



Economic and Social Council

Distr.: Limited
22 April 2009

Original: English

Commission on Crime Prevention and Criminal Justice

Eighteenth session

Vienna, 16-24 April 2009

Draft report

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Addendum

Thematic discussion on penal reform and the reduction of prison overcrowding, including the provision of legal aid in criminal justice systems

1. At its 5th, 6th and 7th meetings, on 20 and 21 April, the Commission considered agenda item 3 (b), entitled “Thematic discussion on: ‘Penal reform and the reduction of prison overcrowding, including the provision of legal aid in criminal justice systems’”. The thematic discussion was guided by the following subthemes:

- (a) Respect for human rights in penal establishments;
- (b) Pretrial detention and the principle of a fair trial;
- (c) Case management in penal establishments;
- (d) Reducing prison overcrowding;
- (e) Restorative justice; and
- (f) Alternatives to imprisonment, and social reintegration.

2. For its consideration of item 3 (b), the Commission had before it the following:

- (a) Report of the Secretary-General on international cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa (E/CN.15/2009/8);



(b) Note by the Secretariat on economic fraud and identity-related crime; and penal reform and the reduction of prison overcrowding, including the provision of legal aid in criminal justice systems (E/CN.15/2009/15);

(c) Statement submitted by the Howard League for Penal Reform (E/CN.15/2009/NGO/3).

3. The thematic discussion was chaired by the Chairman of the Commission and led by the panellists: Vitaya Suriyawong (Thailand), Julio Enrique Socha Salamanca (Colombia), Gustavo Misa (Uruguay), Santi Consolo (Italy), Tae Sugiyama (Japan), Yasser M. T. Refaie (Egypt), Wolfgang Wirth (Germany), Donald Stolworthy (United States) and W. Orakwe (Nigeria).

4. The Commission heard a statement by the observer for the Plurinational State of Bolivia (on behalf of the Group of Latin American and Caribbean States). Statements were made by the representatives of the United Kingdom, Indonesia, Canada, the Republic of Korea, Algeria, India, Lesotho, Brazil, Argentina, China, the Russian Federation, Thailand, Cuba, the Islamic Republic of Iran, South Africa, Nigeria, the Libyan Arab Jamahiriya, the United States and Romania. Statements were also made by the observers for Sweden, Ecuador, Croatia, the Bolivarian Republic of Venezuela, Slovenia, Poland, Uganda, Peru, Portugal, the Dominican Republic, Senegal and Australia. Statements were also made by the observers for the African Institute for the Prevention of Crime and the Treatment of Offenders, the Latin American Institute for the Prevention of Crime and the Treatment of Offenders, the International Scientific and Professional Advisory Council, the International Commission of Catholic Prison Pastoral Care, the Friends World Committee for Consultation and Penal Reform International.

A. Deliberations

5. In his introductory remarks, the Executive Director of UNODC urged Member States to address the humanitarian tragedy and threat to public health and security represented by prison overcrowding throughout the world. He referred to violations of human rights as a result of the low level of adherence to the Standard Minimum Rules for the Treatment of Prisoners, adopted in 1955. Overcrowding also contributed to the spread of HIV/AIDS and other communicable diseases within and outside the prison system. He noted that pretrial detention was being used frequently, contrary to international standards, and that in many countries pretrial detainees accounted for over half of the total prison population. In addition, prisoners with special needs, in particular women, children and youth, drug-dependent persons and the mentally disabled, were often overrepresented and their needs were not catered to. The Executive Director stated that UNODC had a rapidly growing programme for providing technical assistance to Member States in the field of penal reform, including five key areas: the establishment and improvement of data management systems; the training of prison managers; the improvement of prison health and welfare; the development of mechanisms to reduce overcrowding; and targeted programmes to improve the situation of vulnerable groups in prison. Various handbooks developed by UNODC in the area of prison reform were being used for training and capacity-building in many countries. He underlined that

resolution of the crisis of prison overcrowding hinged on political will and leadership.

6. The first panellist noted that there had been a sharp increase in the previous 10 years in the female prison population, which had posed a number of challenges in the area of prison management. He further stated that the Standard Minimum Rules for the Treatment of Prisoners were not adapted to the special needs of women. He presented the work of the Enhancing the Lives of Female Inmates programme of the Ministry of Justice of Thailand, which was aimed at restoring the dignity of female inmates and promoting equality of outcome for such inmates. He noted that a proposal had been made to convene an expert group meeting before the Twelfth Congress, in 2010. He called on Member States to support the process of reviewing the 70 rules on the treatment of women prisoners and non-custodial measures for women offenders, which had been developed at an expert round-table meeting held in Bangkok in February 2009.

7. The second panellist addressed the issue of human rights in penal establishments, emphasizing that in many prisons throughout the world human dignity was not protected. He recalled that presumption of innocence was an essential element of the rule of law and outlined the conditions under international law for determining the use of pretrial detention, namely that the measure should be exceptional, necessary, proportional, ordered by a competent body and for a reasonable period of time. The panellist proposed restorative justice and alternatives to imprisonment as measures to address overcrowding in prisons and to achieve the social reintegration of offenders.

8. The third panellist explained that in his country punitive policies had resulted in a sharp increase in recidivism. Therefore, the national reform that had started in 2005, with the support of UNODC, had focused on raising public awareness of the problem of prison overcrowding, providing social and other prevention policies, using an interdisciplinary process, involving all parts of the Government and focusing on long-term responses, as well as addressing the financial aspects. His country was also moving from an inquisitorial to an accusatorial public system and alternatives to imprisonment had been promoted.

9. The fourth panellist noted that it was possible to reduce the rate of imprisonment by decriminalizing certain offences. He outlined how prison circuits could be reorganized in a constructive manner as follows: the identification of “flow” prisons for initial accommodation; and the identification of prisons offering a range of treatment activities intended for prisoners who posed little danger to society. Other proposed measures included the identification of different models of surveillance; the facilitation of offenders’ access to work outside prison and to alternative measures; and the targeting of staff training to improve the social reintegration prospects of prisoners.

10. The fifth panellist explained how a reduction in the prison population could be achieved by implementing an effective parole system, in partnership with the private sector. Volunteer probation officers played a major role in the community supervision of offenders, in addition to participating in crime prevention activities and raising public awareness. Research indicated that reoffending was much lower among former prisoners who had been released on parole than among those released upon completion of their sentences. In addition, community-based correctional

systems were more cost-effective. The development of more effective treatment programmes to prevent reoffending, improving the human and physical resource capacities of probation officers and increasing public awareness were areas that had contributed to reducing prison overcrowding.

11. The sixth panellist stressed the importance of an integrated approach to reducing prison overcrowding, including the active involvement of all authorities of the criminal justice system and relevant ministries. He made the following specific suggestions: the improvement of the financial situation and logistics; the establishment of a consultative group to supervise the execution of sentences; the establishment of a mechanism for compiling good practices and model legislation; and the establishment of a mechanism for assessing the implementation of measures for criminal justice reform.

12. The seventh panellist focused on a successful pilot project that used social reintegration after the prisoner's release to prevent reoffending. He stressed the need to develop new concepts of cooperation that went beyond the formal boundaries of the prison system and to establish a case management approach, spanning the arrest stage, through the period of imprisonment and the time of release and subsequent stages. In addition, a variety of issues that increased the risk of reimprisonment, such as homelessness, indebtedness, drug addiction, lack of basic skills and low educational level, needed to be addressed. He noted that employment had been identified as a key factor in reducing recidivism.

13. The eighth panellist stressed the central role of case management in prisons to achieve individualized treatment, such as the provision of services appropriate to prisoners' needs, targeted preparation for release and social reintegration following release, all of which helped reduce reoffending. Case management could help to improve the treatment of prisoners and to reduce the prison population.

14. The ninth panellist underlined that the main challenge faced in his country was overcrowding attributed to the large number of pretrial detainees. In his country, a proposal to pardon all prisoners sentenced to death was being considered, free legal aid was provided to many prisoners by the legal aid council, and criminal justice committees had been formed to review cases of detainees and to release those who had been in detention longer than the sentence they could receive. Some initiatives had been undertaken to improve aftercare and social reintegration, but more needed to be done.

Respect for human rights in penal establishments

15. Several speakers referred to alternatives to imprisonment, and considered building and improving current prisons as measures to address prison overcrowding; they called for education and vocational training for inmates to be strengthened to facilitate social reintegration. It was emphasized that fair and effective criminal justice systems, which respected human rights as well as integral prevention policies, were prerequisites for combating crime and building democratic and equitable societies, supportive of vulnerable groups, juvenile justice and victims and witnesses.

16. Several speakers emphasized that overcrowding in prisons was a global human rights problem and that urgent measures needed to be taken to address that problem. Several speakers provided detailed accounts of the human rights situation in their

countries' prisons, including statistical information. It was noted that access to medical care was an important human right of prisoners. Several speakers highlighted the existence of independent institutions to monitor detention conditions and to protect the rights of prisoners in their countries. In that context, reference was made to the establishment of an office of the ombudsman; parliamentary scrutiny; access of non-governmental organizations to prisons; and the establishment in each prison of a committee in which the prisoners, their families and the prison authorities were represented.

17. Some speakers supported the initiative to draft supplementary rules on women in prison. One speaker explained the actions taken in his country to address the rapid increase in the female prison population, as well as the disproportionate impact of imprisonment on women, which included investing resources, creating one-stop centres for women in the community and adopting gender-specific standards.

Pretrial detention and the principle of a fair trial

18. Many speakers emphasized that overuse of pretrial detention was one of the main factors contributing to the increase in detention rates worldwide. Several speakers outlined legal, administrative and case management measures that had been implemented to reduce the use and duration of pretrial detention. Such measures included the fast-tracking of cases through visits to prisons by the Chief Justice, the setting up of fast-track courts for specific groups of offenders and victims, reducing the causes and duration of arrests and police custody and reviewing all remand case files.

19. Several speakers stressed the importance of establishing a robust system to ensure the provision of legal and paralegal aid for offenders, in particular indigents, at the pretrial stage, as well as within the prison system. The provision of free legal aid to pretrial detainees, prisoners and the general population, was recognized as an important factor contributing to a fair trial.

Case management in penal establishments

20. Some speakers referred to measures to improve case management through, for instance, the establishment of national integrated case flow management, managing cases from the arrest stage to release and post-release.

Reducing prison overcrowding

21. It was felt that overcrowding was due to excessively repressive or retributive policies and that a rehabilitative approach was necessary to address the problem in a sustainable manner. Some speakers emphasized that successful penal reform needed to be comprehensive, to involve multiple stakeholders, including the criminal justice system and other government and civil society actors, and to take into account the costs of imprisonment.

22. Several speakers underscored the need to raise public awareness of the importance of penal reform, with a view to reducing prison overcrowding and establishing a more effective and fairer criminal justice system. In particular, the public needed to be informed of the benefits of alternatives to imprisonment in order for community sentences to be effective.

23. Several speakers emphasized that the increases in crime and overcrowding were closely linked to poverty and social and economic inequalities. Some speakers emphasized the need to devise overarching social policies to address inequalities and to establish crime prevention programmes targeting risk groups. Some speakers explained that amnesty and pardoning had resulted in a large number of prisoners being released, thus helping to reduce prison overcrowding.

Restorative justice

24. Several speakers emphasized the need to change the approach to criminal justice from retributive to restorative justice. Many reported on the implementation of restorative justice programmes in line with the basic principles on the use of restorative justice programmes in criminal matters (Economic and Social Council resolution 2002/12, annex). Restorative justice offered offenders and their victims an opportunity for reconciliation and an opportunity to be reintegrated into society. One speaker noted that the establishment of a reconciliation and settlement programme, allowed victims to submit to the prosecutors' office complaints, seeking monetary compensation rather than criminal punishment. Several speakers explained that their Governments had envisaged introducing restorative justice legislation, including mediation for victims and offenders. One speaker noted that it might be useful to establish a specialized bilingual prosecution service for indigenous matters, which could implement constitutional provisions recognizing indigenous justice, promoting alternatives to imprisonment and applying community sanctions.

Alternatives to imprisonment; and social reintegration

25. Several speakers outlined the need to provide alternatives to imprisonment at the pretrial and sentencing stages in order to promote the reintegration of offenders into society and to reduce prison overcrowding. A number of speakers noted the positive impact on the rate of imprisonment achieved by decriminalizing certain offences, reducing the length of sentences and introducing early release programmes. In many countries, penal laws had been revised and appropriate institutions and programmes had been established to implement alternatives to imprisonment such as fines, community service sentences, compensation, admonition, parole and other forms of early release, probation, suspended sentences, conditional release, house arrest and electronic surveillance systems.

26. Several speakers noted that, in order to make alternatives to imprisonment effective, legislative and practical measures, including capacity-building and awareness-raising programmes, were needed to increase the use of such measures by the police, the prosecution and the judiciary. A number of speakers stressed the need to take steps to encourage and enable courts to make more frequent use of non-custodial measures.

27. Several speakers highlighted the need to invest efforts and resources in the social reintegration of prisoners, both during their imprisonment and following their release. Social rehabilitation was regarded as being of benefit both to society, as it prevented recidivism, and to the offender and his or her family. Many speakers described prevention and social reintegration programmes implemented in their countries, including programmes to promote literacy, education and vocational training; programmes for the rehabilitation of inmates under the age of 24; pre- and

post-release programmes; and comprehensive health service programmes. It was noted that effective reintegration programmes should include not only vocational training in prison, but also job placement in preparation for the release stage and aftercare services related to post-detention employment

Chairperson's Summary

28. At the end of the thematic discussion, the Chairperson summarized the salient points as follows:

(a) Overcrowding in penal institutions had become a global human rights, health and security issue for offenders, their families and their communities. There was political will and commitment among many Member States to respond to that challenge;

(b) Prison overcrowding was not the problem of prison authorities alone. To be effective, prison reform measures to reduce overcrowding must address the criminal justice system as a whole in a comprehensive, sustainable manner and must go beyond the building of prisons. Examples were given of successful legal and practical programmes ranged from prevention to decriminalization to early release and focused on reducing delays and the use of pretrial detention, changing sentencing practices and using alternatives to imprisonment at all stages;

(c) Police and pretrial detention should be used only when absolutely necessary, in accordance with established legislation, and should be decided by a competent authority and for a determined period of time. Measures to decrease the use and duration of pretrial detention included bail, plea bargaining, free legal aid, diversion and fast-track courts;

(d) Examples were given of various types of successful alternatives at the sentencing and post-sentencing stages, such as fines, community service sentences, compensation, admonition, parole and other forms of early release, probation and electronic tagging. It was noted that capacity-building and awareness-raising were needed to increase the use of such measures by the police, prosecution and judiciary. The public should also be informed about the benefits of alternatives so that effective use could be made of community sentences;

(e) The need to move from a retributive to a restorative justice system was emphasized. Criminal justice systems that took into account the rights of both the victim and the offender had a positive effect on prison overcrowding and social reintegration of offenders;

(f) In several countries there were independent institutions to monitor detention conditions and to protect the rights of prisoners. Examples of such institutions included the office of the ombudsman; parliamentary scrutiny; access of non-governmental organizations to prisons; and the setting up of a committee in each prison where the prisoners, their families and the prison authorities were represented;

(g) While women still accounted for a smaller proportion of prisoners, their number had been increasing at a higher rate than that of male prisoners. Special measures needed to be adopted to address the special needs of women prisoners so as to ensure equivalence of outcome. That also applied to other vulnerable groups of prisoners, such as indigenous peoples and the mentally disabled;

(h) The social rehabilitation of the offender should be the aim of any sentence, as it benefited the offender, his or her family and society. For that reason, both within and outside prisons, adapted social rehabilitation measures should be offered to offenders. Such measures included voluntary and public probation services, education and comprehensive health services. Employment following release was viewed as the key to preventing reoffending;

(i) The successful reintegration of former offenders into society required a case management approach, from the arrest stage, through the period of imprisonment to the time of release and beyond. Case management played a key role in individualizing treatment in prison and enabled social reintegration;

(j) The cost of imprisonment to society in relation to the costs of other options needed to be taken into account when designing public policies. In most cases, imprisonment was more costly than alternatives to imprisonment.

B. Workshop

29. A workshop on the theme of “Penal reform and prison overcrowding” was organized by the institutes of the United Nations Crime Prevention and Criminal Justice Programme network. The workshop was chaired by the First Vice-Chairman and moderated by the Director of the United Nations Interregional Crime and Justice Research Institute (UNICRI), who also served as rapporteur for the workshop. It was noted that a compilation of the papers presented at the workshop had been distributed by UNICRI at the workshop and would be made available online.

30. The First Vice-Chairman, in his opening remarks, observed that the workshop addressed an important topic that would also be addressed at the current session of the Commission during the thematic discussion on “Penal reform and the reduction of prison overcrowding, including the provision of legal aid in criminal justice system”. The workshop provided an opportunity for institutes to share their experiences and discuss key components for strategies and tools for addressing prison overcrowding through penal reform.

31. The moderator underlined that the solution to the problem of prison overcrowding could not be found solely in the administration of the penal system; there was a need to adopt a multifaceted approach involving all the branches of the criminal justice system.

32. The observer for the Asian and Far East Institute for the Prevention for Crime and the Treatment of Offenders gave a presentation on the current preparations for the workshop on the theme “Strategies and best practices against overcrowding in correctional facilities”, to be organized within the framework of the Twelfth Congress. The goal of the workshop would be to highlight the need for a comprehensive approach to reducing prison overcrowding. It was noted that a meeting of experts had been held from 26 to 28 January 2009 to discuss the structure of the workshop, the main elements of the discussion and the speakers. A second meeting of experts would be held in Tokyo, at the headquarters of the Asian and Far East Institute, from 14 to 18 September 2009 to finalize the background paper for the workshop.

33. The observer for the European Institute for Crime Prevention and Control, affiliated with the United Nations, presented the Estonian strategy of executive decision-making, concerning the use of early release to reduce prison populations, and provided a comparative analysis of the experiences in Estonia and the United Kingdom in that area. It was observed that there were a number of problems associated with high rates of incarceration, such as the economic impact. Issues related to the resettlement and reintegration of prisoners into society were also stressed. An analysis of decarceration strategies in the United Kingdom (England and Wales) was presented, in particular the decrease in the remand population. The efforts made in Estonia to improve the living conditions of prisoners were presented; reference was made to the probation service introduced in 1998. Recent successful decarceration strategies were mentioned, such as the introduction of electronic monitoring as an alternative to imprisonment; a procedure for releasing prisoners on parole was also mentioned. It was noted that legislation had been adopted to allow persons who had committed minor offences while on parole to apply for community service or to pay a fine instead of being sent to prison. It was also noted that the decriminalization of minor theft also made possible a decrease in the number of prisoners.

34. The observer for the International Centre for Criminal Law Reform and Criminal Justice Policy focused on the critical challenges of prison overcrowding in post-conflict situations and transitional societies. The observer mentioned penal reform and the rebuilding of prison systems; the lack of functional security and justice institutions; the legacy of armed conflict; militarized prison administrative systems; and prison overcrowding. The situation with regard to vulnerable groups, especially women and children, was stressed. The observer presented a successful methodology adopted in supporting prison reform initiatives in post-conflict situations. The methodology involved assisting in the construction of new prison facilities and the rehabilitation of existing facilities; developing leadership capacity within the prison system; supporting frequent and independent prison inspections; developing systems for vetting public employees and correctional staff and managers; offering training to prison staff; and supporting adequate information systems and the registry of prisoners to enable more effective prison population management. Finally, recent experiences of the Southern Sudan prison service were presented, together with a list of lessons learned.

35. The observer for the Latin America Institute for the Prevention of Crime and the Treatment of Offenders presented the case of countries in Latin America and the Caribbean and the results of work carried out over the previous three years. After having examined the situation with regard to the prison population in the region, the observer highlighted the link between the issue of prison overcrowding and the necessity of penal and general policy reforms. The speaker presented two successful examples of countries in the region in which strategies had been put in place to reduce prison overcrowding: Costa Rica and Dominican Republic. The observer underlined some of the actions undertaken in those two countries, including the careful selection of correctional staff and relevant training, the establishment of a solid professional penitential career and the channelling of annual investments into the system. Finally, the issue of private prisons was also considered, and their efficacy was compared with that of public prisons.

36. The observer for the International Scientific and Professional Advisory Council presented, as an example, the successful efforts to reduce the prison population in the Islamic Republic of Iran. The observer mentioned the first International Conference on Reducing the Use of Incarceration, held in the Islamic Republic of Iran in June 2007, during which the Government undertook a number of strong commitments, including a commitment to tackling the issue of HIV/AIDS in prison. An example was presented, where an executive committee was established in the province of Isfahan to work on reducing the use of incarceration. It was noted that the committee held regular meetings to identify prisoners eligible to be considered for pardon or conditional release. The work undertaken with prisoner pre-release and after-release centres in prisons and in the community was also mentioned. In addition, the speaker underlined the importance of consulting victims' associations to gain their support for the efforts to reduce the use of incarceration.

37. Following the presentations there was an open discussion. The observer for the European Institute for Crime Prevention and Control stressed the complexities involved in reducing overcrowding and the importance of adapting approaches appropriate to local conditions.

38. The observer for the African Institute for the Prevention of Crime and the Treatment of Offenders mentioned the importance of involving civil society in penal reform and reducing prison overcrowding. He added that the relevant international instruments were in many cases not applied in everyday practice and therefore the workshop to be held in the framework of the Twelfth Congress should be used as an opportunity to explore ways in which to implement such instruments.

39. The observer for UNICRI underscored the need to increase the sharing of information and the exchange of good practices, recognizing that such practices often needed to be specifically tailored to the local environment.

40. The representative of Saudi Arabia provided some insight on the efforts in his country to reduce prison overcrowding, in particular the Government's support in establishing national committees to care for prisoners' families and assist in the reintegration of former prisoners into society. He emphasized the importance of restorative justice in finding alternatives and settlements to disputes between parties.

41. It was noted that a workshop on strategies and best practices against overcrowding in correctional facilities would be held within the framework of the Twelfth Congress.