challenges of globalization, the General Assembly of the International Penal and Penitentiary Foundation, held in Budapest, Hungary on 17 February 2006, approved the creation of the Latin American Committee to draft the basic document containing the initiative in revising and updating the UN Standard Minimum Rules for the Treatment of Prisoners. Special regard should be given to the uniqueness of the proposal drawn especially to be presented at this Twelfth Congress happening in Latin America.

It is important to highlight that the task of reviewing and updating the Standard Minimum Rules timely resonates with the Millennium Development goals set out in October, 2000 at the Millennium Summit, which established that by 2015, in a scenario of global commitment, strategies shall have been produced which will enable the attainment of lasting solutions to the reduction of extreme poverty, social exclusion and insecurity affecting billions of people in different parts of the world.

Instituted on 10 May 2007 by the International Penal and Penitentiary Foundation, Resolution 10, the Permanent Latin American Committee concluded its activities on 23 October 2009. It entailed over 2 years of dedication, hard work, meetings, analysis and discussions that were not lost in time and the concrete result of this endeavor, expressed by the substantial contribution of this General Report, you now have on your hands.

## Reasons for the proposal

The Revision and Update of the UN Minimum Rules for the Treatment of prisoners has been for many years a much needed endeavor.

There are seven reasons for the update:

- 1) The number of years that have elapsed since the Standard Minimum Rules for the treatment of offenders were adopted at the memorable UN First Congress on Crime Prevention and the Treatment of Offenders in 1955 in Geneva, Switzerland;
- 2) The need to match penal systems to the standards of modern technology, especially satellite control variants and internet use;
- 3) The importance of observing the changes in the various fields of knowledge related to the internalization of prison life values, due to the absorption to a greater or lesser extent, of customs, traditions and prison culture.
- 4) The necessity of absorbing the lessons obtained from successful researches and contemporary experimentations that motivate the substitution of liberty deprivation sentences for integrating solutions alternative to prison.
- 5) Raise the level of governments' commitment in every continent so as to allow criminal enforcement systems to position themselves in a satisfactory manner and in agreement with other agencies and legal mechanisms of control.
- 6) Increase the effectiveness of the Minimum Rules in order to promote practical reorientation of penitentiary regimes, safeguarding and promoting human rights in the current affairs dictated by social-economic effects of globalization.
- 7) Reward the efforts of the United Nations Office on Drugs and Crime (UNODC), by facilitating well-defined investments and by being able to provide answers to the complexity of daily challenges in prisons.

Distinguished participants in this Congress

In addition to personal merits, you bring to this meeting the example of wisdom that can only be obtained by maturity and serious dedication.

In line with this gift, in this assembly today, it is born a bright path to global advancement of Law and Criminal Justice that will enable us to progress towards the achievement of mankind's desired victory against crime, be it national or transnational, and assure the safeguard of our institutions.

We are sure that this 12<sup>th</sup> UN Congress with its recommendations on the revision and update of the UN Minimum Rules for the treatment of Prisoners will be of paramount importance.

The proposal drafted by the Latin American Committee is just one step towards a new prison policy profile which will be able to overcome the vulnerable routine in prison dynamics.

In this sense, we are all here to lend our support to the commitment of the United Nations in the search for best practices that are favorable to consistent penal reform.

Life's engine is the expectation of things which one day can still come into being.

# Survey of United Nations and other Best Practices in the Treatment of Prisoners in the Criminal Justice System

Kathleen Macdonald  
Executive Director  
International Centre for Criminal Law Reform and Criminal Justice Policy  
Canada

The International Prison Policy Development Instrument is a compilation of standards and policies from many national and international sources. It was developed on the basis that it would serve as a tool to support the provision of ongoing technical assistance to governments and member states in relation to all aspects of prison policies and programmes. Based on all of the UN Standards, General Assembly Resolutions, and operational prison policy this instrument was developed in such a manner that it can also be used as a self administered guide in the development of national policies and guidelines related to all the operational areas within prisons.

As we know a sound policy framework is essential for the effective and efficient governance of any correctional jurisdiction. However, it is not enough to simply have policies. The policies must be based on the rule of law and be respectful of other international, regional and national standards for corrections and the protection of human rights. The International Prison Policy Development Instrument is a tool designed to assist countries in their development and/or their review of prison policies regardless of region or culture. It is designed as a template so that it can be modified or edited to be in compliance with and supportive of domestic legislation and consistent with local culture and needs. Although the manual can be used to develop an entirely new set of prison policies, it can also be used to conduct a review of existing policies or to conduct revisions to a particular policy area. There is no right or wrong way to use the instrument as it is limited only to the extent of the information provided therein. The manual covers six key areas including: Administration, Case Management, Inmates Rights, Security, Health and Discipline.

The Instrument, which is available both in print and on CD, was initially introduced to Correctional Administrators in Africa during the workshop held in conjunction with the September 2001 Conference of Eastern, Southern and Central Africa Correctional Administrators Conference (CESCA). It was reviewed by an international group of experts many of whom are attending this 12<sup>th</sup> UN Crime Congress and whose contributions were greatly appreciated. It has been translated for use in the Islamic Republic of Iran. This speaks of the instrument's adaptability to different regions and cultures in the world. As a result of efforts by the European Institute for Crime Prevention and Control (HEUNI), one of the sister institutes in the UN Programme Network of

Institutes, the Prison Policy Instrument has been translated into Russian. During the translation process ICCLR provided assistance with updates to the text. It is understood that the revised instrument is being used in a pilot programme during 2009 – 2010 in Russia.

Finally, on behalf of the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR) I would note with special thanks the collaboration, and cooperation that has resulted in making this Prison Policy Instrument available, and for its ongoing use. Particular thanks should be made to the Correctional Service of Canada for their support in the development of the instrument; also the United Nations Office on Drugs and Crime, the European Institute for Crime Prevention and Control (HEUNI), the United Nations Africa Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI), and the many individual experts who contributed to its development and ongoing use in technical assistance exercises. The Prison Policy Instrument is available online at: [www.icclr.law.ubc.ca](http://www.icclr.law.ubc.ca).



# The Russian version of the Manual “International Prison Policy Instrument”

Terhi Viljanen, Senior Programme Officer and Kauko Aromaa, Director  
European Institute for Crime Prevention and Control,  
affiliated with the United Nations (HEUNI)  
Finland

A Manual entitled “the International Prison Policy Development Instrument” has been developed at the International Centre for Criminal Law Reform and Criminal Justice Policy (Vancouver, Canada - a member of the UN Crime Prevention and Criminal Justice Programme Network) on improving prison policy. It has been designed as a tool to assist countries in their development and review of prison policies regardless of region or culture. It is a compilation of standards and policies from several international and national sources, including those of the United Nations. The six key areas of the Instrument include

- administration,
- case management,
- inmates’ rights,
- security,
- health, and
- discipline.

One of the many values of the Instrument is the fact that it can easily be tailored to respond to the specific features of the various regions and countries, and this justifies the widest possible dissemination of the publication. To get the most benefit of it on national levels it should be available also in other languages than English. A Russian language version was produced in cooperation with HEUNI and the Law Academies of the Russian Federal Prison Service in Pushkin and Pskov and it is now in use in Russian prison personnel training institutes as the first instrument that discusses the SMR’s and their application.

The Manual represents a constructive approach to the well-known dilemma that ideals and practice may be far apart in prison life. The approach acknowledges the ideals as a kind of “benchmark” that defines the aspirational horizon codified into the SMR’s. The Manual serves a double purpose. First, it provides all those concerned with the core texts for reference. Second, it provides explanations as to how the core texts are to be understood, in particular as applied to local circumstances.

It is hardly possible to overestimate the importance of international legal standards in global crime control cooperation, as well as progress of humanistic ideals, since the standards accumulate global experience of correctional practice and its humanistic orientation/aspiration. In Russia, relatively recently adopted

international prison policies and their application in full swing became possible only in the post-Soviet era.

This observation served as the basis for the following remarks and objections within the framework of the expert analysis done by the staff of the Pskov Law Institute of the Federal Penitentiary Service and representatives of local agencies of various constituent subjects of the Russian Federation.

- The tailored version of the "Commentary to International Legal Acts and Rules on the Treatment of Prisoners" is in the Russian Federation first and foremost necessary for competent, well thought and scientifically grounded implementation and realization of international standards in penal practice by both penal staff and other subjects of penal relationships. One should not forget that it may be a relatively long and in certain cases a painful process for Russia as a state and society to gain access to internationally shared values common to all mankind as it is only recently that Russia freed itself from the grip of the system crisis which had deeply affected all spheres of its state and social life.
- This circumstance has found a direct reflection in Article 2 of 'the Standard Minimum Rules for the Treatment of Prisoners: "In view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted by the United Nations."
- The implementation of the international standards will actually result in one common denominator - creating prison conditions corresponding to the humanistic ideals of mankind. This is clearly stated in Article 1 of the Standard Minimum Rules for the Treatment of Prisoners: The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.'
- Thus Russia constituting a democratic legal state whose law-making activities are based on universally recognized international principles, one should study the present collection bearing in mind that the domestic penal legislation conforms to the generally recognized principles and norms. But at the same time one should be fully aware of some peculiarities of the penal legislation of Russia.

According to the Russian experts,

- the first peculiarity follows from part 4 of Art 3 of the Penal Code of the Russian Federation stating that the recommendations of international

organisations dealing with implementing punishments and the treatment of prisoners are only realised in the Russian penal legislation when there are necessary economic and social conditions for doing so. In other words a certain international standard shall not be applied until we are capable of providing material resources for reinforcing it. Neither shall an international standard be applied if it does not correspond to the social practices accepted in the Russian Federation.

- another peculiarity is brought about by the notorious "human factor", Although making a law is a special procedure presupposing several readings of a draft law, its consideration by both the lower and the higher Parliament chambers as well as its approval by the President, resultant laws and normative acts are not guaranteed from mistakes, both purely technical and caused by collision. To correct them, there exist special legal institutions such as the law initiative and the decisions of the Constitutional Court of Russia,

In conclusion, the Russian expert commentary maintains that

- It is incorrect to assume that the divergences between the domestic penal legislation and the international norms are caused by Russian lawmakers' ignorance of the existing international standards and principles, or their intention to violate these standards and principles. As a rule these differences testify to the absence of economic or social conditions necessary for the realization of certain international standards.

The policy recommendations of the Russian Manual have been translated into Russian from their original English language version. The texts of the various international standards and norms have been readily available in Russian as official translations of the United Nations. The explanatory policy part has been amended according to the prevailing circumstances in the Russian Federation. The work has been made possible by the generous support of the Finnish Ministry for Foreign Affairs, in cooperation with the Finnish Training Institute of Prison and Probation Services, the St. Petersburg Institute of Qualification Improvement of Federal Services of Punishment Execution Personnel, the Pskov Law Institute of the Federal Penal Service and The European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI). It is also the sincere hope of the partners that the Manual could even find a wider audience in other Russian-speaking countries.

# Corrections/Prisons in United Nations Peacekeeping Operations

Richard Kuuire

Corrections Coordinator, UN Department of Peacekeeping Operations

The strengthening of corrections/prison systems can play a key role in the restoration and consolidation of peace in a post conflict country. This can be done by facilitating the maintenance of law and order during, as well as after a conflict in terms of putting away spoilers of the peace process and addressing surge in crime such as armed robbery, banditry, murder, rape and such violent crimes. Accordingly, the demand for United Nations corrections assistance within peace operations has been growing steadily. Since 1999, the United Nations Security Council has included provisions on strengthening rule of law, justice and corrections/prison systems in the mandates of all new multidimensional United Nations peacekeeping operations. Approximately 175 corrections officers<sup>1</sup> are currently deployed in United Nations peace operations in Afghanistan, Burundi, Chad, Côte d'Ivoire, Darfur, the Democratic Republic of Congo, Haiti, Kosovo, Liberia, Sudan and Timor-Leste to assist host countries in strengthening their legal, judicial and prison systems.

The Criminal Law and Judicial Advisory Service (CLJAS) was established at United Nations Headquarters in 2003 to support the implementation of rule of law, justice and corrections mandates of United Nations peace operations managed by the Department of Peacekeeping Operations (DPKO). When requested and feasible, CLJAS also provides support to field missions managed by the Department of Political Affairs (DPA). Working closely with other Office Rule of Law and Security Institutions (OROLSI) components and concerned entities throughout the UN system and the international community, CLJAS advises and supports field missions on matters related to justice and corrections and assists with staff recruitment, resource mobilization and planning for projects and programmes. In addition, CLJAS designs the justice and corrections components of new field missions and evaluates the achievements and challenges of existing missions. Drawing upon lessons learned and best practices, CLJAS also develops guidance and training materials relevant to the work of justice and corrections components. The electronic Rule of Law Community of Practice maintained by CLJAS further facilitates information-sharing amongst the Prison Affairs Officers in the field and in Headquarters.

Until 2007, CLJAS was staffed with just one Corrections Officer. In 2007, CLJAS became a part of DPKO's Office of Rule of Law and Security Institutions (OROLSI). Currently, CLJAS includes one Corrections Officer (P-4

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<sup>1</sup> Approximately 150 of the 175 corrections officers are staff seconded by their Governments.

seconded); three Corrections Policy Officers (two P-4 and one P-3); and two Assistants.

Need for prison support in peacekeeping operations:

- The objective of prison support activities of UN peacekeeping operations is to contribute to the maintenance of sustainable peace and security by providing essential assistance to national prison staff to develop and manage a prison system in keeping with national and international standards.
- The approach taken by prison components in the field involves a combination of strategic advisory support and on-the-job mentoring and training of national prison officials, where sufficient personnel are deployed.
- Peacekeeping prison support programmes involve civil society, development partners, as well as bilateral and multilateral donors — all of whom are essential for successful programmes.
- Prison support programmes in peacekeeping operations focus on prison security, law and order, human rights and, in some cases, humanitarian issues in prisons.

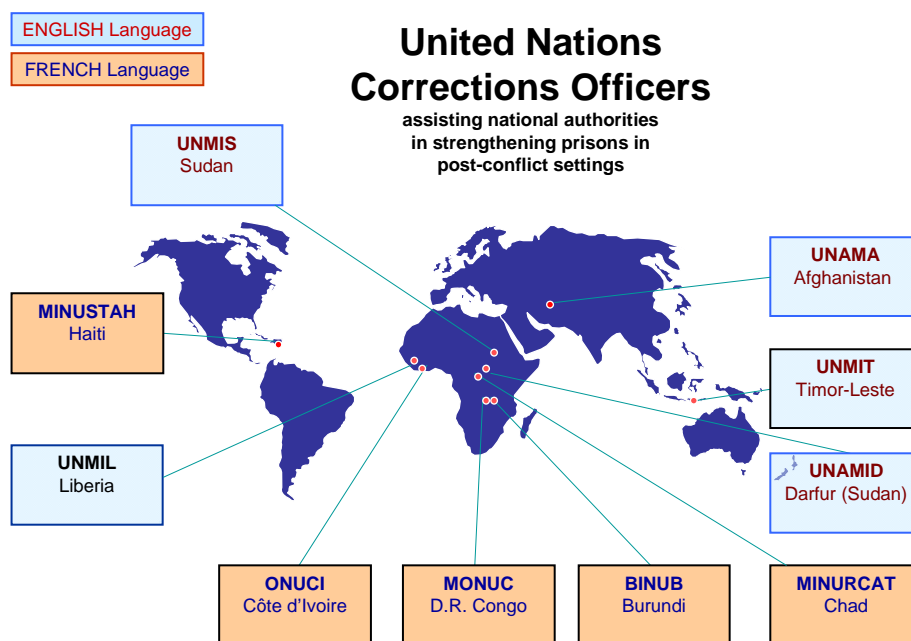
Contribution of prison components to peace and security in post-conflict countries:

- Supporting the activities of Police and Justice Components in the peacekeeping mission as part of a holistic approach to justice delivery and rule of law improvement.
- Strengthening prison security to prevent escapes.
- Preventing prison disturbances which could otherwise spill over to the population.
- Improving human rights in prisons.
- Securing and improving prisons as a means to address poor perceptions of justice delivery in the country.
- Providing advisory support to host country authorities for institutional development.
- Co-locating in prisons of host countries and providing advisory services to national prison authorities.
- Providing training and capacity-building to all levels of prison staff and developing national training capacity.
- Partnering with UN agencies and donors to assist the host country in securing funding for infrastructural improvement, training and provision of essential logistics.
- Collaborating with professional bodies and NGOs — such as Penal Reform International (PRI), ICRC and professional associations such as ICPA — to reform prison systems.

Key challenges to prison component activities in peace operations

- Insufficient staffing levels to carry out tasks mandated by the UN Security Council both at Headquarters and in the field.
- Recruitment challenges such as the need for more Francophone officers as well as female officers
- Lack of funding resources for prison programmes and projects in post conflict countries
- Huge challenges in prisons in post conflict countries such as prison security, many prison incidents, feeding of prison inmates, paucity of health delivery, over crowding, army of pre-trial detainees
- Inability to deploy prison staff rapidly when new peace operations are authorized by the Security Council
- Need for quality and quantity of seconded prison officers in field operations
- Need for experts/support to develop appropriate guidance materials
- Inability to attract, recruit and retain professionally qualified national prison staff.
- Insufficient numbers of francophone international prison officers for secondment and also for recruitment as civilian staff.
- Lack of funding of prison programmatic activities in peacekeeping operations.
- Prisons in post-conflict countries often need significant rehabilitation and other infrastructural improvement.
- Need for enhanced engagement from some host governments to undertake prison reforms and invest in the prison maintenance.
- Prison staffs in host countries often have not received sufficient training.
- Lack of a consistent approach across all corrections contributing countries to the pre-deployment training of seconded corrections officers.
- Need for greater clarity in Security Council resolutions as to the number of seconded prison officers to be deployed and the specific roles to be undertaken by the prison components.
- Donors not often giving sufficient attention to investing in prison programmes and projects in post-conflict countries.
- Governments in post-conflict countries often not paying sufficient attention and providing budgets for the needs of prisoners such as food, medical care, sanitation, training of staff and provision of vital logistics.
- There is ineffective coordination within the UN family to address the many challenges facing prison systems in post-conflict countries. There rather seem to be competition and duplication of efforts and scarce resources in support of prison programmes and projects in the countries that need real assistance and guidance.
- The involvement of prison professional associations, academic bodies and research institutions in addressing the challenges of prisons in post-conflict countries is minimal and uncoordinated.

## Peacekeeping Missions with Prison Components as at January 2010



In addition, CLJAS is also aiding in planning prison system aspects for enhanced UN engagement and a possible peacekeeping operation in Somalia.

Member States that contribute prison officers to current peacekeeping operations

Geographical distribution:

Americas : 2 countries

Asia: 2 countries

Africa: 15 countries

Europe: 2 countries

**Total:** 21 countries

Other countries are considering contributing prison officers to peacekeeping missions. Peacekeeping operations are in particular need of francophone as well as female prison officers.

Authorized staff deployment:

Regular Staff: 34 (civilian prison staff)

Seconded prison officers: 152 (experts on mission who are seconded from Member States)

With the current earthquake incident in Haiti, the corrections component of the Mission is expected to increase its strength up to 100.

## Some corrections activities

### Policies/guidance development

Corrections components of United Nations peace operations have long operated without significant operational guidance. To support prison affairs officers in their efforts to help host countries strengthen their prison systems, one of the key functions of CLJAS is to develop policies and other guidance materials. These materials reflect lessons learned and best practices, including those identified in “Supporting National Prison Systems: Lessons Learned and Best Practices for Peacekeeping Operations Study” (December 2005). The “DPKO/DFS Policy on Prison Support in UN Peace Operations” (December 2005) defines the objectives, principles, functions and substantive areas in which prison components are engaged, as well as the partners with whom they must work in order to achieve their objectives. It also governs basic management issues relating to the work of prison components, including organizational structure, workplans, and link to Headquarters, personnel, training, and budget and reporting.

Other guidance materials developed by CLJAS include sample work plan templates for corrections components, as well as the “DPKO/DFS Guidelines on the Methodology for Review of Justice and Corrections Components in United Nations Peace Operations,” which sets out the methodology for planning, managing and conducting Headquarters-led reviews of the justice and corrections components of United Nations peace operations. CLJAS has also contributed to the development of DPKO’s new electronic reporting system (“Digital Dashboard”). The Digital Dashboard is aimed at improving the quality and dissemination of reports filed by field missions and thereby enhancing their impact and ensuring necessary follow-up. The development of guidance materials for use by corrections field staff is one of the crucial areas where CLJAS requires support from organizations like the International Corrections and Prisons Association (ICPA).



## Partnerships

At Headquarters and in the field, CLJAS and corrections/prisons components of United Nations peace operations work very closely with other United Nations entities on a number of joint projects and programmes to support host countries in strengthening the rule of law in post-conflict settings. These partnerships reflect the “One United Nations” approach and are aimed at optimizing the assistance that the United Nations system and other partners provide to host countries. By working together in accordance with their respective mandates and strengths, the United Nations is better equipped to provide a comprehensive and timely response to needs in the rule of law sector in a given post-conflict setting.

Where United Nations peacekeeping operations are deployed, the Secretary-General has designated DPKO as the United Nations lead entity for strengthening prison systems. In fulfilling this role, DPKO is responsible, *inter alia*, for the identification of key partners, the coordination of planning and strategy development, the coordination of programme implementation, the application of standards, training and resource mobilization. As lead entity, DPKO also serves as the primary counterpart with national authorities. Similarly, OHCHR, UNDP and UNODC are the lead entities in other rule of law areas.

### UN agencies partnerships in Southern Sudan prison system

The United Nations Mission in Sudan (UNMIS) and United Nations Office on Drugs and Crime (UNODC) partnership in the prison system in Southern Sudan commenced in 2007 with the goal to pool resources and expertise to assist prison authorities to re-establish a prison system that was destroyed during the 21 years of civil war in Sudan. UNMIS Correction Adviser extended an invitation to UNODC to partner the Corrections Advisory Unit of UNMIS in the task of re-establishing a credible prison system that was highly militarized with dilapidated infrastructure which was in an advanced stage of decay. Human rights issues in the management of prisons were not being given any priority and there was insufficient leadership capacity to propel any meaningful change in the prison system. The first step was a UNODC delegation visiting Southern Sudan to do a needs assessment together with UNMIS Correction staff and the prison authorities of Southern Sudan. The assessment team identified capacity building and training as a priority that also noted the need to include provisions for the rehabilitation of critical prison infrastructure and prisoners file management in any assistance programme. Other issues were on treatment of vulnerable groups in prison such as women and children, mentally ill prisoners and basic needs of prisoners.

It should be mentioned that there already existed a Multi-Donor Trust Fund (MDTF) pledged at a Donors conference which has a prisons development component from the World Bank which was being administered by UNDP on

behalf of the Government of Southern Sudan. In order to coordinate the effective use of this facility, there exist weekly meetings involving UNMIS, UNODC, UNDP and chaired by the Director General of Prison of Southern Sudan. Since UNODC did not have an office in Sudan, a memorandum of understanding was signed between UNODC and UNMIS for co-location of the two agencies in the premises of UNMIS in Juba. While the two agencies maintained their own reporting lines, daily interactions and joint planning of activities was found to be very useful. Confidence and trust was quickly built between officials of the two bodies and progress was achieved much faster than would otherwise have been the case. Co-location, joint planning, joint implementation of projects and agreeing on a common stand on issues is highly commendable and a good practice. The partnership between DPKO/UNODC in Southern Sudan corrections is an eye-opener that demonstrates that it is possible to deliver “One UN” where there is the willingness and commitment of both parties to work together with a common purpose. This is certainly a best practice for all UN agencies and others to work together.

Another dimension of this project is the involvement of International Centre for Criminal Law Reform (ICCLR) of Canada otherwise known as the Vancouver Institute in the project in their collaboration with UNODC. The two were able to raise funding support from the Government of Canada for the Southern Sudan prison programme which currently stands at over four million USD. ICCLR provided expert resource persons for the delivery of training and capacity building programmes on a number of prison thematic areas of prison development which was jointly delivered with UNMIS Corrections staff. This is another example of collaboration between two UN agencies and an intergovernmental agency.

Yet another dimension of the project was the mobilization of small funding by Ms Vivienne Chin of ICCLR to support a simple female pads production programme for female prisoners in the Juba Women prison. Though a small project, it is important to mention that it arose from her involvement in the larger DPKO/UNODC/ICCLR collaboration in providing assistance to the prison system of Southern Sudan.

The collaboration produced the following significant outcomes to assist in the re-establishment of the prison system in Southern Sudan:

- 36 different training programmes have been undertaken between 2007 and 2010.
- Development of a human rights training manual.
- Publication of a book on vulnerable groups in Southern Sudan prisons.
- Development and printing of prison standing orders.
- Establishment of working committee on prisoners’ mental health.
- In partnership with the Prison Service of Kenya, the establishment of a Probation Service and court Liaison Units for Southern Sudan prison system.

Other examples of partnerships between CLJAS/DPKO, UNODC, OHCHR, and UNDP in other peacekeeping operations include the following:

### **UNODC**

The most significant direct partnership between DPKO and UNODC in managing a joint prisons programme is the one in South Sudan. Others are Afghanistan, Haiti, North Sudan and DRC.

### **UNDP**

There are a number of prison projects being implemented by UNDP especially in Afghanistan, East Timor, South Sudan, North Sudan, Darfur, DRC, Haiti and Ivory Coast.

### **ICRC**

Has been involved in providing for critical issues in prisons such as provision of water, improvement of sanitation, medicines, food, beddings, and funding of small agricultural projects. Countries where ICRC have been mainly involved include, Afghanistan, Haiti, Chad, DRC and Liberia

### **UNIFEM**

Initiated a project in Liberia female prison to impart vocational skills to female prisoners.

Main donors for prison projects in peacekeeping:

Australia, Germany, EU, Canada, Sweden, Norway, UK (DFID) and USA

### **ICPA**

It is a strategy of CLJAS to work with International Organizations and Professional Associations to work in partnership to re-establishing and strengthening prison systems in peacekeeping operations. In this regard, DPKO has entered into a partnership agreement with ICPA as below.

In conclusion, the way forward in strengthening corrections/prison components in peacekeeping operations to provide assistance to national prison authorities in post-conflict countries is to provide a holistic approach in addressing rule of law issues including prisons. Prison issues are often overlooked, ignored or given very little attention by governments, donors and even some UN agencies which eventually impact on human rights performance. Some prison systems do not in anyway measure up to international standards and norms.

In the context of the future of prisons in peacekeeping operations, some considerations are:

- Strengthening close collaboration between DPKO-UN agencies, countries that contribute corrections staff to peacekeeping operations, host countries prison authorities, friends of corrections/prisons in peacekeeping operations and understanding of the needs of prisons by the

leadership of the peacekeeping missions who may not be familiar with prison issues.

- Developing strategies that would enable corrections and justice components of the peacekeeping mission to deploy as rapidly as possible to the missions at the very early stages of the mission start-up.
- Since most prison officers contributed by UN Member States have their own models of prison management, it is important to carefully prepare those being deployed to peacekeeping operations with UN standard models, so they deliver one consistent message and do not confuse national prison authorities with conflicting models. This can be achieved through the delivery of pre-deployment training programmes before the selected staff are launched into a peacekeeping operation.
- Developing mechanisms that will strengthen UN agencies collaboration to deliver “One UN” through joint programming and joint programs and projects and the working together in the implementation of the projects and programmes.
- Involvement of bilateral and donor support, civil society and using media advocacy in the implementation of programmes that will assist national prison authorities in strengthening their prisons systems.
- Governments in post-conflict countries should be encouraged to understand that it is their responsibility to provide for the needs of prisoners in prisons in their countries and that they have the responsibility for the maintenance of their prison systems and to run them in accordance with international norms and standards.
- Donors should be encouraged to invest more in strengthening prison systems in post-conflict countries as part of a holistic approach to reform of rule of law institutions.
- More awareness should be raised about the challenges facing prison systems in post-conflict countries and this can be done by creating international fora where these issues can be discussed and highlighted.

# Session II: Social Reintegration as the Objective of Treatment of Prisoners

## Community Social Reintegration The Fiji Approach

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### Introduction

This paper discusses the process of social integration of offenders in Fiji. The Fiji Prisons and Corrections Service (FPCS) has, since embracing the Prisons and Corrections Act 2006, dedicated itself to the design and implementation of policies that shift the focus of its vision and operations from containment to corrections. The FPCS has in the last three years wielded tremendous strength and resolve in order to transplant documents into physical entities on the ground. The exercise has called for faith, creativity, innovation, courage and a high degree of audacity to turn the wheel around. At the core of this have been offenders and the totality of corrections work, successful rehabilitation and social reintegration. If the previous one hundred years or so of prisons work in Fiji had paved a sure path that was well-worn and smooth, the beginning of 2007 saw a stop at an uneasy juncture and a subsequent leap into the untrodden. The definition, scope and responsibilities of the FPCS altered. This paper defines the concept of social reintegration birthed under this change. The discussion also outlines the context of its application, the challenges unique to Fiji and the approaches designed to increase chances of success.

### Definition and alignment

Article 10 (3) of the International Covenant on Civil and Political Rights (ICCPR) states that the 'essential principle of the treatment of prisoners shall be their reformation and social rehabilitation.'<sup>1</sup> This stipulates that the core function of any prison system is the social reintegration of offenders. This is the reverse of containment and confinement.

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<sup>1</sup> Social Reintegration: Custodial and Non-Custodial Measures – Criminal Justice Toolkit 4, United Nations Office on Drugs and Crime, 2006, p.1.

Rules 56 – 64 of the United Nations Standard Minimum Rules for the Treatment of Offenders further state that the ‘purpose and justification of imprisonment is ultimately to protect society against crime, and that this end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon returning to society the *offender is not only willing but able to lead a law-abiding and self-supporting life.*’<sup>2</sup>

The FPCS employs a holistic approach toward its work in corrections. As such, its entire operations is founded on the principle that rehabilitation and social reintegration is not myopically focused on support at pre-release phase but that it encompasses the entire period from prosecution to post-release. Given this, social reintegration does not become a single entity that is implemented at a certain point during incarceration. Instead, it is the very foundation upon which the FPCS visions, designs and implements measures to fulfil its national role of ensuring public safety.

Social Reintegration in the prison setting as outlined in Criminal Justice Toolkit 4 of the United Nations Office on Drugs and Crime includes,

‘...assisting with the moral, vocational and educational development of the imprisoned individual via working practices, educational, cultural and recreational activities available in prison. It includes addressing the special needs of offenders, with programs covering a range of problems, such as substance addiction, mental or psychological conditions, anger and aggression among others, which may have led to offending behaviour. Reintegration encompasses the prison environment, the degree to which staff engage with and seek the cooperation of individual prisoners, the measures taken to encourage and promote contact with family, friends and the community to which almost all prisoners will one day return.’<sup>3</sup>

This paper examines the approaches of the FPCS within the parameters of international documents; the UN Millennium Development Goals, the UN Standard Minimum Rules for the Treatment of Prisoners. The national compass is the People’s Charter for Change, Peace and Progress (PCCPP) and the FPCS Strategic Plan 2010.

## Context

Fiji is a south-west Pacific archipelago of more than three hundred volcanic islands of which about 100 are inhabited. It is ruled by an interim government comprising military and civilian members. Principal activities are agriculture, fisheries, mining, garments and tourism. Another key source of revenue is remittances.

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<sup>2</sup> Ibid (and my italics)

<sup>3</sup> Ibid

The country has a population of 837,271 people of which 56.8% are indigenous Fijians, 37% Indians and the remaining Others.<sup>4</sup> Like many third world economies, Fiji is a rapidly urbanizing nation with its cache of accompanying problems. Compounding this is the grim 45% of the population which is not economically active in the labour force.<sup>5</sup>

Whilst 49% of the demography is rural-based, this figure is fluid with access to urban centres.<sup>6</sup> Their mobility means the next census is likely to render this percentage significantly lower. This points to a population heavily dependent on a relatively small percentage of economically viable people to carry the economic burden. Part of the social problems emerging is crime and the resultant burden of the criminal justice system to maintain public safety.

The central function of the FPCS is to provide safe custody to offenders using infrastructure and rehabilitative approaches matching international standards.<sup>7</sup> The guiding principle in its work has always been that ‘the successful reintegration of offenders into the community is the best security for society.’<sup>8</sup>

## The EPCS approach

### **1. Adopting the throughcare approach**

One of the significant changes implemented since 2006 is the approach to offender incarceration periods. Instead of separating Incare and Outcare, the FPCS is creating designs to make this previously disjointed process seamless and structured beginning from prosecution to post-release.

The core change in throughcare is the removal of the one-size-fits-all approach to rehabilitation whereby offenders had limited options in programs. The current approach treats every offender on a case-by-case basis meaning the process of diagnosis and treatment for offending behaviour assumes a far more relevant turn.

The design and implementation of this comprehensive approach is defined and laid out in the Rehabilitation Framework which is currently into its second month of trials in FPCS admission centres. The Framework outlines a four-phase approach including Discipline, Behavioural Enhancement, Upskilling/Vocational

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<sup>4</sup> Fiji National Census Population 2007, Fiji Islands Bureau of Statistics in <http://www.govnet.fj/stats.html> (on homepage)

<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> Work has already begun among the 12 prisons in Fiji to remove the dormitory system and move to the international system of having four offenders in one room. Naboro Medium Facility catering to long-termers has completed this phase and others are in line to undergo this change in the next five years.

<sup>8</sup> One of the Fiji Prisons and Corrections lead principles.

Education and Work Placement. The design caters for offenders into release and post-release periods.

The Framework targets the vulnerable points in offender lives and provides key intervention points to sustain the rehabilitative process and steer it to self-sustainability. The intervention points are at diagnosis, at discipline, at behavioural enhancement where changes are intimately monitored and evaluated, at education and upskilling and at release.

The two key factors for recidivism are the lack of family or community support and lack of financial sustainability. The FPCS throughcare approach targets these areas in order to increase chances of successful social reintegration into communities. Throughcare targets and monitors family relationship developments, encourages contact, encourages spiritual growth, keeps a tab on the state of families through its welfare section, provides programs targeting offending behaviour and provides an extensive and rigid linkage process for offenders nearing discharge and prepares offenders for employment or micro-business in agro-based or technical industries.

To assist in this process, staff are undergoing rigorous programs to alter mindsets from containment to corrections. A key program is the Captains of Lives Program which programs officers to become mentors and to be role models for offenders. This forces officers to reevaluate their lives, their approaches to work and their daily interaction<sup>9</sup> with offenders. Officers are programmed to look at offenders as human beings. This is one of the first steps toward easing relationships, fostering cooperation, earning trust and building a sense of responsibility in offenders.

## **2. Spirituality**

The FPCS places the spirit of offenders at the core of its work. Prior even to behavioural counseling and other approaches utilizing cognitive means, offenders are put in touch with the faith of their upbringing and mentored and counseled by spiritual mentors from the denomination of their choice.

Matters of the soul are dealt with as it helps ‘soften’ most offenders for placement in other stages. The FPCS utilizes spiritual mentors in conjunction with behavioural counselors so as to allow for a more objective monitoring and evaluation process of offender changes.

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<sup>9</sup> It is a daily routine to see one officer escorting ten or more offenders armed with cane knives for work in open farm fields. Offenders are regularly placed in enabling situations such as these. Then there are teams of offenders who leave institutions at daybreak to work in the cool fields before the heat. These teams go and return unescorted. The fields are not flat terrain. Farm areas include steep to rolling hills laced with brush and tropical forest. It is teams like these that began commercialization of agriculture in 2009.



### **3. Vanua, Lotu, Matanitu (Land, Faith, Government)**

The concept of respect and allegiance to land (people), faith and government is central to indigenous Fijians.

Land in this context pertains to the spiritual and cultural ties that define a Fijian. This includes land resources, marine resources, myths and stories related to place and being, paternal and maternal bloodlines. Vanua dictates every Fijian's identity and responsibilities; something no other person can fill. Emphasis on this gives offenders a huge sense of belonging, responsibility and empowerment. Offenders perceive the big picture where their contribution is essential to the continuity of their people. More than 80% of offenders in Fiji are indigenous Fijian and introducing this has tremendous repercussions in transforming lives.

The vanua also offers restorative justice options which are central to easing social reintegration for offenders. Fijians have reconciliatory means through traditional cultural practices where offending individuals seek forgiveness from victims. Largely, this involves entire families and communities as a wrong done to an individual is deemed as being toward the larger commune.

As discussed earlier, spirituality is covered to a great depth. Allegiance to nation and commitment to nation-building is equally crucial. One of the strongest drivers for change is to give offenders a sense of purpose. Aligning them to the national picture offers this.

### **4. Commercialization and prison enterprise**

Unemployment and the lack of opportunities stemming from the stigma of having been incarcerated hinder offenders' progress in society. In 2009, with generous support from government, the FPCS embarked on commercializing its industries. Vegetable cultivation, poultry, piggery, bakery, wood joinery and tailoring are some of the initial activities undergoing this change. This is in a direct bid to empower offenders with skills training conducive to the environments they are returning to. This is one of the approaches to increasing successful social reintegration of offenders.

Offenders are placed in work situations, follow a routine duplicating that of the external work environment, train in specific skills, attend workshops and plan their post-release programs by designing micro-finance business plans or options to study further in courses of interest.

The FPCS is in the process of establishing the Fiji Corporation of Rehabilitative Enterprise (FCORE) which is to be the consolidating arm of all prison enterprise. It is training offenders now and will also equip them for production in their communities. FCORE will also be instrumental in providing agricultural needs for post-release and will also purchase all that is produced by ex-offenders. Beginning with agro-based production, this is to be expanded to include bakery goods, garments, honey, joinery products and small cottage-based industries.

Given the limited jurisdiction FPCS and FCORE have on post-release offenders, CARE is being established. CARE which will comprise community stakeholders

including churches, indigenous communities, business houses, NGOs and government statutory bodies will be the support mechanism for ex-offenders.

It is envisaged that this entire enterprise framework will be crucial to the rigidity of support ex-offenders need in order to successfully reintegrate into society. It offers them from the moment of incarceration, discipline to bring order into their lives, a careful scrutiny for diagnosis of offending behaviour and its roots, the right treatment, an offer for skills education and training, employment options and a comprehensive structure to assist them in gaining solidity in the external world.

The concept has been designed to increase offenders' ability to reintegrate into the communities they came from.

One of the crucial ideas behind the FPCS is its commitment to reminding the public that offenders 'did not just land on our doorstep. They came from somewhere. They have a family... a wife, a mother, a father, brothers, sisters, friends...' <sup>10</sup> As such, offenders' entry into prisons points to a failure at some point. It could be in a person, a process or an institution. The FPCS approach is to diagnose the problem, identify the source, treat it and guide it to recovery, empower him or her and then, to hand over the offender to society.

Currently, every offender is upon discharge, escorted by a team of officers, spiritual mentors and other stakeholders back to his or her community. In a formal ceremony (traditional), the FPCS hands over the ex-offender back to his family, church and/or community. This is a public act of giving society the responsibility for offenders' lives, the idea being that the offender returns to a home and a family that supports him.

## Community engagement

Branding was used as a means of marketing and promotion of the work of the FPCS. It has been the quickest way to win community interest in the work of saving lives. The FPCS brand is the yellow ribbon. The Yellow Ribbon Project inspired by Singapore. Fiji has customized it and it is now in its third year. The primary role of the yellow ribbon is to alter public mindset, encourage dialogue, and build relationships.

Founded on the themes of Awareness, Acceptance, Action (community action) it targets schools, villages, urban and peri-urban settlements and neighbourhoods, churches and the private sector (commercial bodies). It uses all forms of media; print, radio and television to disseminate its message that every offender needs a second chance.

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<sup>10</sup> From FPCS Commissioner Brigadier-General Naivalurua (many speeches and media interviews).

The Yellow Ribbon project insignia appears through participation in community events; basketball, rugby matches, trade fairs, charity festivals (2009 Hibiscus Festival) and all major youth activities in the capital and around the country.

The latest growth in this area is in the intervention for youth from 'vulnerable' or hot spot communities. This is done by identification of offender source communities and the designing of interactive empowerment of projects for them. The first which occurred in April 2010 (Easter holiday) was a group of young prefects from Kalabu High School who attended a two-day camp for team-building exercise (all school leaders).

The early intervention is part of the proactive approach the FPCS is engaging in order to target vulnerable communities susceptible to crime.

The yellow ribbon creates awareness but also inspires action in the community. More business houses, churches, provincial councils, villages and NGOs have come up to show support. This in turn means that support is being garnered and established in structured forms ready to carry the process that begins from within prison walls.

The FPCS carries the self-assigned responsibility of 80% of the work inside the prison system. It leaves 20% for the community. This ratio is designed to show commitment to the task assigned to it by Government and society. It views its work as an investment into the economy. When human lives are brought in, the FPCS utilizes the human factor approach at every step of the incarceration period because the work is ultimately an investment. Offenders who successfully reintegrate socially build families, find or establish decent work, have the power to inspire and guide youth based on their journeys and consequently contribute to nation-building.

## The big picture

The work of prisons and corrections can very easily be isolationist. This is the danger of an inward-looking approach. One of the contributing factors to the success in Fiji is that from the outset, the approach was outward-looking. The first step of the transformation process for the organization involved visiting Singapore and Hong Kong to see best practices and approaches that were working. From the start, the benchmark was set against two successfully designed corrections systems.

Significant effort has also been placed on the organization exercising transparency and accountability by employing a business approach in all administration and command. The designing of corporate and business plans reaches the lowest ranks in the workforce. The visioning exercise is taught so officers learn to link their objectives and job descriptions to the bigger organizational and national picture.

The FPCS aligns its strategic plan to the People's Charter for Change, Peace and Progress which has eleven pillars it designs national goals for social and

economic development upon. The PCCPP is in turn designed from the goals outlined by the United Nations Millennium Development Goals (MDGs).

The work of the FPCS links directly to MDG 1, 2, 3, 4 and 7. It contributes to the eradication of poverty (MDG1), the achievement of primary education (MDG 2), the promotion of gender equality and empowerment of women (MDG 3), the combat of HIV and AIDS (MDG 4) and the assurance of environmental sustainability (MDG 7).

When offenders are socially reintegrated into communities, it means they have learned to manage their emotional and psychological issues, learned appropriate social behaviour, learned to nurture relationships, assumed responsibility, possess a skill or degree of business acumen and can earn an income and manage his finances. This links to the basic removal of poverty.

One of the lead causes of lack of completion of primary education is poverty. Its removal by the above means more children can complete a basic education.

Offenders returning to the community having learned the basics of managing emotional and psychological issues means they are better equipped to handle relationships and contribute to reduction in domestic violence. Aside from this, the FPCS runs short courses on gender equality for both offenders and officers. Offenders who had no previous opportunity to learn about gender issues receive this when they are incarcerated. They return with an altered view to women and gender.

The work of corrections in FPCS is a multi-faceted one with enormous and far-reaching impact. Whilst the dream may be big, the grounding approach is simple, the human factor. Faith – everyone needs to believe in something. We offer this. Love – everyone needs the warmth of relationships. We build this. Belonging – everyone needs to belong to a people and place. We reconnect the two. Independence – everyone needs sustainability and the means to reach this. We give this.

Social reintegration according to our definition and practice is not a scientific concept. It is a human one. This is our approach.

# Out for Good: An Innovative Canadian Project in Community Supervision

James Bonta, Director, Mary Campbell, Director General and  
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The excellent Background Paper prepared for this workshop noted in paragraph 4 that the International Covenant on Civil and Political Rights emphasizes in Article 10 that prison systems “shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation”. As more victims of crime find themselves in reduced financial straits – indeed some as the victims of large frauds that have wiped out their life savings – we can experience a hardening of attitudes towards even minimal levels of offender treatment when it is perceived as far exceeding what is available to the victim.

In paragraphs 56 through 58 of the Background Paper, the writers note that effective reintegration of prisoners into society is crucial. Two significant challenges are faced in the treatment and community reintegration of offenders. First, we must get smarter about directing our scarce and expensive resources to where they are needed most, and second, even if we have the best practices in the world at getting people out of custody the money and effort is wasted if we cannot keep them out. Recidivism rates range from bad to worse, and too many of our prisons hold too many people with good potential but who have not succeeded on the street. Instead they are people caught in a revolving door on a windy day, who keep on winding back into custody where they started.

## Core principles of effective treatment

Research for several decades now has been clear that treatment works in reducing recidivism. But, what is also clear is that treatments are not equally effective. Some treatments reduce recidivism and others may actually increase recidivism. An important advance in the research on offender treatment was the 1990 formulation of “Risk-Need-Responsivity”, or the RNR, principles (Andrews, Bonta & Hoge, 1990). The Risk principle calls for the matching of treatment intensity to the risk level of the offender. In other words, direct intensive treatment services to higher risk offenders and not to lower risk offenders. The Need principle advises rehabilitation efforts to target criminogenic, or “crime-causing”, needs. Offenders have many needs but not all are related to their criminal behaviour. Some needs are criminogenic (e.g., procriminal thoughts, substance abuse) whereas other needs are minimally related to criminal behaviour (e.g., self-esteem, emotional discomfort). Finally, the Responsivity principle means tailoring the treatment interventions to the

offender's learning style, abilities, etc. More specifically, cognitive-behavioural interventions work best with offenders.

The RNR principles have had a major impact on the development of offender risk assessment and treatment programs (Ogloff & Davis, 2004). With respect to offender treatment programs the evidence demonstrates that the more closely a treatment program follows the principles, the larger the reductions in recidivism. When a community-based treatment program adheres to all three principles, reductions in reoffending of up to 35 percentage points have been observed (Andrews & Bonta, 2010a, b). A similar pattern of results has even been found in the treatment of sexual offenders (Hanson, Bourgon, Helmus & Hodgson, 2009).

## From theory to practice

Most offenders in Canada will spend some period of time under community supervision and keeping them out is as important as getting them out. The question for Canadian researchers became how effective were community supervisors in implementing the RNR principles in their work. Community supervisors are the key to establishing and maintaining an effective rehabilitation or reintegration plan for the offender and the plan should be evidence based.

In a study conducted by Public Safety Canada researchers, adherence to the RNR principles during community supervision was found to be disappointing (Bonta, Rugge, Scott, Bourgon & Yessine, 2008). In this study, the supervision sessions of probation officers were audiotaped and analyzed as to how well probation officers focused on the higher risk offenders, targeted criminogenic needs and used cognitive-behavioural methods to facilitate change among their clients. Adherence to the risk principle was modest, the major criminogenic needs of procriminal attitudes and criminal friends were largely ignored and the use of cognitive-behavioural interventions was haphazard.

As a consequence of the 2008 study, a project was developed that would be consistent with the RNR principles and that could be implemented in everyday practice. The project was called the "Strategic Training Initiative in Community Supervision" (STICS). How to achieve these goals ultimately became a challenge. The three major challenges STICS attempted to address were to: a) translate the RNR model into specific, concrete actions that would be useful to probation officers, b) develop an implementation strategy that included officer training and on-going clinical support, and c) evaluate the model and implementation efforts on the behaviour of both officers and the offenders they supervise. There are a couple of key points here. First, while there were some specific adjustments for the probation context, whether it is a treatment program for offenders or community supervision, the issues are the same. The program or service must be guided by the evidence and attentive to the RNR principles. Second, the STICS project was applied to both male and female clients. As we

continue to evaluate the results, we will be looking for any gender differences in success rates to test the generalizability of the STICS approach.

The research project involved three days of STICS training, rooted in cognitive-behavioural theory and with an emphasis on the importance of how an individual's cognitions and attitudes influence behaviour (Bonta, Bourgon, Rugge, Scott, Yessine, Gutierrez & Li, 2010). The training included exercises to demonstrate how to teach offenders to replace their procriminal attitudes with prosocial thinking, and how to effectively use prosocial modeling, reinforcement, and punishment to help offenders change.

STICS also included a structure for conducting a supervision session. For each session, the probation officers were taught to follow these four steps:

1. conduct a brief "check-in" to enhance the working relationship with the client, check for any new developments in the client's situation that may require immediate attention, and make sure that the probation conditions were being addressed,
2. review the last session to provide linkages from one supervision session to the next,
3. actually conduct an "intervention" (e.g., teach the client how thinking and behaviour are linked); this was to be the major focus of any session,
4. end the session with "homework" that is agreed upon by the client and reinforces the learning of new skills, and prosocial cognitions.

The researchers recognized that three days of training would be insufficient to bring about lasting change in the behaviour of the officers. The STICS model included on-going monthly clinical support from the researchers. In the monthly support groups, staff met and discussed their application of newly acquired skills, practiced them and received feedback from the researchers.

## Results

STICS was evaluated in a Randomized Control Trial with 80 probation officers randomly assigned to either training in STICS or to a "business as usual" condition. The probation officers were asked to recruit moderate to high risk offenders, in adherence with the risk principle, and to audiotape some of their sessions with clients so that researchers could observe exactly what went on in a supervision session. That is, were the trained officers targeting the procriminal attitudes emphasized in training and using their new cognitive-behavioural skills more than the officers in the control condition? Finally, did the clients of the trained officers demonstrate a lower recidivism rate?

Officer behaviour was observed from 295 audiotapes of the probation officers interacting with 143 clients. As shown in Table 1 the trained officers spent a greater proportion of their supervision sessions discussing criminogenic needs in

general, and in particular, the procriminal attitudes of their clients. They also spent less time talking about noncriminogenic needs and the conditions of probation. In the Bonta et al. (2008) study, the more discussion devoted to criminogenic needs the *higher* the recidivism for probationers. Thus, the STICS training encouraged the probation officers to minimize such discussions.

Table 1

*The Content of Discussions*

Discussion Area	<u>Proportion of Session</u>	
	Experimental	Control
	<i>M (SD)</i>	<i>M (SD)</i>
Probation conditions	.12 (.16)	.24 (.27)***
Noncriminogenic	.31 (.26)	.43 (.31)**
Procriminal attitudes	.13 (.20)	.02 (.10)***
Criminogenic needs- All	.61 (.28)	.45 (.31)***

\*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$ .

In terms of skills (see Table 2), the STICS officers evidenced better session structuring and relationship skills. More importantly, however, the trained probation officers were far more likely to use cognitive techniques to change procriminal attitudes. The use of cognitive techniques was almost non-existent among the control probation officers.

Table 2

*Probation Officer Skill Levels*

	<u>Experimental</u>	<u>Control</u>
	<i>M (SD)</i>	<i>M (SD)</i>
Structuring Session	13.07 (5.59)**	8.92 (3.69)
Relationship Building Skills	13.61 (2.64)**	11.56 (2.21)
Cognitive Techniques	1.58 (2.21)**	0.01 (0.03)

\*\*  $p < .01$ .

The important question is whether the change in the behaviours of the trained officers translated into changes in their clients. The results indicated that such a change did occur. Using a 2-year follow-up, the recidivism rate for the clients of the STICS-trained probation officers was 25.3%. For the clients of the control officers the rate was 40.5%. When we factored in the degree of participation in



the clinical support, the recidivism rate for the clients of those officers who took full advantage of our clinical support was further reduced to 22%.

## In conclusion

The STICS model of community supervision has the potential to dramatically improve our ability to keep offenders safely in the community, to positively impact on their ability to remain law-abiding members of the community, and to focus scarce financial resources on those who need it most. It will allow community supervisors to make better decisions about which offenders can be safely maintained in the community, and which must return to custody.

Investment in research such as the STICS project is not easy. The project involved eight researchers who spent weeks away from the office training probation officers in three different provinces, analyzing nearly 300 audiotapes along with other data that was collected and providing clinical support to the trained officers. For the participating provinces, travel expenses had to be paid for their staff to attend training and the monthly clinical support meetings. For the probation officers, audiotaping their sessions and completing research forms added to their regular duties. But the choice must be made: we can keep on doing what we have always done and “hope for the best”, or we can invest in empirical study, learn from the results, and share the knowledge. This Congress provided a forum where we could make a shared commitment to redouble our efforts to the latter option.

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# Session III: Oversight and Monitoring of Prisoners: Essential to Ensure Good Treatment

## Torture Prevention Network: Topics for Planned Action

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### Introduction

Efforts to ensure better protection for the rights to decent treatment and, accordingly, the rights not to be a victim of torture and other cruel, inhuman or degrading treatments, through international human rights law, are being pursued using various standards and institutions, both governmental and civil-society-based, at the local, regional and worldwide levels. These standards and institutions are inevitably changing in a *gradual and complementary way* in order to achieve this goal. And in this constant quest being undertaken by humanity and its institutions we cannot ignore the *inadequacy* of efforts to date, given the continued and spreading use of torture and other inhuman treatments throughout the world.

Taking into account the building of the new system for prevention of torture under the UN Convention Optional Protocol against Torture and Other Cruel, Inhuman or Degrading Treatments or Punishments (OPCAT), through periodic visits to all places of detention, is creating tension, conflict and consensus generated by new actors and new dialectics. In this process, complementarity between the work of international organizations, both regional and worldwide, and that of local institutions and organizations must be strengthened.

An analysis of what has been done in recent years to eradicate or reduce torture and other inhuman treatments reveals that the new paradigm made up of a large mass of international standards and bodies created within the United Nations, which have in different ways sparked the reform of domestic constitutions, basic codes and procedural legislation, has not been adequate. Among other problems, the fundamental institutions of the rule of law that bear responsibility in this area for ruling the law have been incapable of halting the use of torture. I am referring in particular to institutions in the law enforcement, judicial (*judges, prosecutors and defence counsels*) and penitentiary fields.

Against this background, the long struggle waged by numerous actors to achieve OPCAT's coming into force calls for each of us, within the context of our various responsibilities, to think and act in the most effective possible way, both individually and collectively, and to report our actions.

I intend to begin this article, therefore, by identifying the conceptual guidelines that run through OPCAT within a dynamic approach to the national preventive mechanisms (NPMs) in particular. I shall then analyse the mandate of the Subcommittee on Prevention of Torture (SPT) and review the issues about the desirability of creating a specific network for the prevention of torture. Thus, I suggest some thoughts about strategic planning in the context of the international human rights bodies.

## The three themes

A new system for periodic visits to all places of detention cannot be put in to practice without taking into account the mistakes made and obstacles faced by international human rights bodies, both worldwide and regional. In particular, the implications of the non-fulfilment of the repeated recommendations made by such bodies, which undermines their effectiveness, must be addressed. There is provision for this in the core elements of the well-developed text of OPCAT, the result of many years of deliberation. Hence I propose that we should look at what we might call the dynamic elements for the construction of this new system to prevent torture: such a preventive system must be *independent* in order to gather and generate relevant *information* while operating in *inter-institutional* mode.

## Independence

The two prevention institutions created by OPCAT - the SPT and the NPMs - must be structured so as to ensure their independence, mainly through the mechanisms for appointment and removal. They must respect basic rules of transparent and open elections while fostering stability and allocating material and human resources so as to ensure optimal functioning for the enhanced protection of persons deprived of their freedom against torture and other inhuman treatments.

There will be several points of tension in these structures for building a new preventive system. Sociological analysis of law enforcement, judicial and penitentiary institutions, for example, reveals that their culture, structure and procedures fall well short of humanist standards. There are great differences between formal, official functions and those that are actually carried out, with corresponding violations of human rights through actions, omissions or willingness to turn a blind eye.

We may also point out the strong impact that the leadership of such institutions has when it is in the hands of persons who are truly committed to human rights, as demonstrated through their lives and work. An example is the new Supreme Court of Argentina and the direct effect of its decisions in terms of pulling down the barriers of impunity represented by the “due obedience” and “clean slate” laws.

I also wish to point out that proper selection of members of the bodies within the new system for prison visits is essential; seeking candidates suitable for the performance of their tasks. In addition to an appropriate structure, it is necessary to include persons with multidisciplinary and cross-disciplinary knowledge. By the latter, I mean persons with knowledge of the world behind prison bars, and not necessarily formal knowledge (for example, former prisoners and their relatives, and not just lawyers). Geographical and gender diversity would likewise help to achieve the desired ends.

To this, it must be added what the SPT stated in its first annual report<sup>1</sup> as part of its guidelines for the ongoing development of national preventive mechanisms, many of which are relevant to the subject of independence.

Subcommittee for the Prevention of Torture: guidelines for the ongoing development of national preventive mechanisms:

- 1) The mandate and powers of the national preventive mechanism should be clearly and specifically established in national legislation as a constitutional or legislative text. The broad definition of places of deprivation of freedom, in accordance with the Optional Protocol, shall be reflected in that text;
- 2) The national preventive mechanism should be established by a public, inclusive and transparent process, including civil society and other actors involved in the prevention of torture; where an existing body is considered for designation as the national preventive mechanism, issue should be open for debate, involving civil society;
- 3) The independence of the national preventive mechanism, both actual and perceived, should be fostered by a transparent process of selection and appointment of members who are independent and do not hold a position that could raise questions of conflict of interest;
- 4) Selection of members should be based on stated criteria related to the experience and expertise required to carry out national preventive mechanism work effectively and impartially;
- 5) National preventive mechanism membership should be gender-balanced and have adequate representation of ethnic, minority and indigenous groups;

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<sup>1</sup> First annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/40/2), 25 April 2008.

- 6) The State shall take the necessary measures to ensure that the expert members of the national preventive mechanism have the required capabilities and professional knowledge. Training should be provided to national preventive mechanisms;
- 7) Adequate resources should be provided for the specific work of national preventive mechanisms, in accordance with article 18, paragraph 3, of the Optional Protocol; these should be ring-fenced, in terms of both budget and human resources;
- 8) The work programme of national preventive mechanisms should cover all potential and actual places of deprivation of freedom;
- 9) The scheduling of national preventive mechanism visits should ensure effective monitoring of such places with regard to safeguards against ill-treatment;
- 10) Working methods of national preventive mechanisms should be developed and reviewed with a view to effective identification of good practice and gaps in protection;
- 11) States should encourage national preventive mechanisms to report on visits with feedback on good practice and gaps in protection to the institutions concerned, and address recommendations to the responsible authorities on improvements in practice, policy and law;
- 12) National preventive mechanisms and the authorities should establish an ongoing dialogue based on the recommendations for changes arising from the visits and the actions taken to respond to such recommendations, in accordance with article 22 of the Optional Protocol;
- 13) The annual report of national preventive mechanisms shall be published in accordance with article 23 of the Optional Protocol;
- 14) The development of national preventive mechanisms should be considered an ongoing obligation, with reinforcement of formal aspects and working methods increasingly refined and improved.

## Information

Independence with such built-in features, stemming from and focused on human rights, will help to create substantial databases related to the prevention of torture and other inhuman treatments. A body that is independent in terms of culture, know-how and experience will set up bases with the essential major indicators. Good information leads to a diagnosis that is indispensable for planning and supporting effective action in this area.

We could say, “Show me your appointment book and I’ll see how independent you are”. The attitudes that encourage transparency and indicate timely and appropriate decision-making on the part of each of the responsible bodies will help to give visibility to progress and regression and show where responsibility

lies. The opposite attitudes will foster opacity and concealment of all or part of the phenomena of the use of torture.

It should be added that bodies which are so designed and are devoted to shedding light on human rights violations, have a tendency to be subjected to harassment, obstruction and disruption. These human rights violations are proven to be concealed or denied in various ways. Hence the need for effective independence that prevents the body's structure and operations from being affected by removals, budgetary cut-backs, dismissals from duty and similar manoeuvres. The idea has thus evolved from the original one of strictly confidential visits to one involving the mandatory publication and circulation of the annual reports of the NPMs and aims at the same for the SPT, while preserving the restricted nature of certain information in order to protect those concerned.

The abundant and important information available in several local, regional and worldwide databases needs to be compiled and systematized to facilitate its appropriate use in formulating recommendations to prevent torture and other inhuman treatments and also for follow-up activities. For all these reasons, it is advisable to have structures and know-how, both in the SPT and in the NPMs, to carry out this collection, production and systematization of suitable information and its strategic use.

## An inter-institutional approach

Experience shows that weaknesses continue to exist in the current arrangements for visits to places of detention, due to several reasons. Among the main factors it should be pointed out:

- (a) Shortage of human and material resources;
- (b) Lack of clarity in objectives and appropriate training;
- (c) Duplication and gaps of various types.

In order to overcome these limitations, what is needed is appropriate *coordination* carried out rigorously enough. We can learn important lessons about coordination from other areas (for example, security) so as to avoid making the same mistakes. To start with, it is not clear who should be involved and what the shared objectives are. In addition, there is much lack of continuity among coordination bodies, which are often used as instruments for whitewashing or falsely demonstrating that everything is all right.

We can see that multisectoral efforts range from a methodology in which everyone operates in an isolated way to inter-institutional integration in which everyone brings in something new - in other words, new practices are created. Between these two extremes, however, we see hybrid situations that are not clear cut. This is because of the lack of appropriate institutional machinery and operating regulations in which all the sectors preserve their identity while integrating clearly their mandates and avoiding the above-mentioned duplications and gaps.

*Coordination is necessary in order to strengthen capacities through cooperation.* Confusion of roles results in duplication, which is strategically and tactically inadmissible where there is a widespread shortage of resources, while simultaneously undermining proper accountability. By way of a rule, let us say that we need to seek an appropriate *interdependence*.

Here follow few more recommendation:

### **Formalized coordination relations**

While a degree of informality facilitates the free flow of information, it can also jeopardize confidentiality on certain subjects. At the same time, an informal approach may be adopted on the pretext of “getting things done”, thereby bypassing controls and hence reducing transparency. This approach ultimately leads to self-deception, sometimes for the purpose of hanging on to power; it creates false expectations and erodes trust, and thus, it is a bad approach for fostering and strengthening inter-institutional relations.

Carrying out the activities mandated by OPCAT at various levels, in various spheres and among various participants needs the establishment of relations of trust, which must be sustained through constant, conscientious and continuous effort. I believe this is essential as it defuses tensions, avoids confusion in roles and breaks down stereotypes caused by a lack of real understanding of other institutions or their staff.

In regards of this, anticipating somewhat the next point, we must promote and create, among other things, training opportunities for those who will be responsible for coordinating networks for carrying out periodic visits to places of detention with a view to overcoming misunderstandings and mistrust. The SPT has taken part in multisectoral meetings to build bridges among participants, for example during missions concerning the NPMs in Peru, Bolivia, Paraguay and Brazil, with the invaluable support of the Association for the Prevention of Torture.

### **Accountability**

Proper inter-institutional work will facilitate accountability since now it is not clear who is responsible for what and to whom. Accountability directly affects the legitimacy of bodies which are guided by this regulation. In the case of the NPMs, this can be ensured, among other means, through an appropriate mechanism for appointing their members as well as the efficient administration of their resources.

### **Procedures and models**

In the search for efficiency and effectiveness, we sometimes concentrate exclusivity on the best institutional model, disregarding the external or contextual aspects that affect relations of cooperation (for example, brainstorming and discussions) and trust.

If we concentrate exclusively on the best model for NPMs (the same applies to the SPT, *mutatis mutandis*) in terms of efficiency and effectiveness in carrying out their respective tasks and functions, we run the risk of ignoring the transparency necessary for the development of relations of trust between the State and civil society. We must not disregard aspects that may be unquantifiable yet are key to the creation of common ground between the State and civil society, promoting relations of cooperation, reciprocity and interdependence rather than competition and isolation.

We must even add that the search for effective theoretical models must not lead to “paper NPMs”, a common phenomenon in judicial, law enforcement and imprisonment institutions, where in practice, the actual or possible functions diverge from the formal or official ones. This will mean greater political costs and a new loss of confidence due to the generation of false expectations.

## The subcommittee on prevention of torture (SPT)

The task of preventing torture and other cruel, inhuman or degrading treatments or punishments by enhancing protection of persons deprived of their freedom in concert with State parties necessitates the building of a new system for periodic visits to be carried out by international, regional and national bodies. The role of the SPT,<sup>2</sup> at this groundbreaking stage, with all the strengths, weaknesses, opportunities and risks that it represents, is to carry out its functions in a *balanced* way regarding the three conceptual cores of its mandate as laid down in article 11 of OPCAT, which states:

The Subcommittee on Prevention shall:

- (a) **Visit** the places referred to in article 4 and make recommendations to State parties concerning the protection of persons deprived of their freedom against torture and other cruel, inhuman or degrading treatments or punishments;
- (b) In regard to the **national preventive mechanisms**:
  - (i) Advise and assist State parties, when necessary, in the creation of their producers;
  - (ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance in order to a view to strengthen their capacities;

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<sup>2</sup> Current membership: Vice chairman Mr. Mario Luís Coriolano (Argentina), Mr. Emilio Ginés Santidrian (Spain), Ms. Marija Definis Gojanovic (Croatia), Mr. Zdenek Hajek (Czech Republic), Mr. Zbigniew Lasocik (Poland), Vice chairman Mr. Hans Draminsky Petersen (Denmark), Mr. Malcolm Evans (United Kingdom), President Mr. Víctor Manuel Rodríguez Rescia (Costa Rica), Mr. Miguel Sarre Iguiniz (Mexico), Mr. Wilder Tayler Souto (Uruguay).



- (iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their freedom against torture and other cruel, inhuman or degrading treatments or punishments;
  - (iv) Make recommendations and observations to the States parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatments or punishments;
- (c) **Cooperate**, for the prevention of torture in general, with the corresponding United Nations bodies and mechanisms as well as with the **international, regional and national** institutions or **organizations** working towards the strengthening of the protection of all persons against torture and other *cruel, inhuman or degrading* treatment or punishment.<sup>3</sup>

Taking into account the guidelines, we can observe that, unlike other international organizations that carry out their work through the examination of reports from States and also, in some cases, through the handling of individual cases and possible visits, the Subcommittee will make recommendations and observations to State parties concerning *public policies for the prevention* of torture and other inhuman treatments. We must fulfil this function in a complementary way, and our activities must be guided by proper planning of the new system of periodic visits including and necessarily getting feedback from a network of NPMs and other international, regional and local organizations fighting torture.

This torture prevention network must be supported and sustained by the broad and intensive efforts of civil society organizations and some State sectors which have traditionally done such work in isolation, even at very hard times. It does not mean cleaning the slate and starting again or continuing this way. The aim is to strengthen the current work being carried out by many persons and institutions to fight torture.

The mandate to carry out visits while interacting not only with States parties and the NPMs but also with various institutions, organizations and individuals chosen by the SPT because of their relevant information, as well as the freedom to choose places that are to be visited, offer a desirable new starting point. The aim is to launch a new system of independent periodic visits involving an inter-institutional approach and the provision of important information in order to make recommendations and observations designed to strengthen the protection of persons deprived of freedom against torture and other inhuman treatment.

The greater the visibility and awareness of the problems that can be generated by the various participants, the better the opportunities for achieving changes will be for preventing violations. The core of the mandate of the SPT, like that of the

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<sup>3</sup> Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 11 (emphasis added by the author).

other international, regional and local actors (both from civil society and from the State), contains the necessary foundations to enable new efforts without undermining existing ones. This should help to strengthen the rule of law which calls for new institutions oriented and created from and for human rights, synonymous of rule of law.

## Torture prevention network

The social movements that arose in connection with the struggles waged by groups associated with feminism, environmentalism, trade-unionism and anti-discrimination, among others, provide examples, with distinctive regional features, of how to bring together very diverse sectors. At the same time, there has been a new approach to the relations between the new social movements and the State: on one hand, civil society has been invited to become involved in the drafting and implementation of government policies, and on the other, the State has gained certain influence in the way the appointment work of civil society are organized.

In general, we can say that the will of State parties, expressed through their ratification of OPCAT, and the strengthening of the human rights movement will be a formula enabling us to work together to build a new system of periodic visits to effectively prevent torture. OPCAT<sup>4</sup> clearly refers to the need for *relations of cooperation* in such fields as advice and assistance by the SPT to State parties in the establishment of NPMs in order, where necessary, to make recommendations and observations with a view to strengthening the capacity and the mandate of the NPMs.

At the same time, work must be done to improve the *conceptualization* of specific prevention efforts in relation to torture and other inhuman treatments; it should be done in an authentic way. Extrapolation from other fields, reductionism, or falling into the trap of false antagonisms within this field, especially with regard to civil security, should be avoided.

The levels of analysis of torture and other inhuman treatments throughout the historical-political, social-institutional and psychologico-social aspects lead us to revise the much-repeated indications and recommendations focused on reformist-type aspects that emphasize improvements of a structural and functional type (for instance in building matters, doctors and lawyers assistance, etc.) but neglect the underlying cultural or ideological aspects or those which give rise to structures and routines. Hence, we must move towards strategies for integral transformation involving both aspects - structural and ideological-cultural – while encouraging public debates on the subject.

Facing the challenge of articulating this new prevention network, we must avoid both the false optimism of believing that consensus will not be troublesome, and

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<sup>4</sup> I am referring specifically to art. 2, para. 4, art. 11 (b) (i) and art. 11 (b) (iv) of OPCAT.

the sterile pessimism of emphasizing that the State, represented by any of its components, will always look for ways of continuing to apply torture. Both positions are subjective and prejudiced and, in my view, improperly juxtaposing conflict and consensus.

Instead, we must highlight, support and promote the processes of building torture prevention networks that have been generated by OPCAT in various areas. We can also identify and reject situations that involve more exclusion and opacity than inclusiveness and transparency, essential features for the new institutional framework that OPCAT is calling on us to build.

The development of NPMs of mixed origin made up of State and civil society, generates the relational dynamics already mentioned with respect to social movements. Having greater civil responsibility in handling public affairs involves certain risks concerning discipline and control which are leading civil society to wonder whether or not they should become involved in NPMs. Here, the SPT should encourage channels for dialogue and cooperation with the features we have been describing and with long-term benefits since they promote relations of trust and reciprocity without ignoring areas of tension.

We will strengthen all the sectors involved in the prevention of torture through a cooperation network that is well designed, straightforward and open, with specific contributions to be made without loss of identity. The methodology for building inter-institutional relations is a key issue. There is no single formula for creating an ideal NPM, and this will have to be determined for each specific context - applying the slogan of the new social movements in the environmental field, "thinking globally and acting locally". However, care should be taken to avoid rhetorics that leads to complexities in the implementation. Solitary or isolated efforts, which may be attractive in the short term because of their lower costs, mean the weakening of the struggle for preventing torture.

It seems to me that we should engage in the construction keeping in mind achievements and failures, progress and draw backs. This includes dismantling authoritarian and violent institutions, or their authoritarian past behaviours, creating new practices compatible with the culture of human rights.

## Inter-institutional strategic planning

Lastly, by way of a proposal, I should like to raise a number of ideas on how to achieve the greatest possible impact in the articulation and operativeness of the network composed of various United Nations regional international protection bodies together with local institutions - State and civil-society bodies - in the light of the different mandates of the bodies involved in fighting torture.

In addition to the network of NPMs and a multiplicity of local actors, we have a situation where the SPT must closely cooperate - in the areas of planning, action and follow-up - with the United Nations treaty bodies (Committee against Torture, Human Rights Committee, CEDAW Committee, Committee on the

Rights of the Child, etc.) and with the various special procedures (Special Rapporteur on torture, Working Group on Arbitrary Detention, Special Rapporteur on summary executions, etc.), as expressly laid down in article 11 (c) of OPCAT. It is also necessary to cooperate with other international bodies (such as the International Committee of the Red Cross) and regional bodies (Inter-American Commission on Human Rights, European Committee for the Prevention of Torture, African Commission on Human and Peoples' Rights, etc.). Similarly, close ties must be sought with institutions and agencies working in important thematic areas, such as health, and protection of vulnerable population groups - for example, against slavery or trafficking in women, to cite one example among many.

The diagnosis of the situation regarding torture, and action to combat it, which would underpin rational planning of this prevention network, could be formed as follows. Firstly, by categorizing the Member States of the United Nations in terms of whether they have ratified or signed OPCAT. Secondly, we take account of the range of activities by the various United Nations bodies and special procedures (country reports; complaints in individual cases; field visits and advocacy), supplemented by the activities of the regional human rights agencies. Thirdly, we classify the situations in each region, and country by country, on the basis of the extent of the use of torture and other inhuman treatments. Fourthly, by taking into account the existence and effectiveness of local institutions in the area, especially NPMs. The SPT will thus be able to design and carry out a set of different activities in accordance with an annual or periodic plan.

Such planning would call for basic measures of institutional engineering, such as the construction of a forum for coordination among secretariats (or if possible through the construction of a single secretariat) which, together with an inter-committee working group and special procedures, would collect and systematize all the information related to the four points mentioned above. In this way, it would be possible to create a dynamics of joint work in the evaluation, design and implementation of such action plans, which would be periodically assessed and redesigned. And in that way to make strategic use of the vast and valuable information which already exists, but is dispersed.

On this basis, the SPT will be able to better perform its tasks in a rational, strategic and planned manner. In particular, it will decide on the implementation of:

- (a) Missions to State parties to visit places of detention and make or follow up recommendations - of greater or lesser duration and greater or lesser urgency;
- (b) Missions to State parties to provide advice and support for the establishment or upgrading of an NPM;
- (c) Advocacy to foster the signing or ratification of OPCAT. It will be also possible to promote the activation of other United Nations and regional procedures (for example, complaints in individual cases) and to report on the need to call for support from the various assistance or cooperation

funds for the implementation of recommendations to prevent torture and improve conditions in detention.

In this way, the SPT will be able to achieve greater impact in the prevention of torture and other inhuman treatments, gaining through its achievements the place it deserves as a global reference in the field of *prevention* of torture.

# South African Judicial Inspectorate for Correctional Services

Deon van Zyl  
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## Introduction

The South African Parliament has, since the first fully democratic elections held in 1994, introduced various measures aimed at transforming government departments, including the then Prison Services, to ensure that these departments comply with the values and principles laid down in the *Constitution of the Republic of South Africa*, Act 108 of 1996 (the Constitution).

The transformation of our prisons has been driven by the extensive protection furnished in the Bill of Rights, contained in Chapter 2 of the Constitution, to all detained persons, including sentenced prisoners. In this regard section 35(2) of the Constitution provides:

Everyone who is detained, including every sentenced prisoner, has the right

- (a) to be informed promptly of the reason for being detained;
- (b) to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
- (c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- (d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
- (e) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and
- (f) to communicate with, and be visited by, that person's
  - (i) spouse or partner;
  - (ii) next of kin;
  - (iii) chosen religious counsellor; and
  - (iv) chosen medical practitioner.

The principles stipulated in subsection (e) constituted the objective of the then Prison Services in the new South Africa, namely to ensure that the detention of all prisoners is consistent with human dignity, including at least exercise and the

provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment.

The transformation of the Prison Services was further facilitated by its renaming as the Department of Correctional Services (DCS), followed by the adoption of a *White Paper on Correctional Services* during 1994 and an extensive review of the correctional system, which gave rise to the approval by Parliament of a new *Correctional Services Act 111 of 1998* (the Act). The Act has been amended from time to time, most recently in terms of Act 25 of 2008, and a new *White Paper on Corrections in South Africa* was approved in 2005.

The next major transformational step took place on 1 April 1996, when the DCS embarked on a process of demilitarization. Military uniforms, ranks and parades were abolished virtually overnight. At the same time the DCS embarked on a massive affirmative action drive to overhaul the racially skewed profile of the staff corps throughout the country. The action has been substantially successful.

In 1997, the then Minister of Correctional Services, with the approval of Cabinet, signed a unique agreement which allowed for the commissioning of two so-called public-private-partnership (PPP) prisons. For the first time the DCS had “operating partners” from the private sector, who invested an estimated R720 million in the building of two new ultra-modern prisons.

The envisaged transformation of our prisons is, furthermore, driven by a strong political will to transform our prisons from places in which offenders are simply “warehoused” at minimal cost, to effective rehabilitation centres directed at reintegrating offenders into the community and substantially reducing recidivism. The concept of “retributive justice” was, in the process, supplanted by what has become known as “restorative justice” in the sense of making restoration to the victims of crime and their communities.

## The need for prison oversight

An important element of the transformation process was the establishment, in terms of sections 85 to 94 of the Act, of the Judicial Inspectorate for Correctional Services (the Judicial Inspectorate). It was intended to function as an oversight body alongside an array of independent statutory institutions created to bolster and support the democratic principles and human rights enshrined in our Constitution.

The Judicial Inspectorate is, in terms of section 85(1) of the Act, “an independent office under the control of the Inspecting Judge”. Its object, in terms of section 85(2), is “to facilitate the inspection of correctional centres in order that the Inspecting Judge may report on the treatment of inmates in correctional centres and on the conditions in correctional centres”.

Although the legislative mandate of the Judicial Inspectorate is substantially based on the British model, some very unique differences are to be found in the South African model. Most notable among these is, firstly, the requirement that

it must be headed by a Judge, appointed by the President from the ranks of judges of the Supreme Court of Appeal or the High Court. Secondly, the statutory mandate of the Judicial Inspectorate provides for a combination of roles traditionally associated with two different offices, namely that of prison inspectorate and that of an ombudsman. In the South African model the Inspecting Judge must not only report to the Minister of Correctional Services and the Parliamentary Portfolio Committee on the conditions in correctional centres and on the treatment of inmates detained in correctional centres, but is also expected to deal with complaints received from inmates.

In the third place the Act provides for a system of so called “independent correctional centre visitors” (Independent Visitors) appointed by the Inspecting Judge to serve at every prison after a process of publicly calling for nominations and consulting with community organisations. They operate independently of the prison authorities and report only to the Inspecting Judge. Their main responsibilities include visiting the prisons regularly, interviewing prisoners, recording and facilitating the resolution of prisoner complaints and reporting to the Inspecting Judge on the number and nature of complaints dealt with. In addition they report on their observations regarding the treatment of prisoners and the conditions in the prisons they have visited.

The fourth unique element of the South African model is the introduction of a system of so-called “mandatory reports” relating to prison deaths, the use of force, the use of mechanical restraints and the segregation of prisoners by prison authorities. Prisoners have the right to appeal to the Inspecting Judge against any decision taken by the Head of a Prison concerning his or her segregation or placement in mechanical restraints.

## The functioning of the judicial inspectorate

The Judicial Inspectorate comprises 43 members of staff and 212 Independent Visitors. The members of staff are deployed at the Head Office in Cape Town and a satellite office in Pretoria. They are grouped into three main units, namely Legal Services, which deals with mandatory reports and legal issues, Support Services, which provides financial, logistical and administrative support, and Operational Services, which oversees, audits and inspects the work performance of Independent Visitors.

The 212 Independent Visitors are deployed at the 238 operational prisons throughout South Africa and are grouped into 25 Visitors Committees, each with a Chairperson and Secretary. The Visitors Committees meet monthly with a view to discussing unresolved complaints and co-ordinating the work of Independent Visitors. The Judicial Inspectorate is represented at each of these meetings.

The total expenditure of the Judicial Inspectorate amounts to R16 million (\$2.03 million) which amounts to approximately 0.12% of the total budget allocated to the DCS.



The Judicial Inspectorate has developed six strategic objectives which are aimed at the achievement of its vision, namely “to ensure that all inmates are detained under humane conditions, treated with human dignity and prepared for reintegration into the community.” These six strategic objectives are:

- to establish and maintain independent complaints procedures for inmates;
- to collect reliable and up-to-date information concerning the treatment of inmates and the conditions at correctional centres;
- to inform public opinion on the treatment of inmates and the conditions prevailing in correctional centres;
- to prevent possible human rights violations, through a system of mandatory reporting and regular visits to correctional centres;
- to promote and facilitate community involvement in correctional matters;
- to ensure and maintain the highest standards of good governance.

## Past and present performance

It is generally accepted that the Judicial Inspectorate has made valuable contributions to the efforts of government to deal with the issue of prison overcrowding. In this regard it has been publicly acknowledged by the Chairperson of the Parliamentary Portfolio Committee and other members of Parliament as having placed the issue of prison overcrowding on the National Agenda<sup>1</sup>.

The Judicial Inspectorate has successfully lobbied for amendments to the *Criminal Procedure Act* 51 of 1977 with the object of reducing prison overcrowding, such as section 63 (A) which provides for the release, under certain conditions, of awaiting-trial detainees who are unable to pay bail. Over the past 12 years the Judicial Inspectorate has, by generating wide publicity regarding the conditions in prisons, succeeded, to a large extent, in changing public opinion on the subject. It was previously a common perception among members of the South African public that our prisons are like five-star hotels. Currently the majority of informed South Africans are aware of the harsh and frequently inhumane conditions prevailing in most prisons as a result of overcrowding.

In her research directed at examining and assessing the work carried out by the Judicial Inspectorate since its inception in 1998, Professor Saras Jagwanth<sup>2</sup> concluded that it was making a significant contribution to improving the human rights of prisoners in South Africa. Similarly positive was the research

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<sup>1</sup> Parliamentary Monitoring Group. Minutes of CS Portfolio Committee, [www.pmg.org.za](http://www.pmg.org.za), 2006

<sup>2</sup> Saras Jagwanth A Review of the Judicial Inspectorate of Prisons of South Africa, CSPRI Research Paper Series No 7, May 2004.

conducted by Advocate Jacqui Gallinetti<sup>3</sup> on the subject of Independent Visitors in South African Prisons. Her conclusion was that the presence of Independent Visitors in prisons has contributed meaningfully to the more efficient consideration of prisoner complaints and has led to a vast improvement in the complaints procedure operating in South African prisons. It has also resulted in greater transparency and accountability, which ultimately reinforces the State's objective of ensuring that a human-rights culture permeates all levels of government.

The Judicial Inspectorate is justifiably proud of the achievement of the Honourable Judge Hannes Fagan, who held the position of Inspecting Judge for six years, on receiving honorary doctorates from the Universities of Cape Town and the Western Cape in recognition of the work he and the Judicial Inspectorate have performed with a view to creating more humane conditions of detention and treatment of prisoners.

In conclusion I believe that the South African model for prison oversight has acted, and continues to act, as an effective catalyst for prison transformation. In the process it may be regarded as an instrument of best practices relating to the monitoring of prisons and prisoners.

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<sup>3</sup> Jacqui Gallinetti Report on the Evaluation of the Independent Prison Visitors (IPV) System, CSPRI Research Paper Series No 5, May 2004

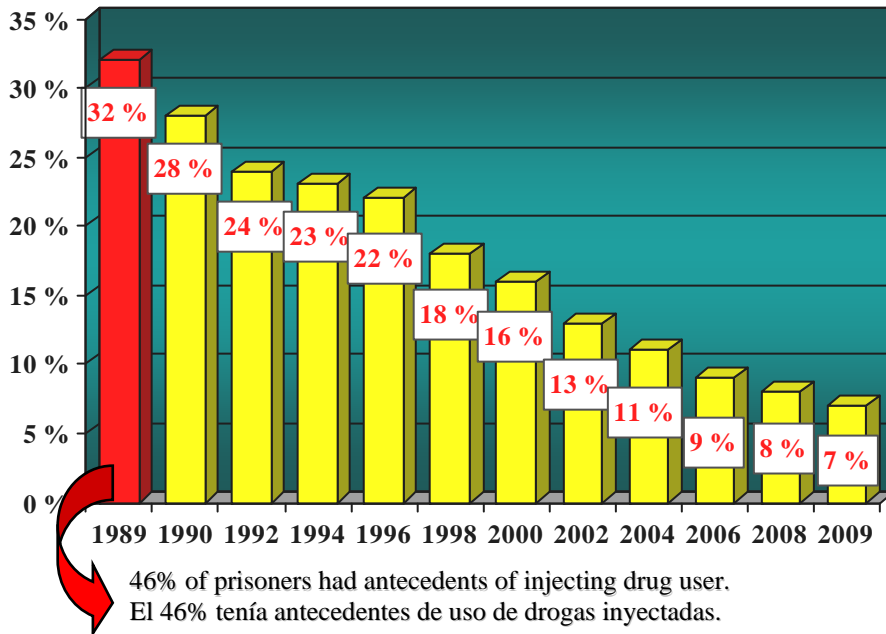
## Session IV: Special Groups with Special Rights and Needs

### La Experiencia Española en Drogas y VIH/SIDA, su Prevención, Tratamiento y Atención en las Prisiones

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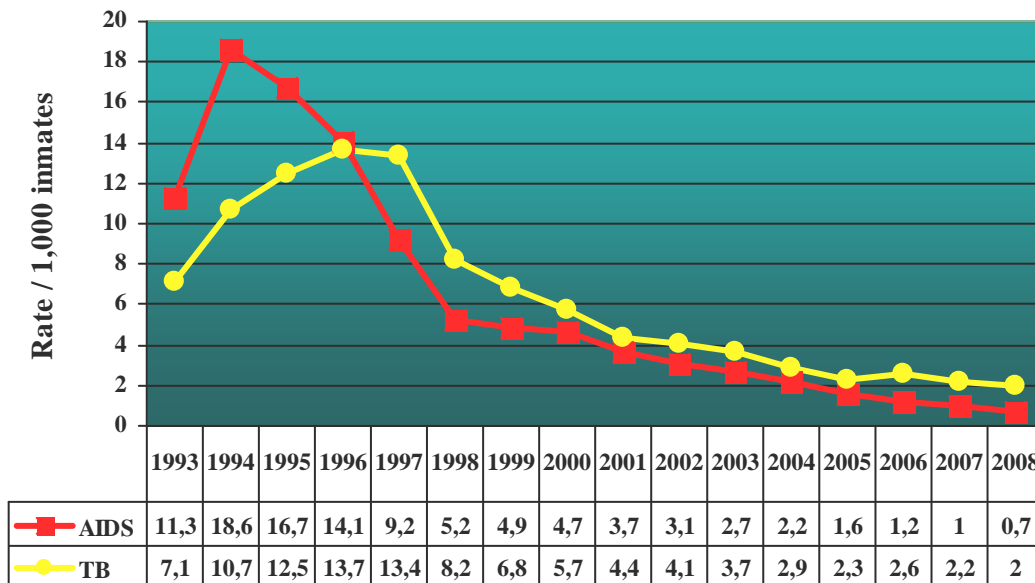
En los años 80 en España hubo un importante aumento del número de usuarios de drogas inyectadas, heroína y cocaína, principalmente. El consumo se realizaba de forma inyectada y en muchas ocasiones compartiendo el material de inyección. Esto facilitó la transmisión de enfermedades entre estas personas, cuyo mecanismo de transmisión fuera mediante sangre y fluidos corporales, como el VIH de reciente aparición. Estos usuarios de drogas inyectadas se veían en la necesidad de cometer delitos (contra la propiedad, tráfico de drogas,...) para mantener el consumo, lo que los llevó a prisión. En las prisiones españolas a finales de los años 80 el 46% de las personas refería al ingreso en prisión consumir drogas de forma inyectada y compartir el material de inyección. La consecuencia fue que un 32% de los internos era HIV positivo (Gráfico 1), esto ocasionó un gran problema de salud pública en las prisiones con la aparición de un elevado número de enfermos de SIDA.

Gráfico 1: HIV prevalence in Spanish prisons Prevalencia del VIH en las prisiones



La epidemia de VIH produjo una epidemia secundaria de tuberculosis (Gráfico2) que afectó principalmente a los VIH positivos, al ser una enfermedad de aparición en las primeras etapas de la inmunodeficiencia, pero que también afectó a los VIH negativos dada la mayor facilidad de transmisión de la tuberculosis en un medio cerrado como las prisiones.

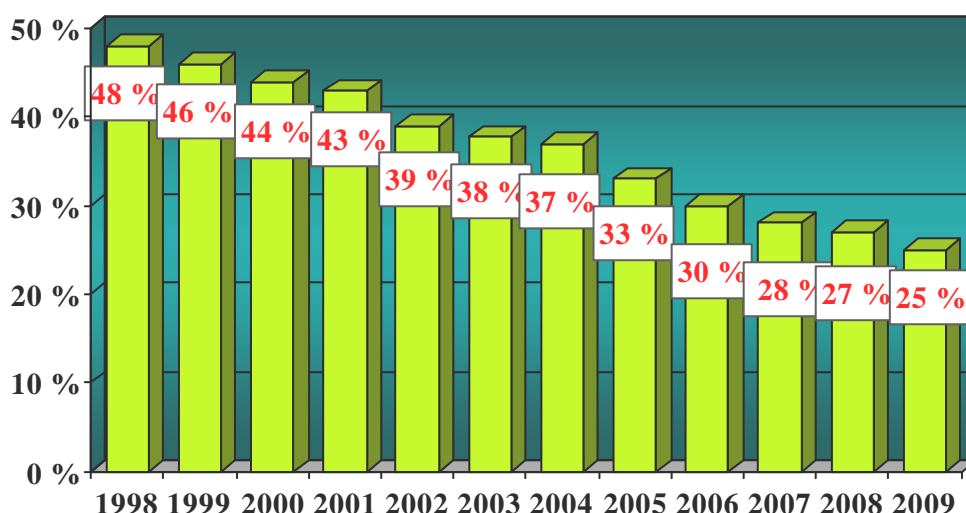
Gráfico 2: Rates of AIDS and TB in Spanish Prisons (cases / 1,000 inmates) Tasas de SIDA y de TB en las prisiones españolas (casos / 1.000 internos)



Era prioritario evitar la transmisión del VIH dentro de las prisiones y desarrollar el abordaje de las drogodependencias. Primeramente se inició el reparto de lejía (para desinfectar las jeringuillas) y preservativos entre los internos para evitar la transmisión homosexual entre internos y heterosexual en las comunicaciones con sus parejas. Se pusieron en marcha campañas de educación para la salud y programas de desintoxicación y deshabituación a drogas. Se desarrollaron programas de prevención y control del VIH/SIDA, tuberculosis, hepatitis y enfermedades de transmisión sexual, programas de vacunación para la hepatitis B y se iniciaron costosos tratamientos antirretrovirales.

Cuando aparecieron los tratamientos antirretrovirales de alta actividad (HAART) la situación clínica mejoró, la esperanza de vida aumentó notablemente y disminuyeron las enfermedades y fallecimientos relacionados con el VIH/SIDA, aunque con un elevado coste económico. En ese momento, al aumentar la esperanza de vida de estas personas, apareció otra enfermedad de igual mecanismo de transmisión, la hepatitis C que presentaba una prevalencia muy alta en la población reclusa (Gráfico 3).

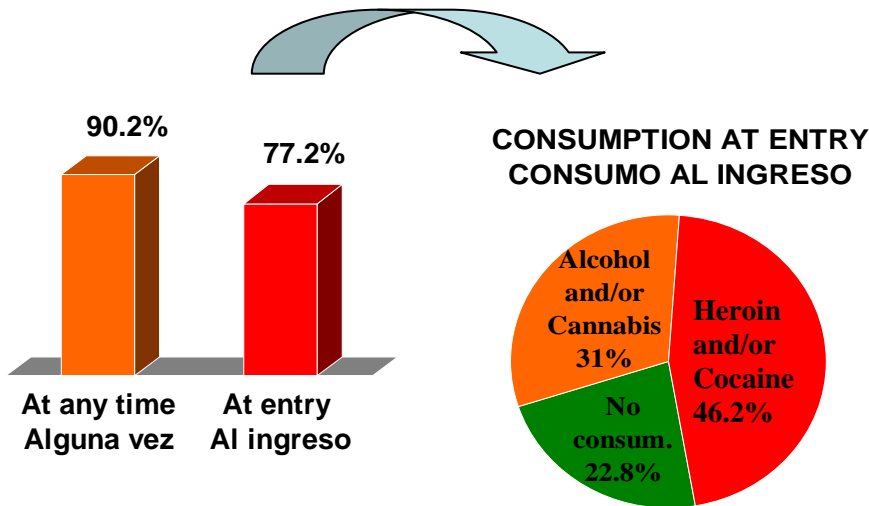
Gráfico 3: HCV prevalence in Spanish prisons Prevalencia del VHC en las prisiones españolas



Esta situación hizo necesario un abordaje más pragmático de la situación y llevó a iniciar programas de reducción de daños en las prisiones. Se implementaron primero programas de mantenimiento con metadona, llegando a estar incluida en el programa más del 20% de la población reclusa, como veremos más adelante, y posteriormente programas de intercambio de jeringuillas, llegando a repartirse anualmente más de 20.000 jeringuillas en 38 centros penitenciarios. Paralelamente se desarrollaron nuevas estrategias de educación para la salud como los programas de educación entre iguales y nuevos programas de deshabituación a drogas en unidades terapéuticas. Todo esto será evaluado posteriormente.

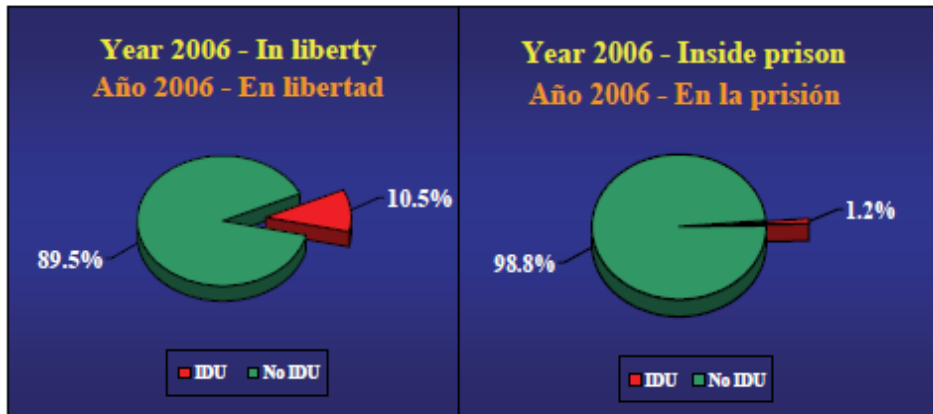
Los datos de los últimos años nos indican que a su ingreso en prisión el 77,2% de los ingresos refieren estar consumiendo algún tipo de droga, y el 46,2% refieren ser consumidores de heroína y/o cocaína, solas o en combinación (Gráfico 4). El 10,5% de los ingresos refieren haber sido consumidores de drogas inyectadas en el mes previo a su ingreso en prisión, y el 1,2% refieren seguir consumiendo drogas por vía inyectada dentro de prisión (Gráfico 5). Esta situación justifica tanto la importante necesidad de programas de atención al drogodependiente como la necesidad de programas de reducción de daños que eviten la transmisión del VIH y del VHC en las prisiones, combinados con programas y actividades de educación para la salud.

*Gráfico 4: Penitentiary population in Spain Drug consumption – Year 2006 Población penitenciaria en España Consumo de Drogas – Año 2006*



**Gráfico 5: Intravenous Drug Users In month previous to entry and in last month inside prison**

Usuarios de Drogas Inyectadas En el último mes en libertad y en el último mes en prisión



Actualmente, en las prisiones españolas se realizan de forma programada las siguientes actividades para la prevención de enfermedades entre los usuarios de drogas inyectadas (UDIs) y entre la población general:

- Programas de prevención y control del VIH/SIDA, tuberculosis, hepatitis C y enfermedades de transmisión sexual.
- Distribución de preservativos, lubricante y lejía.
- Programa de Mantenimiento con Metadona.
- Programa de Intercambio de Jeringuillas.
- Programa de Educación para la Salud.

Estas actividades se realizan en estrecha cooperación con el Plan Nacional sobre el SIDA y con el Plan Nacional sobre Drogas.

La prevalencia de la infección por el VIH en 2009 entre los 65.416 internos en los centros penitenciarios dependientes de la Secretaría General de Instituciones Penitenciarias fue de un 7%, lo que hacía que algo más de 4.500 personas vivían con el VIH en las prisiones españolas. De estas recibían tratamiento antirretroviral 3.068 lo que suponía el 67% de los infectados por el VIH. El coste del tratamiento antirretroviral fue de 7.549 € de media por paciente con un gasto total de casi 25 millones de euros. Además 806 internos necesitaron ingresos hospitalarios con una media de 7 días por ingreso y 17 personas fallecieron por este motivo a pesar de un largo tratamiento.

Es evidente que, además de las razones basadas en los derechos humanos y la salud pública, las razones de economía sanitaria hacen extremadamente rentable cualquier medida preventiva que evite la aparición de casos nuevos de VIH.

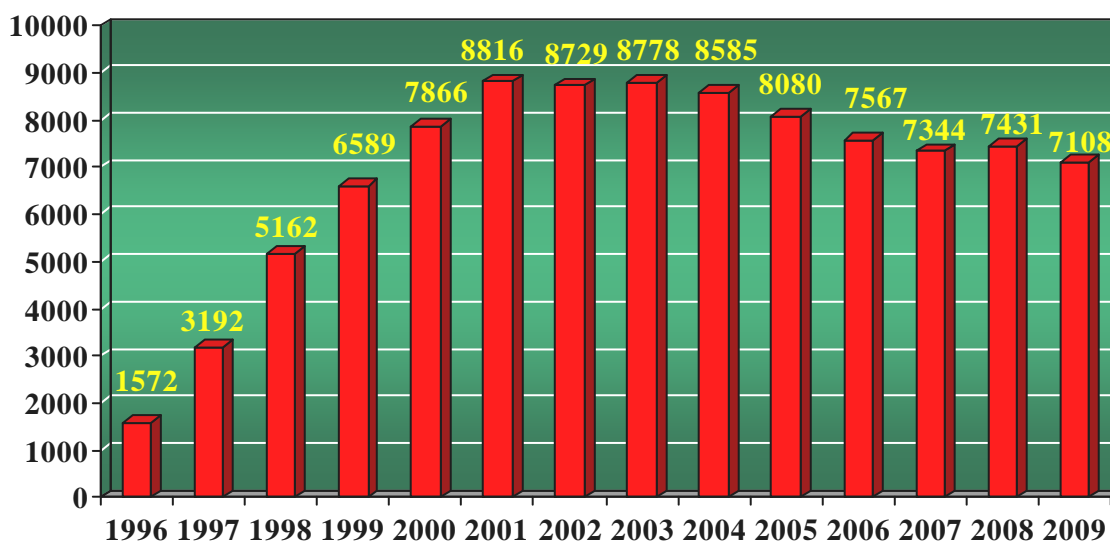
La tuberculosis cobra especial importancia en un medio cerrado como es el medio penitenciario por mayor facilidad de transmisión. Actualmente nuestra tasa de incidencia de enfermedad tuberculosa está en descenso gracias al control de la infección por el VIH y las especiales medidas para evitar la transmisión aérea de la tuberculosis, aun así la tasa actual es de 2 por mil internos y año, muy superior a la de las personas en libertad. La infección por el VIH es sin duda el principal factor de riesgo para el desarrollo de la tuberculosis en el medio penitenciario.

La hepatitis C tiene actualmente una prevalencia del 25% entre nuestros internos. El 90% de los internos VIH positivos están coinfectados por el virus de la hepatitis C, al compartir la vía de transmisión ambos virus, suponiendo en algunos casos un grave problema adicional y la necesidad de tratamiento adecuado.

En 1995 se iniciaron en las prisiones españolas los programas de mantenimiento con metadona que ya se estaban desarrollando en el medio comunitario. Su rápida progresión (Gráfico 6) hasta alcanzar a más de la cuarta parte de los internos en el año 2001 supuso un abandono del consumo de drogas inyectables y una notable mejora en la seguridad de los centros penitenciarios donde disminuyeron notablemente los incidentes relacionados con el tráfico de drogas.

Actualmente el 11% de nuestros internos reciben diariamente su dosis de metadona. Es muy importante mantener una estrecha colaboración con los organismos comunitarios de atención a drogodependientes para intercambiar la información relativa a la dosis de los pacientes, tanto a la entrada en prisión como a su salida de permiso o en libertad, para mantener la continuidad en el tratamiento.

Gráfico 6: Prisoners in Methadone Maintenance Program Presos en Programa de Mantenimiento con Metadon



En 1997 se inició en España el primer proyecto piloto de intercambio de jeringuillas en prisión con la finalidad de comprobar la viabilidad de un programa que ya se realizaba con buenos resultados en la comunidad, seguido de dos más en 1998. En un primer momento, la Administración Penitenciaria necesitaba tener la relativa seguridad de que los programas de intercambio de jeringuillas serían efectivos en prisiones, al igual que en el medio extrapenitenciario. Estos primeros proyectos piloto aportaron las primeras evaluaciones satisfactorias y favorecieron el apoyo de los responsables de la Administración Penitenciaria a estos programas no exentos de dificultades para su implantación.

Al principio existían presiones en contra de profesionales y funcionarios de vigilancia alegando que los Programas de Intercambio de Jeringuillas (PIJ) fomentaría el consumo de drogas inyectadas, aumentarían los conflictos y que las propias jeringuillas podrían utilizarse como armas. Los internos tenían a su vez temor a un aumento de control por parte de los funcionarios de vigilancia y a una reducción de permisos y otros beneficios penitenciarios. La información a funcionarios e internos sobre las conclusiones de los primeros programas de intercambio de jeringuillas evaluados y una garantía de confidencialidad sobre su participación en el programa a los internos, favorecieron la desaparición de estos temores.



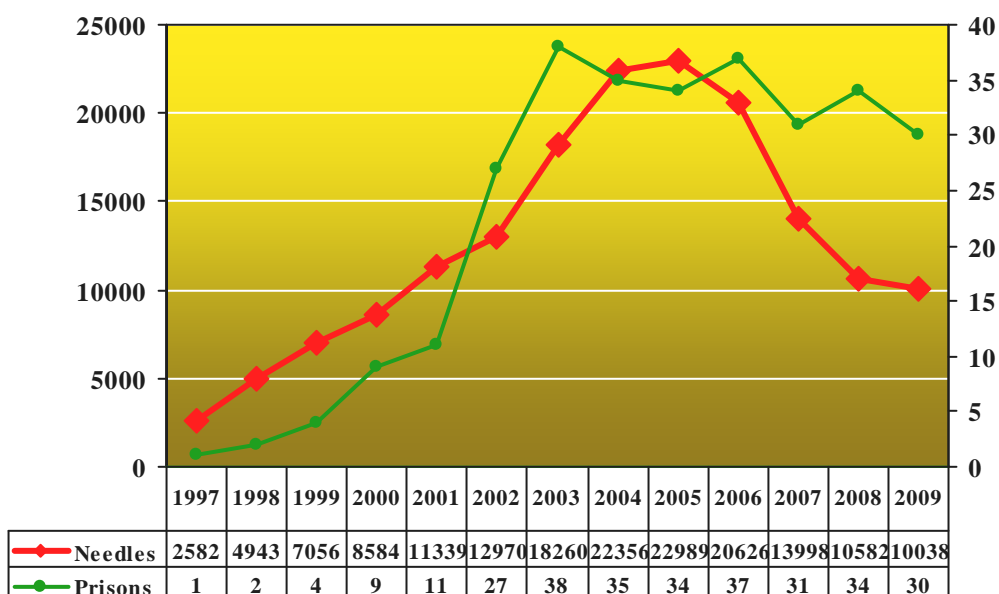
Otra cuestión que dificultaba la implantación era la importancia para los trabajadores y organizaciones sindicales de un posible incremento del riesgo laboral por accidentes con las jeringuillas, punto en el que no se lograba un acuerdo con la Administración Penitenciaria que ya estaba decidida a la implantación de los PIJ en todas las prisiones. Se necesitó la intervención de la Inspección General de Trabajo que estimó que “la implantación del PIJ no plantea inconvenientes graves al desarrollo de la actividad de los funcionarios de prisiones, sino que más bien atenúa y minimiza los riesgos derivados de la utilización de jeringuillas clandestinas”. Se adoptaron una serie de medidas de protección y prevención para eliminar o reducir los riesgos laborales como normas fundamentales del programa.

Finalmente, en la fase de implantación, en cada centro penitenciario era necesario lograr una adecuada coordinación institucional e interinstitucional. La colaboración y coordinación, tanto entre los profesionales del centro penitenciario como con otras instituciones, fueron imprescindibles para la implantación adecuada del PIJ. El apoyo de la dirección del centro y finalmente la colaboración de los trabajadores de la prisión fueron factores claves para el éxito en la implantación del programa.

Progresivamente se fueron implantando los PIJ en las prisiones donde había usuarios de drogas inyectadas (Gráfico 7), con una actividad máxima entre los años 2002 a 2007 llegando a repartirse más de 22.000 jeringuillas anuales sin que en ningún caso se hubieran utilizado como armas ni ocasionado ningún accidente laboral.

Actualmente, el programa se encuentra en recesión dada la disminución en las prisiones españolas del número de usuarios de drogas inyectadas.

Gráfico 7: Evolution of Needle Exchange Programs Programa de Intercambio de Jeringuillas



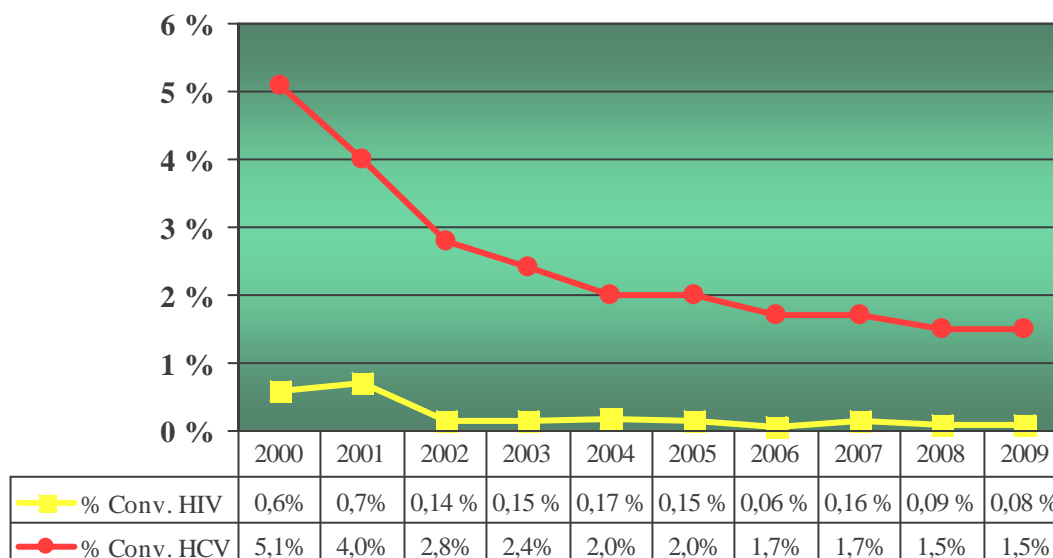
Otra estrategia importante para la prevención del VIH en las prisiones es la Educación para la Salud. En nuestra experiencia, la mejor estrategia ha sido la mediación en salud entre iguales. La formación de internos como agentes de salud capaces de llevar los mensajes de educación sanitaria a sus iguales, con su lenguaje y costumbres, y en su propio medio, es altamente eficaz en la transmisión de los contenidos. Se transmiten contenidos educativos sobre sexo seguro, uso seguro del material de inyección, adherencia a los tratamientos antirretrovirales, y otros. En esta estrategia, son muy eficaces y valoradas las actividades realizadas por las organizaciones no gubernamentales (ONGs), que en algunas prisiones también son las encargadas de los programas de intercambio de jeringuillas.

Los programas de reducción de daños se consideran una de las actuaciones más relevantes para la prevención de la transmisión del VIH y otras enfermedades infectocontagiosas. Para evaluar esta premisa es preciso calcular la tasa de seroconversión al VIH (pasar de VIH negativo a VIH positivo) de los presos VIH negativos a lo largo de los años. Esta labor ha sido realizada por el Área de Salud Pública de la Secretaría General de Instituciones Penitenciarias, contando con los datos informatizados facilitados por los servicios médicos de todos los centros penitenciarios.

Para analizar el resultado que se observa en el gráfico 8 hay que tener en cuenta que previamente al año 2000 ya se encontraban en funcionamiento en todas las prisiones los programas de mantenimiento con metadona y que es en el año 2002 cuando ya entran además en funcionamiento los Programas de Intercambio de Jeringuillas en todas las prisiones dependientes de Secretaría General de Instituciones Penitenciarias (todas las de España excepto las de la comunidad autónoma de Cataluña).

Desde la implantación del PIJ en todos los centros penitenciarios, donde había usuarios de drogas inyectadas que compartían el material de inyección, se redujo notablemente la transmisión del VIH, con todos los beneficios en cuanto a la salud de los internos y a la economía sanitaria.

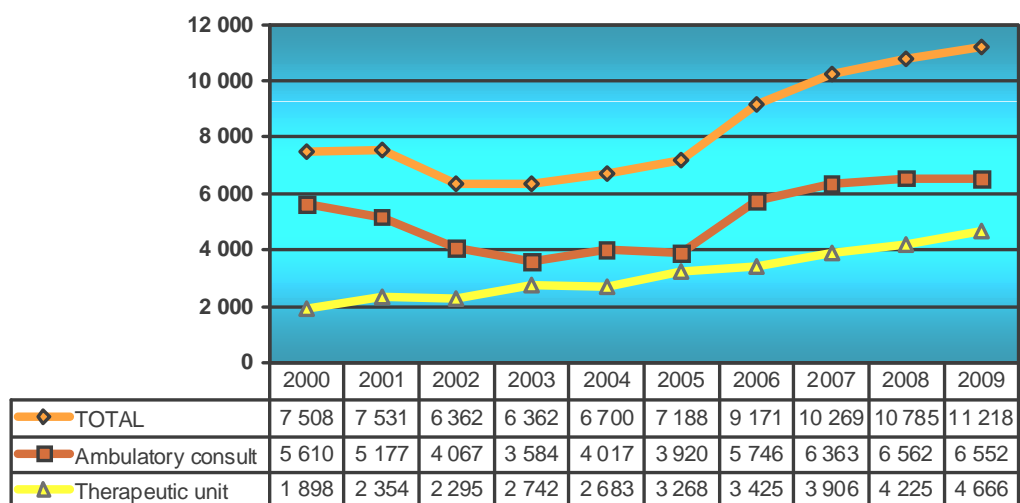
Gráfico 8: Conversions to HIV and HCV Conversiones al VIH y VHC



Desde un punto de vista de salud pública es prioritario evitar la transmisión del VIH en los usuarios de drogas inyectadas, pero desde un punto de vista penitenciario es muy importante afrontar el tratamiento de las drogodependencias como problema de fondo para una adecuada rehabilitación y reinserción social.

El tratamiento de las drogodependencias se aborda en consulta ambulatoria con tratamientos de deshabituación y en unidades terapéuticas específicas con un abordaje integral de la drogodependencia (Gráfico 9). En la fase final del tratamiento se realiza una derivación a centros comunitarios como fase previa a la libertad.

Gráfico 9: Treatments for drug dependence Tratamientos de deshabituación a drogas



- **End of 2009: 33 Therapeutic Units** with 2.035 inmates – **3,1%** total inmates.
- **Year 2009: 6.074** derivations to community centres.

En resumen, en nuestra experiencia se deben desarrollar en las prisiones programas que promuevan la ejecución de medidas de prevención y reducción de daños, incluidos el uso de preservativos, el tratamiento de sustitución de drogas, el suministro de agujas y jeringuillas estériles, el acceso voluntario a pruebas de detección del VIH y el asesoramiento de los miembros de los grupos considerados vulnerables y de los afectados por el VIH, así como programas de tratamiento de las drogodependencias para una adecuada rehabilitación y reinserción social como fin último de la pena privativa de libertad.

# Nuevo Paradigma en el Acceso a la Salud en las Cárceles argentinas

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## Introducción

La República Argentina mediante la reforma de la Constitución Nacional del año 1994, ha incorporado con jerarquía constitucional, a través del art. 75 inc. 22, los instrumentos internacionales de derechos humanos que forman parte del bloque de constitucionalidad<sup>1</sup>. La circunstancia de que una persona esté privada de su

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<sup>1</sup> Constitución Nacional (art. 18); Declaración Universal de Derechos Humanos; Pacto Internacional de Derechos Civiles y Políticos; Pacto Internacional de Derechos Económicos Sociales y Culturales; Convención Americana sobre Derechos Humanos y su Protocolo - Facultativo de San Salvador (Salvador); Convención contra la Tortura y otros Tratos o Penas Cruelles, Inhumanos o Degradantes y su Protocolo Facultativo; Convención sobre los Derechos del Niño; Convención sobre los derechos de las personas con discapacidad; Ley 24.660 de Ejecución de la Pena Privativa de la Libertad; Reglamento General de Procesados (Decreto 303 del 26/3/1996) y todas las leyes Provinciales de Ejecución que se han adherido a aquella: Ley 26529 Nacional (Derechos del Paciente); Reglas Mínimas para el Tratamiento de los Reclusos, adoptadas en 1955 por el Primer Congreso de las Naciones Unidas sobre Prevención del Delito y Tratamiento del Delincuente y aprobadas por el Consejo Económico y Social en 1957 y 1977; Conjunto de Principios para la protección de todas las personas sometidas a cualquier forma de detención o prisión, adoptado por la Asamblea General de las Naciones Unidas en su Resolución 43/173 de 19 de diciembre de 1988; Principios básicos para el tratamiento de los reclusos, adoptados y proclamados por la Asamblea General de las Naciones Unidas en su Resolución 45/111 del 14 de diciembre de 1990; Reglas de las Naciones Unidas para la protección de los menores privados de libertad, adoptadas por la Asamblea General en su Resolución 45/113 del 14 de diciembre de 1990; Principios y Buenas Prácticas sobre la Protección de las Personas Privadas de su Libertad en las Américas aprobado por la Comisión Interamericana de Derechos Humanos en su 131 período ordinario de sesiones celebrado en marzo de 2008; Principios de ética médica aplicables al personal de salud, especialmente los médicos, en la protección de personas presas y detenidas contra la tortura y otros tratos o penas crueles, inhumanos o degradantes, adoptados por la Asamblea General de las Naciones Unidas en su Resolución 37/194 del 18 de diciembre de 1982; Principios relativos a la investigación y documentación eficaces de la tortura y otros tratos o penas crueles inhumanos o degradantes, adoptados por la Asamblea General de las Naciones Unidas en su Resolución 55/89 del 4 de diciembre de 2000; Manual para la Investigación y Documentación eficaces de la Tortura y otros Tratos o Penas Cruelles, Inhumanos o Degradantes (Protocolo de Estambul, Naciones Unidas, 2000); Principio sobre la protección de los enfermos mentales y el mejoramiento de la atención de la salud mental, adoptado por la Asamblea General de las Naciones Unidas en su Resolución 46/119 del 17 de diciembre de 1991; Declaraciones de la Asamblea Médica Mundial de Hamburgo (noviembre de 1997), de Helsinki (junio de 1964 y sus enmiendas de 1975, 1983, septiembre de

libertad no implica la supresión de los derechos y garantías que hacen a la dignidad de las personas. Dignidad que se encuentra garantizada por nuestra Constitución y los Pactos y Convenciones de Derechos Humanos, esta circunstancia obliga al Estado como garante, a promover los derechos de las personas en encierro, como el derecho a la vida, a la integridad física, a la dignidad, al acceso a la salud y a otros que hacen de soporte de estos derechos<sup>2</sup>.

En el marco normativo constitucional no solamente debe protegerse la ausencia de enfermedad, sino sostener una política que tienda al disfrute del más alto nivel posible de la salud física y mental (art. 12 del Pacto Internacional de derechos Civiles, Económicos y Sociales), lo que supone proporcionar, en un espacio de encierro, que la persona privada de su libertad tenga derecho a una misma calidad de salud que el resto de la comunidad (Principios de universalidad y equivalencia). Para ello se ha considerado indispensable, en primer término, precisar que la salud en las cárceles se trata de una política de Estado y que es necesario que el Ministerio responsable de la Salud pública sea el que asuma la dirección en la materia y dicte los protocolos a los que debe adecuarse las intervenciones de prevención y asistencia en el espacio carcelario. Además debe existir una coordinación entre las distintas agencias estatales para garantizar el derecho a la salud al igual que la inclusión de las personas privadas de su libertad.

Por su parte los responsables de los sistema penitenciarios no solamente están obligados a promover el acceso a la salud sino también la de garantizar la dignidad de los presos y su integridad física. Ello conlleva, además de prevenir cualquier agresión o trato humillante, que debe asegurarse condiciones de detención que no sean incompatibles con el derecho a un trato digno y humano; la persona privada de su libertad debe contar con una superficie y un volumen de aire mínimos, de instalaciones sanitarias adecuadas y de una alimentación gustable, con valor nutritivo suficiente para garantizar una vida saludable<sup>3</sup>.

No puede soslayarse que todavía en algunas unidades pertenecientes al Servicio Penitenciario Federal se ha podido verificar condiciones que no se adecuan a los estándares demandados por la normativa internacional en la materia; que los sanitarios se encuentran en mal estado; que tanto el suministro de agua caliente como la calefacción y/o ventilación sean deficientes; aguas estancadas en el piso de las duchas; y que la comida que se distribuye, no solamente llega fría a manos de los detenidos, sino que carece de las calorías que posibiliten el mantenimiento

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1989, octubre de 1996, octubre de 2002), de Malta (septiembre de 1992) y de Tokio (octubre de 1975).

<sup>2</sup> Corte Suprema Nacional Argentina: “Dessy Gustavo Gastón s/ habeas corpus” del 19/10/95; “Verbitsky, Horacio s/ hábeas corpus” del 03/05/05.

<sup>3</sup> Comité de Derechos Humanos, caso “Mukong c/ Camerún” de 1994.

de su salud<sup>4</sup>. La Dirección conciente de estas anomalías se ha comprometido dar solución en un corto plazo a las irregularidades apuntadas.

## Ficha técnica

- Población en las prisiones: 65000 aproximadamente al 26/03/2010<sup>5</sup>;
- Población: en el Sistema Penitenciario Federal al 26/03/2010 aproximadamente 9302 detenidos;
- Tasa poblacional cada 100000 habitantes: 154 al 26/03/2010<sup>6</sup>;
- Detenidos en situación de prisión preventiva: 51,6 % al 26/03/2010; 54% a nivel Federal y 76% en la Provincia de Buenos Aires;
- Mujeres en prisión:
- 5.5% (3306 mujeres y 802 en el Sistema Federal, 40% son extranjeras y 80% están detenidas por traficar como “mulas”) al 26/03/2010<sup>7</sup>;
- 41 madres, 13 embarazadas y 51 niños al 26/03/2010<sup>8</sup>;
- Extranjeros en prisión: 5.4 % al 26/03/10<sup>9</sup>;
- Número de establecimientos penitenciarios: 211 al 26/03/2010 (32 cárceles federales y 179 provinciales)<sup>10</sup>;
- Capacidad de las Prisiones: aproximadamente 46494 al 26/03/2010<sup>11</sup>;

Superpoblación alrededor del 55% al 26/03/2010, debe aclararse que la superpoblación es producto de la falta de Unidades de Detención en las provincias, sin contar los que están detenidos en Comisarías<sup>12</sup>.

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<sup>4</sup> Legajo de Visita a Cárceles del Tribunal Oral en lo Criminal N°1. En el mismo sentido, informe anual de la Procuración Penitenciaria de la Nación.

<sup>5</sup> Asociación Unidos por la Justicia

<sup>6</sup> International Centre for Prison Studies at King's College (United Kingdom)

<sup>7</sup> Ministerio de Justicia, Seguridad y Derechos Humanos

<sup>8</sup> Ministerio de Justicia, Seguridad y Derechos Humanos de la Nación

<sup>9</sup> Ministerio de Justicia, Seguridad y Derechos Humanos de la Nación

<sup>10</sup> Ministerio de Justicia, Seguridad y Derechos Humanos de la Nación

<sup>11</sup> Ministerio de Justicia, Seguridad y Derechos Humanos de la Nación

<sup>12</sup> Asociación Unidos por la Justicia

## Perfil del servicio penitenciario federal

Según la Ley Orgánica del Servicio Penitenciario Federal N°20.416 (15/5/1973) el mismo constituye una fuerza de seguridad verticalizada, con un perfil militarizado, que tienen como objetivo prioritario la custodia y “rehabilitación” de los detenidos. Dentro de esta estructura se encuentra la “Dirección de Sanidad”, cuyos profesionales tienen rango “militar”. Este tipo de organización indudablemente condiciona las decisiones que tienen que tomar el personal asistencia respecto de los pacientes privados de su libertad.

## Brechas

En la elaboración de una nueva política sanitaria relacionada con las cárceles se pudo constatar una serie de obstáculos –entre otros- que condicionan el acceso a la salud de las personas privadas de su libertad, y que afectan las intervenciones de prevención y asistencia en dicho espacio:

a) Coordinación limitada del Ministerio de Justicia, de Seguridad y Derechos Humanos con los Ministerios de Salud Pública y Desarrollo Social en materia de prevención, atención e inclusión.

En otras palabras las estrategias, salvo en algunos tópicos puntuales, en el contexto carcelario eran diseñadas y adoptadas por las autoridades de las que dependían las cárceles (Ministerio de Justicia, de Seguridad y Derechos Humanos de la Nación). Coexistían una sanidad “penitenciaria” y otra “comunitaria”.

Previo al cambio de paradigma, cada Servicio Médico utilizaba criterios heterogéneos respecto de las políticas del Ministerio de Salud, las intervenciones estaban direccionadas hacia la urgencia y la demanda, y no existía una verdadera relación médico–paciente<sup>13</sup>.

Estas dos “salud pública” paralelas -la comunitaria y la penitenciaria- provocaba que se adoptaran políticas de salud que se contraponían, como por ejemplo en materia de VIH/SIDA. Una de las estrategias de prevención del Ministerio de Salud es, que los condones sean asequibles a la población en general, mientras que en el espacio carcelario, como el imaginario de los responsables es que no se “mantenían relaciones sexuales” en dicho contexto, su suministro era muy limitado, y únicamente entregado a la persona privado de su libertad su pareja cuando eran “beneficiado con el régimen de visitas íntimas”.

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<sup>13</sup> “Políticas Públicas en Contextos de Encierro en Materia Sanitaria, Experiencias del trabajo interministerial en cárceles federales”, informe producido por la Comisión Nacional Coordinadora de Políticas Públicas en Materia de Prevención y Control de Tráfico Ilícito de Estupefacientes de la Delincuencia Organizada Transnacional y la Corrupción de la Jefatura de Gabinete de Ministros; el Ministerio de Justicia, Seguridad y Derechos Humanos; Ministerio de Salud de la Nación y la Dirección Nacional del Servicio Penitenciario Federal.

Por su parte, esta descoordinación llevaba a una mala utilización de los recursos, ya que el Ministerio de Salud Pública cuenta con medicamentos e insumos que son entregados a los efectores de la comunidad (considerados Centros de Atención Primaria -CAP-), siendo que el Servicio Penitenciario Federal adquiría los medicamentos y otros materiales sanitarios para la población penal, lo que constituía una duplicación de gastos.

Tampoco se articulaba la atención de la persona privada de su libertad que egresaba a la comunidad; ello afectaba a la continuidad de los tratamientos, pues o bien no tenían turnos asignados en los hospitales o bien eran extemporáneas a sus necesidades. Lo que afectaba a la continuidad de los tratamientos, dado que, bien no tenían turnos asignados en los hospitales, bien los mismos no eran adecuados a sus necesidades

b) Decisiones clínicas condicionadas por razones de seguridad.

Como ya se señalaba el objetivo primordial del Servicio Penitenciario es “asegurar” a la persona privada de su libertad, y también se ha hecho referencia a que el personal de la Dirección de Sanidad es parte integrante de aquel, y de la naturaleza militar de la institución.

Ahora bien, cualquiera sea el puesto bajo el cual el médico lleva a cabo su actividad, sus decisiones clínicas deben adoptarse tan sólo con criterios médicos y no de seguridad. Sin embargo en el tema de los traslados a los dispositivos asistenciales en la comunidad, se ha podido verificar que los directores de las unidades penitenciarias pueden impedir o demorar la derivación de un detenido argumentando razones de seguridad, cuando debe prevalecer el derecho a la integridad física y psíquica. Lo mismo sucede cuando los profesionales no ingresan a las celdas para atender a los presos que pudieran sufrir heridas, o algún otro padecimiento que pusiera en peligro su integridad física, argumentándose las mismas razones.

c) La relación médico-paciente en el ámbito carcelario se encuentra deteriorada.

Las personas privadas de su libertad que padecen una dolencia no son visualizadas como pacientes, con todos los derechos bioéticos que les asisten. Las personas privadas de su libertad, al igual que cualquier otro, tienen derecho a informarse, a decidir si va a someterse a un tratamiento o rechazarlo (principio de autonomía ética), a que se garantice la confidencialidad del acto asistencial y a que se respete su intimidad<sup>14</sup>.

Varios de estos derechos no son respetados ni por los profesionales de la salud, ni por las autoridades penitenciarias.

Así tenemos que se conculca el derecho a la confidencialidad cuando nuestra ley de ejecución exige que la copia de la historia clínica debe integrar su legajo criminológico. Se advierte una incompatibilidad ética cuando el profesional, que asiste a la persona privada de su libertad, integra a su vez los gabinetes criminológicos, como sucede en el ámbito del Servicio Penitenciario Federal. Se

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<sup>14</sup> Ley 26529 Nacional (Derechos del Paciente)



afirma ello por cuanto el paciente se entrega en cuerpo y alma al profesional, tomando conocimiento éste último de una serie de datos personales, en el marco de esta relación, que en modo alguno pueden ser conocidos por otros funcionarios.

A su vez el derecho a la información se desconoce cuando no se le permite a los presos-pacientes conocer el contenido de la historia clínica, ni se le entrega de la misma. La historia clínica le pertenece al detenido; no le pertenece ni al médico ni al servicio penitenciario.

También sucede que cuando se realiza el análisis serológico para detectar el virus del HIV, en muchas oportunidades el resultado negativo no se comunica a la persona privada de su libertad, con la incertidumbre que ello importa.

A su vez se vulnera el derecho de decidir sobre su propio cuerpo cuando la Ley de Ejecución en el supuesto de que se tratare de la realización de operaciones de cirugía mayor o cualquier otra intervención quirúrgica o médica que implicare grave riesgo para la vida o fueran susceptibles de disminuir permanentemente sus condiciones orgánicas o funcionales, deberá mediar además el consentimiento del juez competente<sup>15</sup>. Se asevera ello por cuanto no se advierte por qué el Juez competente debe dar su venia para que una persona asuma someterse a una operación quirúrgica, aunque corra riesgo su vida pues, no se trata de una persona incapaz, en cuyo caso deberá el representante legal o el familiar suplir su consentimiento. En el mismo sentido, se vulnera el principio de autonomía cuando se exige a las personas privadas de su libertad y a sus esposas/os o convivientes, que se realicen el test para detectar el HIV para ser “beneficiados” con el régimen de visitas íntimas, como lo prescribe la reglamentación respectiva del Servicio Penitenciario Federal.

Finalmente, tampoco puede obviarse que efectivamente mucha de la información recibida por los médicos en virtud del acto profesional de asistencia, es compartida con personal de seguridad, cuando en realidad, el único profesional de seguridad que debe ser anoticiado es el Director del establecimiento, pues es el quien debe decidir el traslado del preso a un efector extramuros.

d) Insuficiente compromiso del personal asistencial en el mejoramiento del hábitat carcelario.

No puede dejar de señalarse, que los profesionales médicos si bien tienen la obligación, además de atender a los pacientes, de realizar inspecciones y formular asesoramiento al director del establecimiento carcelario respecto a:

- i) la cantidad y preparación y distribución de los alimentos;
- ii) la higiene de los establecimientos y reclusos;- las condiciones sanitarias, la calefacción, el alumbrado y la ventilación del establecimiento;
- iii) la calidad y el aseo de las ropas y las camas de los reclusos;

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<sup>15</sup> art. 149 de la Ley 24.660.

iv) la observancia de la reglamentación relacionada con la práctica de la educación física y deportiva cuando esta sea realizada por personal no especializado, la realidad nos indica que los médicos no asumen el rol que les incumbe para humanizar el ámbito carcelario<sup>16</sup>.

## Acciones encaminadas

A fin de garantizar los principios de universalidad y equivalencia el día 29 de julio de 2008 se firma el “Convenio de Marco de Asistencia y Cooperación” entre los Ministerios de Justicia y Salud, incluyendo como garante del mismo a la Comisión Nacional Coordinadora de Políticas Públicas en materia de Prevención y Control de Tráfico Ilícito de Estupefacientes, la Delincuencia Organizada Transnacional y la Corrupción, con el objeto de implementar las políticas sanitarias de éste último en el ámbito de las unidades que dependen del Servicio Penitenciario Federal, así como referenciar a las personas que egresen en libertad con los centros sanitarios para continuar su tratamiento.

En fecha 22 de octubre de 2008 se firman los Acuerdos Complementarios para la aplicación de los siguientes programas: VIH/SIDA y Enfermedades de Transmisión Sexual, Materno Infantil, Salud Ocular y Prevención de la Ceguera, Salud Sexual y Procreación Responsable.

El día 02 de abril de 2009 se suscribe el Acuerdo Complementario para la aplicación del Programa de Salud Mental y Adicciones; y en fecha 06 de mayo de 2009 los acuerdos para aplicar el Programa de Control de Tuberculosis y Remediar + Redes.

Para gestionar el Convenio en el Ministerio de Salud se organizó la Unidad Coordinadora de Salud Penitenciaria, en la Dirección de Medicina Comunitaria dependiente de la Subsecretaría de Salud Comunitaria.

Durante el año 2008 a diciembre de 2009, se han realizado las siguientes capacitaciones y reuniones de fortalecimiento del equipo sanitario de las unidades del área metropolitana y del interior del país, por parte del Ministerio de Salud de la Nación: 1. VIH-SIDA, 2. REMEDIAR, 3. SALUD SEXUAL Y PROCREACIÓN RESPONSABLE, 4. TUBERCULOSIS, 5. MATERNIDAD E INFANCIA, 6. EPIDEMIOLOGÍA.

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<sup>16</sup> Reglas Mínimas para el Tratamiento de Reclusos, Regla 26.

## Implementación de los programas<sup>17</sup>

### REMEDIAR + REDES:

El Programa FEAPS-Remediar, consiste en la provisión de 64 medicamentos esenciales para dar respuesta a los motivos de consulta del Primer Nivel de Atención.

La operatoria del Programa consta de un estricto registro de los diagnósticos, prescripción de medicación y control de stock con reenvío mensual para actualización de la medicación necesaria por Servicio Médico.

Como primera medida, se ha capacitado al 87,5% de los Servicios Médicos de las unidades.

### VIH/SIDA y ENFERMEDADES DE TRANSMISIÓN SEXUAL:

El Programa de VIH/SIDA y Enfermedades de Trasmisión Sexual ha capacitado a más de 300 de profesionales y auxiliares sanitarios en sus tres líneas estratégicas:

- Acceso al test de VIH con asesoramiento, consentido e informado;
- Accesibilidad a los estudios y tratamientos para las personas con VIH/SIDA;
- Accesibilidad al preservativo, independientemente de la visita íntima, información, línea 0-800 y línea directa por cobro revertido, para todas las personas privadas de la libertad;

Dicho Programa provee en forma continua medicación antirretroviral, reactivos para tamizaje e insumos de prevención –preservativos, folletería, carteles, entre otros- y viene realizando recorridas por las unidades del área metropolitana para verificar el cumplimiento de las líneas estratégicas.

### MATERNIDAD E INFANCIA:

El Programa Materno Infantil, desde la firma del Convenio, dicta las pautas de desarrollo infantil además de proveer de leche en polvo para los niños alojados junto a sus madres en las cárceles federales.

### PROGRAMA DE CONTROL DE TUBERCULOSIS:

El Programa de Control de Tuberculosis tiene como objetivos:

#### GENERALES:

- Reducir la morbimortalidad por tuberculosis.
- Reducir la transmisión de la infección tuberculosa.

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<sup>17</sup> Op. Cit. “Políticas Públicas en Contextos de Encierro en Materia Sanitaria, Experiencias del trabajo interministerial en cárceles federales”

Reducir la resistencia del *Mycobacterium tuberculosis* a los medicamentos anti-tuberculosos.

#### ESPECIFICOS (ESTRATEGICOS):

- Fortalecer la estrategia ALTO A LA TUBERCULOSIS en todas las jurisdicciones del país. La estrategia incluye las siguientes líneas:
  1. Aplicación de la estrategia DOTS/TAES de calidad
  2. Hacer frente a la TBC MDR, TBC VIH y otros problemas
  3. Fortalecer los sistemas de salud
  4. Involucrar al personal de salud
  5. Empoderar a los casos y la sociedad sobre la TBC y su rol
  6. Promover la investigación (epidemiológica y operativa)
  
- Realizar un enfoque de trabajo centralizado en las áreas prioritarias de acuerdo a la magnitud del problema.

Este Programa ha capacitado a más de 160 médicos y auxiliares que se desempeñan en las unidades del área metropolitana en forma conjunta con el Programa de VIH/SIDA y Enfermedades de Transmisión Sexual.

En el mes de junio de 2009 se acordó, luego de haber capacitado al personal encargado del manejo clínico de los casos de Tuberculosis y su seguimiento, la entrega de medicación antituberculosa al Servicio Penitenciario Federal para su distribución en las distintas unidades penitenciarias.

Asimismo, se llevaron a cabo supervisiones en los laboratorios de tres unidades, a los efectos de coordinar la provisión de reactivos e insumos de laboratorio.

#### SALUD OCULAR Y PREVENCIÓN DE LA CEGUERA:

Este Programa consiste en la entrega de medicación para glaucoma a través de la logística del Programa Remediar y en la articulación con efectores públicos para la intervención quirúrgica en los casos de cataratas con ese diagnóstico.

En junio de 2009 se realizaron las comunicaciones con las autoridades tanto provinciales como hospitalarias a fin de canalizar la atención de pacientes con diagnóstico de cataratas.

Se realizó un trabajo de evaluación de casos de cataratas y glaucoma a fin de que el Programa de Salud Ocular y Prevención de la Ceguera provea a los internos afectados con estas patologías de cirugía correctiva y medicación.

#### SALUD MENTAL Y ADICCIONES

En virtud que recién en el mes de abril de 2010 se creó la Dirección Nacional de Salud Mental y Adicciones y al no existir un plan estratégico en materia de atención en cárceles, le han encargado a este organismo el diseño del tratamiento en adicciones con las adecuaciones y especificidades para los contextos de encierro. El motivo está dado pues el modelo predominante utilizado en el

Servicio Penitenciario Federal resulta ser el de Comunidades Terapéuticas, sin que se ofrezcan otros tipos de asistencia.

#### SALUD SEXUAL Y PROCREACIÓN RESPONSABLE:

El Programa de Salud Sexual y Procreación Responsable consiste no sólo en la distribución de métodos anticonceptivos tales como los orales, de lactancia, inyectables, y de barrera –DIU-; sino que exige la realización de consejería, y aporta la posibilidad de realizar ligadura de trompas de Falopio o vasectomía en hospitales públicos según la Ley 25.673 de creación del Programa y la Ley 26.130 de anticoncepción quirúrgica.

Debe destacarse que este Programa ha sido implementado en las unidades con destino de alojamiento de mujeres en fecha 1 de abril de 2008<sup>18</sup>.

Es importante poner de resalto que se ha fortalecido el contacto de los referentes del Programa con los Servicios Médicos de las unidades que alojan mujeres, y se encuentra, desde el año 2008, proveyendo de métodos anticonceptivos y folletería en todas las unidades del área metropolitana.

#### PROGRAMA DE PREVENCIÓN DEL CÁNCER CÉRVICO UTERINO:

Las líneas del programa están centradas en la detección de esta patología mediante la realización de Papanicolau, especialmente a mujeres de entre 35 a 60 años, que conforme a la investigación periódica que realiza este programa es el grupo de mayor morbimortalidad.

Se proyecta la implementación de este nuevo Programa del Ministerio de Salud que tiene como objetivo la prevención del cáncer de cuello uterino.

#### EPIDEMIOLOGÍA:

A través de la Dirección de Epidemiología, las personas privadas de su libertad alojadas en el Servicio Penitenciario Federal están recibiendo dosis de vacunas – fiebre amarilla, antigripales, antitetánica, del plan obligatorio para los niños alojados junto a sus madres en prisión, entre otras – tanto para el personal penitenciario como para los internos alojados.

En febrero de 2010, anticipando la posibilidad de infección de los internos de la Gripe A, se han solicitado y recibido por parte del Ministerio de Salud de la Nación, tres mil ochocientas dosis de vacunas para vacunar a los internos y al personal dentro de los grupos de riesgo.

En abril de 2010 se han realizado gestiones para solicitar siete mil dosis adicionales al Ministerio de Salud, para que se incluya a la población penal no vacunada como grupo de riesgo, teniendo en cuenta la dinámica de traslados, ingresos y visitantes, además de entenderla como una herramienta de prevención.

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<sup>18</sup> Resolución N° 652/08 de la Dirección Nacional del SPF.

## El día después

Con el objeto de garantizar, no solamente la atención médica de las personas privadas de su libertad que egresen de las cárceles, sino también su inclusión social, se ha acordado una articulación de políticas para ciudadanos en contexto de encierro que recuperan su libertad.

Los organismos involucrados son la Jefatura de Gabinete de Ministros, a través de la Comisión Nacional Coordinadora de Políticas Públicas en materia de Prevención y Control de Tráfico Ilícito de Estupefacientes, la Delincuencia Organizada Transnacional y la Corrupción, el Ministerio de Justicia, Seguridad y Derechos Humanos, por intermedio de la Dirección Nacional del Servicio Penitenciario Federal y la Dirección Nacional de Readaptación Social, el Ministerio de Salud, el Ministerio de Trabajo, Empleo y Seguridad Social, el Ministerio de Desarrollo Social –especialmente la Secretaría Nacional de Niñez, Adolescencia y Familias-, el Ministerio de Educación, y la Secretaría de Cultura de la Nación.

El objetivo de la articulación interministerial es establecer medidas de asistencia integral a aquellas familias que se encuentran en extrema vulnerabilidad social y afectadas por el consumo indebido de estupefacientes, como así también, promover y fortalecer la participación de los niños, niñas y adolescentes y sus familias en redes locales comunitarias, en especial, en aquellas localidades bajo riesgo social, para la elaboración e implementación de estrategias comunitarias de prevención y apoyo que contribuyan a evitar la vulneración de derechos y/o a restituir derechos vulnerados.

Por otra parte, en el área de la Dirección Nacional de Readaptación Social se ha constituido una oficina, la Oficina Interministerial de Inclusión Social, donde funcionará la Base de Datos con los nombres, direcciones y situación familiar de todos los internos en las unidades del Servicio Penitenciario Federal.

## Objetivos logrados

- Adecuación de las normas de prevención y asistencia a los protocolos elaborados por el Ministerio de Salud Pública.
- Coordinación entre las distintas agencias en las intervenciones en materia de prevención, asistencia e inclusión.
- Sensibilización de los agentes penitenciarios para reducir ciertos prejuicios y transformarlos en agentes que posibiliten y faciliten el cambio.
- Intercambio activo entre los profesionales sobre las situaciones críticas que se le presentan en el ámbito carcelario, y el diálogo sobre las posibles respuestas a los temas acuciantes que se originan en materia asistencial.

- Valorización por parte de los profesionales asistenciales de las ventajas de una política coordinada entre los distintos ministerios.
- Adhesión a dichos convenios de cuatro provincias de la República Argentina (Buenos Aires, Mendoza, Salta y Tierra del Fuego), lo que implica alrededor del 62% de la población carcelaria.

# The Efficiency of the Complex Approach in Keeping under Control the Spread of HIV Infections among Detainees Serving Sentences in the Penitentiary Institutions of Moldova

Vadim Cojocaru  
Director General of Department of Penitentiary Institutions  
Republic of Moldova

## Summary of the presentation

In order to prevent the spread of HIV infection among the inmates, it is very important to apply a multilateral approach, along with the simultaneous provision of various services, targeting such a vulnerable group as detainees.

A comparative analysis has been carried out on the spreading of the HIV infection within penitentiary institutions, before and after the introduction of control measures comprised in the complex approach, which includes four basic components:

- Detection of HIV infection of the detainees;
- Prophylactics and control of the spread of HIV;
- Keeping records and monitoring HIV cases;
- Treatment of HIV infected detainees.

The presentation includes the results of harm reduction cooperation between the Moldovan penitentiary system and specialized NGOs.

## Results

A tendency towards the reduction of cases of HIV infection was detected – from 32 HIV positive cases in 2004 to 17 in 2008. The rate of HIV infection spread within penitentiary institutions in Moldova has also decreased – from 2.0 % HIV positive detainees (190 persons) on record in the medical service of the Department of Penitentiary Institutions in 2004 to 1.7 % (130 persons) in 2007. A 100% coverage HIV testing of detained pregnant women found a number of HIV positive women who were granted anti-retroviral treatment. This prevented HIV positive children being born. Since the implementation of the anti-retroviral treatment in 2004, within the prison hospital – the second centre of treating HIV positive patients in the republic – 105 persons have taken advantage of its



services. The implementation of the new approach has made it possible to examine 61.8 % of HIV positive detainees for the markers of hepatitis B, and 38.7 % for the markers of hepatitis C over the year 2008.

The inclusion of HIV testing in the scheme of identifying tuberculosis infections has made it possible to find all cases of HIV/TB co-infections and to promptly prescribe the proper treatment and prevent the increase of the mortality rate in this category of detainees, the fact being that these opportunistic infections constitute the main cause of death of HIV positive detainees (54.5 % in 2008).

The cornerstone of any comprehensive strategy targeting HIV, ITS and viral hepatitis infections is a set of measures of integrated prevention. However, the prevention efforts have a maximum impact when they are a component of a broad strategy that includes care, treatment and maintenance. Focusing on prevention might estrange the persons already infected with HIV, thus losing important allies in spreading messages of prevention. The prevention efforts take into consideration the fact that the majority of persons are not infected; the challenge is to prevent them from becoming infected with HIV.

The implementation of the complex approach to the spreading of HIV infection among detainees of Moldova's penitentiary institutions has proven to be reliable already in a short period of time (2004 to 2009).

# Introduction to the Theme on Women Prisoners

Tomris Atabay  
Criminal Justice Reform Expert, UN Office on Drugs and Crime

Although women continue to constitute a very small proportion of the general prison population worldwide, their numbers are increasing with the rise in the overall prison population in many countries and studies in some countries have shown that the number of women prisoners is increasing at a much faster rate than that of male prisoners.

Although research is unanimous in underlining the particularly harmful effects of prison on women, as well as their children and other members of their families, their special needs are rarely taken into consideration during sentencing and imprisonment.

Although the situation and background of women in prison vary considerably in different countries and cultures, it is possible to identify some common factors.

These include:

- The challenges women face in accessing justice on an equal basis with men in many countries;
- Their disproportionate victimization from sexual or physical abuse prior to imprisonment;
- A high level of mental healthcare needs, often as a result of domestic violence and sexual abuse;
- Their high level of drug or alcohol dependency;
- The extreme distress imprisonment causes women, which may lead to mental health problems or exacerbate existing mental disabilities;
- Sexual abuse and violence against women in prison;
- The high likelihood of having caring responsibilities, for their children, families and others;
- Gender specific healthcare needs that cannot adequately be met;
- Post-release stigmatization, victimization and abandonment by their families.

The change in the composition of the prison population has highlighted the shortcomings in almost all prison systems in meeting the gender specific needs of women prisoners.

*The United Nations Standard Minimum Rules for the Treatment of Prisoners* apply to all prisoners without discrimination, therefore the specific needs and realities of all prisoners, including of women, should be taken into account in their application. The SMR, adopted more than 50 years ago, did not, however, draw sufficient attention to women's particular needs. Thus, Mr Vitaya Suriyawong, representing Thailand will be covering the initiative of the Government of Thailand to develop a set of supplementary rules for the treatment of women prisoners. In this context, UNODC was mandated by resolution 18/1, adopted by the Commission on Crime Prevention and Criminal Justice in April 2009, to convene an open-ended intergovernmental expert group to develop, consistent with the Standard Minimum Rules for the Treatment of Prisoners and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), supplementary rules specific to the treatment of women in detention and in custodial and non-custodial settings. The meeting, which was held in Bangkok from 23 to 26 November 2009, endorsed a series of new, supplementary rules including provisions for the increased use of alternatives to prison in case of certain categories of women offenders.

The draft rules emerging from this process have been submitted before the Congress (A/CONF.213/17) for appropriate consideration and action and will be subsequently submitted to the Commission on Crime Prevention and Criminal Justice at its 19<sup>th</sup> session in May of this year.

Ms Palwasha Kakar, Deputy Minister of Women's Affairs, Afghanistan, will be providing a perspective from Afghanistan, and Ms Maria-Noel Rodriguez, United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders, will be covering the situation of women in prison in Latin America.

# Good Practices on the Treatment of Women in Prison: A proposal for Supplementary Rules for the treatment of women prisoners and non-custodial measures for women offenders

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## Introduction

Over the past decades, the number of women prisoners has increased across the globe. While men remain the vast majority of prisoners in all countries, the rate of increase among women is disproportionately higher than the rate of increase for male prisoners. Women in prison make up, on average about six percent of the world's prison population, with rates ranging from under 4% in France to almost 9% in the United States. The increase in the number of women in prison is, in some countries, primarily due to the increased use of imprisonment to punish offences that were previously punished by non-custodial sentences. This is particularly the case related to drug offences and petty property crimes.

This increase in numbers of women incarcerated presents specific challenges for correctional authorities and requires renewed attention to their situation. This paper makes the case for the need for Supplementary Rules for the treatment of women prisoners by describing the situation of women offenders, and reviewing international penal standards and accepted UN instruments as they apply to women in prison. The paper then moves to a brief discussion of best practice in terms of programs and policies and outlines the current initiative, a proposal for Supplementary Rules for the treatment of women prisoners and corresponding non-custodial measures for women offenders.

As reported by the Quaker UN Office (QUNO), the profile and background of women in prison, and the reasons for which they are imprisoned, differ significantly from those of men. Like men, women prisoners typically come from economically and socially disadvantaged segments of society. In contrast to male prison populations, drug users, lower-level property offenders, and sex workers are overrepresented. Due to their economic status, they are particularly vulnerable to being detained because of their inability to pay fines for petty offences and/or to pay bail. Women prisoners are most likely to be young, unemployed, low-educated, and have dependent children. Many have histories of

alcohol and substance abuse while a high proportion of women offenders have experienced violence or sexual abuse and related trauma.

Due to their small number, prison systems and prison regimes are almost invariably designed for the majority male prison population – from the architecture of prisons, to security procedures, to facilities for healthcare, family contact, work and training. As a consequence, few prisons meet the specific needs of women prisoners, and often do not prepare them for release with gender-appropriate rehabilitation. There is also significant evidence that, due to their gender, the human rights and basic dignity of women in prison are systematically violated.

Emerging international standards make the argument that women in prison require a specific and intentional approach to their psychological, social and health care needs while imprisoned. It follows that all facets of prison facilities, programs and services must be tailored to meet the particular needs of women offenders. Existing prison facilities, programs, and services for women inmates that have all been developed initially for men are not sufficient to their rehabilitative needs. The section below describes some of the needs and makes the case for a new approach to enhancing the lives of female inmates.

## The needs and realities of women offenders

Numerous documents describe in great detail the situation of women offenders. For a comprehensive overview, see the QUNO report on Women in Prison. Whilst problems such as overcrowding, health care, poor hygiene, and inadequate visiting facilities affect both men and women prisoners, there are many concerns that are specific to women, or which affect women prisoners in a different or particular way. Particular groups of women, such as pregnant and parenting prisoners, female juvenile prisoners, women with disabilities, women with STD, women who are foreign nationals, and indigenous and other minority women, have further needs specific to them as women.

Women in prison and other forms of detention are very often the sole or primary care-taker of young children, and have other family responsibilities. They also have different needs related to sexual and reproductive health as they may have been victims of sexual abuse, before and/or after being sent to prison, and/or may be pregnant and give birth in prison. In some countries, women's basic needs such as commodities for ensuring menstrual hygiene (sanitary napkins, clean sanitary cloths) are often not met.

Related to their substance abuse involvement and sexual history, including abuse and trauma, the topic of HIV/AIDS in prison is an emerging global concern. For women prisoners, HIV/AIDS prevention, treatment, care and support programs tend not to be adequately developed, even though both drug use and HIV/AIDS infection are more prevalent among women in prison than among imprisoned men.

Because there are few prisons for women, women tend to be imprisoned far from home. The distance separating them from their children, families and friends increases the feeling of isolation and can cause additional stress such as economic hardship and anxiety, for both the women concerned and their families.

Last but not least, upon release, the stigma of imprisonment weighs more heavily on women than on men. In some countries, women are discriminated against and are unable to return to their communities once released from prison.

These issues and others outlined in the QUNO report and elsewhere make the case for a new approach to the situation of women in prison. The next section reviews existing international rules and guidelines and their application to women prisoners.

## Existing international rules and guidelines for the treatment of prisoners

Neither women nor men lose their human rights when they are imprisoned. As stated in the Universal Declaration of Human Rights, the State may only limit the exercise of a person's rights and freedoms, including the rights and freedoms of a person who is a prisoner "for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".

The application of this principle in relation to imprisonment is set out in the Basic Principles for the Treatment of Prisoners: "Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights" and any other UN covenants to which their State is party.

The UN Human Rights Committee has elaborated on the meaning of this in relation to the International Covenant on Civil and Political Rights. Persons who are in prison must not "... be subjected to any hardship or constraint other than that resulting from the deprivation of liberty ... Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment."

In reviewing the situation of women in prison, it must always be asked whether the restrictions upon their rights are "demonstrably necessitated by the fact of their incarceration" and "unavoidable in a closed environment". The treatment of women in prison must be guided by not only the Standard Minimum Rules for the Treatment of Prisoners and other prison-specific guidelines, but by all applicable human rights (and, where relevant, International Humanitarian Law) instruments. These include the:

- Universal Declaration of Human Rights;
- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights;
- Convention on the Rights of the Child;
- Convention on the Elimination of Racial Discrimination; and
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

“The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)”, the international bill of rights for women must also be considered in developing an enhanced approach to addressing women offenders. According to the Convention, discrimination against women can be defined as “...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

The United Nations (UN) Standard Minimum Rules for the Treatment of Prisoners were adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955, and approved by the UN Economic and Social Council in 1957. Since then, they remain the key point of reference in designing and evaluating prison conditions. Since 1955, further international guidelines concerning imprisonment have been developed. Two of the most important international standards for imprisonment are the 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the 1990 Basic Principles for the Treatment of Prisoners. These instruments, with the Standard Minimum Rules, affirm that all prisoners must be treated with respect for their human dignity with regard to the conditions of their detention. They reinforce the notion that the purpose of imprisonment is rehabilitation of the prisoner, and set down minimum standards for matters such as prisoner classification and discipline, contact with the outside world, healthcare, complaints, work and recreation, and religion and culture.

Further provisions have been agreed to address detention of children, namely the 1985 Standard Minimum Rules for the Administration of Juvenile Justice and the 1990 Rules for the Protection of Juveniles Deprived of their Liberty.

The 1955 SMRs do address several aspects of women imprisonment in their original form, discussed briefly below.

#### I. Basic principle: Non-discrimination

Article 6 “(1) The following rules shall be applied impartially. There shall be no discrimination on grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The equality of rights between men and women is a fundamental norm reaffirmed in all major human rights instruments. Women and girl children who

are imprisoned are entitled to equal enjoyment and protection of all their human rights, without any discrimination.

Reality:

In most countries, discrimination against women in prison has been documented, including decisions made as to pre-trial detention, opportunities for education and employment, healthcare, and in the exercise of marital and parental rights. In many cases this discrimination is not intended by the prison authorities, but is the effect of the prison system being designed for men.

Women often serve their sentences in harsher conditions than men due to their small numbers. They have suffered from greater family dislocation than men, because there are few choices for the imprisonment of women. They have often been over-classified or detained in a facility that does not correspond to their classification. For the same reasons, fewer programs have been offered, particularly in the case of women detained under protective custody arrangement. Furthermore, they have had no significant vocational training opportunities, few opportunities for transfer, and very little access to a true minimum security institution.

## II. Basic Principle Security classification

Article 8 requires that “The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment.”

A prisoner’s security classification determines their level of liberty. Prisons are operated pursuant to rules that determine the degree of supervision and control imposed on prisoners, according to their security classification. Security classifications direct decisions such as granting leave from prison, access to visitors and programs.

Reality:

The small number of women prisons has not adequately accommodated the rapid growth of female prisoner population. As a result, women prisoners are likely to be imprisoned according to a security classification that is stricter than justified by any risk assessment. Untried prisoners are often held with convicted prisoners, and those sentenced for civil and criminal offences are often held together.

## III. Basic Principle Supervision of women prisoners by women

Article 53 “(1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution. (2) No male member of the staff shall enter the part of the institution



set aside for women unless accompanied by a woman officer. (3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.”

Reality:

Current investigations throughout the world document the fact that women prisoners are at risk of rape, sexual assault and torture. In addition to open assault, staff sexual misconduct of all forms, improper touching during searches, being watched when dressing, showering or using the toilet occur which the Special Rapporteur on Violence Against Women describes as ‘sanctioned sexual harassment’. Very often, the presence of male corrections officers in housing units and elsewhere creates a situation in which sexual misconduct is more pervasive than if women are guarded by female officers. Further, there are some cases of dependency of prisoners upon prison staff which leads to increased vulnerability to sexual exploitation, as it drives them to ‘willingly’ trade sex for favors. Prisoners who are abused or exploited by prison staff usually have little opportunity of escaping from the abuser, while those who file a complaint or take legal action are at risk of retaliation.

IV. Basic Principle Separation of female and male prisoners

Article 8 “(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate...”

Reality:

As a result of the lack of women’s detention facilities, women and girls in many countries are imprisoned in prisons where men and women share facilities, such as cooking and recreational space. Whilst formally male and female prisoners may be held separately, in practice they are not. This places women at an unacceptable risk of abuse by male prisoners.

V. Basic Principle Children living in prison with their mothers

Article 23: “(1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment... (2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.”

Reality:

In many countries, babies born in prison stay in prison with their mother and very young children may be attached with their mothers into prison. Facilities

provided vary widely from country to country. Some countries have ‘mother and baby units’, with special facilities to support the mother and the child’s development, while some, babies live in the prisons without their presence being registered or monitored by the concerned authorities, and without any special provision being made for them.

This brief review illustrates the inadequacy of these more general rules in addressing the needs and realities of women prisoners. These rules and principles contain only a handful of provisions specifically directed to women and girl prisoners. While meant to be applicable to both men and women prisoners, is very limited awareness or attention given to women’s vulnerability, specific needs, health, and child-rearing responsibilities. Accordingly, there is growing concern regarding the rights and treatment of women prisoners, at national, regional and international levels. A range of international fora have emphasized the need to review prison systems and the norms and standards regarding imprisonment with women’s needs in mind.

While the 1955 SMRs address some issues, there is growing support for an additional set of international standards that take a comprehensive approach to enhancing the lives of female offenders. The next section highlights selected examples of specific national efforts to promote women’s rights within the context of their needs.

## Best practices: Programs and emerging policy

There exist many best practices concerning the treatment of women prisoners in various countries, arranged by both public and private sections, which reflect various and specific characteristics and needs of each country or region. To illustrate this point, there are examples of practices selected from 3 countries that have geographical, economic, social, and cultural differences, yet have developed significant indicatives to address issues relating to women in prison.

In the United Kingdom, there are 14 women's prisons and 7 mother and baby units while female young adult offenders are held in dedicated young adult units. However, there are currently 4 purposes built female juvenile units. This suggests that, even in the developed country like the UK, attention to the specific needs of female prisoners, particularly on the custodial allocation, has just been alerted.

On the issues of pregnant inmates and children attached to incarcerated mothers, the United Kingdom’s correctional agencies handle them with the establishment of the 7 particular units for children and imprisoned mothers, which have their own management methods.

On the side of private agencies such as Women in Prison or WIP, it has dedicated its effort to support and campaign for women offenders and ex-offenders as well as to assist them with other preparation before and after

release; for example, advice on housing, education, mental health, legal rights, work, benefits, debt, and domestic violence.

In Nigeria, Kirikiri prison in Lagos has been organizing the project on preventing HIV/AIDS among female prisoners as current global statistics shows that more than 20 million women are infected worldwide, and Sub-Saharan Africa has the highest figure among these women. The project aims at intervention for female prisoners in Nigeria prisons. The methods used are 1) peer-education training to create awareness and prevention of HIV/AIDS among inmates and prison personnel who acts as care givers, 2) Behavior, Change & Communication (BCC) materials are developed, produced and distributed to further create awareness, 3) Pre and Post test Counseling sessions are held for inmates and prison personnel, 4) there is also provision of relief materials for example beverages for infected mother and their babies, and 5) provision of palliative drugs to infected inmates. This may illustrate that correctional regimes in Africa tend to give their attention higher on the issue of HIV/AIDS than other regions.

Within the context of Thailand, although duty of care belongs to the State's correctional services, there are still various NGOs and charity organizations actively advocating for the improvement of the treatment of women in prisons, for example, a project called Kamlangjai or Inspire, which started in 2007. The project aims at providing women prisoners with moral support, basic healthcare, as well as opportunities while serving sentences and after release. Piloted at the Central Women Correctional Institution in Thailand, the Project has continued to expand to institutions in various parts of the country.

Equally important, the Kamlangjai Project places an emphasis on assisting pregnant and nursing inmates and children living with mothers in prison. Some of the activities in this area include maternity courses for pregnant inmates, facilities for child care and breastfeeding mothers and improved women's health care in prisons.

Further, it seeks to promote opportunities for women prisoners upon release in order to minimize the chance of re-offending. Some of the activities in this area include provision of vocational training programs (foot massage, bakery cooking, or hairdressing, etc), religion-induced behavioral rehabilitation, and entertainment introduced as psychological support tool.

In spite of these significant efforts to address the gender-based rehabilitative needs and to ensure the human rights of women while incarcerated, it is increasingly clear that a broader, more comprehensive approach to women prisoners on an international level is required. This next section details the efforts of the Kingdom of Thailand to bring together a broad coalition of NGOs, international experts and global partners to need for international standards which help set a gender benchmark which can trigger domestic review of correctional management worldwide.

## Thailand's proposal

Thailand deems it timely and appropriate to invite the world community to use the original Standard Minimum Rules for the Treatment of Offenders (SMR) as a base to develop a more comprehensive set of standards specifically geared toward female offenders. Through the initiative of HRH Princess Bajrakitiyabha Mahidol, Thailand has proposed a new approach to women offenders through the draft United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders which has been introduced to the world community as the tangible effort of Thailand under the project called "Enhancing Lives of Female Inmates" or "ELFI."

The ELFI Project was launched in July 2008 by the Thai Ministry of Justice with the aim to propose supplementary rules to the existing UN Standard Minimum Rules on the Treatment of Prisoners, particularly on the issues of women prisoners and their specific needs as well as measures of non-imprisonment for women with some conditions inappropriate for custody as the extension of the Tokyo Rules.

ELFI stems from the Kamlangjai Project and is based on the premise that, with today's changing World, the issues of women in prison have become more complex. The existing regimes on the treatment of prisoners and offenders, though appropriate for men, are either silent or not adequate for the gender-specific needs and realities of women. The lack of specific standards, which serve as a guide to those developing correctional policy and operating facilities where women are housed, is especially important when dealing with pregnant women and those with children attached to them.

The proposal does not mean to claim that Thailand has achieved the best practices on the treatment of women in custody nor been a successful model for other countries. Our part is simply to collect researches and best practices from many countries, putting them together in a package proposal as a new set of international standards and norms. We hope to be able to form an alliance of like-minded countries in order to move this proposal towards a successful path.

### Coalition efforts

International synergies play a key role in the drafting process and beyond. In 2009, Thailand convened the Roundtable Experts Meeting in Bangkok to develop the draft United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders in order to make the Draft Rules a well-rounded, comprehensive and integrated document. Following the initial Experts Meeting, Thailand made presentations to several Regional Preparatory Meetings to expand support of the initiative: the Latin and Caribbean meeting in May, 2009; the Western Asian meeting in June, 2009; the Asian and Pacific meeting in July, 2009; the African meeting in September, 2009.

Following UN protocol, Thailand then convened a meeting of Intergovernmental Experts, representing over 25 countries to review the draft rules closely. Then, the “Draft United Nations Rules” represents a culmination of best policies and practices on women prisoners that have been developed in various countries and by many international organizations with the belief that this is a sustainable guarantee and hope for women prisoners around the world.

As a result of the Meetings, there are 70 rules that can be organized into four main pillars as proposed by the Draft United Nations Rules which include:

Part 1 Rules of General Application – covers the general management of institutions which applies to all categories of women deprived of their liberty, including criminal or civil, untried or convicted women prisoners, as well as women subject to security measures or corrective measures;

Part 2 Rules Applicable to Special Categories – contains rules on classification and treatments of the special categories of inmates; for example, inmates who were victims of violence, pregnant inmates, and ethnic and racial minorities or indigenous inmates. This part is also separated into 2 sub-sections namely Section A: Prisoners under Sentence, and Section B: Prisoners under Arrest or Awaiting Trial;

Part 3 Non-custodial Measures – apply to women offenders who committed petty offence and those who have unsuitable physical factors to be custodial such as, young female offenders and pregnant women. This part of the rules can be enforced since proceeding of inquiry to post-sentencing stages of the criminal justice process; and

Part 4 Research, Planning, Evaluation and Raising Public Awareness – aim at encouraging research and analysis of behaviors of women that often lead to their offences, including the impact of parental detention and imprisoned mothers on the physical and psychological development of children. Additionally, it is equally important to raise public awareness on this issue by actively engaging with the media community.

(These rules and documentation of the process leading to their development can be found on the website: [www.elfi.or.th](http://www.elfi.or.th))

## Future steps

After this 12th UN Congress on Crime Prevention and Criminal Justice, the final agreed text of the Draft Rules will undergo its final stage which is the official endorsement by the UN General Assembly, in New York this coming September.

One should be aware that the proposed draft “*United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*” is not intended to create differences between men and women prisoners, to grant women more privileges or a better treatment than males, nor to replace or amend the existing regimes, but to simply create a gender equality

approach to the treatment of prisoners and offenders as well as to narrow the gap of negligence to fulfill specific needs of women prisoners, and to build an internationally accepted point of reference on the treatment of women prisoners for prison authorities worldwide, especially in its relation to gender differences and unmet needs of women.

Once the proposed draft “*United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*” is internationally adopted and implemented, we, as the world community, shall be looking for the best for those whose right to freedom is limited, yet other rights as a human remain.

Once the best occurs to imprisoned women, we, as one society, shall proudly declare that we are now in the civilized world where any maltreatment or discrimination based on sex is ended by our own pure will to uphold human rights of all individuals.

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## **International laws and rules**

Universal Declaration of Human Rights

International Covenant on Civil and Political Rights

International Covenant on Economic, Social and Cultural Rights

Convention on the Elimination of All Forms of Discrimination against Women

Convention on the Elimination of Racial Discrimination

Convention on the Rights of the Child

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The 1955 UN SMR for the Treatment of Prisoners

The 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

The 1990 Basic Principles for the Treatment of Prisoners

# Buenas Prácticas en el Tratamiento de las Personas Privadas de Libertad – Mujeres Privadas de Libertad en América a Latina

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## Introducción

No obstante el reducido número de mujeres criminalizadas y encarceladas, éstas constituyen un colectivo especialmente vulnerable debido al entorno que caracteriza su encarcelamiento y a la reproducción de los estereotipos de género que discriminan a las mujeres en el ámbito del encierro.

La prisión para la mujer es un espacio genéricamente discriminador y opresivo que se expresa en la desigualdad en el tratamiento que reciben, el diferente sentido que el encierro tiene para ellas, las consecuencias para su familia y la concepción que la sociedad les atribuye.<sup>1</sup>

Abordar y analizar la situación de las mujeres presas desde una perspectiva de género implica visualizar las inequidades construidas socio-culturalmente, y detectar mejor la especificidad en la protección que requiere este grupo en especial situación de vulnerabilidad.

## Legislación internacional de DDHH aplicable a las mujeres privadas de libertad

La doctrina de los Derechos Humanos está en constante evolución y en su desarrollo ha contemplado ampliaciones conceptuales y reconocimientos explícitos de los derechos de las mujeres. Cabe recordar que la Declaración y el Plan de Acción de la Conferencia Mundial sobre Derechos Humanos (Viena 1993), señala expresamente que “los derechos humanos de la mujer y de la niña son parte inalienable e indivisible de los Derechos Humanos universales”, y que la plena participación de la mujer en condiciones de igualdad (en la vida política, económica, social y cultural) y la erradicación de toda forma de discriminación basada en el sexo, son objetivos prioritarios de la comunidad internacional.

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<sup>1</sup> Anthony Carmen. “Mujeres confinadas”. 2001



Los instrumentos internacionales de Derechos Humanos contienen normas que evidencian el compromiso de los Estados para garantizar la igualdad ante la ley y la vigencia de los derechos “sin discriminación alguna por motivo, entre otros, de sexo”.

Los instrumentos referidos a los derechos de las mujeres, en particular la Convención sobre la eliminación de todas las formas de discriminación (CEDAW) y la Convención Interamericana para prevenir, sancionar y erradicar la violencia contra las mujeres (Convención de Belem do Pará), reafirman los principios de igualdad y no discriminación y reconocen el derecho de las mujeres a una vida sin violencia.

Sin perjuicio de reconocer la trascendencia que las Reglas Mínimas para el tratamiento de los reclusos de las Naciones Unidas han tenido en el ámbito penitenciario, las mismas se rigen bajo un concepto erróneo de la igualdad, que parte del supuesto que hombres y mujeres son iguales y que por tanto, ambos están incluidos en el término genérico “recluso”.

Todo el documento de las Reglas Mínimas se refiere al término recluso, sin embargo cuando se hace mención a la necesidad de instalaciones para el tratamiento de reclusas embarazadas y a la presencia de menores de edad, aparece el término mujer. Se constata una equivalencia entre lo femenino y lo maternal y se reproducen vínculos que maternalizan e infantilizan a las mujeres.

Situación muy similar ocurre en las legislaciones penitenciarias de los países de la región, donde se advierte la falta de previsión de las necesidades específicas de las mujeres, concentrándose en la mujer madre, presentando como sinónimos mujer-familia y estableciendo que las únicas necesidades de las privadas de libertad son las que están en función de su maternidad.

Confiamos en que este déficit será superado, ya que a nivel internacional se vienen desarrollando dos procesos de importancia para la actualización de la normativa: en primer lugar, bajo el impulso de la Oficina de las Naciones Unidas contra la droga y el delito (ONUDD) y el Gobierno de Tailandia se han diseñado *Reglas para el tratamiento de las mujeres privadas de libertad y medidas no privativas de libertad*; en segundo lugar, el Comité de América Latina para la revisión y actualización de las Reglas Mínimas para el Tratamiento de los Reclusos, con el auspicio de la Federación Internacional Penal y Penitenciaria y el apoyo del ILANUD, ha elaborado un proyecto de revisión de dichas Reglas, en cuya redacción la perspectiva de género es un eje central.

En el ámbito americano, con fecha 13 de marzo de 2008, la Comisión Interamericana de Derechos Humanos adoptó los *Principios y buenas prácticas sobre la protección de las personas privadas de libertad en las Américas*. Estos Principios incorporan varias disposiciones que atienden a las particularidades y necesidades de las mujeres privadas de libertad (ej: principios X, XII.2, XXII.3).

En el ámbito europeo no podemos dejar de mencionar las *Reglas Penitenciarias Europeas*, revisadas y actualizadas en el 2006, las que contienen normas

relacionadas especialmente al trato que debe brindarse a las mujeres privadas de libertad.

Para analizar la realidad de las mujeres privadas de libertad debe tenerse en cuenta por un lado el concepto de discriminación directa –que refiere a situaciones en las cuales leyes, reglamentos o prácticas excluyen de manera expresa a determinadas personas en razón de su condición- y por otro lado, la discriminación indirecta, que refiere a situaciones en las cuales las leyes, reglamentos o prácticas a primera vista neutrales, por su aplicación afectan de manera desproporcionada a integrantes de ciertos grupos. <sup>2</sup>

Mediante una revisión crítica de los procedimientos y prácticas de los sistemas penitenciarios y del análisis de los desequilibrios existentes en la atención de la población carcelaria femenina, es que se constata la afectación del principio de igualdad y no discriminación, principalmente por la existencia de prácticas de discriminación indirecta en perjuicio de las mujeres privadas de libertad.

Esto conlleva a la necesidad de establecer acciones afirmativas o de discriminación positiva a favor de las mujeres<sup>3</sup>, tal como lo sugieren el Conjunto de Principios para la protección de todas las personas sometidas a cualquier forma de detención o prisión<sup>4</sup>, los Principios y buenas prácticas sobre la protección de las personas privadas de libertad en las Américas<sup>5</sup>, y el proyecto de Reglas de Bangkok<sup>6</sup>.

A través de acciones afirmativas o de discriminación positiva (las que pueden ser una norma legal, una decisión judicial, una política pública o una directriz oficial) se busca lograr la igualdad de oportunidades para las mujeres u otras poblaciones socialmente discriminadas y reducir la brecha de la desigualdad.

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<sup>2</sup> Mujeres privadas de libertad. Informe Regional, CEJIL y otros. 2006.

<sup>3</sup> Handbook for prison managers and policymakers on Women Imprisonment, UNODC, 2008.

<sup>4</sup> Principio 5.2: Las medidas que se apliquen con arreglo a la ley y que tiendan a proteger exclusivamente los derechos y la condición especial de la mujer, en particular de las mujeres embarazadas y las madres lactantes, los niños y los jóvenes, las personas de edad, los enfermos o los impedidos, no se considerarán discriminatorias. La necesidad y la aplicación de tales medidas estarán siempre sujetas a revisión por un juez u otra autoridad.

<sup>5</sup> Principio II: ...No serán consideradas discriminatorias las medidas que se destinen a proteger exclusivamente los derechos de las mujeres, en particular de las mujeres embarazadas y de las madres lactantes....Estas medidas se aplicarán dentro del marco de la ley y del derecho internacional de los derechos humanos y estarán siempre sujetas a revisión de un juez u otra autoridad competente, independiente e imparcial.

<sup>6</sup> Rule 1: In order for the principle of non-discrimination, embodied in Rule 6 of the SMR to be put into practice, account shall be taken of the distinctive needs of women prisoners in the application of the Rules. Providing for such needs to accomplish substantial gender equality shall not be regarded as discriminatory.

## Características problemáticas de la reclusión de mujeres

Las cárceles de mujeres enfrentan los mismos problemas y deficiencias que las de varones y presentan condiciones y falencias que son comunes a nivel regional.

Sin embargo existen algunas características problemáticas que particularizan la reclusión de las mujeres. A continuación presentaremos en forma sintética algunas de esas características, así como las principales recomendaciones y buenas prácticas que podrían resultar de utilidad para su superación:

1. Las mujeres representan promedialmente un 6 % del total de las personas privadas de libertad en América Latina y a nivel mundial el guarismo fluctúa entre el 2 y el 10 %.

Una consecuencia de este bajo porcentaje es la invisibilidad de su problemática en el funcionamiento de los sistemas penitenciarios, los que tienden a organizarse sobre la base de las necesidades de los reclusos varones. Las mujeres en prisión se convierten en sujetos ausentes, casi invisibles, a quienes se las inserta forzosamente en un sistema concebido en base a la imagen del varón.

Debemos recordar que en 1980 el Sexto Congreso de las Naciones Unidas sobre Prevención del Delito y el Tratamiento del Delincuente aprobó una resolución sobre las necesidades específicas de las reclusas, y entre otras cosas recomendó que: 1) la implementación de las resoluciones aprobadas por el Congreso debe considerar los problemas específicos de las mujeres presas y la necesidad de proporcionar los medios para su solución; 2) los programas y servicios utilizados como alternativas a la privación de libertad deben ponerse a disposición de las reclusas en pie de igualdad con los varones; 3) las Naciones Unidas, los organismos gubernamentales y no gubernamentales, y demás organizaciones internacionales deben hacer esfuerzos continuos para garantizar que las reclusas reciban un trato justo y equitativo durante el arresto, juicio, condena y prisión, prestando especial atención a los problemas que enfrentan las mujeres presas, como el embarazo y el cuidado de los niños.<sup>7</sup>

Por otra parte, mediante la Declaración de Viena sobre la delincuencia y la justicia: frente a los retos del siglo XXI, adoptada por el Décimo Congreso de las Naciones Unidas sobre Prevención del Delito y el Tratamiento del Delincuente<sup>8</sup>, los Estados miembros declararon su compromiso de tomar en cuenta y abordar dentro del Programa para la prevención del delito y la justicia penal de las Naciones Unidas como así de las estrategias nacionales sobre prevención del

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<sup>7</sup> A/CONF.87/14/Rev.1, Res.9.

<sup>8</sup> Resolución 55/59 de la Asamblea General Nro. 55/59, anexo. 2000.

delito y justicia penal, los impactos disímiles de los programas y políticas en hombres y mujeres, y desarrollar recomendaciones de políticas de acción basadas en las necesidades especiales de la mujer, ya sea en calidad de profesional de la justicia penal, víctima, reclusa o delincuente.

En consecuencia, los Estados deben analizar transversalmente y con perspectiva de género la situación y las necesidades de las mujeres presas a efectos de diseñar e implementar planes de acción que garanticen la igualdad de oportunidades y una intervención penitenciaria ajustada a los Derechos Humanos.

A pesar de que aún no se ha generalizado en la región latinoamericana una política pública de género para el sistema de justicia penal, se constatan avances importantes en lo que refiere a la visibilización de la problemática de la mujer privada de libertad y la adopción de medidas concretas para mejorar su situación y atención en el ámbito carcelario.

2. Las estadísticas revelan que el encarcelamiento de mujeres ha venido en aumento, fundamentalmente por el endurecimiento de la legislación contra el tráfico de drogas. La mayoría de las mujeres están encarceladas por cometer delitos relacionados con la venta y el tráfico de drogas (microtráfico) o por ofensas menores, por las que no necesariamente deberían estar en prisión.

El papel desempeñado por las mujeres en el círculo del narcotráfico generalmente corresponde al último eslabón, son quienes entregan las sustancias a los consumidores o transportan la droga a través de las fronteras. Las mujeres son quienes mueven la droga y como representan la parte más visible y expuesta de la cadena, corren el mayor riesgo de ser encarceladas.<sup>9</sup>

Estas pequeñas transportistas no sólo están expuestas a ser detenidas, sino a sufrir un importante deterioro de su salud o directamente perder sus vidas. Si son sorprendidas reciben un trato cruel y discriminatorio debido a los brutales procedimientos utilizados para obligarlas a expulsar la droga.

En algunos países, el consumo problemático de drogas afecta a muchas de las mujeres reclusas y de hecho es el principal motivo de su encarcelamiento, ya que la adicción las lleva a ingresar en actividades delictivas.

En este sentido y en línea con el proyecto de Reglas de Bangkok, se sugiere para este tipo de infractoras, la utilización de medidas alternativas a la privación de libertad así como el acceso a programas de tratamiento especiales.

3. La arquitectura penitenciaria es inadecuada. En general los sistemas penitenciarios no cuentan con suficientes centros para mujeres, lo que provoca el desarraigo de aquellas que residen lejos de los centros femeninos o la reclusión en anexos de cárceles masculinas provocando la

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<sup>9</sup> Anthony Carmen, Estudio sobre violencia de género: la mujeres trasgresoras, Editorial Panamá, 2006.

restricción de derechos, limitando oportunidades y exponiendo a las mujeres a eventuales abuso.

Las mujeres deben ser alojadas en lugares cercanos a sus hogares, en establecimientos construidos con perspectiva de género, que les brinden iguales oportunidades que a los varones. Una buena práctica sugerida a nivel internacional es recurrir a centros habitacionales, a modo de urbanizaciones cerradas, que imiten de la mejor forma posible los espacios en libertad.<sup>10</sup>

Los planes de construcción deben contemplar una adecuada distribución regional de los centros para mujeres. En Costa Rica en el marco de un proyecto ejecutado con el apoyo del BID se propone la creación de cuatro centros regionales, en los cuales se contará con instalaciones especiales para madres con hijos/as.

Los establecimientos para mujeres deben estar supervisados por personal femenino y las reclusas deben ser alojadas en forma separada de los varones, sin perjuicio de experiencias excepcionales de centros mixtos, siempre que exista voluntariedad, una cuidadosa selección y una adecuada supervisión.<sup>11</sup>

Los centros mixtos permiten una relación normalizada entre ambos sexos en términos parecidos a la que se da en la sociedad libre, donde se comparten todos los espacios, salvo aquellos en los que se desarrollen actividades relacionadas con la esfera íntima de las personas.

A modo de buena práctica, presentamos la experiencia de una cárcel rural en el Departamento de Florida, Uruguay, en la cual reclusos y reclusas comparten actividades de capacitación y recreación durante la jornada, manteniéndose los alojamientos nocturnos y los servicios sanitarios en forma separada.

4. Debido a la limitación de prisiones y plazas femeninas y a la falta de instrumentos de clasificación con perspectiva de género, las mujeres son alojadas en sectores o niveles de máxima seguridad, cuando el riesgo que representan es mucho menor que el de los varones privados de libertad.

Las mujeres deben ser alojadas considerando los niveles adecuados de seguridad, mediante una debida evaluación que recoja toda la información necesaria, que contemple sus antecedentes personales (experiencias previas de violencia doméstica, responsabilidades familiares, etc.), su perfil criminológico y el daño que una incorrecta clasificación en máxima seguridad puede implicarles.<sup>12</sup>

5. Los establecimientos penitenciarios en general carecen de instalaciones adecuadas y programas especiales para las reclusas embarazadas y madres que conviven con sus hijos/as.

Muchos establecimientos penitenciarios a pesar de lo establecido en las legislaciones nacionales y en las Reglas Mínimas para el tratamiento de los

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<sup>10</sup> Propuesta presentada en el marco del Encuentro Mujer y Justicia en Iberoamerica organizado por la COMJIB en junio de 2008.

<sup>11</sup> CPT, 10mo. Informe General (2000).

<sup>12</sup> Handbook for prison managers and policymakers on Women Imprisonment, UNODC ,2008.

reclusos, no disponen de instalaciones y programas especiales para las reclusas embarazadas, reclusas madres, ni para los hijos e hijas de éstas.

Las reclusas embarazadas y en etapa de lactancia, deben recibir una dieta y un tratamiento especial que incluya en particular los cuidados médicos requeridos durante el período de gestación. Al momento del alumbramiento deben ser trasladadas a un hospital público, y si el parto se produce dentro de la prisión tal circunstancia no debe quedar registrada en el certificado de nacimiento del niño o niña.

La posibilidad de que las madres vivan con sus hijos depende muchas veces de la capacidad física del establecimiento y del grado de hacinamiento. Cuando la legislación o los reglamentos lo permiten, las guarderías generalmente se improvisan en piezas o espacios no preparados y no se prevén los programas y cuidados necesarios.

La falta de guarderías y de programas de atención para los niños y niñas provoca que las madres vean restringido su acceso a los programas educativos y laborales, ya que deben ocuparse de su cuidado.

El VIII Congreso sobre prevención del delito y justicia penal, recomendó que: “El uso del encarcelamiento para ciertas categorías de delincuentes como mujeres embarazadas o madres con bebés o niños pequeños debe limitarse y un esfuerzo especial debe hacerse para evitar el uso prolongado del encarcelamiento como sanción para estas categorías”<sup>13</sup>.

Siempre que sea posible debe optarse por medidas no privativas de libertad para las mujeres embarazadas o con niños/as bajo su dependencia. Las medidas privativas de libertad deben considerarse como último recurso, cuando se trate de un delito grave, la mujer represente un riesgo y luego de haberse considerado el interés superior del niño tal como prescribe la Convención sobre los Derechos del Niño.

El Instituto Latinoamericano de las Naciones Unidas para la Prevención del Delito y el Tratamiento del Delincuente (ILANUD) ha recogido como buena práctica en América Latina el uso del arresto domiciliario o la suspensión de la condena para las mujeres embarazadas o madres con hijos/as pequeños/as. (ver anexo A).

En caso que la medida privativa de libertad sea impuesta, y ante la evidencia que muchas mujeres carecen de referentes familiares que puedan asumir el cuidado de sus hijos/as, y que las legislaciones permiten que los niños/as vivan con sus madres en prisión hasta cierta edad, es aconsejable la construcción de hogares maternos donde las reclusas puedan convivir con sus hijos/as fuera de los muros de la prisión, y contar con guarderías preferentemente de la red comunitaria.

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<sup>13</sup> A/Conf.144/28, Rev.1(911V.2) Res.1 (a), 5 (c), 1990.

Si los niños/as no conviven con sus madres en prisión deben adoptarse especiales medidas para asegurar el mayor y mejor contacto posible (visitas más extensas, lugares apropiados, acceso telefónico, facilidad para el transporte, etc.)

La cárcel del Buen Pastor en San José de Costa Rica, cuenta con un sector de casa cuna para el alojamiento de las mujeres embarazadas a partir del séptimo mes de gestación y de las madres con hijos o hijas menores de tres años.

Los niños y niñas permanecen con su madre durante las 24 horas del día hasta cumplir un año. Luego de esa edad el niño/a participa las actividades diurnas en el Hogar Santa María (administrado por una organización no gubernamental), permaneciendo con su madre durante la noche y los fines de semana.

Los niños/as pueden permanecer en el establecimiento penitenciario hasta los tres años, luego pasan a residir con su familia o son alojados en el Hogar Santa María.

En Argentina, se cuenta con un establecimiento especial en Ezeiza para alojar a las reclusas que conviven con sus hijos e hijas. En el interior de la unidad funciona un jardín de infantes, sin perjuicio del apoyo de una guardería pública que opera en el medio libre.

En Montevideo, Uruguay, se construyó un hogar maternal extramuros donde se alojan las reclusas con hijos/as menores de cuatro años, y se instaló una guardería a la que asisten los hijos/as de las reclusas, de las guardias y los niños/as que viven en los alrededores, como forma de evitar procesos de segregación y estigmatización.

En una cárcel de Colonia, Uruguay, se permite a las parejas, cuando ambos encarcelados, que convivan con sus hijos/as en celdas o unidades familiares.

6. Especiales previsiones a adoptarse en relación a los niños y niñas que viven con sus madres en prisión.<sup>14</sup>

*“Hay un persistente debate sobre la conveniencia de que las madres prisioneras conserven cerca a sus hijos más pequeños. Esta discusión suele ser ociosa. Muchas de estas madres, en nuestro medio, no tienen alternativa: o con ellas o en el más completo abandono”*

*Sergio García Ramírez.*

La Asamblea General de Naciones Unidas, en su resolución sobre DDHH en la Administración de Justicia aprobada el 22 de diciembre de 2003, pidió prestar mayor atención a la cuestión de las mujeres en prisión, incluidos los hijos e hijas de éstas, con el fin de determinar los principales problemas y las formas en que pueden ser abordados.<sup>15</sup>

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<sup>14</sup> Quaker United Nations Office. “Niños y niñas presos de las circunstancias”, Oliver Robertson, 2008 y “Bebés y niños/as que residen en prisiones”. Marlene Alejos, 2005.

<sup>15</sup> Resolución 58/183.

Los niños y niñas que viven en la cárcel junto a sus madres deben disponer de condiciones de vida tan buenas como las que tendrían si vivieran en libertad y el interés superior del niño debe ser el eje central de toda intervención y decisión.

Algunas previsiones especiales deben ser adoptadas en relación con los niños y niñas que conviven con sus madres en prisión, entre las que priorizamos las siguientes:

- Mantener un adecuado y completo sistema de registro.

Se debe llevar un registro de los niños y niñas que viven en la cárcel y todos sus movimientos a fin de garantizar que sus necesidades sean satisfechas y evitar que queden “olvidados”. También deberá quedar registrado cualquier desplazamiento de los niños/as hacia el exterior o de una cárcel a otra. Igualmente, al ingreso de una mujer en prisión, debe tenerse registro de los niños/as que permanecen fuera de la cárcel.

- Considerar el impacto que la sentencia tendrá en los niños/as y procurar alternativas a la privación de libertad.

Al dictar una detención preventiva o una sentencia definitiva, la Justicia debe considerar el impacto sobre los hijos/as (quienes la acompañan a la cárcel y quienes quedan afuera) de las mujeres involucradas. De aplicarse una sentencia con privación de libertad se deberá decidir dónde encarcelar a la madre, dando preferencia a una cárcel cercana a su familia y comunidad.

Debe evitarse que las madres (y sus niños/as) sean enviados a prisión utilizando medidas alternativas a la privación de libertad.

Un buen referente normativo en esta materia lo constituye la Carta Africana sobre los derechos y bienestar de la niñez que en su artículo 30 estipula que los Estados deberán asumir la responsabilidad de proporcionar un trato especial a las embarazadas y madres de niños pequeños que han sido acusadas o declaradas culpables de infringir las leyes, y deberán en particular:

- Considerar sentencias no privativas de libertad así como medidas alternativas sin confinamiento institucional para el tratamiento de madres infractoras.
- Establecer instituciones alternativas especiales para acoger a dichas madres.
- Garantizar que ninguna madre sea encarcelada con su hijo/a.
- Garantizar que no se impondrá pena de muerte a dichas madres.
- Establecer una edad límite para la permanencia de los hijos/as de las reclusas en prisión.

La determinación de la edad está relacionada con las costumbres y tradiciones locales y sobre la situación y evaluación de cada caso en particular. A nivel mundial, el rango va desde los pocos meses hasta los seis años, ubicándose el promedio en dos a tres años según la región.



Debe asegurarse la protección del derecho de los recién nacidos y niños/as pequeños, a no ser separados de sus madres, a menos que tal separación responda al interés superior del niño.

Asimismo, debe ser definido claramente el proceso de toma de decisiones, teniendo en consideración los derechos de todas las personas involucradas y promoviendo la participación de los niños/as en tal proceso, teniendo debida consideración de su edad.

- Proporcionar a los niños/as condiciones adecuadas para su desarrollo.

El Comité de los Derechos del Niño ha recomendado a los Estados que desarrollen e implementen pautas claras sobre la permanencia de los niños y niñas que conviven en la cárcel su progenitor/a, en aquellos casos donde esta medida se considere apropiada en virtud del interés superior del niño o niña, y que garanticen que las condiciones de vida, incluidos los servicios sanitarios sean las adecuadas para su desarrollo. Asimismo el Comité ha recomendado que se implementen servicios de cuidado alternativo para los niños/as que han salido de la cárcel y que dicho cuidado sea supervisado con regularidad y permita al niño/a mantener una relación personal y un contacto directo con su progenitor/a que permanece en prisión.<sup>16</sup>

Mientras el niño o niña permanezca en la cárcel, se deberán satisfacer sus necesidades alimenticias, materiales, médicas, educativas, emocionales y de desarrollo. Cuando las condiciones no son adecuadas, se deberá postergar el ingreso de los niños/as hasta que se hayan logrado tales condiciones, estableciendo por ejemplo un cupo en cada establecimiento.

El sistema penitenciario debe disponer de instalaciones separadas, limpias y seguras, libres de drogas y adecuadas para niños y niñas y sus madres encarceladas. Se debe además prever el acceso a espacios abiertos con instalaciones y juegos infantiles para su recreación.

Las instalaciones para mujeres con niños/as deben ser abiertas, sin candados y preferentemente los alojamientos deben ser individuales, con espacio y privacidad suficiente.

- Implementar planes para los niños/as que salen de la prisión.

Se deben realizar los preparativos necesarios y con anticipación para los niños y niñas que están por salir de la cárcel; en particular se debe resolver la situación de dónde y con quién van a vivir y cómo van a mantener contacto con su madre.

Antes del egreso se debe preparar y acostumar a los niños/as a vivir en libertad, facilitando el contacto con sus familias fuera de la prisión.

Cuando han salido de la cárcel los niños/as necesitan seguir contando con apoyo para poder reintegrarse en la comunidad. Este apoyo puede darse a la madre o cuidadora alternativa y puede otorgarse en forma de beneficios económicos, capacitación, apoyo para cuidar a los niños/as, acceso a servicios médicos, etc.

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<sup>16</sup> México CRC/C/MEX/CO/3 (2006), parr. 40.

En Ecuador se ha instaurado un sistema de becas alimenticias que se entregan al hogar acogiente así como el apoyo para toda la atención que requiere el niño. Un pilar central de este programa es el seguimiento a la familia acogiente, al igual que la información permanente que se brinda a la madre respecto de su hijo/a.

7. La discriminación que existe extramuros se reproduce y acentúa al interior de los centros penitenciarios, y se tiende a reproducir los estereotipos sociales de género, reafirmando a las mujeres en sus roles domésticos.

La mayoría de las mujeres presas provienen de sectores sociales marginalizados, su nivel educativo es bajo y su formación laboral muy precaria, lo que las coloca en una situación de especial vulnerabilidad para ser captadas por un sistema penal fuertemente selectivo, ya que responden al estereotipo del poder criminalizante.

Por otra parte, sin perjuicio del limitado acceso a las actividades laborales, educativas culturales y deportivas, a las mujeres se les sigue impartiendo cursos y enseñanzas que la tradición ha entendido propios de su sexo, los que no confieren independencia ni posibilidades de real inserción laboral.

Se requiere implementar programas que desalienten la asignación de roles y patrones estereotipados de comportamiento, que permitan el empoderamiento de las mujeres y la construcción de una identidad diferenciada desde el punto de vista de género.

Los programas deben brindar a las mujeres iguales oportunidades de formación y trabajo, tomando en cuenta las particularidades propias de su género y orientados a la efectiva reintegración social.

Tal como establecen las Reglas Penitenciarias Europeas, ninguna discriminación en base al sexo debe emplearse a la hora de distribuir las modalidades de trabajo (regla 26.4).

A efectos de compensar la falta de recursos y programas destinados a las mujeres, se puede recurrir a un sistema rotativo de utilización de plazas disponibles en los anexos masculinos con la debida supervisión<sup>17</sup>. Asimismo se podría recurrir a los programas de entrenamiento entre pares, incrementar la cooperación con las organizaciones de la sociedad civil e incentivar la participación de las mujeres privadas de libertad mediante comités o mesas representativas.

Como buena práctica en este punto, destacamos los esfuerzos desarrollados por varios países latinoamericanos para realizar convenios con empresas privadas que permitan fortalecer la actividad laboral al interior de los centros penitenciarios y la implementación de mecanismos de redención de la pena por trabajo o estudio.

Esta discriminación también se aprecia en el desigual acceso que las reclusas tienen a las visitas íntimas. Muy pocas cárceles latinoamericanas de mujeres han

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<sup>17</sup> Handbook for prison managers and policymakers on Women Imprisonment, UNODC, 2008.

reglamentado el derecho a la visita íntima, que aunque no esté formalmente negado, el mismo no se ha implementado debidamente.

En los establecimientos donde las mujeres acceden al derecho de visita íntima, éstas son objeto de fiscalizaciones y exigencias que los varones no sufren, como el uso forzoso de anticonceptivos o la obligación de probar el vínculo conyugal o de pareja estable con el visitante.

Las mujeres lesbianas son particularmente discriminadas, y su derecho a la sexualidad restringido. En este punto debemos recordar que la Comisión Interamericana de DDHH declaró admisible un caso relacionado con el derecho de una reclusa a tener visitas íntimas con su compañera de vida<sup>18</sup>.

Debe asegurarse que las mujeres accedan a la visita íntima en iguales condiciones que los varones y que los establecimientos dispongan de espacios físicos adecuados para estas visitas, respetándose la intimidad de las personas involucradas.

Dentro del universo de mujeres presas existen grupos en especial situación de discriminación, como por ejemplo las mujeres extranjeras e indígenas.

En relación a las mujeres extranjeras, es necesario diseñar programas especiales que incluyan mecanismos para facilitar el traslado a su país de origen, viabilizar su comunicación y contacto con su familia y representantes diplomáticos, respetar sus preceptos y costumbres, recibir información en un idioma que puedan entender, etc.

Destacamos como buena práctica el Programa para angloparlantes del Servicio Penitenciario Federal de Argentina, el que prevé la traducción de las principales normativas, disponibilidad de personal penitenciario bilingüe, una mesa de enlace con los consulados, un sistema de visita por mensajería instantánea vía internet, etc.

La situación de las mujeres reclusas provenientes de etnias indígenas debe analizarse en función de la Convención sobre la eliminación de todas las formas de discriminación racial y el Convenio Nro. 169.

8. En la mayoría de los países no se cuenta con programas de ayuda post-penitenciaria que apoyen a la mujer al recuperar su libertad y faciliten su proceso de reinserción.

El proceso de reintegración social no se realiza de la misma forma para hombres y mujeres, por lo que los programas penitenciarios y post-penitenciarios deben ajustarse a las especiales características o situaciones de los diferentes sexos.

Las autoridades penitenciarias deben ofrecer diferentes niveles de privación de libertad, incorporando prisiones abiertas y casas de mitad de camino a efectos de facilitar el retorno progresivo a la vida en libertad, así como albergues temporales y programas de reintegración social para apoyarlas luego de su liberación.

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<sup>18</sup> Informe 71/99, caso 11.656. Martha Lucía Álvarez c/Colombia.

Una buena práctica a efectos de colaborar en el proceso de reinserción es asegurar a las mujeres liberadas una cuota en las licitaciones públicas que realice el Estado<sup>19</sup> y promover la creación de cooperativas sociales.

9. La asistencia médica brindada a las mujeres reclusas no siempre es la adecuada y no contempla las especificidades propias del género.

La falta de una adecuada atención psicológica, sumada a la concepción estereotipada de la mujer encarcelada como una persona conflictiva y emocional, conlleva a que en las cárceles de mujeres se suministre excesiva medicación. Por este motivo el nivel de prescripciones de antidepresivos y sedantes es, en general, mucho mayor que entre los varones en la misma situación.<sup>20</sup>

Como sostiene la experta catalana, Elisabet Almeda, esto no es extraño si se tiene en cuenta que, a lo largo del tiempo, la perturbación mental ha sido considerada una de las causas más importantes de la criminalidad femenina y por tanto, la medicación y la internación psiquiátrica eran -y son todavía en muchos casos- prácticas habituales en el campo penitenciario.

Los servicios médicos deben ser de calidad, equivalentes a los brindados en la comunidad y coordinados con los ministerios de Salud Pública. Estos servicios deben contemplar las diversas áreas de la salud (salud sexual y reproductiva, salud mental, tratamiento a adicciones, atención a las situaciones previas de violencia y abuso sexual, prevención del suicidio y enfermedades contagiosas, atención y cuidados especiales para las mujeres embarazadas y lactantes, etc.).

Asimismo se debería exigir que al momento del ingreso se recabe la siguiente información, tal como sugiere el proyecto de Reglas de Bangkok:

- Eventuales antecedentes de adicción a drogas.
- Diagnóstico de enfermedades de transmisión sexual, ofreciendo pruebas voluntarias, previo asesoramiento y conserjería posterior.
- Experiencias previas de violencia doméstica y/o abuso sexual.
- Riesgo de suicidio y autolesiones de modo de garantizar el acceso a los servicios de asistencia médica y psicológica.
- Historial de salud sexual y reproductiva.
- Incluir a los niños y niñas que ingresan junto a las reclusas, a efectos de brindarles la atención especializada que requieran.

Por otra parte las mujeres deben ser atendidas en sus especiales necesidades de higiene y las autoridades deben brindar todas las facilidades e insumos necesarios (acceso regular al agua, toallas higiénicas, ropa de cama en cantidad suficiente, etc).

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<sup>19</sup> La ley 17.897 de Uruguay incluyó una disposición a través de la cual es obligatorio que en las licitaciones de obras y servicios públicos, las empresas contraten un mínimo equivalente al 5% del personal afectado a personas liberadas registradas en la Bolsa de Trabajo del Patronato de Liberados.

<sup>20</sup> Almeda, Elizabeth. Corregir y castigar. Ediciones Bellaterra, Barcelona. 2002

En noviembre de 2008 se aprobó la *Declaración de Kiev sobre la salud de las mujeres en prisión* (OMS, Oficina Regional para Europa) cuyos lineamientos constituyen un marco de actuación válido y adecuado para todos los países del mundo.

10. Los reglamentos disciplinarios y los protocolos de actuación generalmente son diseñados para los varones y no siempre contemplan las particularidades de las mujeres.

Desde el mismo momento del ingreso, las mujeres deben recibir información sobre el régimen penitenciario, los reglamentos de disciplina, los procedimientos para presentar quejas y peticiones, así como cualquier otra información relevante para su privación de libertad.

En lo que refiere al régimen disciplinario, debe asegurarse que el aislamiento sea utilizado como último recurso y debe estar prohibido para reclusas embarazadas, y madres con hijos/as, tal como lo establecen los Principios de la Comisión Interamericana de Derechos Humanos y el proyecto de Reglas de Bangkok. También debe prohibirse la suspensión del contacto familiar como sanción, especialmente con los hijos/as, teniendo en cuenta el principio de no trascendencia de la pena y el interés superior del niño.

En cuanto a los registros personales deben ser realizados por personal del mismo sexo, siguiendo los procedimientos preestablecidos y debe procurarse la utilización de métodos alternativos como escaners. Sin perjuicio que los Principios y Buenas prácticas de la CIDH prohíben la realización de registros intrusivos, en el caso excepcional de recurrirse a una revisión íntima, la misma debe ser realizada por personal médico.

En lo que refiere a la utilización de medios de coerción, debe tenerse presente que durante los exámenes médicos y el trabajo de parto no debe aplicarse grilletes.

En caso que se utilicen medidas de fuerza en las prisiones donde residen niños/as, se deben adoptarse las previsiones necesarias para retirarlos de la zona o aislarlos ante cualquier intervención.

11. En relación al personal, se requiere impulsar la carrera penitenciaria y desarrollar programas de capacitación siendo imprescindible que al momento de la selección y formación se considere que parte de la población reclusa está compuesta por mujeres.

Todo el personal asignado a centros femeninos debe recibir formación en materia de género, conocimientos básicos en primeros auxilios y sobre el cuidado de la salud de los niños/as que viven con sus madres en prisión.

Se requiere implementar un estilo de gerenciamiento de los establecimientos de reclusión sensible a las cuestiones de género, que suponga reconocer que las mujeres tienen necesidades diferentes, la capacidad del personal de comunicarse

abiertamente y de forma menos autoritaria, desarrollar habilidades como la capacidad activa de escucha y de comprender las dinámicas emocionales, etc. <sup>21</sup>

Por otra parte, es necesario que el personal femenino ocupe en forma equitativa cargos de jerarquía en la administración penitenciaria, hombres y mujeres deben estar representados en forma equilibrada dentro del personal penitenciario y deben implementarse políticas claras para prevenir y sancionar la discriminación contra las funcionarias.

En atención a las buenas prácticas relevadas y a la dificultad que muchas veces implica su identificación, sería de gran utilidad establecer un banco de datos respecto de las mismas, que facilite su conocimiento y el intercambio de experiencias, optimizando los recursos disponibles.

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<sup>21</sup> Handbook for prison managers and policymakers on Women Imprisonment, UNODC ,2008.

## Anexo A.

En el siguiente cuadro se recoge la aplicación del arresto domiciliario o suspensión de la pena para reclusas embarazadas o madres en los países de América Latina.

La realización del cuadro fue posible gracias a la colaboración de los y las participantes del Seminario Internacional del Programa “Sistemas Penitenciarios y Derechos Fundamentales”<sup>22</sup> organizado por el ILANUD y el Instituto Raoul Wallenberg en noviembre de 2008.

<b>PAÍS</b>	<b>ARRESTO/ PRISION DOMICILIARIA</b>
<b>ARGENTINA</b>	Sí, para madres con niños menores de cinco años.
<b>BRASIL (ámbito federal)</b>	El arresto domiciliario es una facultad del juez de ejecución penal.
<b>BOLIVIA</b>	Reclusas embarazadas a partir del sexto mes y hasta 90 días del parto. (art. 197 Ley 2298)
<b>CHILE</b>	Suspensión de la pena en modalidad de reclusión nocturna y sustitución de prisión preventiva.
<b>COLOMBIA</b>	Sí, para mujeres embarazadas o con hijos menores o con incapacidad.
<b>COSTA RICA</b>	Sustitución de la prisión preventiva por arresto domiciliario o suspensión de cumplimiento de pena para embarazadas o con hijos menores de tres meses si la prisión pone en riesgo la vida, la salud o la integridad de la madre, el feto o el hijo (art. 260 y 462 CPP).
<b>ECUADOR</b>	Sí, para mujeres embarazadas y hasta noventa días posteriores al parto; se aplica exclusivamente para imputadas, durante el proceso investigativo. (art 171 CPP)
<b>EL SALVADOR</b>	No está considerado.
<b>GUATEMALA</b>	Por medida sustitutiva.
<b>HONDURAS</b>	Sí.
<b>MEXICO (ámbito federal)</b>	No se aplica.
<b>PANAMA</b>	La ley lo contempla pero no se aplica.
<b>PARAGUAY</b>	Para la mujer embarazada y con hijos menores de un año (art 43 del C.P.)
<b>PERU</b>	No se dispone de esa información. El arresto domiciliario lo maneja la PNP.
<b>REPUBLICA DOMINICANA</b>	No.
<b>URUGUAY</b>	Sí. Tres meses antes y tres meses después del parto.
<b>VENEZUELA</b>	Se prohíbe dictar medidas preventivas de privación de libertad a mujeres procesadas en los tres últimos meses de embarazo y hasta los seis meses posteriores al nacimiento. Las penadas se trasladan a centros con guarderías.

<sup>22</sup> El Programa “Sistemas Penitenciarios y Derechos Fundamentales” culminó con una publicación titulada “Cárcel y Justicia Penal en América Latina y el Caribe,” en la cual se incluye el trabajo “Mujer, cárcel y DDHH: un abordaje desde la perspectiva de género”, el cual sirvió de base para el presente artículo.

# Quand la Privation de Liberté s'inscrit dans le Projet de vie d'une Fille Mineure en Conflit avec la loi

## Expérience du Liban

Mouin Chehade, Colonel et Rose-Marie Tannous, Directrice  
Direction Générale Des Forces De Sécurité Intérieure  
Liban

Je suis très heureux et honoré de vous faire part dans le contexte du 12eme congres, l'expérience libanaise: **Quand la privation de liberté s'inscrit dans le projet de vie d'une fille mineure en conflit avec la loi.**

Les enfants et les jeunes jouent un rôle primordial dans la construction de toute société, et c'est à eux de prendre en charge les responsabilités culturelles, sociales et économiques.

Le Liban a entrepris un grand chantier de reforme dans le domaine de la justice des mineurs et ce depuis 1999 avec l'assistance technique de l'Office des Nations Unies contre la Drogue et le Crime (UNODC). Cette reforme se veut garante des droits de l'enfant en conflit avec la loi ainsi que de l'enfant en danger, et ce, dans toutes les phases du processus judiciaire pour lui assurer la protection nécessaire.

En effet la loi 422 de 2002 offre un éventail de provisions et de mesures et insiste sur le fait que les mesures privatives de liberté doivent être en dernier recours et ouvre la porte pour les mesures éducatives, alternatives comme le travail d'intérêt général et la réparation.

L'impact de l'application de la loi a été fortement ressenti surtout au niveau du nombre des enfants en conflit avec la loi dans les centres privatifs de liberté. En effet, le nombre des enfants privés de liberté a diminué de 60% après l'adoption de la loi.

Néanmoins, il restera toujours un nombre d'enfants en conflit avec la loi dont la nature du crime limite le jugement à des peines privatives de liberté. Et là aussi la reforme institutionnelle entreprise a pu amener une nouvelle approche de réhabilitation en harmonie avec les instruments internationaux permettant une meilleure réinsertion.



## Les centres privés de liberté au Liban

3 centres fermés accueillent les enfants en conflit avec la loi

- Le centre de détention juvénile de la Prison Centrale de Roumieh pour les garçons mineurs
- Le centre de rééducation pour les filles mineures à Dahr el Bachek( Moubadara )

Gérés par les  
FSI

- Le centre de rééducation de Fanar - géré une ONG mandatée par la loi.

Au total 150 enfants garçons et 12 filles sont accueillis dans ces 3 centres.

La Direction Générale des FSI, institution chargée de traiter la question des mineurs au sein du ministère de l'intérieur, a mis en place un bureau de coordination dans la Prison Centrale de Roumieh supervisé par une assistante sociale, visant à réorganiser la réhabilitation des mineurs en centres fermés en vue d'une meilleure réintégration

Nous allons centrer notre intervention sur le centre des filles (Moubadara)

C'est donc dans le cadre de la réforme de la justice des mineurs entreprise pour le gouvernement libanais avec l'assistance technique de UNODC qu'un centre pour filles mineures en conflit avec la loi a vu le jour en 2004, pouvant accueillir 30 filles et assurant de façon définitive la séparation avec les femmes adultes dans les centres de détention. C'est dans ce cadre que le centre « Moubadara » a été créé.

Rien n'a été laissé au hasard, à commencer par le nom du centre: Moubadara, initiative en arabe, montre bien toute la dimension pédagogique en misant sur l'aspect volontaire, dynamique et positive à toute action entreprise. L'organisation de la vie s'est construite autour de la responsabilisation de la jeune fille et sa volonté à s'engager dans une démarche individualisée, progressive et sincère qui inscrit dans un projet de vie clair offrant une chance réelle à la réinsertion avec le soutien d'une équipe multidisciplinaire et professionnelle.

Les cinq unités de vie, dotées de nom suggestifs, permettent l'identification des cinq étapes du régime progressif : Du premier croissant de lune à la lumière du jour ; chaque unité de vie a sa propre fonction et permet l'accès a des responsabilités différentes dépendamment du degré d'évolution des mineures ou de leur régression. Cette progression dans l'espace permet aux mineures de mobiliser leurs énergies en vue d'un changement, de visualiser et de vivre concrètement les bénéfices de cette évolution dont l'étape finale permettra de profiter d'un régime de semi-liberté offrant la journée formation ou emploi à l'hôpital gouvernemental situé a proximité en vue d'une meilleure réinsertion dans la société.

**Le programme de développement personnel est basé sur le contrat éducatif établi avec la fille et le travailleur social ;** Le contrat éducatif est un outil concret de responsabilisation dans le processus de réintégration. Il vise à établir, ensemble, des objectifs clairs, les moyens mis en œuvre et le temps prévus pour arriver à l'objectif de départ. Il aide aussi à promouvoir l'image de soi, le respect de soi et de l'autre, et à prendre conscience des valeurs humaines et sociales. Le souci de réintégration et le projet de vie commencent à se construire dans le contrat éducatifs dès les premiers jours de détention et le contrat éducatif est surtout un outil dynamique qui évolue avec l'évolution de la jeune fille ce qui permet un parcours individualisé et progressif.

**Les programmes de réhabilitation et de productivité :** Des programmes éducatifs – alphabétisation, soutien scolaire, formation professionnelle, atelier de pâtisserie – les travaux artisanaux ainsi que des cours d'informatique. Plusieurs activités sociales sont organisées dans ce cadre (groupes de communication, valeurs familiales et sociales – sensibilisation, hygiène, santé, environnement – activités sportives, etc.)

Le contrat éducatif permet une pause d'évaluation entre le travailleur social et la jeune fille ; Evaluation qui sera transmise au juge pour enfant régulièrement, et dans le cas où l'évolution est positive, le travailleur social peut demander au juge un changement de mesure ou même la suspension de la mesure et ce argumentée par les rapports d'évaluation. Cette notion de jugement dynamique qui peut évoluer avec l'évolution de l'enfant en conflit avec la loi est incontestablement l'élément moteur de la réforme législative au Liban et permet à l'enfant en conflit avec la loi de voir ses efforts récompensés dans le cadre d'une justice plus humaine.

**Quand la privation de liberté s'inscrit dans le projet de vie d'une fille mineure en conflit avec la loi.** Les résultats ne sont plus à démontrer, la réinsertion des filles mineures en conflit avec la loi devient possible et offre incontestablement un avenir plus rose à une jeunesse qui a besoin de tirer les conclusions du passé pour rebondir et s'engager dans une vie meilleure.

**Enfin, en guise de conclusion,** il est clair que Les mineurs délinquants privés de liberté sont toujours des enfants ou jeunes, leur personnalité est toujours en voie de développement, ils peuvent aussi s'impliquer dans des actes délictueux. Assumer la responsabilité de l'acte commis constitue l'étape crucial du processus de réhabilitation qui devra assurer les réelles chances de réinsertion. Ceci exige des forces de sécurité intérieure plus d'effort et de travail afin de développer davantage les compétences du personnel en charge de la justice des mineurs, en s'évertuant à fournir les ressources humaines et financières nécessaires pour assurer le meilleur intérêt de l'enfant en conflit avec la loi.

## Session V: Mobilizing Societies and Resources for Improving Social Reintegration of Prisoners

Communication strategies to create a better understanding of what prison can (and can't) do for society and under what circumstances

Mary Murphy  
Policy Director, Penal Reform International

### SMR 46(2)

*'The prison administration shall constantly seek to awaken and maintain in the minds of the personnel and the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used'*

I have to say that in my experience this is not one of the best kept Standard Minimum Rules. At one level it is often impossible to get even the most simple statistics from official bodies, sometimes because they are officially a secret. At another, do any of us think that the public in our country receives the type of information which would lead them to think that prison is a social service, not to mention one of great importance?

But I would also allocate the responsibility for this state of affairs more broadly than on the 'prison administration'. Prisons are indeed responsible for providing an important social service to a not insignificant portion of the country's population, and as such they are the responsibility of all ministries.

- **Why is it important to give information about things prison-related?**

When deprivation of liberty occurs, there is always the risk of violation of human rights. Openness, expressed in different practical ways, is one protection against this.

In addition, there are many misconceptions about who prisoners are, what happens in prison, what can be achieved there in the interests of the society whom prison serves, and how. This can be caused both by an information vacuum, which is easily filled by myth, and by the exploitation of criminal justice by politicians, the media and some sections of the public.

To combat this it is important to ensure that objective information is gathered, and that as many facts as possible are conveyed to the general public but also to legislators and policy makers about prisons, prisoners' lives, the impact of imprisonment, and what the community can hope to achieve in influencing the nature of inmates' return to the community.

- **What sort of information should be shared?**

The principle should be to reveal the maximum, withholding only where its disclosure could genuinely be justified as prejudicial to the security of the public and the legitimate interests of victims and offenders.

The way in which the information is conveyed and subsequently transmitted is extremely important, as the concepts involved are not necessarily straightforward.

The public should be given the very best opportunity to understand, for example, that the need for retribution is accompanied by an absolute obligation to treatment and rehabilitation, and that punishment and simple confinement do not protect society's needs and interests by creating a safe local community.

There should be a much greater focus on the results that need to be achieved after the prison sentence has been pronounced and the approaches and resources that are essential to achieve those results.

- **What are the risks in sharing information?**

The main risk is in failing to anticipate the possible reaction to the information released and derives from the manner in which it is shared and the ability (or inability) to back up the information with facts, research and well founded arguments.

In the words of the Arne Kvernvik Nilssen, Governor of Norway's Bastøy Prison (a really interesting initiative on an island near Oslo): *"I do know that we have an important message to share and convey, both to the Norwegian community and other countries but the challenge is to manage to convey why we treat the inmates, and why we run the prison the way we do. If we fail, the information can all too easily be used to say that we are too soft and a bunch of idiots."*

One bad example from my country, England. Public reaction to information in a 2002 poll that incarceration bore a heavy financial cost led to calls to cut back on imagined 'luxuries'.

- **What are the risks in withholding information?**

The risk is that if we withhold information, the public and/or those who influence the public are free to concoct their own version of reality based on a total lack of facts. Some information will get out anyway. But by this time the framework for the 'debate' will be so corrupted that there will be no opportunity to understand or to reflect on what are actually very important issues for the wellbeing of society, including public safety and use of resources.

There is a real (and demonstrated) risk that crucial decisions, with extremely significant financial and social implications are then taken on an irrational basis, do not achieve the desired goals and divert resources from potentially effective interventions.

This can build a dangerous legacy over time expressed in chronic underfunding of credible crime prevention approaches, chronic overcrowding, violence and gang law in prisons, inability to staff our prisons, vigilantism and militias in society, growing numbers of habitual criminals and habitual prisoners.

In addition, if prison remains a repellant mystery, potential allies in society - official and civil society - with the resources to support and complement the work of the prison service, will never know of the opportunities for collaboration, or the obligation to collaborate, and will never be motivated to collaborate.

- **What are the best ways of ensuring that the right sort of information gets out in the right way?**

Information about prison and prisoners needs to be produced as a result of a carefully designed framework for information gathering, and the information collection and recording needs to be done in accordance with a rigorous approach. Data needs to be submitted to a process of analysis, for which trained personnel have to be prepared. The regulatory framework must be protective of the privacy of prisoners and in particular children, and be sensitive to the legitimate interests of victims.

Facts and research reports should be regularly, not rarely, issued, and not only to academic and institutional circles. Long-term education of the public is needed, both through provision of information and through creation of opportunities, including for media, to access prisons and related institutions such as courts, community service initiatives and halfway houses. The media may need to be provided with some basic information to correct misconceptions.

In planning the distribution of information thought always needs to be given to the question: whom are we addressing, and to the appropriate packaging. There should be acknowledgement that it is common for the public's expectation of prison to be one of retribution and punishment, and that victims and their families have certain legitimate concerns. Effort must be taken to develop approaches that 'meet them on their own territory'. There needs to be comprehensive prior discussion of risks, anticipation of possible reactions, and consideration of risk management strategies. One way to manage risk can be to make reference to relevant practices and experiences from other countries. Prior discussion will usually be needed with correctional officials and relevant ministries who may be asked for their reactions, and in general a system and criteria should be in place for issuing information to the press and responding to their requests.

Most importantly, a clear invitation needs to be given by government to the relevant service to cooperate and "open up" prisons to the public and media, a

task which should be included in staff job descriptions, and for which guidelines and training will need to be developed. This can lay the ground for creating opportunities for, and direct channels of communication (eg officials talking to local interest groups in the community), setting up situations where the public can immediately ask questions and give comments, but where there is also time for reflection and explanation. We have heard today from the Fiji prison service of the highly successful, long term efforts that they have made to come up with creative ways of doing this through their 'yellow ribbon' scheme.

## Typical existing examples of means of prison communication

These are Prison Service and Ministry newsletters, websites with statistics and other information, thematic briefings, press releases, press advisories. But we need a complementary and more creative, credible, proactive approach.

Involvement of community based organizations in the work of the prison is a means of spreading credible, independent information, within clear but not unnecessarily restrictive guidelines. So too are formal, external inspection mechanisms from ministries of education, health, etc, the national human rights ombudsman, National Preventive Mechanism under OPCAT (which produces annual public reports), formal independent civil society monitoring mechanisms, regional and international oversight bodies (where there is agreement on making the findings public.)

In conclusion, and as I can see our Russian prison service colleagues here in the hall, I will briefly mention a good experience that PRI had in Russia in this area. We worked with a local media foundation to ensure that journalists had regular information about developments in the criminal justice system, including prisons. Journalists received training in objective reporting of criminal justice developments. The initiative was particularly geared at ensuring informed reporting about the practical implications of legislative changes then coming into effect, and which resulted in the release of prisoners into the community and a growth in use of alternative sanctions. Anticipating the anxiety which members of the public could have about the impending large scale releases, the collaboration ensured that information was provided as to the general profile of those who would be released, and as to the procedures which would be adopted in order to minimize the risk to the public. This had a role in creating a more welcoming landscape for the prisoners' transition to a new life. If there is a desire in the Russian FSIN to renew such collaboration with independent civil society, PRI would be very happy to facilitate this.

# Annex 1: Workshop Programme

## Workshop 2: Survey of UN and other best practices in the treatment of prisoners

**Thursday, 15 April 2010**

**Scientific moderator:** Minister Antonio Cezar Peluso, Supreme Court, Brazil

**Scientific rapporteur:** Mr Rob Allen, Director of International Centre for Prison Studies, King's College London, UK

### **10.00 Opening of the workshop**

**Keynote address:** Professor Manfred Nowak, UN Special Rapporteur on Torture

### **10.20 Session I: International standards: implementation and review**

#### **10.20 The project of the Latin American Permanent Committee for the Revision and Update of the Standard Minimum Rules for the Treatment of Prisoners**

Professor Eugenio Raúl Zaffaroni, Minister of the Supreme Court of Justice of Argentina Vice President of the Committee and Professor Edmundo Alberto Branco de Oliveira, General Coordinator of the Committee, Brazil

#### **10.30 Incorporating international standards in the training curriculum for penitentiary staff: The Russian experience**

Ms Kathleen MacDonald, Executive Director, International Centre for Criminal Law Reform and Criminal Justice Policy and Mr Kauko Aromaa, Director, European Institute for Crime Prevention and Control, affiliated with the United Nations

#### **10.40 Post-conflict countries: challenges and responses:**

Mr Richard Kuuire, Corrections Adviser, Office of Rule of Law and Security Institutions, Criminal Law and Judicial Advisory Section, United Nations Department of Peacekeeping Operations

#### **10.50 Questions from the floor to the speakers of session I.**

### **11.05 Session II: Social reintegration as the objective of treatment of prisoners**

#### **11.05 Community social reintegration:**

Mr Ioana Naivalurua, Prison Commissioner, Fiji

#### **11.15 Out for Good: An Innovative Canadian Project in Community Supervision**

Mr Shawn Tupper, Assistant Deputy Minister, Public Safety, Canada

**11.30 Session III: Oversight and monitoring of prisoners: essential to ensure good treatment**

**11.30 Oversight, monitoring and inspection: International monitoring: the work of the SPT member in prevention of torture**

Mr Mario Coriolano, Vice-Chair of the UN Sub-Committee on the Prevention of Torture

**11.40 National oversight and inspection mechanism:**

Mr Deon Van Zyl, Inspecting Judge, South Africa

**11.50 Questions from the floor to the speakers of sessions II and III.**

**12.05 -13.00 Statements from the floor**

**15.00-16.40 Session IV Special groups with special rights and needs**

**15.00 Roundtable on health in prisons**

introduced by Dr. Fabienne Hariga, UNODC

**15.05 The Spanish experience in drugs and HIV/AIDS prevention, treatment and care in prisons**

Mr Enrique J. Acín García, Chief of Public Health, Coordination of Penitentiary Health System, Spain

**15.15 Health in prisons, a reform process underway in Argentina**

Dr. Martín Edgardo Vázquez Acuña, Judge of the criminal oral court nr. 1, Buenos Aires, Argentina

**15.25 Harm reduction in prisons, working with NGO's: the experience of Moldova**

Mr Vadim Cojocar, Colonel of Justice, General Director of the Department of Penitentiary Institutions of the Republic of Moldova

**15.35 Questions from the floor to the speakers**

**15.45 Roundtable on women in prison including children of imprisoned mothers:**

introduced by Ms Tomris Atabay, UNODC

**Movie:** Women and children behind bars in Afghanistan by UNTV (length 9 minutes)

**16.00 Afghanistan: post-release opportunities of women**

Ms Palwasha Kakar, Deputy Minister, Ministry of Women's Affairs, Afghanistan



**16.10 Good practices on treatment of women in prison and proposal for supplementary rules**

Mr Vitaya Suriyawong, Deputy Director General of the Office of Justice Affairs, Thailand

**16.20 Women in prisons in Latin America**

Ms Maria-Noel Rodriguez, United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD)

**16.30 Questions from the floor to the speakers**

**16.45 Roundtable on children and young people:**

**16.45 Treating children in detention in accordance with international standards as part of a comprehensive juvenile justice reform**

Colonel Mouin Chehade, General Security Forces and Ms Rose-Marie Tannous, Director of the juvenile wing and closed institution for girls, Ministry of Interior, Lebanon

**16.55 Imprisonment of children: Why and how can we ensure that children are in prison only as a measure of last resort and for the shortest appropriate period of time**

Mr Jean Zermatten, UN Committee on the Rights of the Child

**16.55 Questions from the floor to speakers**

**17.10 Session V: Mobilizing societies and resources for improving social reintegration of prisoners**

**Mobilizing resources and awareness raising: working with the media**

Ms Mary Murphy, Policy Director, Penal Reform International

**17.20-17.50 Statements from the floor**

**17.50-18.00 Conclusions and recommendations**

Scientific rapporteur Mr Rob Allen

**18.00 Closing of the workshop**

## ANNEX 2: Congress Documents



# Twelfth United Nations Congress on Crime Prevention and Criminal Justice

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Salvador, Brazil, 12-19 April 2010

Item 5 of the provisional agenda\*  
**Making the United Nations guidelines in  
crime prevention work**

## **Workshop 2: Survey of United Nations and other best practices in the treatment of prisoners in the criminal justice system \*\***

### **Background paper**

#### *Summary*

While detainees and prisoners lose their freedom of movement in detention, they still keep their rights as human beings and must not be treated in inhuman or degrading ways, let alone be tortured. The present paper describes best practices in the treatment of prisoners around the world, focusing on the question of responsibility for prisons at the governmental level, administration of prisons, practices in respect of particular types of prisoners, and monitoring and inspection of prisons. Even though the prison system worldwide is facing numerous problems, such as overcrowding, lack of necessary infrastructure and inadequate numbers of staff, ways can be found to improve the conditions of detained persons with a view to their reformation and social rehabilitation, which the International Covenant on Civil and Political Rights defines as the essential aim of the treatment of prisoners. Political commitment, policy innovations and adequate allocation of resources have important roles to play in improving prison systems all over the world.

\* A/CONF.213/1

\*\* The Secretary-General wishes to express his appreciation to the European Institute for Crime Prevention and Control, affiliated with the United Nations, for assisting in the organization of Workshop 2.



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## I. Introduction

1. Prison<sup>1</sup> is an important and integral part of the criminal justice system in every country. Despite the adoption of principles encouraging the development of community-based measures and restorative approaches, retributive punishment remains the central feature of most jurisdictions, with imprisonment the commonest way it is given effect. Used appropriately, prison plays a crucial role in upholding the rule of law by helping to ensure that offenders are brought to justice and by providing a sanction for serious wrongdoing. At best, prisons can offer a humane experience with opportunities for prisoners to obtain assistance with rehabilitation, which can reduce the risk of re-offending. At their worst, prisons can be sites of serious human rights violations, incubators of disease or mere warehouses from which prisoners return to society poorly equipped to lead a law-abiding life.

2. In addition to the Universal Declaration of Human Rights (General Assembly resolution 217 A (III)), the administration of prisons is subject to a range of treaties, including the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>2</sup> as well as standards and norms, such as the Standard Minimum Rules for the Treatment of Prisoners,<sup>3</sup> the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173, annex), the Basic Principles for the Treatment of Prisoners (General Assembly resolution 45/111, annex), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (General Assembly resolution 40/33, annex), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (General Assembly resolution 45/113, annex), the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169, annex) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.<sup>4</sup>

3. Standards have been developed also at the regional level, such as the revised European Prison Rules adopted by the Council of Europe (2006) and the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, adopted by the Inter-American Commission on Human Rights (2008). The Latin American Standing Committee of the International Penal and Penitentiary Foundation has also made a proposal for the revision of the Standard Minimum Rules.

4. These instruments make it clear that while prisoners lose their right to freedom of movement they retain their other human rights while in detention. International standards forbid all forms of torture or inhuman or degrading treatment. The International Covenant on Civil and Political Rights also makes it clear that the

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<sup>1</sup> By prison, this paper means facilities under the authority of the prison administration in which persons are held while awaiting trial or under sentence. The term prisoner is used to describe all people in prison whether detained before trial or after conviction.

<sup>2</sup> United Nations, *Treaty Series*, vol. 1465, No. 24841.

<sup>3</sup> *Human Rights: A Compilation of International Instruments*, Volume I (First Part): *Universal Instruments* (United Nations publication, Sales No. E.02.XIV.4 (Vol. I, Part I)), sect. J, No. 34.

<sup>4</sup> *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.2, annex.

penitentiary system for convicted offenders “shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation” (art. 10, para. 3). The aim of the present paper is to describe aspects of best practices in prison systems around the world. It has not been possible to undertake a formal survey of practices, so a comprehensive analysis is impossible. The paper focuses on areas identified in the discussion guide (A/CONF.213/PM.1) and the regional preparatory meetings held during 2009. The examples of good or promising practices should be viewed as illustrative only. The basic criteria by which practices have been chosen are the extent to which they protect and promote the human rights of prisoners and in the case of sentenced prisoners seek to contribute to rehabilitation.

5. In many countries, both rich and poor, these functions are severely hampered by high levels of overcrowding, lack of necessary infrastructure and inadequate numbers of staff. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has found in his fact-finding missions to many countries in different regions of the world “that police and prison authorities simply do not regard it as their responsibility to provide detainees with the most basic services necessary for survival, let alone for a dignified existence or what human rights instruments call an ‘adequate standard of living’” (A/64/215 and Corr.1, para. 43). The situation in countries emerging from conflict is even worse.

6. In much of the world, prisons are in a state of crisis and need to be accorded much higher priority by Member States and the international community. Substantial resources need to be mobilized if prisons are to fulfil their proper function and meet international standards. This is not simply a question of building new physical infrastructure and recruiting more prison staff. The use of imprisonment needs to be considered as part of the criminal justice system as a whole, a point made in several regional preparatory meetings. Workshop 5 is to examine strategies and best practices against overcrowding in correctional facilities,<sup>5</sup> which are absolutely complementary to the matters discussed in Workshop 2.

7. The focus of this paper is on the practice of imprisonment rather than the use of prison in sentencing, although the two topics are closely connected. The aim is to address what needs to be done by those responsible for the administration of prisons in Member States and to consider good practices in this regard.

## **II. Responsibility for prisons**

8. Responsibility for prisons and the wider criminal justice system is placed with a variety of government organs in different countries. The majority of prisons and detention facilities or closed institutions fall under a central ministry of justice, a ministry of 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 or for all

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<sup>5</sup> In this paper, the term correctional facilities includes all prisons and pretrial detention facilities, although the latter do not have a correctional function.

health care) and social welfare and education departments (e.g. for children in conflict with the law).

9. Responsibility for prisons may be devolved to state, provincial and/or local levels. For example, in the Philippines, local jails are managed by the Department of the Interior and local government, while national prison institutions are managed by the Department of Justice.

10. In recent years there has been a trend towards moving responsibility for prisons into ministries of justice. The ministry of justice is responsible for prisons in all countries of the Council of Europe, except Spain. This is also the case in most of the Americas, much of Africa and some of Asia. In the Middle East, prisons are more commonly part of the ministry of interior, although several countries in the region are currently considering a change. Some countries in Eastern Europe have moved prisons to the ministry of justice, while in others the ministry of interior has retained control.

11. The requirement for a civilian as opposed to a military prison system is at the heart of the international human rights framework. Some international norms also emphasize that criminal offences should be dealt with as part of the due-process protections of a civilian justice system; that prisons should be run by the civilian power; that detainees should retain all rights not taken away by the fact of their imprisonment and while they are in prison they should be prepared for life as free citizens; and that prisons and information about them should be open to independent monitoring and oversight, subject to some form of parliamentary scrutiny and to access for civil society groups. These requirements are impossible to meet if prisons are under military control, and there is a high risk that they may be jeopardized and compromised if under the control of the same ministry that has responsibility for the police, internal security and other functions such as immigration control.<sup>6</sup>

12. Reforming prisons is best undertaken as part of wider criminal justice reform encompassing matters relating to criminal procedure and sentencing, as well as the execution of sentences, and involving prosecutors and judges. Placing responsibility for prisons with the ministry of justice is more likely to produce important innovations and lead to consideration of the development of sanctions that do not involve the deprivation of liberty. The ministry of justice is also better placed to ensure that other relevant government departments 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 that fit with its overarching values. It is also better placed to introduce a human rights culture in prison management, identified as necessary, for example, by the African Regional Preparatory Meeting. Examples of a successful transfer of responsibility can be found in the Russian Federation and in Thailand;<sup>7</sup> Lebanon and Mozambique are also working to that end.

13. Other ministries still play important roles. The Latin American and Caribbean Regional Preparatory Meeting concluded that health education and social policies

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<sup>6</sup> See Committee of Ministers of the Council of Europe Recommendation No. Rec (2006) 2, rule 71.

<sup>7</sup> "International experience in reform of penal management systems: a report by the International Centre for Prison Studies", King's College, London, 2008. Available from [www.kcl.ac.uk/depsta/law/research/icps/downloads/International\\_Experience.pdf](http://www.kcl.ac.uk/depsta/law/research/icps/downloads/International_Experience.pdf).

for inmates should be developed by the relevant ministries, not by the penitentiary administration alone. Also, the separation of juvenile offenders can best be ensured by giving responsibility for those under 18 to the ministry of social welfare, education or justice, through a specialized department.

14. While in most countries health in prisons is still under the authority of the ministry responsible for the prison administration, there is currently a trend to shift this responsibility to ministries of health, which brings positive results in terms of access to health care in prisons and in terms of continuity of care. This is the case, for example, in Australia, France and, more recently, in the United Kingdom of Great Britain and Northern Ireland.

15. While imprisonment is a public function, there is an important role for civil society and non-governmental organizations (NGOs) in working to improve conditions and promoting reform. There are relatively few examples of NGOs running prisons — mainly in South and Central America — and these have not been subject to independent assessment. NGOs often contribute to activities and regimes within prisons, assisting with the reintegration of prisoners on release, raising public awareness about the rights of prisoners and campaigning for reforms.

16. In some countries, the private sector plays a role in running prisons. In some cases (South Africa, United Kingdom, United States of America) this involves contracting for the design, construction, management and financing of prisons. In others, businesses deliver specified functions such as catering, maintenance and rehabilitation activities (Chile, France, Japan). Many countries do not consider it appropriate for profit-seeking entities to be engaged in the running of prisons. There are also concerns that making prisons attractive for business may have an adverse impact on sentencing policies.

17. Particular challenges face prisons in post-conflict and fragile States. The physical infrastructure may have been destroyed and the criminal justice system may often be unable to function, leaving vast numbers of detainees, including former combatants, awaiting trial for long periods of time. Reform in such States needs to take account of the broader requirements of post-conflict justice indicated in the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616) and in the Chicago Principles on Post-Conflict Justice (2007).

### **III. Administration of prisons**

#### **A. Registration, file management and classification of prisoners**

18. The most basic good practice in prison management relates to the need to have systems to collect and use information about detained persons. A reliable registration and file management system, either electronic or manual, enables the authorities to know whom they are detaining and for how long. Such information can also be used as a basis for processes of classifying prisoners. This should be undertaken following an assessment of the risk that each individual prisoner presents. Collecting data about prisoners and prisons and developing information management systems can also better inform criminal policies and help to monitor compliance with international standards. Maintenance of accurate prisoner records



is also crucial to prevent overcrowding and rights violations. The United Nations Office on Drugs and Crime (UNODC) is currently assisting the Sudan in establishing and using a system for the accurate and reliable recording of prisoner information. The UNODC *Handbook on Prisoner File Management*<sup>8</sup> contains practical guidance on setting up effective registration systems.

## **B. Staff recruitment and training**

19. Effective prisons require adequate numbers of properly trained and remunerated staff. In some prisons, staff remain at the perimeter during the night, or even during the day, with day-to-day administration in the hands of prisoners themselves. If prisoners are assigned rehabilitation and welfare responsibilities, it should be ensured that they do not exercise any role in managing security and discipline in the prison.<sup>9</sup>

20. While problems associated with “self-governing prisons” are widely acknowledged, prison management should incorporate consultation and communication with prisoners through prisoners’ councils or committees. In Ecuador this has reduced riots and disturbances.

21. Many regional instruments spell out the importance of proper staff training. For example, the European Prison Rules state that before entering into service, prison staff must be given a course in their general and specific duties and be required to pass theoretical and practical tests. Throughout their careers, staff should maintain and improve their knowledge and professional capacity by attending in-service training and development courses. The regional preparatory meetings in Latin America and the Caribbean and in Asia and the Pacific recommended that training should be extended also to the judiciary, prosecutors and law enforcement officials.

22. In the Dominican Republic the old police and military administration system is being transformed into a new model correctional service focused on rehabilitation of and vocational training for inmates. Currently, 11 of the 38 prisons have been converted to this model, with a further five to be converted in 2010. A school for staff has been established, which provides a full range of training, from basic staff training to management training. New staff have been recruited to the system with enhanced pay and increased responsibilities. Corrupt practices are met with instant dismissal.

23. Staff training and management capacity-building are key components of UNODC prison reform programmes in developing and post-conflict countries such as Afghanistan, Lebanon, the occupied Palestinian territories and Southern Sudan.

## **C. Physical conditions of detention**

24. International standards state that each prisoner must have enough space. The International Committee of the Red Cross (ICRC) has recommended minimum cell

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<sup>8</sup> United Nations publication, Sales No. E.08.IV.3.

<sup>9</sup> Standard Minimum Rules for the Treatment of Prisoners, rule 28(1).

space of no less than 3.4 sq m per prisoner and within the security perimeter 20 to 30 sq m of space per prisoner. Minimum rates of air renewal and intensity of light have also been specified.<sup>10</sup> Every detainee or prisoner should have his or her own bed or mattress with clean bedding.

25. Prisons must keep different categories of detainees separate from each other. Pretrial detainees must be kept separately from convicted prisoners, women must be held separately from men and, if children are detained, they must be kept separately from adults. If detainees or prisoners are held in dormitories or shared cells, there should be an assessment of whether they are suitable to live together. A cell-sharing risk-assessment system was developed in the United Kingdom following the murder of an ethnic-minority prisoner by a racist cellmate in 2000.<sup>11</sup>

26. Prisons must serve sufficient food free of charge for all detainees and prisoners at normal times each day. The food must be of sufficient quantity and quality and provide 2,400 kcal. The food must also meet the medical, religious and cultural needs of individual detainees and prisoners. Clean drinking water must be provided to all detainees and prisoners whenever they need it. ICRC recommends 5 litres per day, plus a further 10 litres for washing.<sup>10</sup>

27. All detainees and prisoners must have access to a bath or shower as often as is necessary to maintain their personal hygiene. The detention centre must provide soap and towels. Sanitary installations must be sufficient to allow detainees and prisoners to comply with their bodily needs in private and in a clean and decent manner.

28. There are many examples of practices that have been introduced to meet these requirements. In Bangladesh, the Dhaka central jail has developed a bakery that provides bread for prisoners and sells its products to those visiting the jail and the local community. Profits are reinvested in the prison.<sup>7</sup> In Rwanda biogas technology has been introduced to convert animal and human waste into fuel.<sup>10</sup> Prison farms have been developed in many African countries.<sup>12</sup>

29. The maintenance of equipment is often a low priority in jails. In the Russian Federation, small teams of serving prisoners are allocated to undertake these duties in pretrial prisons.

#### **D. Health care and psychological care**

30. When the state imprisons or detains someone it takes on the responsibility of looking after his or her health. All necessary medical care and treatment must be provided free of charge. The standard of preventive, curative, reproductive and palliative medical care must be at least the same as that in the outside community, regardless of the regime of the detention. The World Health Organization (WHO)

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<sup>10</sup> Pier Giorgio Nembrini, *Water, Sanitation, Hygiene and Habitat in Prisons* (Geneva, International Committee of the Red Cross, 2005).

<sup>11</sup> *Report of the Zahid Mubarek Inquiry* (London, Her Majesty's Stationary Office, 2006). Available from [www.zahidmubarekinquiry.org.uk/article3d65.html?c=374](http://www.zahidmubarekinquiry.org.uk/article3d65.html?c=374).

<sup>12</sup> Penal Reform International, "A model for good prison farm management in Africa", 2002. Available from [www.penalreform.org/a-model-for-good-prison-farm-management-in-africa.html](http://www.penalreform.org/a-model-for-good-prison-farm-management-in-africa.html).

guide to health in prisons provides valuable information on the provision of health care in prisons.<sup>13</sup>

31. Health staff must comply with the 1982 Principles of Medical Ethics, relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment (General Assembly resolution 37/194, annex). The role of health staff in prisons is that of caregivers, and they should not be involved in measures of security and control.

32. Detainees must be offered a medical examination when they first arrive in detention, and continuity of treatment initiated before entering prisons should be ensured. Detainees and prisoners must be able to see a suitably qualified medical officer on a regular basis. Women and children must also be able to see specialists in women's and children's medicine. The WHO/UNODC Kyiv Declaration on Women's Health in Prisons provides guidance on gender-specific aspects of health care.<sup>14</sup> The prison administration must provide suitable premises and equipment for consultation and for emergency treatment. It must also supply adequate and appropriate medicines. If outside treatment or hospital care is required, the escort arrangements must be decent and appropriate to the medical condition involved.

33. Detainees and prisoners who require medical attention are patients. They are entitled to privacy both in consultation with medical staff and in their treatment. If safety is a serious concern, consultations may take place within sight but not within hearing of a detention officer. If a medical condition is identified, a detainee should be informed of all treatment possibilities available. This applies in particular for drug-dependence treatment.

34. Medical records are not part of the general prison records, but must remain either under the control of the detainee or prisoner (where the law gives this right to patients generally) or under the control of the medical officer. In Belgium the electronic medical record belongs to the prisoner and follows him or her in every situation, such as transfer to another prison.

35. Appropriate measures must be taken to ensure that health care is continued both when a person is arrested or enters prison and when a prisoner is released. This continuity of care is a major concern for some types of treatment, such as tuberculosis, drug-dependence or anti-retroviral drug treatments. This is best achieved when community health services are responsible for health care in prisons or when NGOs are involved in the provision of health services both inside and outside prisons.

36. Comprehensive strategies are needed to reduce the risk that prisoners will contract tuberculosis, HIV/AIDS and hepatitis. Good practices include education and the sharing of information among peers. In Moldova the involvement of peers in

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<sup>13</sup> Lars Møller and others, eds., *Health in Prisons: A WHO Guide to the Essentials in Prison Health* (Copenhagen, World Health Organization, Regional Office for Europe, 2007). Available from [www.euro.who.int/prisons/meetings/20070917\\_4](http://www.euro.who.int/prisons/meetings/20070917_4).

<sup>14</sup> World Health Organization, Regional Office for Europe, and United Nations Office on Drugs and Crime, *Women's Health in Prison: Correcting Gender Inequity in Prison Health* (Copenhagen, 2009). Available from [www.euro.who.int/Document/E92347.pdf](http://www.euro.who.int/Document/E92347.pdf).

the implementation of HIV prevention and harm reduction, including through needle and syringe programmes, can be cited as a best practice.

37. An example of a comprehensive strategy on HIV/AIDS is provided by Indonesia, where the Ministry of Justice decided to promote HIV prevention and care activities for prisoners to prevent the spread of HIV within prisons and from there to the community as a whole. In 2005 the Indonesian National Strategy for HIV Prevention, Care and Support for Prisoners was launched, the first national strategy of its kind in Asia. It has enabled education and the provision of condoms, methadone and anti-retroviral drugs for prisoners. In the Islamic Republic of Iran authorities have implemented a comprehensive HIV prevention programme. They have also introduced methadone treatment, which has resulted in a significant reduction in injecting drug use, which plays a crucial role in HIV prevention, and a more than 90 per cent decrease in self-injury and fighting.<sup>15</sup> Similarly, since 2005 UNODC has supported HIV-prevention activities in prisons of South Asia. The tools developed by UNODC, WHO and the Joint United Nations Programme on HIV/AIDS (UNAIDS) provide guidance for countries to mount an effective national programme on HIV in prisons and to advocate and train stakeholders on HIV in prison settings.<sup>16</sup>

38. Prisons must also provide healthy living conditions for detainees, prisoners and staff. The prison doctor must inspect these facilities regularly to ensure that they are healthy. He or she should advise the centre's director of any concerns. There is a particular risk of spreading diseases in detention and in the wider community if hygiene is poor or living conditions are overcrowded.

39. International standards require staff to monitor the effect of detention on the mental health of detainees and prisoners. People with mental health problems are overrepresented in many prison systems; in some countries prisons are even used to house mentally ill persons who have not committed any offence. Effective practices include the integration of strategies to promote mental health into the overall prison management strategy; the creation of a positive prison environment; an integrated approach to mental health care that does not rely solely on medication, if at all; suicide awareness and prevention (e.g. in respect of at-risk prisoners in Australia); and specialized treatment (e.g. equine therapy in Mexico). In the United Kingdom multidisciplinary teams aim to offer prisoners the same kind of specialist care and treatment they would receive in the community. The UNODC *Handbook on Prisoners with Special Needs*<sup>17</sup> provides guidance on these matters.

## **E. Contact with family and the outside world**

40. Although detainees and prisoners lose the right to freedom of movement and association, they do not lose the right to communication and contact with the outside world. In particular, they have the right to contact with their families and

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<sup>15</sup> "HIV and AIDS in places of detention", 2008, available from [www.unodc.org/documents/hiv-aids/HIV-toolkit-Dec08.pdf](http://www.unodc.org/documents/hiv-aids/HIV-toolkit-Dec08.pdf).

<sup>16</sup> HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings: A Framework for an Effective National Response, 2006, available from [www.unodc.org/documents/hiv-aids/HIV-AIDS\\_prisons\\_Oct06.pdf](http://www.unodc.org/documents/hiv-aids/HIV-AIDS_prisons_Oct06.pdf).

<sup>17</sup> United Nations publication, Sales No. E.09.IV.4.

with their legal representatives. Family members outside prison also have the right to contact with the detainee or prisoner. The prison administration must ensure that contact between a detainee or prisoner and his or her family is maintained, and visits should be authorized as a right and not a privilege. These visits should take place in conditions that are as natural as possible, especially if the visitors include children.

41. In some parts of the world, family and intimate visits are commonplace, one of the effects of which is to reduce tension in prisons. In the Islas Mariás in Mexico prisoners are able to stay with their families. Conjugal visits for married couples have recently been introduced in Pakistan. In the Russian Federation the law specifies the number of long and short visits prisoners are entitled to, while in the Libyan Arab Jamahiriya prisoners are allowed up to 8 vacation days a year.

## **F. Complaints**

42. Detainees and prisoners who feel that their rights have been violated are entitled to make a complaint. Clear information should be given to detainees and prisoners about the procedure for making a complaint when they first come into prison. Detainees and prisoners should have — without fear of reprisal — an opportunity to submit requests and complaints to the director of the detention centre or his or her representative, or to an outside body such as the public prosecutor or defender or an ombudsman. All requests and complaints must be dealt with as quickly as possible and investigated where appropriate. In China the 2009-2010 National Human Rights Action Plan includes measures for

intensifying real-time supervision conducted by the people's procuratorate on law enforcement in prisons and detention houses ... Complaint letterboxes are set up in their cells, and a detainee may meet the procurator stationed in a prison or detention house by appointment ... to make a complaint.

## **G. Disciplinary matters**

43. Breaches of discipline that are against prison rules must be dealt with in accordance with a set of published procedures. The system should not allow unofficial punishment. The prohibition against torture and inhuman and degrading treatment applies in prison.

## **H. Security and use of force**

44. The main purpose of detention is to protect society from persons who may present a serious threat to public safety. It is also important to protect other detainees, prisoners and staff, and measures need to be taken to prevent violence, including sexual violence, within prison settings. The level of security for each detainee or prisoner must be based on an individual risk assessment.

45. Excessive security and control can, at its worst, lead to a sense of injustice and increase the risk of a breakdown of control and of violent or abusive behaviour. It is important to review regularly the security status of convicted prisoners as part of the

process of preparing them to return to the community. In the case of pretrial detainees, the risk assessment must also include any potential threat to witnesses. Solitary confinement as a preventive security measure must be avoided.

46. The use of force must be the last resort in controlling detainees or prisoners if good order breaks down. In order to protect detainees or prisoners against abusive treatment, there must be a clear set of procedures defining the circumstances under which force may be used. Firearms must be used only when there is a clear and immediate threat to life and in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Detainees or prisoners should not be used in maintaining control.

47. Organized systems for moving prisoners around the prison and direct contact between staff and prisoners are as important in maintaining security and control as are fences and cameras.

## **I. Death in prison**

48. Prisoners who are close to death from natural causes should be able to spend their last days with their families when possible. Systems of compassionate release should be in place to allow this.

49. When people die in prison, independent and transparent investigations involving the family must be carried out. Such investigations produce lessons that can help to prevent future incidents and to establish possible disciplinary action against staff members.

## **J. Regime activities**

### **Work**

50. Productive paid work is an important component of prison life, providing an active day for prisoners and generating financial resources. Work should not be excessively onerous or be required at the expense of the rights and welfare of prisoners, and it may never be used as a punishment. In many countries, involvement in work can lead to early release from prison. For example, in the so-called two-for-one system in several countries of South America, prisoners can shorten the length of their imprisonment by one day for every two days that they work. Good practice suggests that prisoners should be able to choose their type of employment within limits; the organization of work should resemble that of similar work in the community, and the interests of prisoners should not be subordinated to the pursuit of profit.

51. Esperanza industrial prison in Paraguay enables 300 prisoners to learn a trade, work eight hours each day and receive a salary for their work. At Mar del Plata prison in Argentina, prisoners can work in a fish-filleting factory, with the possibility of continued employment after release.

**Educational, vocational and cultural activities**

52. The Special Rapporteur on the right to education has recently reported that learning in prison is generally considered to have an impact on recidivism, reintegration and employment outcomes.<sup>18</sup> Prisons should seek to provide all prisoners with educational programmes that meet individual needs.

53. Kaki Bukit Centre Prison School in Singapore brings together different categories of inmates from both penal and drug institutions in one centralized location, where they attend academic and vocational classes.

54. In addition to education, prisons should offer a range of vocational training, cultural activities and sports. Querétaro prison in Mexico employs two cultural amateurs who provide activities for prisoners and their families when they visit.

55. The provision of vocational training and education to prisoners is a component of UNODC prison reform programmes in countries worldwide. In Afghanistan, for example, a series of vocational training and education programmes have been delivered by local NGOs to women prisoners in Kabul and three provinces, as an element of a programme to improve the social reintegration of women prisoners on release.

**Treatment and preparation for release**

56. Reintegrating prisoners effectively into the community after release is crucial. The various models include halfway houses and post-release hostels and other forms of supportive accommodation in which prisoners can learn to live independently. The Bolivarian Republic of Venezuela is in the process of establishing 25 community treatment centres in which prisoners who have served half their sentence can spend the rest of their term. Prisoners who have been assessed as suitable spend the night, weekend and holidays in the centre but during the day go out to work. The centres provide opportunities for residents to undertake education and training and to participate in cultural and sporting activities. Specific evaluations are lacking as yet, but the initiative has promise as a way of reducing the most negative aspects of imprisonment and improving reintegration and the prevention of re-offending.

57. Circles of support and accountability for released sex offenders and the lifelines concept for resettling prisoners following long sentences have been developed in Canada. In countries of Eastern Europe, there are often resocialization staff who can help prisoners to return to the community. In some countries reconciliation with victims, communities and even the offender's own family is important, particularly in serious cases.

58. In many countries, public and media hostility towards prisoners acts as a barrier to reintegration. Singapore's annual Yellow Ribbon initiative is an attempt to overcome these barriers through a campaign to give ex-convicts a second chance in society. In the United States the Second Chance Act authorizes federal grants to government agencies and community and faith-based organizations to provide social, health and other services that can help to prevent re-offending and violations of probation and parole.

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<sup>18</sup> See A/HRC/11/8.

## **IV. Particular groups of prisoners**

### **A. Pretrial detainees**

59. In many countries, a majority of people in prison have not yet been tried or convicted. Pretrial detainees represent over three quarters of all prisoners in some countries, including Liberia (97 per cent), Mali (89 per cent), Haiti (84 per cent), Andorra (77 per cent), the Niger (76 per cent) and Bolivia (Plurinational State of) (75 per cent). High rates are particularly common in post-conflict countries.

60. Reducing the proportion of pretrial detainees is largely a question of improving the functioning of the criminal justice process.

61. However, prisons themselves can work to reduce pretrial detention. They can ensure that periods in pretrial detention are kept as short as possible by monitoring time limits of pretrial arrangements. Prisons must keep accurate information about prisoners, and they must not receive anyone into detention without a valid order from a judge. They can also engage in inter-agency initiatives to clear backlogs of cases. In India and Malawi, prisons host courts in which magistrates hold hearings inside the jail.

62. Pretrial prisoners are not being held in detention as a punishment, and a number of international norms protect their special status. Detainees who have not been convicted must always be treated as innocent, although in practice, in many countries, pretrial prisoners are kept in the worst conditions and do not enjoy the same rights or have access to the same services as convicted prisoners.

63. Taking into account the long periods that many pretrial detainees spend in prison, it is important to ensure that, like convicted prisoners, they are given an opportunity to participate in all prison activities. For instance, pretrial and unconvicted detainees should be given the opportunity to work or study if they wish, and be allowed sufficient time out of the cell.

### **B. Groups with specific needs**

64. Most detainees and prisoners are adult males. Some other groups of prisoners have different needs and require special attention, including women, children and young persons, older prisoners, prisoners with mental health-care needs, prisoners with disabilities, people of foreign nationalities or cultural groups and prisoners under sentence of death. The UNODC *Handbook on Prisoners with Special Needs* includes guidance and recommendations for the treatment of some of these groups.

#### **Women**

65. The proportion of women in prison is in most countries between 2 and 9 per cent. Women are a very disadvantaged group and often victims of abuse and violence, and their needs are usually very different from those of men. The draft United Nations Rules for the Treatment of Women Prisoners and Non-custodial



Measures for Women Offenders were produced in late 2009<sup>19</sup> following an intergovernmental expert group meeting organized by UNODC and hosted by Thailand. All of the regional preparatory meetings welcomed this initiative.

66. Women must be supervised by female staff. Women must always be kept in separate accommodation from men, although there are innovations such as the high-security prison in Ringe, Denmark, where men and women live together in units of about 10 people, sharing a communal kitchen and bathroom.

67. Women detainees and prisoners who are mothers must be given every opportunity to maintain links with their children. Special attention must be given to the needs of women with small children. The best interests of the children must always be considered when making decisions affecting them. There is marked variation in policy about the age limit beyond which children cannot remain in prison with their mother. In general, the emphasis needs to be on small living units approximating as much as possible life outside. Examples of good practice include Boronia prison in Western Australia, where there are gardens and well-maintained houses that resemble a suburban landscape, and Frondenberg prison in Germany, where 16 mothers live with their children up to the age of 6 in self-contained flats.

68. In some countries, special efforts are made to enable mothers with children not to serve prison sentences. In the Russian Federation, sentences can be suspended until the child is 14. In a recent case, the South Africa constitutional court ruled that sentencing should take account of the impact on children.

69. Women detainees and prisoners also have specific health-care needs. The WHO/UNODC Kyiv Declaration on Women's Health in Prisons and the UNODC/UNAIDS policy brief on women and HIV in prison settings<sup>20</sup> provide guidance to countries to respond to the health needs of women in prisons.

70. The UNODC *Handbook for Prison Managers and Policymakers on Women and Imprisonment*<sup>21</sup> (2008) provides further guidance and examples of good practice for prison authorities to ensure that women and their children receive appropriate treatment in prisons, while alternatives to imprisonment are encouraged for certain categories of women.

### **Children and young people**

71. International law and special rules exist for the treatment of children who are in conflict with the law. The most important are the Convention on the Rights of the Child,<sup>22</sup> the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty. These state that detention should be used as a last resort

<sup>19</sup> Drafted in compliance with Commission on Crime Prevention and Criminal Justice resolution 18/1. The draft rules will be submitted by the Government of Thailand for final adoption by the General Assembly at its 65th session, through the Twelfth Congress on Crime Prevention and Criminal Justice and the Commission on Crime Prevention and Criminal Justice at its 19th session.

<sup>20</sup> Available from [www.unodc.org/documents/hiv-aids/Women%20and%20HIV%20in%20prison%20settings.pdf](http://www.unodc.org/documents/hiv-aids/Women%20and%20HIV%20in%20prison%20settings.pdf).

<sup>21</sup> United Nations publication, Sales No. E.08.IV.4.

<sup>22</sup> United Nations, *Treaty Series*, vol. 1577, No. 27531.

and for the shortest possible time. In addition, the Council of Europe has recently published European Rules for Juvenile Offenders subject to Sanctions or Measures.<sup>23</sup> The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has recently concluded that to many children deprived of their liberty, the above norms, with their envisaged protection and conditions, must sound as if they are out of touch with reality.<sup>24</sup>

72. Children and young people are vulnerable to abuse by older detainees and prisoners, as well as staff. This was highlighted by the report of the independent expert for the United Nations study on violence against children (A/61/299). If it is necessary to detain children, they must always be kept in separate accommodation from adults. If girls are kept in female prisons, effective separation and equality of rights should be ensured. Staff who work with children must be given appropriate training.

73. Children have specific welfare, educational and health needs. The activities and facilities available to them in detention must meet those special needs. Children must be able to carry out activities that help their continuing development. The authorities responsible for children in detention must establish and maintain links with the authorities responsible for the education, welfare and health of children in the outside community, and the children should be allowed contact with their parents and other family members.

74. The appropriate philosophy is expressed by Sirindhorn vocational training school in Thailand. Seeking to provide a child-centred regime for delinquents, it describes itself as a “temporary substitute home for a child that has made a mistake”.

75. Some countries recognize the developing maturity of young people above the age of 18. In Brazil, as part of the National Programme of Public Safety and Citizenship, special penitentiaries for young adults aged 18 to 24 are being built in order to tackle overcrowding and avoid an escalation in the criminal career of youngsters. Other countries have extended special programmes for children in conflict with the law to cover young people up to age 21, or in some cases older. In Finland people are considered to be young offenders up to age 29.

#### **Foreign prisoners and prisoners from minority groups**

76. In some countries there are large numbers of foreign prisoners, in particular as a consequence of increased transnational crime. Prisons must allow foreign nationals to contact representatives of their own government, such as consular representatives. Member States should be encouraged to enter into prisoner transfer agreements using the United Nations model treaty, which requires the consent of the prisoner. Efforts should be made to enable these prisoners to keep in contact with their families. The federal prison system in Argentina has established an assistance programme for English-speaking women prisoners.

77. In many countries minority groups are overrepresented among prisoners. In Canada, the prison system has constructed a “healing lodge” where aboriginal women can serve all or part of their sentences.

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<sup>23</sup> Recommendation CM/Rec(2008)11.

<sup>24</sup> A/64/215 and Corr.1, para. 69.

### **Other groups**

78. The authorities responsible for places of detention must also give particular attention to the needs of members of other specific groups, especially those who are old, infirm, mentally ill or dependent on drugs, as well as those who are lesbian, gay, bisexual or transgendered.

79. Prisoners serving life or other long-term sentences also require special attention. Good practice suggests that a progressive system in which security levels are regularly assessed and prisoners who make progress are moved to less restrictive regimes tend to produce the best results. Open establishments and resettlement prisons are most likely to prepare long-term prisoners for release.

80. Prisoners under sentence of death are subjected to severe restrictions in many countries worldwide and spend years in unacceptable conditions, which has a severe impact on their mental well-being. While the United Nations calls for the abolition of the death penalty, it also calls on Member States that retain the death penalty to ensure the humane treatment of those under sentence of death.

## **V. Monitoring and inspection**

81. Under international law, prisons and other places of detention should be visited regularly by qualified and experienced persons who do not work for the prison authorities. Such independent inspection was seen as very important by the regional preparatory meetings, particularly the Western Asia meeting, which agreed that regular inspections could guarantee the security of inmates and ensure compliance with international standards.

82. All detainees and prisoners have the right to communicate freely and in private with these official visitors. Interviews may take place within sight of detention officers but not within hearing. In some countries representatives of the local community and of international organizations, such as ICRC, are allowed to visit places of detention in order to monitor the conditions of detention and the treatment of detainees and prisoners.

83. Models of good practice include an independent prison inspectorate (Western Australia), local independent monitoring boards (England and Wales) and the office of the inspecting judges (South Africa). In civil-law countries some inspectorial functions are also undertaken by prosecutors, public defenders and penal execution judges: in Argentina the *procuración penitenciaria* is responsible for inspection of the federal prison system.

84. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 57/199, annex) states that inspections should be independent and have access to all parts of a prison and all information and that private interviews can be held. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has stated that a proactive approach is required, monitoring compliance with human rights affected by detention even in cases where no complaints have been received.

85. The Optional Protocol, ratified by 50 countries as of October 2009, requires Member States to establish national preventive mechanisms, which so far include a wide range of arrangements, including several existing bodies such as an ombudsman's office or human rights commission work alongside civil society. Internal prison inspection does not satisfy the requirements of effective independent monitoring.

## **VI. Conclusions and recommendations**

86. The Congress may wish to reiterate and emphasize the central importance of the Standard Minimum Rules for the Treatment of Prisoners, as they represent good principle and practice in the treatment of prisoners and the management of institutions.

87. The Congress may wish to welcome initiatives being undertaken to supplement the Standard Minimum Rules, and in particular the development of supplementary rules specific to the treatment of women in detention and in custodial and non-custodial settings, mandated by resolution 18/1 of the Commission on Crime Prevention and Criminal Justice. The Congress may also wish to endorse and approve the set of draft supplementary rules agreed upon by an open-ended intergovernmental expert group meeting and submitted to the Congress.

88. The Congress may wish to consider whether additional supplementary standards are needed in respect of other vulnerable groups in prison, such as children and young people, older prisoners or people with health problems, including physical and mental disabilities and drug dependency.

89. The Congress may wish to encourage Member States to reaffirm their commitment to meeting the requirements of international standards in respect of the treatment of prisoners, in particular the Standard Minimum Rules, and to consider urgently how they can be met. Such consideration should include measures to reduce overcrowding, which represents the biggest single barrier to compliance with international standards. It should also involve reviews, where necessary, of the law, policy, practice and budgetary allocations relating to imprisonment.

90. Bearing in mind the dire state of prisons in Member States emerging from conflict and the crucial importance of establishing functioning civilian criminal justice systems to peacebuilding and the re-establishment of the rule of law, the Congress may wish to consider giving much higher priority to the strengthening or reconstruction of prison systems in post-conflict settings to bring them into compliance with the requirements of international standards, and to the provision of adequate resources by donors to achieve this.

91. The Congress may wish to encourage Member States to develop the necessary policies and institutional infrastructure to ensure that prisons are used sparingly and fulfil their proper role. They should not be used in the absence of appropriate social and welfare provisions to detain people in need of care, protection, treatment or control who are not accused or convicted of breaking the criminal law (e.g. mentally ill people, women at risk of violence or street children).

92. The Congress may wish to encourage Member States to review the way that prison systems are organized within their government structures and the roles of

various departments, bearing in mind that effective prison systems that meet international standards are the responsibility of the State as a whole, with particular roles to be played by ministries of justice, interior, finance, health, education and social welfare. Member States in which prisons are the responsibility of the ministry of interior or security should consider transferring responsibility to the ministry of justice.

93. The Congress may wish to encourage Member States to integrate prison health into wider community health structures, and assign responsibility for the management and provision of prison health services to those same ministries, departments and agencies providing health services to the general population. Where this is not achievable in the short term, action should be taken to significantly improve cooperation and collaboration between prison health services and community health services.

94. The Congress may wish to encourage Member States to ensure that prisons are professionally managed and have adequate numbers of qualified and properly trained staff, and avoid situations in which prisoners exercise a role in managing security and discipline in the prison.

95. The Congress may wish to encourage Member States to develop prisoner data management systems to collect information about the numbers and characteristics of prisoners and prisons so as to better inform policies, improve the management of individual prisons and the criminal justice system as a whole and monitor compliance with international standards.

96. The Congress may wish to encourage Member States to put in place procedures and mechanisms to ensure that all those in prison are legally detained and have access to necessary legal advice and assistance. They should have adequate mechanisms to vent their grievances and have means to maintain contact with the outside world.

97. The Congress may wish to encourage Member States to commit the necessary resources to provide a prison system in compliance with the Standard Minimum Rules, obtained from national and, where appropriate, international sources, and to mobilize the energies of civil society, local communities, relevant government departments and authorities at the local and national levels.

98. The Congress may wish to encourage Member States to ratify the Optional Protocol to the Convention against Torture if they have not done so and give priority to the establishment of mechanisms of accountability, independent external inspection and oversight and monitoring.

99. Furthermore, the Congress may wish to consider whether:

(a) The United Nations should undertake activities to raise public awareness about prisons (e.g. by designating an annual “day of the prisoner”) to help States and civil society organizations to draw public attention to the international standards governing the use and management of prisons and the rights and needs of prisoners;

(b) The institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network should, together with UNODC, develop capacity to establish a database of good practices in the treatment of offenders and

management of prisons, building on the existing materials produced by UNODC since the Eleventh Congress;

(c) UNODC should be encouraged to continue providing technical assistance for prison reform to Member States that request it, including in the form of tools and training, and Member States should provide UNODC with the requisite resources to do so.

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