

PENAL REFORM

A NEW APPROACH FOR A  
NEW CENTURY

International Penal Reform Conference 1999

A new agenda for  
penal reform

International Centre for Prison Studies  
Penal Reform International

# A new agenda for

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## INTERNATIONAL PENAL REFORM CONFERENCE

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Royal Holloway College,  
University of London  
Egham, Surrey, United Kingdom

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# penal reform

Between 13 and 17 April 1999, 120 people from 50 countries in all five continents met in Egham, Surrey, England to consider A New Approach for Penal Reform in a New Century. Government ministers and officials, parliamentarians, judges and representatives of international, regional and national non-governmental organisations concerned with penal reform and human rights discussed the role of the criminal justice system and in particular the prison in a civil and democratic society.

Those present agreed a new agenda for penal reform for the next decade.

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April 1999

## The current situation

- The conference recognised the fact that criminal justice systems are in need of reform and that prison systems all over the world are in crisis.
- Throughout the world there are more than eight million men, women and children in prisons.
- In many countries a majority of the people in prison are awaiting trial and many of them have little or no access to adequate legal assistance.
- Prisons are of small benefit to society, disrupt the family life of prisoners and give little satisfaction to victims.
- Prisons throughout the world are institutions that are isolated from society and easily forgotten. There is little effective monitoring or independent inspection.
- In practice prison conditions are often inhuman and fall short of the United Nations and regional minimum standards to which most States subscribe.
- Human rights abuses including overcrowding, unhygienic conditions, lack of food and medical care, the spread of infectious diseases and deaths in custody, violence and corruption are widespread.
- Lack of trained personnel, inadequate resources and poor co-ordination in the prison and justice systems in many countries lead to long delays in dealing with complaints and rendering justice.
- There are disproportionate numbers of racial, ethnic and other minorities in prison and an over-representation of the poor in most prison systems.
- The total number of prisoners has been dramatically inflated by the use of imprisonment in an attempt to deal with the problem of the use of drugs in society. In some societies more than 50% of all prisoners are detained for non-violent drug related offences. Ironically, similar percentages of prisoners continue to use illegal drugs while in prison.
- Vulnerable groups, such as women, children, juveniles, mentally and terminally ill prisoners, the disabled, the aged, ethnic and religious minorities, foreign nationals and

## Objectives of the conference

political detainees often do not receive the special attention they need.

- Many of the existing, successful alternatives to custody are not generally understood by the public nor used sufficiently by the courts and criminal justice professionals.
- Imprisonment is often used, even for petty offences, as a punishment of first instance, rather than of last resort.
- The death penalty is still used in a number of countries and those on death row often spend a long period of time in inhuman conditions without access to the rights of due process of the law.

Against this background the objectives set for the conference were to promote:

- New models of best practice for penal reform, usable throughout the world, that conform to the international human rights standards and are culturally-sensitive and cost-effective.
- A new framework for penal reform that emphasises access to justice for the poor and marginalised.
- Expanded and sustainable networks of penal reformers, within regions and across regions, and better working relationships between government officials, practitioners and non- governmental organisations.
- A higher profile for penal reform work on the human rights agenda and more attention to the position of particularly vulnerable groups and special categories such as women, children and the mentally ill.

# Elements of a new agenda

In the course of discussion the conference began to identify the key elements of a new agenda for penal reform world wide. An important feature in the development of new democracies in recent years has been reform of their penal systems. The lessons which they have learnt need to be widely disseminated. These elements are:

- The understanding that penal reform is an essential part of good governance.
- The awareness that penal reform cannot proceed without changes to the criminal justice system as a whole and that crime prevention in and by civil society is essential to the success of penal reform.
- The recognition that, in dealing with poverty and the disadvantaged, it is vital that justice should be accessible and that there should be penal reform.
- The determination to make sure that everyone, especially the poor and marginalised, has equal access to the justice system.
- The need for all accused to have a fair trial under due process of the law.
- The recognition that drug abuse is usually better dealt with inside the health or social welfare care system rather than the criminal justice system, especially when there is no violence involved.
- The need to enrich the formal judicial system with informal, locally based, dispute resolution mechanisms which meet human rights standards.
- The assurance that people understand how courts and the criminal justice system operate.
- Openness and accountability in all aspects of the operation of the criminal justice system.
- Penal reform that is an all-embracing and consultative process.

# Implications of this new agenda

This new agenda implies:

- An acceptance that criminal justice should have a well-defined and limited role to play in any democratic society. It should not be used to resolve problems which are not relevant to it. Depenalisation should be encouraged wherever possible.
- An insistence that imprisonment should be used by courts as an exception rather than a first option.
- This should apply especially in respect of pre-trial detention and judicial custody.
- The recognition that private, for-profit prisons are likely to result in pressure for an increased use of imprisonment and therefore should be opposed.
- Respect for the human rights of everyone in the criminal justice system, particularly of the victim and of the accused.
- A non-elitist criminal justice system which treats all people equally
- A criminal justice system which includes women and ethnic and minority groups at all levels of its

operation.

# How this new agenda should be developed in detail

If this new agenda is followed, there is likely to be a significant development in strategies which allow matters currently dealt with in a criminal justice setting to be resolved under other formal or informal procedures. A greater number of offenders who are at present detained in custody are likely to be dealt with in the community. This should lead to a reduction in prison populations. This, in turn, should give prison administrators the opportunity to assist prisoners to use their time in prison positively and to prepare for release. The conference identified the following nine strategies as central to the development of this new agenda. The priority given to the strategies may differ from State to State. They are listed here according to the logical sequence described above.

## 1 Restorative justice

Formal criminal justice systems have marginalised victims of crime and have failed to oblige offenders to face up to the damage and harm which their actions have caused. The basic principle of restorative justice is a determination to restore the balance between the victim, the offender and the community.

- Restorative justice should be adopted

in appropriate instances as a preferred form of criminal justice process because it strengthens the social fabric and is likely to lead to a reduction in levels of imprisonment.

- Restorative justice should be promoted in each country as a legitimate part of the criminal justice process. There should be a programme to increase public awareness of the benefits of restorative justice.
- Projects to promote restorative justice should be established in each country.
- There should be training in law schools and other educational institutions in the principles of restorative justice. Those already working in criminal justice systems should be included in this training.
- There should be arrangements for an exchange of best practice in restorative justice and to monitor and promote its development.

## 2 Alternative dispute resolution

Alternative dispute resolution, as its



name implies, provides options that may take disputes out of the penal justice arena and help the parties to resolve them with the assistance of a neutral person, such as a mediator.

- The mechanism for alternative dispute resolution should be participatory, voluntary and take account of human rights and gender issues.
- Public awareness programmes should be developed in order to ensure the participation and support of everyone, including governments, local representatives, including women, potential users, mediators and communities in general.
- Training in the skills necessary for alternative dispute resolution should be provided.
- The option of alternative dispute resolution should be available to all potential users.
- Sustainability should be ensured by planning which includes issues of manpower and finance.
- Alternative dispute resolution should be recognised as a valuable and

legitimate component of the rule of law.

### 3 Informal justice

Informal justice contributes to improving access to justice in a manner which is reconciliatory, inexpensive, intelligible, participatory, language and value sensitive to local communities. Its emphasis on restorative and compensatory outcomes is a useful complement to the previous two strategies.

- Informal, customary and other community-based justice which accords with human rights protections laid down in international instruments should receive recognition and support from governments.
- Where appropriate, elements of informal and community-based justice should be incorporated into the formal systems with a view to making the whole system more user-friendly and accessible to the poor.
- Where there are separate systems of community-based justice and state

justice they should develop a complementary working relationship.

- The danger that community-based justice might make use of means that do not meet the requirements of legal systems and human rights has to be recognised. Care must be taken that community-based justice does not become violent, self-serving or irresponsible.

#### 4 Alternatives to custody

In addition to the strategies outlined above, it is also necessary to consider more traditional alternatives to custody in order to deal with the inappropriate use of imprisonment which has led to widespread prison overcrowding.

- Legislators, the executive, the judiciary and the public need to understand what alternatives to custody involve.
- Pre-trial detention and short term prison sentences should wherever possible be replaced by non-custodial alternatives.
- The rights of victims should always be taken into account when

alternatives to custody are being considered.

- Training programmes should be offered to everyone who is involved in the process of imposing or implementing alternatives to custody, including those working in the criminal justice system, civic leaders and non-governmental organisations.
- Civil society needs to be made aware of the role it can play in developing and implementing alternatives to custody.
- Civil debtors and fine defaulters should not be imprisoned but should be dealt with through non-custodial options.

#### 5 Alternative ways of dealing with juveniles

- The international instruments, particularly the Convention on the Rights of the Child, require that juveniles should be imprisoned only as a last resort. This means that there has to be an alternative strategy for dealing with juvenile offenders.
- There should be a co-ordinated and

comprehensive response to juvenile offending.

- Governments should adopt a wide range of schemes for the prevention of juvenile crime.
- Restorative justice and other alternatives are particularly appropriate for juvenile offenders.
- Resources should be devoted to a comprehensive assessment at the point of arrest with a view to diversion from custody.
- When custody is inevitable, the basis of the whole regime should be rehabilitative.

## 6 Dealing with violent crime

Violence prevention is so crucial for society that special strategies need to be developed to deal with it.

- Violent crime requires both short term and long term solutions.
- Long term solutions should have priority. These should include preventive measures designed to change public attitudes, to encourage political dialogue and to remove

economic and gender disparities.

- Recognising that in the short term certain numbers of violent offenders need to be imprisoned, we should look for a variety of alternative methods for dealing with them while in custody which are humane and in accordance with the international human rights instruments.
- Most violent offenders will eventually be released. Therefore, they should be encouraged to face up to the crimes they have committed and to acquire skills which will help their re-integration into society.
- When violent offenders are released and it is necessary for public safety that some record should be kept of their whereabouts, this information should not be used in such a way as to prohibit their social reintegration.

## 7 Reducing the prison population

International instruments on the treatment of offenders require minimum use of imprisonment. The strategies outlined above will contribute to the realisation of this end. In addition,

further steps, which accord with human rights instruments, need to be taken to reduce inappropriate use of imprisonment.

- A planned reduction of the prison population is preferable to ad hoc amnesties.
- There has to be a programme of public education to increase awareness of the limitations of imprisonment as a way of protecting society.
- Methods of evaluating the effectiveness of the police and the courts must be devised which do not rely on numbers of persons arrested and incarcerated.
- There should be a strict limit on the length of pre-trial detention.
- Non-custodial penalties should be genuine and effective alternatives to imprisonment.
- The use of effective pre-release methods should be promoted.
- Drug abusers should be diverted from the criminal justice system into the health care system.

## 8 The proper management of prisons

Prisons must always be run according to the relevant international standards. In addition, there are a number of features which should be common to all prison systems.

- Prisons should be part of the civilian criminal justice system and not part of any military or police structure.
- The prison system should be regarded as a public service. It should be transparent and open to public scrutiny.
- Standards should be set for prisons covering all areas of activity, including matching numbers of prisoners to space available.
- Prison staff should be properly recruited, trained, remunerated and given adequate working conditions. They should be civil servants, not members of the military or the police.
- Prisoners should be given the opportunity to work but this should not be punitive or demeaning.
- Prisoners should be properly prepared for release.

## 9 The role of civil society in penal reform

No strategy for penal reform can succeed without the involvement of civil society.

- Governments should recognise the need to involve civil society groups in all stages of the criminal justice process.
- These civil society groups, such as NGOs, universities and religious groups, should co-operate with each other in the interests of penal reform.
- There is a need to educate public opinion on penal reform issues and contacts with the media should be developed. They should have access to the various sectors of the criminal justice system, including penal institutions.
- Local community organisations should be encouraged to scrutinise prison conditions and to contribute to prison activities.
- Civil society should be encouraged to monitor and to report on the human rights of detainees and victims.
- NGOs and other civil society groups should be involved at local, national

and international levels to promote penal reform. Examples are the provision of legal aid, legal education and training, community services, litigation, lobbying legislators, community policing and information about best practices.

## Future action

The conclusions reached at this conference constitute a significant agenda for penal reform in the next decade. The 120 delegates from the 50 countries present at this conference wish to draw their conclusions to the attention of all governments, the United Nations, regional intergovernmental agencies and non-governmental organisations. They recommend that these conclusions should be adopted by all governments and that they should be widely publicised as a means of encouraging a new agenda for penal reform.

The International Centre for Prison Studies was established in the School of Law, King's College, University of London, United Kingdom in April 1997.

It seeks to assist governments and other relevant agencies to develop appropriate policies on prisons and the use of imprisonment. It carries out its work on a project or consultancy basis for international agencies, governmental and non-governmental organisations. It aims to make the results of its academic research and projects widely available to groups and individuals, both nationally and internationally, who might not normally use such work. They include policy makers, practitioners and administrators, the media and the general public.

It is working to

- Develop a body of knowledge, based on international covenants and instruments, about the principles on which the use of imprisonment should be based, which can be used as a sound basis for policies on prison issues.
- Build up a resource network for the spread of best practice in prison management worldwide to which prison administrators can turn for practical advice on how to manage prison systems which are just, decent, humane and cost effective.

Penal Reform International (PRI) an independent, non-governmental organisation established in 1989 and registered in the Netherlands. Its secretariat is based in the UK and it has offices in Moscow, Paris, San Juan and Bucharest. It has consultative status with the United Nations and the Council of Europe and observer status with the African Commission on Human and People's Rights.

Penal Reform International seeks to achieve penal reform, whilst recognising diverse cultural contexts, by promoting:

- the development and implementation of international human rights instruments with regard to law enforcement, prison conditions and standards;
- the elimination of unfair and unethical discrimination in all penal measures;
- the abolition of the death penalty;
- the reduction in the use of imprisonment throughout the world;
- the use of constructive non-custodial sanctions which encourage social reintegration whilst taking account of the interests of victims.

PRI works in partnership with individuals and non-governmental organisations and co-operates with governments.

