

Penal Reform and Gender

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There is strong recognition that security sector reform (SSR) should meet the different security needs of men, women, boys and girls. The integration of gender issues is also key to the effectiveness and accountability of the security sector, and to local ownership and legitimacy of SSR processes.

This Practice Note provides a short introduction to the benefits of integrating gender issues into penal reform, as well as practical information on doing so.

This Practice Note is based on a longer Tool, and both are part of the **Gender and SSR Toolkit**. Designed to provide an introduction to gender issues for SSR practitioners and policymakers, the Toolkit includes 12 Tools with corresponding Practice Notes – see *More information*.

Why is gender important to penal reform?

Penal reform is the work carried out to change a penal system in order to bring it into line with the rule of law and the international human rights framework. It aims to ensure sanctions that are proportionate, non-discriminatory and rehabilitative, and to change prison institutions into places that respect individual human dignity, and ensure that those imprisoned are afforded their legal rights.¹

Gender refers to the roles and relationships, personality traits, attitudes, behaviours and values that society ascribes to men and women. 'Gender' therefore refers to *learned* differences between men and women, while 'sex' refers to the *biological* differences between males and females. Gender roles vary widely within and across cultures, and can change over time. Gender refers not simply to women or men but also to the relationship between them.

Human rights standards

- For penal institutions to meet international and national human rights standards, which require all those deprived of their liberty to be treated with 'humanity and with respect for the inherent dignity of the human person'.
- To prevent and respond to sexual violence in prison environments, including that committed by prison personnel.

Non-discriminatory penal policies

- To ensure that penal policies and procedures reflect and address the distinct needs of female and male inmates, youth, children and other marginalised groups.

Prisoner rehabilitation

- To ensure that rehabilitation and reintegration initiatives address and accommodate the needs and capacities of both male and female inmates, as well as the realities of the society in which they live, without compromising the universality of the standards advocated for decency and dignity.

Public health

- To promote better public health by addressing sexually-transmitted diseases among male and female inmates and providing adequate reproductive health services to female inmates, including those who may be pregnant.



The Indian Penal Reform and Justice Association (PRAJA) organised week-long Health Camps at two jails in Hyderabad and Rajahmundry, as part of a programme to promote the mental health and care of women in prison. The Health Camps made the following facilities available for all the women and children in the prison: general check-up and examination, including of blood pressure, chest, skin, height/weight/state of health; blood test; dental examination; eye/nose/throat examination; gynaecological examination; making dietary and medicinal recommendations; answering inquiries about other physical or psychological problems. PRAJA's Health Camp project demonstrates how, even in a very poor country, methods can be found to enable basic rights to be delivered with limited resource input.

Supporting men and women as employees in the penal sector

- To promote the full participation of both women and men as employees of the penal sector.
- To adequately prevent and respond to sexual harassment and discrimination against prison staff.

Compliance with obligations under international laws and instruments

Taking the initiative to integrate gender issues into penal reform is not only a matter of operational effectiveness; it is necessary to comply with international and regional laws, instruments and norms concerning security and gender. Key instruments include:

- *Convention on the Elimination of All Forms of Discrimination Against Women* (1979)
- *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988)

For more information, please see the Toolkit's Annex on International and Regional Laws and Instruments.

How can gender be integrated into penal reform?

Assessment

Carry out a gender assessment of the penal system. Disaggregate all data (at the minimum) by sex, age and ethnicity. The assessment should look at:

- ✓ Applicable legislation
- ✓ Penal policies and procedures for both female and male inmates
- ✓ Range of programmes and services available to men and women
- ✓ Access to health services
- ✓ Data on the level of gender-based violence (GBV) in prisons
- ✓ Parity between male and female prison personnel
- ✓ Codes of conduct in place to govern the behaviour of prison staff
- ✓ Presence of complaint and oversight mechanisms to monitor compliance with policies, procedures and codes of conduct

Gender-responsive policies and procedures

- Evaluate penal policies and procedures from a gender perspective to make certain they are proportionate, non-discriminatory and address the diverse needs of both female and male inmates. In particular, ensure that women do not face

discrimination in pre-trial detention or security classification.

- Ensure that male and female inmates are imprisoned close to their families, and that provisions are in place to support regular family contact.
- Ensure access to health care for male and female prisoners (see Box 1), including access to a female doctor for female prisoners and reproductive health care, as well as independent mental health services.
- Ensure that the physical and mental health needs of pregnant women, nursing mothers and children are also recognised and provided for.

Prevent and respond to GBV

- Establish codes of conduct with respect to sexual harassment, discrimination and GBV by prison staff, and mechanisms for confidential reporting.
- Establish legislation, protocols and procedures for dealing with GBV among prisoners, including preventive and punitive measures, as well as protocols for care and referral of victims (see Box 2).
- Ensure the presence of appropriate and skilled personnel to deal with gender-sensitive issues such as sexual abuse and other forms of GBV.
- Create a culture of zero tolerance regarding sexual harassment, abuse and misconduct by prison personnel and promote a culture of respect for the rights of prisoners, including the right to benefits such as conjugal visits, regardless of their sex, sexual orientation or ethnicity.

Oversight and complaints mechanisms

- Establish national-level internal and external oversight mechanisms and bodies including independent inspection systems and clear reporting and documentation:
 - Inspection teams with male and female inspectors, and inspectors with expertise on gender issues, in order to gain the confidence of all inmates and adequately address problems such as GBV.
 - Include health specialists in the inspection team to assess prison facilities and procedures.
- Create gender-responsive internal complaint mechanisms:
 - Ensure that complaint procedures are accessible, as confidential as possible, and that prisoners are protected from reprisals.

Box 2**Eliminating prison rape**

In the United States, Stop Prisoner Rape, an NGO, has been campaigning for years against this abuse. In 2003, the Prison Rape Elimination Act was signed into law. The law calls for the gathering of national statistics on rape in US prisons, the development of guidelines for states on how to deal with prisoner rape, the establishment of a review panel to hold annual hearings and the provision of grants to states to combat the problem. An evaluation of the first three years since the Act became law shows considerable progress in work to reduce prison rape through:

- Developing policies (rather than secrecy and denial)
 - Prevention (through more considered location of prisoners, less overcrowding and prisoner education)
 - Investigation and prosecution
 - Victim services
 - Staff training
 - Collaboration with non-prison agencies
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- Independently review complaints in order to protect male and female inmates from human rights abuses, as well as prison staff from false accusations.
 - Ensure that non-literate prisoners are also fully able to understand and access complaint mechanisms.

Gender training

Provide gender training to all prison personnel, including on topics such as:

- The human rights of prisoners and appropriate treatment of men, women, boys and girls in prison.
- Prevention and appropriate responses to GBV, including male rape.
- Health and hygiene for female prisoners, including the provision of items such as sanitary napkins and adequate toilet facilities.
- The specific needs of vulnerable groups of prisoners, such as pregnant women and mothers of young children who also live in the prison.
- The needs of female prisoners pre-release and on release, including secure housing, support for family reunification and vocational training.

Increase the participation of women and civil society organisations

- Increase the recruitment, retention and advancement of female prison personnel.

- In collaboration with civil society organisations, provide services to female inmates such as professional and confidential counselling (see Box 3).
- Engage civil society, especially women's organisations, in penal reform processes:
 - Build public support for penal reform, working with parliament, civil society and the media.
 - Collaborate with civil society organisations to raise awareness and build internal capacity on gender concerns in the penal system.
 - Build the capacity of civil society organisations to monitor the penal system from a gender perspective.

Also available in Tool 5...

- Examples and tips for gender-responsive inspection and complaints procedures
- Considerations for improving prison visiting arrangements
- Preserving human dignity in the penal system
- 12-step protocol for responding and investigating allegations of sexual assault
- Meeting the needs of pregnant women and young mothers

Post-conflict challenges and opportunities

In post-conflict contexts, rebuilding the penal system is often seen as a low priority in comparison to other reconstruction needs. Within this context, mainstreaming gender issues in penal reform frequently receives inadequate attention and support. Therefore it is important to ensure that the administrative body in control of the state understands the need for gender-responsive detention facilities.

Challenges for the integration of gender issues

- Prisons may have a very bad image among populations as a result of detention without trial, rape, torture and execution.
- The previous prison system may have been dysfunctional, principles of the rule of law may not have been applied and gender equality may have been an unknown concept. The prison may also have been managed by the police or the military, contrary to good human rights practice.

Opportunities for the integration of gender issues

- Rebuilding may be an opportunity to support the establishment of a system that will be less abusive,

Box 3**Engaging civil society**

In Yemen, the Women's National Committee promotes dialogue with decision-makers to ensure justice for women. Until recently, women prisoners who had completed their sentence were forbidden to leave prison unless a male guardian collected them. The Women's National Committee put pressure on the Ministry of Interior and this rule was changed. The Yemeni Women's Union has 36 volunteer lawyers who provide free legal support to poor women in prisons, courts and police stations. As a result of their legal assistance, 450 female prisoners were released in 2004 and 2005.²

more gender responsive and more trusted by the people.

- The post-conflict environment may provide an opportunity to conduct a census and an identification process to determine the precise number and identity of those persons on the prison system payroll followed by a vetting process to identify staff alleged to be perpetrators of major human rights violations.

? Questions for penal reform

One of the best ways to identify entry points, strengths and weaknesses for incorporating gender perspectives into penal reform is to conduct an assessment. Below are sample questions on gender that are important to include in penal reform assessment, monitoring and evaluation processes.

- Are gender-responsive laws, policies and procedures in place that adequately deal with issues such as prison rape?
- Do independent external oversight and monitoring bodies exist that effectively monitor sexual harassment, discrimination, rape and other forms of GBV?
- Do record-keeping processes enable conclusions to be drawn about the treatment of different groups? Are statistics disaggregated by sex, age and ethnicity? Is this data made available to the public, the media and governmental oversight bodies?

- Do both male and female inmates have adequate access to health services? What provisions are available for the mental and physical health of pregnant women, nursing mothers and children?
- How is family contact ensured for men and women in detention?
- Does the prison system implement specific initiatives to prevent and respond to GBV, such as providing services to victims of GBV?
- Have prison personnel received training on gender issues, including specific training on sexual harassment, rape and other forms of sexual violence?
- Are women and men proportionately represented among prison personnel? Are female staff in supervisory and management roles? Have initiatives been taken to increase the recruitment, retention and advancement of female staff?
- Is civil society involved in prison assessment, policy-making, monitoring and oversight activities?

More information

Resources

Bastick, M. – *Women in Prison: A Commentary on the Standard Minimum Rules for the Treatment of Prisoners*, Quaker United Nations Office, 2005.

OECD-DAC – *OECD DAC Handbook on Security System Reform: Supporting Security and Justice*, 2007.

ICRC – ‘Part II Women Deprived of their Freedom’, *Addressing the Needs of Women Affected by Armed Conflict*, 2004.

International Centre for Prison Studies – *A Human Rights Approach to Prison Management*, 2002.

International Centre for Prison Studies – *Guidance Notes on Prison Reform*, 2005.

The Urban Institute – *Addressing Sexual Violence in Prisons: A National Snapshot of Approaches and Highlights of Innovative Strategies Final Report*, 2006.

Organisations

International Centre for Prison Studies – www.prisonstudies.org

Penal Reform and Justice Association (India) – www.prajaindia.org/prajainaction.html

Penal Reform International – www.penalreform.org

Quaker Council for European Affairs, Women in Prison – www.quaker.org/qcea/prison/index.html

Stop Prisoner Rape – www.spr.org

Women’s Prison Association – www.wpaonline.org

Gender and SSR Toolkit

1. Security Sector Reform and Gender
 2. Police Reform and Gender
 3. Defence Reform and Gender
 4. Justice Reform and Gender
 5. Penal Reform and Gender
 6. Border Management and Gender
 7. Parliamentary Oversight of the Security Sector and Gender
 8. National Security Policy-Making and Gender
 9. Civil Society Oversight of the Security Sector and Gender
 10. Private Military and Security Companies and Gender
 11. SSR Assessment, Monitoring and Evaluation and Gender
 12. Gender Training for Security Sector Personnel
- Annex on International and Regional Laws and Instruments

Each of these Tools and Practice Notes are available from: www.dcaf.ch, www.un-instraw.org and www.osce.org/odhr.

This Practice Note was prepared by Anna Korneeva of UN-INSTRAW, based upon Tool 5 authored by the International Centre for Prison Studies.

¹ Coyle, A., *A Human Rights Approach to Prison Management: Handbook for Prison Staff*, (International Centre for Prison Studies: London), 2002.

² Oxfam, ‘Yemen Programme Overview’ http://www.oxfam.org.uk/what_we_do/where_we_work/yemen/programme.htm