

IMPLEMENTING INTERNATIONAL STANDARDS IN CORRECTIONS: CHALLENGES, STRATEGIES, AND OUTCOMES

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INTRODUCTION

In comparison to other areas of international cooperation, technical assistance in the field of corrections and prison reform rarely gets the attention and the support it requires. Finding effective ways to ensure the practical application of existing United Nations standards and norms in the field of corrections continues to be a challenge. Member States are beginning to better understand the urgency of the problem and that was indeed reflected in the *Vienna Declaration*¹. That document contains a number of proposals which may contribute to the effective implementation of existing standards in the field of corrections.

The reforms that are required to ensure that international standards and norms are actually met within a correctional system are far more complex than often assumed. They go well beyond the mere formal reaffirmation of the standards at the national level. Furthermore, some of the required reforms actually reach well beyond prison systems and have to address sentencing and other criminal law reform issues, as well as the need for alternative to prisons and the need to challenge society's over-reliance on prisons. In recent years, all of these challenging problems have been compounded by the problem of prison over-crowding.

Current approaches to prison and criminal justice reform have often proven insufficient and technical assistance in the field of corrections is just beginning to explore new modes of intervention to facilitate the necessary reforms. To date, technical assistance efforts in the field of prison reform have tended to focus on a number of valid, but usually insufficient forms of cooperation. These included: facilitating legal reform (e.g., model legislation), needs assessments missions, training of trainers and correctional officials, exchange of officials, development and translation of manuals to explain

¹ General Assembly resolution 56/261, annex.

existing international standards, and assistance in planning and executing prison construction programs. However, without fundamental attitudinal, structural, system-wide changes to the troubled correctional organizations, the prospect of seeing these organizations meet the minimum goals set by international standards remains dubious.

If the international criminal justice community is serious about assisting correctional organizations to meet the standards it has set for them, it must address the question of how international cooperation can contribute to the significant and complex organizational changes that are required at the national level. Further, it must identify and support the development of the local capacity and leadership required to implement the standards. A comparative analysis of successful attempts to bring major organizational and leadership changes in a correctional setting would be essential. The role of technical assistance and international cooperation in this endeavor should also be carefully delineated.

This paper identifies some of the prerequisites to the successful application of international standards through international cooperation and the provision of technical assistance. There are three components to the paper: 1) a preliminary examination of the challenges and strategies involved in providing technical assistance to recipient countries in order to address issues of transferability, sustainability, continuity, and evidence-based correctional policy development and programming; 2) a reflection on the need to develop practical tools to facilitate organizational changes, using the example of the recent experience of the *International Centre for Criminal Law Reform and Criminal Justice Policy* in developing and offering a non-prescriptive *International Prison Policy Development Instrument*² to advance, in a practical manner, the implementation of international standards; and, 3) a reflection on how the experience of Canada in the field of correctional reform could be compared, for example, to that of other countries in order to learn about the particular organizational change challenges faced in that sector.

² International Prison Policy Development Instrument, 1st Edition July 2001, International Centre for Criminal Law Reform and Criminal Justice Policy

ACHIEVING THE OBJECTIVES: THE CHALLENGES AND STRATEGIES OF PROVIDING EFFECTIVE TECHNICAL ASSISTANCE

Although the UN human rights and criminal justice standards in the field of corrections have articulated the objectives to be achieved by systems of corrections, how these objectives are to be achieved by member states has not been articulated. Various efforts have focused on training prison officials, developing manuals, and providing legislative models through which the standards can be enshrined in legislation. Unfortunately, many of the initiatives have had little impact on the operation of prison systems throughout the world.

There is, then, a distinct difference between establishing the objectives, standards, and framework for prison reform, and the issues that must be addressed in undertaking reforms. For donor countries, the objective is to provide technical assistance that is sustainable, practical, and cost effective, and that enhances the performance and effectiveness of systems of corrections.

THE CHALLENGES

Prison Overcrowding

The international preoccupations with human rights, prison overcrowding, international standards, technical assistance, and multi-lateral vs. bi-lateral assistance, among others, were highlighted in the Vienna Declaration, the broad strategic policy development agenda that was set forth in Congress 2000 and in the work of the UN Commission on Crime Prevention and Criminal Justice. One of the most critical challenges confronting all systems of corrections is prison overcrowding. This phenomenon undermines and severely limits reform initiatives and also creates a number of additional challenges. The report prepared for the Secretary General for submission to the Commission on Crime Prevention and Criminal Justice entitled “Reform of the Criminal Justice System: Achieving Effectiveness and Equity” stated:

The issue of prison and detention, and particularly prison overcrowding, transcends a number of areas addressed in the Vienna Declaration and the action plans, such as women, juveniles, victims of crime, protection of witnesses, prison health, pre-trial detention and restorative justice and alternatives to incarceration.” (2002:12)

It was further noted in this report (2002:12) that “...until the problem of overcrowding was resolved, efforts to improve other aspects of prison reform were unlikely to have any meaningful impact.”

Convincing Donor-Agencies to Invest in Prison Reform.

Recipient countries rarely identify prison reform as a major priority in the official development plans that are submitted to donor agencies. This has been due to the fact that, in many jurisdictions, prison systems are administered by the police and the military and are closely associated with national security and the maintenance of the political status quo. Such areas are often viewed as “off limits” to external intervention and reform. However, problems such as prison-overcrowding create a range of other difficulties for societies, including increases in the rates of communicable diseases such as Tuberculosis, Hepatitis B and C, HIV/AIDS that, in turn, place severe demands on the health care system.

The Absence of a Knowledge Base

There has not been a comprehensive inventory of technical assistance initiatives in the field of corrections, nor an attempt to evaluate the impact of these initiatives on prison systems. This should be a priority. Most systems of corrections lack a well-developed body of empirical knowledge upon which to base the formulation of policies and the operation of programs. Where they do exist, research findings have little influence on correctional policies, programs, and services, which are affected by a variety of factors including political considerations and public opinion. Contributing to the problem is the lack of experimental research and rigorous evaluation of correctional policies and programs. Prison policies and programs are rarely subjected to independent

evaluation to assess their effectiveness. This makes it difficult to determine whether the policies and programs are effective in meeting their stated objectives.

Identifying Receptive Jurisdictions

It is important that countries involved in providing technical assistance develop the capacity to identify those jurisdictions that have the most potential to benefit from assistance. Desirable attributes are an active NGO sector, the potential for developing community-based alternatives to confinement that may include restorative justice programs, and persons in government who have indicated a commitment to undertake significant reforms.

Offering Expertise: The Issue of Transferability

The field of technical assistance is rife with case studies in which countries providing technical assistance erroneously assumed that there is direct transferability of policy and practice to the recipient country. There may be religious, cultural, or other attributes of the recipient country that will prevent, or hinder, the adoption of certain policies. A framework must be established that allows the recipient country the opportunity to devise indigenous policies and practices that will meet minimum standards. Ideally, the basis for technical assistance in the field of corrections should be a comparative analysis between countries of existing practices and their relative outcomes, followed by the identification of the “conditions of transferability” of a program. This is rarely done.

One challenge is that the donor and recipient country rarely have correctional systems that are at the same level of development and sophistication although, ironically, there may be more potential for developing innovative and effective strategies of corrections in jurisdictions that do not have expansive, well-entrenched systems of corrections. Too often, bi-lateral assistance takes the form of “do as I do”, with very little critical examination of whether the practices/technologies that are being transferred are worth transferring, or whether, in fact, such approaches are adaptable or even applicable to the recipient jurisdiction’s context.

It is also important to match the expertise resident in the country providing the technical assistance with counterparts in the recipient country. There is in Canada, for example, a considerable expertise among Aboriginal persons that could be accessed by recipient countries seeking to develop policies and programs for indigenous peoples.

Building Individual, Organizational and Community Capacity

Far too often, reform projects have been initiated, and have terminated, with funding. At all stages of the process, efforts must be directed to building individual and organizational capacity. This will enhance the prospects for long-term change.

Sustaining Reform

A key challenge is to devise strategies to ensure the sustainability of the reform effort and policy initiatives once external financial support has been reduced or terminated. This requires that in-country organizations and persons have “ownership” of the project and be trained in the requisite skill sets to direct and manage the reform effort and specific policy initiatives. Study tours are an effective way of increasing the knowledge base of key reform participants from the recipient country. It is important, however, that study groups include persons from senior management to the line level as well as persons from the community.

As well, the tendency to establish costly infrastructure that cannot be sustained once funding levels are reduced must be avoided. There are, in all countries and communities, non-capital resources that can be mobilized to participate in and sustain program initiatives. These include the volunteer sector, which may have to be cultivated and encouraged, and in-kind services that can be provided by not-for-profit organizations and by the private sector.

THE STRATEGIES

There are a number of strategies that may be utilized by countries to increase the efficacy of reform efforts. These include:

Promoting Reform: Establishing Legitimacy

A key issue in promoting reform in prison policy is establishing the legitimacy of the reform effort. There are several strategies that can be utilized to establish the legitimacy of a reform effort:

The recipient country must play the central role in identifying the areas in need of reform and improvement: If an initiative is identified as being solely the effort of an outside agency or government, the effort is not likely to be legitimized and will not be sustainable. Rather, the reform will be viewed as externally imposed and as a pre-requisite for receiving other types of assistance. It is important that the recipient country have “ownership” of the reform effort. The recipient country should play the primary role in identifying and prioritizing the areas in need of reform.

Efforts to reform prison systems must be legitimized in terms of the rights of offenders, victims, and general public safety: Historically, the focus of human rights and criminal justice standards has been on the rights of inmates, albeit more recently, this has included a recognition of the rights of crime victims as well. Post-911, reforms to promote the efficiency and efficacy of prison systems must also be legitimized in terms of increased public safety. This presents unique challenges to both donor and recipient countries.

The legitimacy of the reform effort must be established at all levels: Too often, technical assistance projects have been sponsored by, are therefore viewed as, projects of central governments. The cynicism with which externally funded projects are viewed and their association with “the development set” must be acknowledged and countered. There has often been little consultation with managerial and operational personnel who are responsible for implementing correctional policies. It is not sufficient to only secure the cooperation and sponsorship of senior government; from the outset, there must be representation and

input from the managerial and operational levels. Without cooperation at these levels, reform initiatives are likely to fail. It should not be assumed that merely securing the involvement and participation of senior levels of government would be sufficient to ensure the success of reform projects.

Key resource persons who are in a position to initiate and legitimate the reform effort must be identified as the outset. One of the most challenging tasks in providing assistance is to identify those persons who are in a position to facilitate the reform process. Countries providing technical assistance must consult with a wide range of informants in an effort to separate out those persons who are “figureheads” from those persons who are committed to reform and have the requisite influence and authority to enhance the reform process. Investing sufficient time and resources in identifying these persons will increase the likelihood of success of the reform effort.

Securing “Buy In”

Reform is a difficult task in all systems, due in large measure to the tendency of agency personnel to resist change and to not challenge the status quo. There must be some incentive for senior personnel and individuals at the managerial and line levels to participate in the reform effort. It is not realistic to expect that there will be enthusiastic support for an initiative merely because it is labeled as “reform.”

Creating a Holistic Framework for Assistance

The reform effort cannot be limited to prison systems. To be effective, there must be a more holistic framework that considers criminal justice policy generally, including sentencing reform, bail reform, a fine payment system, conditional release policies and programs, and alternatives to incarceration.

Creating Public-Private Partnerships (P3s) and Adopting Private Sector Practices

In many jurisdictions, efforts to find more cost-effective ways of providing services have led to a reexamination of the potential of private sector involvement, not

only in program and service delivery, but also in the construction and operation of correctional facilities. In Canada, the expansion of public-private partnerships builds upon a long tradition of private sector involvement in institutional and community corrections. For example, the Correctional Service of Canada (CSC) contracts out for the provision of medical services, technical services, education, and some treatment programs in prisons, and for offender programs in the community.

Creating Policies and Programs for Indigenous Peoples

Worldwide, indigenous communities and organizations are becoming increasingly involved in designing and delivering corrections services in community and institutional settings. In Canada, Aboriginal communities are involved in institutional programs through Native liaison workers, activities sponsored by Aboriginal organizations, and the participation of Elders in providing treatment. Communities and the justice system also collaborate in programs, many of which incorporate elements of traditional Aboriginal spirituality and principles of restorative justice. These programs include sentencing circles, community mediation, and various sentencing advisory committees. Aboriginal communities also create and control their own programs, some of which are geared toward Aboriginal women.

Establishing Realistic Benchmarks and Reform Objectives

Even the most well designed technical assistance project will fall short of its objectives if they are not planned adequately. It is unrealistic to expect that all of the reforms required to establish systems of accountability, training, legislation, etc. can occur simultaneously. Specific, achievable objectives must be established that hold the best potential for success. Demonstration projects and carefully selected and developed case studies can provide early, demonstrable successes that will increase the momentum of and support for organizational change and reform.

Conducting Project Evaluations

All technical assistance projects should include an evaluation component. This evaluation should be conducted by independent researchers from the jurisdiction in

question, working where required, in collaboration with evaluators from the country providing the technical assistance. There are number of key issues surrounding project evaluation including the use of an evaluative framework that is not externally-imposed but rather reflects the realities of the recipient country. Further, if the measures of success are too rigid, then any reform initiatives may not produce positive outcomes.

Creating Alternatives to Confinement

In addition to creating overcrowding, incarceration is an expensive proposition that cannot be sustained by any country. There are a variety of programs and strategies that have been developed under the general rubric of Restorative Justice that hold considerable promise. Experience indicates that the principles of restorative justice can be utilized to create alternative forums for dispute resolution and sanctioning in remote, rural, suburban, and urban centres. A key attribute of restorative justice is that there is significant involvement of the community in the response to persons whose behavior has been harmful to the victim and to the community. Restorative justice holds considerable promise as a cost efficient and effective alternative to traditional responses to criminal offenders.

Increasing Accountability and a Concern with the Rule of Law and Justice

In many jurisdictions, there has been an increase in the accountability of systems of corrections and conditional release. This has coincided with the increasing involvement of the courts in imposing on corrections agencies and personnel a duty to act fairly in managing offenders and to ensure that the decision making process is fair and equitable. Court decisions have also extended the rights of prison inmates, including giving federal offenders the right to vote in elections. A component of this initiative is establishing and enhancing the role of offices of ombudsmen, correctional investigators, and other human rights mechanisms.

Ensuring the Rights of Victims

There have been concerted efforts in many jurisdictions to identify and address the needs of crime victims. Increasingly, the rights of victims have been enshrined in

legislation to ensure that such rights are recognized and enforced. Although some observers have argued that empowering crime victims by involving them in the criminal justice and corrections process introduces undue emotionalism and increases the punitiveness of the system, such resistance has decreased in recent years. In fact, there is considerable evidence that acknowledging the rights of victims has served to legitimize the objectives and actions of justice and corrections systems, rather than undermining them.

In many jurisdictions, legislation has established victims' rights in the correctional process. At their request, victims can be advised of the parole eligibility dates of their perpetrator, the decision of the parole board, and release status of the offender. In addition, crime victims can attend parole hearings and submit written victim impact statements to the parole board. In cases involving federal offenders before the National Parole Board and in several provincial jurisdictions, victims can present oral victim impact statements to the parole board.

Creating Alternatives to Incarceration

Correctional systems are increasingly focusing on intermediate sanctions and on programs based on the principles of restorative justice. Most provinces and territories have in place policies that encourage the development of initiatives such as conflict resolution, community mediations and panels, Aboriginal Elders panels, and community accountability panels. Communities, religious organizations, and nonprofit agencies are playing a major role in the development of alternatives to incarceration.

Policies and Programs for Specialized Prison Populations

Special categories of offenders such as sex offenders, the mentally disordered, indigenous peoples, and female offenders require policies, programs, and facilities specific to their needs.

Focusing on Human Resources

Correctional systems can become more efficient and effective only with highly

motivated, trained, and skilled employees. It is important to remember that systems of criminal justice and corrections are, first and foremost, a human enterprise. This fact must not be obscured by a sole focus on legislative frameworks and standards. Key to reform initiatives is leadership and systems of corrections must have the capacity for leadership development. This not only increases the receptivity to reform, but assists in maintaining continuity of the reform effort.

THE ICCLR PRISON POLICY DEVELOPMENT INSTRUMENT: A CATALYST FOR CHANGE

As part of its contribution to the UN's world-wide effort to implement minimum standards in corrections, the International Centre for Criminal Law Reform and Criminal Justice Policy has produced the International Prison Policy Development Instrument. The instrument was designed as a tool to assist countries in the development and/or review of prison policies, regardless of region or culture and provides the basis for the development of correctional policy in six key areas: 1) administration; 2) case management; 3) inmate's rights; 4) security; 5) health; and, 6) discipline. Significantly, the manual can be used to develop an entirely new set of prison policies or to conduct a review of or revisions of existing correctional policy.

For each of the six areas within the instrument, reference is made to the applicable UN and other international standards, including the UN Standard Minimum Rules for the Treatment of Offenders, the Basic Principles for the Treatment of Offenders, and the Universal Declaration of Human Rights. The manual is not a set of exact policies, but rather, is to be used as the basis for policy discussions, improving the performance of prison systems, and to illustrate the potential for creating fair and justice corrections. It is a template designed so it can be modified or edited to be in compliance with and supportive of local legislation and consistent with local culture and needs.

In addition to the proposed policy and applicable references to International standards and instruments, the document entitled *Towards Improved Corrections, A*

Strategic Framework, has been incorporated into the manual. The Strategic Framework is the product of two international symposia on the future of corrections³, the first held in Ottawa, Canada in 1991 and the second in Popowo, Poland in 1993. The intent of the strategic framework is to assist correctional organizations in defining their role within the criminal justice system. This involves:

- explaining what corrections is;
- defining what is meant by effectiveness in corrections;
- explaining what corrections can realistically achieve; and
- expressing the values that are vital to corrections in a democratic society.

The framework itself is again not a set of precise, specific standards, but a broad vision that will serve to guide developments in the field of corrections. Its aim is to inspire improvement in performance, not just change. It should serve as a starting point for discussion. How the framework is used must be determined by each system that is in search of a better future. It can serve as a reminder of the opportunities for improvement and an impetus for action. Commitment to the values and principles contained within the framework will allow correctional systems to achieve significant progress and improvement within their organization.

LESSONS FROM THE CANADIAN EXPERIENCE

Canada has much to offer, but also much to gain, from international cooperation in the field of corrections. Systems of corrections in Canada operate in an environment that presents numerous challenges. There has developed in both federal and provincial/territorial corrections systems considerable experience and expertise in addressing a wide range of issues, including, but certainly not limited to:

³ *First International Symposium on the Future of Corrections, Ottawa 1991* - Sponsored by the Correctional Service of Canada and the Society for the Reform of Criminal Law; *Second International Symposium on the Future of Corrections, Popowo, Poland 1993* - Sponsored by the Correctional Service of Canada, the Polish Ministry of Justice and the International Centre for Criminal Law Reform and Criminal Justice Policy.

- serving a diverse clientele, including mentally disordered, woman offenders, long-term offenders, elderly offenders, and sex offenders:
- developing correctional policies and programs for Aboriginal peoples, most often in consultation with Aboriginal leaders, political organizations, and communities
- delivering correctional services in a diversity of geographic and cultural settings, ranging from the urban centres of Montreal and Toronto, to the remote North in Yukon, Northwest Territories, and the Inuit territory of Nunavut.
- the implementation of restorative justice practices in correctional settings
- the development of effective risk assessment instruments
- the development of effective correctional treatment programs, including effective interventions for sex offenders and cognitive skills programs that are internationally recognized.

Despite these achievements, there are number of challenges that remain. Systems of corrections are dynamic and the political, economic, social, and cultural forces that influence the identification and response to criminal offenders are multi-faceted and ever changing. An understanding of these forces, and of the factors that precipitate and sustain reform is a critical component of any technical and financial assistance that is provided to those jurisdictions seeking to implement and extend the minimum standards for corrections.

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United Nations Economic and Social Council. 2002. *Reform of the Criminal Justice System: Achieving Effectiveness and Equality. Use and Application of United Nations Standards and Norms, Especially Concerning Juvenile Justice and Penal Reform. Report of the Secretary-General.*