

What can parliamentarians do to work on penal reform?

Brief about PRI

Penal Reform International (PRI) is an international, non-governmental organization with Consultative Status at the United Nations Economic and Social Council (ECOSOC), the Council of Europe and the Inter-Parliamentary Union, and Observer Status with the African Commission on Human and People's Rights and the Inter Parliamentary Union. It aims to develop and promote international standards for the administration of justice, reduce the unnecessary use of imprisonment and promote the use of alternative sanctions which encourage reintegration while taking into account the interests of victims. PRI also works for the prevention of torture and ill-treatment and for a proportionate and sensitive response to women and juveniles in conflict with the law, and promotes the abolition of the death penalty.

Introduction

Criminal justice and penal systems have three essential and inter-related objectives: 1.) To protect the public and prevent crime; 2) To administer justice fairly; and 3.) To help offenders lead law-abiding lives and to assist their resettlement in the community after imprisonment.

How can parliamentarians support penal reform?

Parliamentarians have numerous possibilities to support penal reform. Depending on the political system and the rules of procedure, they can:

- Table and amend legislation and make policy changes to affect the application of relevant legislation.

- Speak out in favour of a bill or amendment.
- Implement existing international human rights standards into the national criminal justice system.
- Initiate a parliamentary discussion and invite experts to a parliamentary discussion.
- Request information from the Minister in charge.
- Bring penal reform issues to the attention of their political party.
- Speak to NGOs and academics to learn about their concerns and recommendations.
- Access media contacts and gain coverage otherwise not open to activists, in order to hold debates publicly on an issue.
- Sign-up to any relevant petitions.
- Promote criminal justice reform with their counterparts in other countries.
- When consulting publicly before a reform or on an issue, they can tap into a wide range of resources and expertise which would not be available to everyone.
- Join together to create cross-party action groups to achieve change that does not rely on the political will of only one leading party in government.

Where can parliamentarians raise the issue?

- Parliamentary Committees.
- Parliamentary plenary sessions.
- Meetings of their political party.
- The media.
- With their constituents and the general public.

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Promoting penal
 reform worldwide



Creating a standing committee on criminal justice issues

The establishment of a parliamentary standing or select committee on criminal justice provides one mechanism for law and policy makers to work with a wide variety of actors. It can be a useful, non-partisan body for scrutinizing the executive, conducting inquiries, commissioning research and debating particular issues. It can also reach out to civil society groups and people working on issues of criminal justice and penal policy to draw on their expertise and involve them in its debates. By providing a forum for informed discussion it can help to raise awareness about issues relating to criminal justice reform amongst both parliamentarians and the wider public. By working across party political lines it can also help to build consensus in favour of policies that actually are effective in managing prisons and cutting crime. The United Kingdom, for example, has various cross party committees working on criminal justice and penal reform. These includes: The All-Party Parliamentary Group for Penal Affairs, the All-Party Parliamentary Group for Women in the Penal System, the All-Party Parliamentary Group for the Abolition of the Death Penalty, the All-Party Parliamentary Group for Victims and Witnesses of Crime, and the All-Party Parliamentary Group for Child and Youth Crime.

How should law and policy be reformed?

- Policy, legislation and programmes should implement international human rights norms and be guided by good practice.
- Law and policy reforms need to take full account of the available evidence concerning its effectiveness in achieving stated aims.
- An important focus of reform is crime prevention.
- Law and policy reforms should take full account of individual differences of offenders and victims.
- Criminal justice should be geared to accountability, which does not equal imprisonment; and to the interests of the victim, including an opportunity to obtain reparation, feel safer and seek closure.

- Penal law and policies should focus on the prevention of re-offending, and therefore invest in rehabilitation and reintegration programmes.
- Law and policy reforms need to avoid discriminating against persons affected by the reforms in question and be gender-sensitive.
- Law and policy reforms should take account of the advantages of diverting offenders from the formal criminal justice system.

What kind of penal reform issues could parliamentarians work on?

Address prison overcrowding and increase the application of non custodial measures

- Review and reform the criminal justice process as a whole from arrest to release and invest in crime prevention and reduction.
- Reduce the use and length of pre-trial detention, including by the improvement of case management.
- Review the length of prison sentences, including the range of offences which carry minimum sentences and allow for non-custodial measures to be applied.
- Improve access to justice and legal aid.
- Develop and implement constructive non-custodial measures and sentences. Divert minor cases out of the criminal justice system.
- Review and expand the use of non-custodial measures, to include inter alia: Diversion, verbal sanctions, conditional discharge, economic sanctions, restitution to the victim or a compensation order, suspended or deferred sentence, community service order, referral to an attendance centre, house arrest, and any other mode of non-institutional treatment.
- Ensure consistent sentencing practice, including by sentencing guidelines.
- Consider alternative arrangements for parents with dependent children, particularly sole caretakers with babies.
- Develop opportunities for parole or other forms of early release and assist prisoners on release to prevent return to prison.
- Meet the special needs of children, young and female offenders throughout the criminal justice system.

Example: Promoting prison population reductions through sentencing, probation and parole reforms, and re-examining effective public safety

Four states in the United States – Kansas, Michigan, New Jersey, and New York – have reduced their prison populations by 5–20 percent since 1999 without any increases in crime. This came about at a time when the national prison population overall increased by 12 percent; and in six other states it increased by more than 40 percent. The reductions were achieved through a mix of legislative reforms and changes in practice by corrections and parole agencies. The reforms included:

- Kansas: Changed sentencing guidelines to divert lower level drug cases to treatment rather than incarceration and expanded support services to people on parole supervision.
- Michigan: Eliminated most mandatory minimum sentences for drug offences; enacted statewide initiative to reduce parole revocations and enhance employment, housing, and treatment services for people leaving prison.
- New Jersey: Increased parole releases by adopting risk assessment instruments and utilizing day reporting centres and electronic monitoring.
- New York: Scaled back harsh drug penalties, established Drug Treatment Alternative to Prison programmes, and applied ‘merit time’ credits to speed up parole consideration.

Source: Downscaling Prisons: Lessons from Four States, by Justice Strategies and The Sentencing Project (2010)

Create a fair and effective criminal justice system for children

- Develop and implement a crime prevention strategy for children.
- Collect accurate data on the administration of criminal justice for children to inform policy reform.
- Increase the age of criminal responsibility.
- Set up a separate criminal justice system for children with trained staff.
- Abolish status offenses.
- Ensure that children in conflict with the law have the right to be heard and represented.
- Invest in diverting children from the formal criminal justice system.
- Use detention as a last resort.
- Develop and implement reintegration and rehabilitation programmes.
- Prohibit and prevent all forms of violence against children in conflict with the law.
- Take into account the impact on children of their parent’s involvement in a criminal justice process.

Abolition of the death penalty

- Amend legislation to reduce the number of crimes which are death penalty applicable, and to ensure that the crimes for which the death penalty may be applied are only for the most serious crimes.
- Extend the categories of person on whom a death sentence may not be pronounced to include mothers and the elderly.
- Review legislation and practice to ensure that they guarantee to those facing a death sentence the right:
 - ▶ to qualified and competent legal assistance at all stages of the proceedings (trial, sentencing and appeal);
 - ▶ to legal aid in full equality if the defendant does not have sufficient means;
 - ▶ where relevant to consular assistance;
 - ▶ to be presumed innocent;
 - ▶ to be tried promptly by a competent, independent and impartial tribunal established by law;
 - ▶ to appeal to a higher jurisdiction;
 - ▶ to seek clemency or pardon;
 - ▶ to have implementation of the sentence suspended while such appeal, clemency or pardon process is pending.
- Review practices to ensure that death sentences are not being applied in a discriminatory or arbitrary manner.
- Establish moratoria on executions and executions.
- Where executions do occur, putting in place measures to ensure that they are carried out so as to inflict the minimum possible suffering, including for the family of the offender.
- Ensure transparency, including the publication of comprehensive information on the application of the death penalty.

Torture prevention

- Promote and initiate the ratification of the UN Convention against Torture and its optional protocol.
- Promote and initiate the establishment of independent monitoring mechanisms to examine the treatment of people in detention, and to strengthen protection against torture and ill treatment.

Proportionate a sensitive response to women's offending

- Promote and initiate implementation of the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders 2010 (the Bangkok Rules).

Women in prison

- Women generally represent a minority (roughly 2–9 percent) of the overall prison population, which is why their needs tend to be overlooked. At the same time, the number of women imprisoned has increased significantly in some countries, and at a greater rate than for men. The Bangkok Rules provide for specific non-custodial measures for female offenders and seek to ensure standards of treatment in prisons which take into account the special needs of women and girls. These include, for example: promotion of non-custodial measures; physical and mental healthcare; safety and preventive measures; pregnancy and parenting; capacity-building for staff; gender-based violence in prison; girls in the criminal justice system; contact with the outside world and rehabilitation.

Non-custodial sanctions and measures for mothers

In Russia, federal legislation allows for mothers of children under the age of 14 and pregnant women who have been convicted of less serious offences to have their sentences deferred, shortened or revoked. Female prisoners who are pregnant or who have young children and who are imprisoned for less serious offences may have their sentences deferred until their children have reached the age of 14.

Protecting other vulnerable prisoners

- Certain groups of prisoners are particularly vulnerable, require protection and/ or have specific needs. These include juveniles, women, persons with disabilities, prisoners on death row, elderly, individuals with grave or infectious diseases (AIDS/HIV, TB and drug addiction constituting the main health problems usually faced by prisoners), foreigners, life-sentenced prisoners, and other minority groups such as LGBT people. Laws and policies should be enacted to ensure that these prisoners are accorded special consideration and protection so that they are not discriminated against or threatened.

Key PRI resource

PRI has produced a handbook to guide reformers *'Making Law and Policy that Work,'*¹ aimed at specialists and non-specialists faced with the responsibility of creating a policy and legislative framework for criminal justice and penal systems. It is based on PRI's twenty years of cumulative experience in penal reform around the world. PRI well knows that no country reshaping its criminal justice system has the luxury of starting from a blank page. History, custom, popular myth, budgets, institutions and legislation all tie the hands of those who wish to create something that more closely meets contemporary needs and standards. The publication aims to provide clear guidance and practical suggestions for tackling reform in line with an international human rights framework which can be applied in different contexts and countries.

¹ *Making Law and Policy that Work* is available to download in English and Russian free of charge on our website www.penalreform.org. Copies in French and Spanish will be available in April 2012. To order hard copies of the publication please write to publications@penalreform.org. PRI is grateful to the Sigrid Rausing Trust for its kind support.