

United Nations Rule of Law Reform Support in Post-conflict States (Case of Penal Reform): @PKO Now!

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Properly functioning penal institutions confine violent offenders to maintain security and order and, to some extent, support their rehabilitation and reintegration into society. In most post-conflict states, however, penal institutions often fail to carry out such a mandate, and the international community has overlooked this when extending assistance.¹ Weak and fragile penal institutions not only undermine activities of the police and judiciary, but also degrade popular confidence in the rule of law systems and thus destabilize society. This column explores common issues penal institutions in post-conflict states often face, considers the reasons for reform as well as effective policies and measures, and lastly sheds light on UN support to penal reforms.

Common Issues on Penal Institutions in Post-conflict States

The overcrowding of penal institutions is one of the most prevalent issues in post-conflict setting. After conflicts cease, arrest rates tend to rise due to the expanding presence of international and national police.² Nevertheless, as dysfunction of the judiciary delays the case processing, the number of pre-trial detainees increases, which results in overcrowding. In past UN peace operations, there were cases in which police were compelled to release suspects because of the lack of space in penal institutions.³ Also, in the cells where multiple inmates were confined, they had to “take turns lying down to sleep while fellow inmates tie themselves to the cell bars and sleep standing up.”⁴ Additionally, adults and children who

should be properly separated were sometimes confined in the same cells.⁵ These issues can partly be attributed to the international community's skewed focus on capacity building of the police, but not of judicial and penal sectors, causing the fragmentation of the rule of law system.

Second, the poor conditions of penal institutions are alarming. The inmates are not provided with water, food, medicines, treatment and therapy. Most institutions also lack facilities for exercise and educational and vocational training programs.⁶ Moreover, as the institutions are often unhygienic, a risk of spread of infectious diseases always exists, which can potentially cause public health emergencies. Despite such risks, health management structure in the institutions is far below standard due to persistent lack of budget and personnel.

Third issue is the prevalence of human rights abuses against the inmates. In conflict-affected states, penal institutions are often run by the military or police, who, in violation of international law, commit torture and arbitrarily detain civilians.⁷ In Sudan, for instance, citizens detained merely on suspicion of associating with anti-government groups are tortured with beatings, hands and legs tied and hung from trees, as well as electrocution.⁸ The inmates are also barred from family visits and deprived of food and water for extended periods. "Global Prison Trends," published annually by Penal Reform International (PRI), documents various cases of human rights abuses against the inmates in conflict-affected states.⁹ As most inmates are originally from poor segments of society, they cannot afford legal aid and are thus unable to exercise their rights to fair trial. Consequently, they languish in the institutions, further exacerbating the overcrowding of prisons.¹⁰

Finally, penal institutions can play a key role in the radicalization of inmates. They look for protection from the poor conditions of penal institutions and human rights abuses, and search for their identities and meaning of life.¹¹ Exploiting inmates' such vulnerable feelings and grievances, extremist groups recruit, inject ideas of violent extremism, and generate a sense of defiance against authority, which, extremists believe, is unjust.¹² The inmates who joined extremist groups, for instance, attack prison staff, take hostages, and resort to riots.¹³ Those who break the prisons threaten public stability by conducting heinous crimes

like terrorist attacks and murders.¹⁴ There were also cases in which extremist groups launched assaults on penal institutions to help fellow members escape, or forced the inmates to join the groups in return for their assistance with the escape. It is thus hard to deny that penal institutions in post-conflict states, to some extent, serve as a breeding ground for violent extremism.

Reasons for Reform and Effective Policies and Measures

The need for penal reform in post-conflict states is urgent. To maintain public order and protect citizens, penal institutions that securely confine inmates are indispensable, and sanctions, such as imprisonment deter future crimes.¹⁵ Establishing a system which complies with international human rights standards, including protection of prisoners' rights and the improvement of conditions in penal institutions is also imperative. The empirical evidence suggests that inmates who are respected and treated humanely are less likely to be violent and influenced by extremist ideologies.¹⁶ Penal reform should thus consider both security and human rights perspectives.

What are some of the effective policies and measures for penal reform? First, to alleviate overcrowding, which causes other issues in this sector, use of alternatives to imprisonment can be effective. Constructing more prisons to increase accommodation capacity is not sustainable because maintaining the facilities and hiring additional staff will be costly.¹⁷ An effective measure then is non-custodial sanction. In Kenya and Zimbabwe, for example, authorities sought to alleviate congestion in prisons by allowing minors to serve their sentences performing community service in lieu of imprisonment, considering that minors who were confined for a long period exacerbated congestion.¹⁸ Also, informal justice systems can be further utilized. Based on local traditions and customs, informal justice systems aim to restore broken relationships between community members through reconciliation and rehabilitation of offenders. The focus is different from typical criminal justice systems, but the restorative justice approach can produce results that are more acceptable and long-lasting in the community.¹⁹ While the use of non-custodial sanction should be carefully considered due to its potential risks, it is expected to contribute to mitigating the overcrowding of penal institutions.²⁰

Human rights abuses against inmates and poor prison conditions need to be addressed by ensuring that penal institutions are brought up to international human rights standards. Article 10 of the International Covenant on Civil and Political Rights stipulates the necessity of humane treatment of those who are detained.²¹ The UN Standard Minimum Rules for the Treatment of Prisoners, also known as “the Nelson Mandela Rules” (adopted in the UN General Assembly in 2015), delineates “good principles and practice in the treatment of prisoners and prison management.”²² Other relevant international standards include “the Bangkok Rules” (2010), describing recommended treatment of female prisoners and non-custodial measures for female offenders, and “the Beijing Rules” (1985), outlining the standard rules for the administration of juvenile justice. States are encouraged to make efforts to put these international standards into practice in penal institutions and improve prison conditions.

Considering that the military or police, who run penal institutions in conflict-affected states, often use enhanced interrogations techniques against detainees in breach of international law, management of penal institutions should be transferred to professionally trained and qualified civilian staff.²³ It is also important that prison staff fully embrace international human rights standards in their day-to-day operations.²⁴ Moreover, penal institutions tend to be opaque by limiting access to media and citizens for “confidential reasons,” thereby restricting public knowledge of abuses inside the system, and monitoring and oversight is weak or completely absent.²⁵ In that regard, setting up or restoring an internal investigation body is crucial to improve institutional accountability and transparency. Strengthening oversight by third parties, such as parliament, the judiciary, an ombudsperson, and civil society would also be effective.²⁶

Improving conditions of facilities and practicing humane treatment of inmates are helpful measures to combat radicalization in prison and beyond. The provision of educational and vocational training opportunities also facilitates inmates’ social reintegration. In post-conflict societies, as construction and welding skills tend to be valued, capacity building in such fields can be helpful for inmates’ employment opportunities.²⁷ Additionally, since it would be challenging for ex-inmates to be accepted by their communities and back to normal

civilian life, it is important that penal institutions collaborate with civil society organizations for them to be able to access essential public services and information. A number of penal institutions in the world fail to assist reintegration of ex-inmates due to various constraints. Nonetheless, penal institutions are encouraged to offer these services as it can prevent recidivism and radicalization of ex-inmates and restore their dignity.

UN Support to Penal Reforms

Since 1999, UN peace operations have increasingly been supporting penal reforms in post-conflict states. In the beginning, however, the UN provided penal reform assistance merely to ensure that “the international community’s investment in reforming national police services is not undermined by the absence of a functioning and humane prison system.”²⁸ More recently, the UN started to realize that credible penal institutions constitute a critical element of the rule of law system and promote security sector reform (SSR). Today, the Justice and Corrections Service (JCS) in the Office of Rule of Law and Security Institutions (OROLSI), Department of Peace Operations (DPO) leads UN assistance to penal reforms by cooperating with relevant UN agencies. JCS provides local governments and UN peace operations with technical advice, coordinates with relevant stakeholders, drafts budget and action plans, develops training materials and mobilizes resources necessary for penal reforms.²⁹

In the field, the UN has also contributed to penal reforms. For instance, the UN Mission for Justice Support in Haiti (MINUJUSTH) assisted in resuming the use of most of the national prisons that were dysfunctional for a long time, and built new facilities to improve poor conditions of existing penal institutions, which led to a reduction of prison-breaking.³⁰ The UN Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) supported local government in demilitarizing penal institutions, and in January 2019, the government signed the policy documents that stipulate transformation to civilian management of penal institutions, compliance with international human rights standards, and assistance to rehabilitation and reintegration of the inmates. The process of transferring to professional civilian personnel is on-going.³¹ The UN Assistance Mission in Somalia (UNSOM) has supported projects to promote the rehabilitation of inmates through

psychological care in the prisons and after they are released, to prevent them from being radicalized and joining local terrorist groups.³²

In addition to UN peace operations, UN agencies have also assisted penal reforms. The leading agency is the UN Office on Drugs and Crime (UNODC), specializing in the protection of inmates, introduction and implementation of non-custodial sanctions and social reintegration. To achieve humane management of penal institutions based on international human rights standards, UNODC offers technical assistance to local governments.³³ Other agencies active in penal reforms include the UN Development Programme (UNDP) focusing on development approaches to the reforms, and the UN Children's Fund (UNICEF) specializing in reviewing and reforming the juvenile laws.

Conclusion

This column explores common issues of penal institutions in post-conflict states, discusses potentially effective policies and measures to alleviate the issues, and briefly touches upon UN assistance to penal reforms. The aim of penal reform is to build capacity to accommodate inmates, improve poor conditions of facilities and protect the rights of inmates. In addition, through supporting rehabilitation, penal institutions are expected to prevent radicalization of inmates and facilitate their reintegration. Penal institutions should thus be reformed not only on security and human rights grounds, but also on socioeconomic grounds. Last but not least, penal reform should be coordinated closely with police and judicial reforms to maintain overall balance of the rule of law systems.

End Notes

¹ Bastick, Megan. 2010. "The Role of Penal Reform in Security Sector Reform." Geneva Centre for the Democratic Control of Armed Forces (DCAF). Occasional Paper No.18, 44. Since penal reforms which include construction of facilities and training of prison staff are costly and require long-term assistance, most donors were reluctant to support. The unwillingness of the international community to support penal reforms can also be attributed to local governments' lack of political will to undertake penal reforms.

² United Nations. 2005. "Supporting National Prison Systems: Lessons Learned and Best Practices for Peacekeeping Operations." UN Department of Peacekeeping Operations (DPKO) Criminal Law and Judicial Advisory Unit, Peacekeeping Best Practices Section, 5.

³ Bastick, "The Role of Penal Reform in Security Sector Reform," 48.

⁴ Ibid, 36.

⁵ UN Office on Drugs and Crime (UNODC). 2011. "Prison Reform and Alternatives to Imprisonment," 2.

⁶ Ibid, 7.

⁷ Penal Reform International and Thailand Institute of Justice. 2017. "Global Prison Trend 2017," 30.

⁸ United Nations, et al. 2013. "Human Rights Situation in Darfur," 20.

⁹ The latest PRI report is available at Global Prison Trends 2020 (<https://www.penalreform.org/resource/global-prison-trends-2020/>).

¹⁰ UNODC, "Prison Reform and Alternatives to Imprisonment," 11.

¹¹ Neumann, Peter R. 2010. "Prisons and Terrorism: Radicalisation and De-radicalisation in 15 Countries." London: International Centre for the Study of Radicalisation and Political Violence, 29.

¹² Ibid, 26.

¹³ United Nations. 2016. "Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons." New York: UNODC, 23.

¹⁴ Ibid, 17.

¹⁵ Bastick, "The Role of Penal Reform in Security Sector Reform," 7.

¹⁶ United Nations, "Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons," 11.

¹⁷ UNODC, "Prison Reform and Alternatives to Imprisonment," 11.

¹⁸ Ibid, 32.

¹⁹ Ibid, 27.

²⁰ Ibid, 33. Under non-custodial measures, as prison staff cannot closely monitor and regulate actions of the inmates, overt application of the measures can create a risk of another crime committed. Therefore, it might not contribute to mitigating overcrowding. For the indicators of non-custodial measures, UN member states have referred to the UN Standard Minimum for Non-custodial Measures (the Tokyo Rules) adopted in the General Assembly in 1990.

²¹ UN Office of the High Commissioner for Human Rights (OHCHR). International Covenant on Civil and Political Rights. Accessed 20 Oct 2020.

(<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>).

²² The document is available at UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) (<https://www.penalreform.org/resource/standard-minimum-rules-treatment-prisoners-smr/>).

²³ Bastick, "The Role of Penal Reform in Security Sector Reform," 34.

²⁴ Ibid, 12.

²⁵ Ibid, 40.

²⁶ Ibid, 13.

²⁷ United Nations, "Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons," 122.

²⁸ United Nations, "Supporting National Prison Systems: Lessons Learned and Best Practices for Peacekeeping Operations," 4.

²⁹ United Nations, "Supporting National Prison Systems: Lessons Learned and Best Practices for Peacekeeping Operations," 7.

³⁰ United Nations. 2018. "Justice and Corrections Update Issue 6." New York: UN Justice and Corrections Service, 5.

³¹ United Nations Permanent Missions. 2019. Central African Government signs Prison Demilitarization Strategy (<https://www.un.int/news/central-african-government-signs-prison-demilitarization-strategy>) Accessed 22 Oct 2020.

³² United Nations. 2017. "Justice and Corrections Update Issue 5." New York: UN Justice and Corrections Service, 4.

³³ Reports and handbooks on penal reforms published by UNODC can be accessed at UNODC Prison Reform Tool & Services (<https://www.unodc.org/unodc/en/urban-safety/prison-reform.html>).