

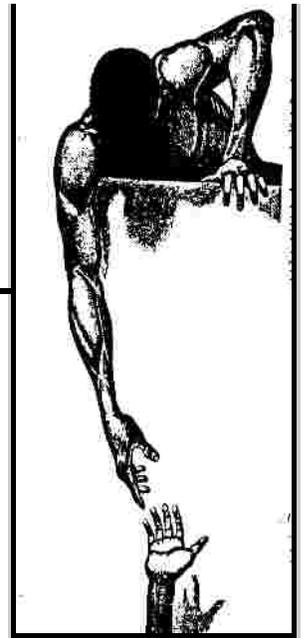
International CURE

Newsletter

January, 2008

To Reduce Crime and Uplift World-wide Criminal Justice

Published by International CURE, *Citizens United for the Rehabilitation of Errants*, www.internationalcure.org
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"He Ain't Heavy"
by Gilbert Young

Grand Opening of the International CURE Newsletter

by Charles Sullivan, *Exec. Director of International CURE*
and Kay Perry, *Chairperson*

This is the first issue of what will become a quarterly newsletter of International CURE. We intend to use this vehicle to convey items of importance to members of International CURE, those incarcerated in worldwide prisons, and advocacy organizations concerned with improvements in worldwide criminal justice systems.

This newsletter will tend to focus on subjects like:

- Noteworthy events in national criminal justice.
- Examples of Rehabilitation programs that work.
- National data such as incarcerated populations, rate of incarceration and % of pre-trial detainees.
- Restorative justice process and experiences.
- United Nations activities related to criminal justice.
- Key problems and deficiencies in national criminal justice systems.
- Systemic neglect or abuse of incarcerated persons.
- Recommendations for criminal justice advancement and reform.

Input on such subjects are strongly encouraged from all countries, but, of course, the editors retain all rights of acceptance and excerpting.

Distribution of the newsletter will first be by the web, in printable (pdf) format, on the International CURE website www.internationalcure.org. Downloading and reproduction of the Newsletter is encouraged. As translators are found, authorized multi-language versions will also appear on the web.

Submissions to the Newsletter should be sent by email, preferably in Word format, to Editors, at cureny@bestweb.net and should include the author's name, mail address, and organization affiliation, if any. Photos are welcome, preferably in jpeg or gif format. Please make the subject of such email submissions: International CURE Newsletter.

It is our intent to use this means to raise the consciousness of individuals and organizations to the opportunities for

improvements in programs for rehabilitation of offenders, and in justice systems in general. Our approach will be cooperative and supportive of reform efforts, rather than confrontational, even though all deficiencies will be discussed.

We cordially invite your collaboration and partnership in this venture.

Australia: Prisoner Access to Newspaper Battle

Excerpts from www.justiceaction.org.au

BANNED PRISONER ELECTION NEWSPAPER: COURT CHALLENGE

In the NSW Supreme Court on Thursday, lawyers for Justice Action are challenging the refusal of NSW Corrective Services to allow a "prisoner's election special" newspaper to be distributed before the Federal Election.

"The High Court of Australia reinstated prisoners' right to vote, therefore they are entitled to receive information to decide their political preference just like other citizens. NSW is not fulfilling its responsibility to ensure citizens have their constitutional rights and dignity" said Lara Daley, Justice Action Coordinator.

This "election special" prisoner's newspaper has been approved for distribution in WA and NT prisons. Not only has NSW banned the newspaper, it has also refused how-to-votes or any campaign material from any party.

"These attacks on the status of citizens who are in prison threaten our whole democracy. The rights to receive information, form and express a view are fundamental to our humanity and the social health of our community. It is no wonder many prisoners can't survive outside after such exclusion by prison authorities" said Brett Collins, a spokesperson for Justice Action. Kingsford Legal Centre and barrister Ben Zipser will be presenting the application.

Key Problems

Examination of reports on criminal justice in 35 countries in the western hemisphere led International CURE to the following observations and identification of key problems.¹

Overcrowding. Official figures show that 18 countries have prison populations that exceed 120% of capacity, ranging up to 184% for Haiti and 302% for Barbados. Nine countries have incarceration rates above 300 prisoners per 100,000 citizens. Six countries have rates above 400. These figures are the result of tough legislation passed during the last decade, and the failure to utilize alternatives to incarceration.

Overcrowding inevitably consumes nearly all resources. Little is left for rehabilitation programs, sanitation, hygiene, and food. The result is increased disorder, violence, and corruption.

Un-sentenced Prisoners. Many countries do a poor job of providing due process for the accused. By official figures, ten countries have more than 50% of their prisoners as pre-trial detainees. Slow processing of criminal cases and inadequate defense attorneys lead to systemic violation of due process rights, particularly international time limits on pre-trial detention.

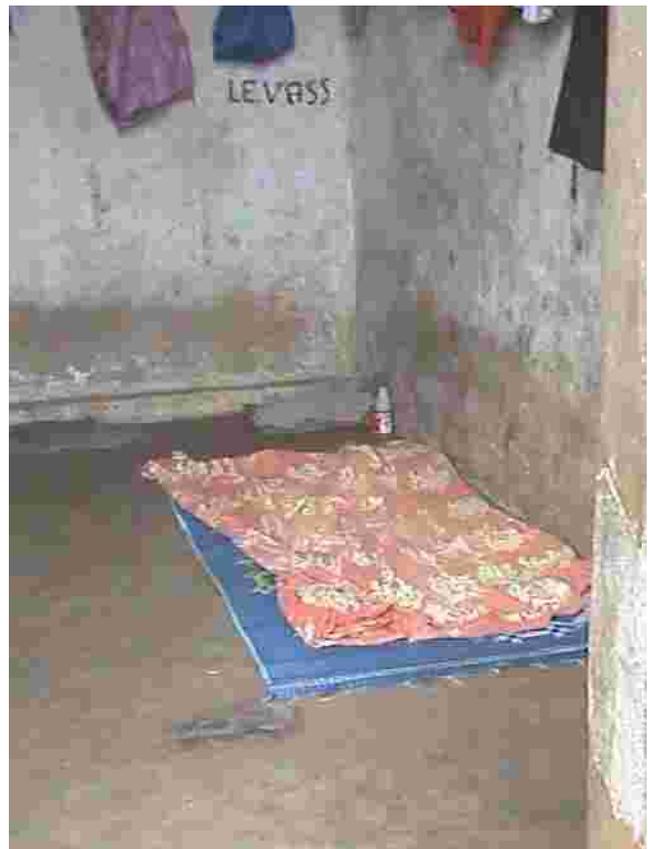
Inhumane Conditions. Many American prisons of all sizes and security levels provide inadequate food, general health care, and mental health care, and fail to meet basic needs such as sanitary facilities and mattresses.

Violence and Crime. As crowding has increased, so has prison violence - with physical abuse, gang domination, rapes, and riots increasingly common. Narcotics trafficking, prostitution rings, and other criminal enterprises are prevalent in too many prisons. Guards who receive inadequate salaries and training are too often susceptible to corruption or use excessive force to quell disturbances. With too few guards, parts of some prisons are inadequately patrolled, and left to the mercies of powerful inmates. Inmates denouncing abuses can face retribution. Too often even extreme brutality does not prompt investigations or preventative measures.²

Society and Human Rights. Increases in violent crime – real or the product of sensational media coverage – have led to more support for "iron fist" policing and ever more incarceration.

The needs of the incarcerated for restorative approaches, particularly education, addiction treatment, and job training are too often ignored. This lack, together with systemic overcrowding, spread of infectious disease, physical and mental abuse, and rape in prisons, all are well known to authorities. Such deficiencies often reflect the criminal justice system's inadequacy: excessive and misguided penalties, poor due process, weak criminal defense, lack of strong civil rights groups, inadequate trial procedures, and weak oversight.²

The result often is the failure to rehabilitate, and the reinforcement of criminal tendencies, which surely plague communities upon the release of those thus trained.



Cell in La Basso prison, Ivory Coast.
Photo by Claudia Boudreaux

¹ *Dignity of the Individual, Prison Systems in the 35 countries in the Organization of American States*, International CURE, Kim Pathways, Katonah, NY, 2007

² *Prisons in Crisis* working groups under the direction of Dr. Mark Ungar, Woodrow Wilson International Center for Scholars, 2005

What Works

The international rehabilitation organization, Ashoka, reports: "Colombia's prisons do not address the rehabilitation of inmates. There are no socialization programs that would promote reform of prisoners' violent ways, reduce tensions, and prepare them for life after release. According to Colombia's Ministry of Justice, 95 percent of released prisoners return to crime and end up back in jail."

A notable exception is the case of Jos, David Toro who was accepted into the Ashoka Fellowship in 2001. Before his release from Picalea prison, Jos, David Toro created a "Peace Laboratory" to help prepare inmates "for life outside prison through a combination of psychological, educational, and creative support programs." Emphasis was placed on developing work skills, with volunteers teaching inmates accounting and how to start small businesses.

After his release, he founded the Horizons of Freedom Foundation with a group of 42 prisoners, former prisoners, and family members of Picalea inmates. "He has

succeeded in creating one place in the whole nation where left-wing guerrillas and right-wing paramilitary members coexist in peace-in-prison, no less." The Peace Laboratory proves how armed conflict can be resolved through dialogue and mutual understanding. (For more details, go to www.ashoka.org/fellows)

2009 Conference

International CURE's 4th International Conference on Prison Reform and Human Rights will be in 2009 in Geneva. The Convention Against Torture (CAT) Commission meets three times a year in Geneva. We will schedule our conference when the OPCAT (Optional Protocol to the United Nations Convention Against Torture and Other Forms of Cruel, Inhumane or Degrading Treatment or Punishment) Commission reports to the CAT Commission.

Locked in an Argentina prison (photo by Alan Pogue)



OPCAT

Optional Protocol to the U.N. Convention Against Torture
Excerpts from www.apf.ch

Reaffirming that freedom from torture is a right that must be protected in all circumstances, and based on the premise that regular visits to places of detention is one of the most effective means to prevent torture and improve conditions of detention, the United Nations adopted on 18 December 2002 a novel international treaty for the prevention of torture: the Optional Protocol to the UN Convention Against Torture (OPCAT).

The OPCAT entered into force on 22 of June 2006 and is the culmination of over two decades of joint efforts by civil society and friendly States.

The OPCAT is the first international instrument which seeks to prevent torture and other forms of ill-treatment through the establishment of a system of regular visits to places of detention carried out by independent international and national bodies. International and national bodies will work together to conduct regular visits to all places of detention in all States Parties and will make recommendations to the authorities to establish effective measures to prevent torture and ill-treatments and to improve the conditions of detention of all persons deprived of liberty.

At the international level, the OPCAT creates a new international preventive body, called the UN Subcommittee for the Prevention of Torture. At the national level, States Parties have to create or designate **National Preventive Mechanisms (NPMs)** within one year after they ratify.

THE APT

The Association for the Prevention of Torture (APT) is the international **non-governmental organisation**, based in Geneva, behind the ground-breaking Optional Protocol to the UN Convention against Torture (OPCAT).

The APT is convinced that the **risk of torture** and other ill-treatment exists everywhere in the world. The challenge and mission of the APT is **how to prevent it**.

For 30 years the APT has been a leading force in prevention by promoting three integrated elements of:

1. **Transparency** of detention institutions through regular visits by independent experts;
2. Effective **legal frameworks**;
3. **Capacity strengthening to reform practices of detention**.

THE APT AFRICA PROGRAMME

The Association for the Prevention of Torture (APT) Africa Programme works to contribute to the prevention of torture and other cruel, inhuman or degrading treatments or punishments in Africa. To this end it continually operates with a broad variety of non-governmental, inter-governmental and governmental partnerships to achieve its objectives in a sustained manner.

Madagascar: Drafting a National Anti-Torture Law

From 2 to 3 November 2007 the APT conducted a workshop to draft a national legislation against torture and other cruel, inhuman or degrading treatment or punishment (UNCAT) in Madagascar. This workshop was organised jointly by the Ministry of Justice and the UNDP – Madagascar in collaboration with the APT, which was invited as an expert to facilitate the drafting process. The event was a follow-up on a previous APT initiative when, in January 2007, it co-organised with the Ministry of Justice a national seminar on the UNCAT provisions.

The seminar gathered about 30 national key actors including representatives from the Ministry of Justice, Ministry of Interior, Ministry of Foreign Affairs, Police, Parliament, Judiciary and Penitentiary Services as well as NGOs. Under the facilitation of the APT Africa Programme Officer, the workshop considered a preliminary draft elaborated by a Working Group put in place by the January 2007 Seminar. The drafting was conducted as follows:

First of all, the APT Africa Programme Officer presented an analysis of the Convention against torture, highlighting key elements that should contain any legislation aiming to domesticate the UNCAT provisions. He also recalled the usefulness of the Robben Island Guidelines for the prevention of torture in such a process on the drafting of an anti-torture legislation.

The Working Group briefed participants on the process which led to the preliminary draft to be considered by the workshop. They stressed the importance of technical advice that APT provided through regular email communications. Then, participants were divided in three working groups each being assigned a part of the draft to review.

Finally, comments and amendment proposals from the working groups were compiled and discussions in the plenary led to a final draft approved by participants.

This draft law contains measures on the prohibition, the prevention and the repression of torture and other cruel, inhuman or degrading treatment or punishment. It provides also with measures on reparation and protection of victims. The next stage of the process will be for the Ministry of Justice to forward the draft law to appropriate State institutions including the parliament for adoption.

Benin: Creating a National Preventive Mechanism (NPM)

Excerpts from www.apt.ch

A national seminar was organized jointly by the APT and the Ministry of Justice on the establishment of an effective National Preventive Mechanism (NPM). The seminar gathered about 30 national key actors including representatives from the Ministry of Justice, Ministry of Interior, Ministry of Foreign Affairs, Police, Judiciary and Penitentiary Services as well as NGOs. This inclusive consultation reviewed the obligations and implications of the OPCAT and assessed the current national situation in Benin (current visiting mechanisms in place, gaps, needs...) and came up with a range of recommendations which will serve as a 'roadmap' to guide the authorities in establishing an effective NPM.

The APT also met with the Head of the UNDP (United Nations Development Programme)-Benin, the Head of the Swiss Cooperation Agency as well as the Human Rights Officer of the Danish Embassy to exchange views and share information on OPCAT implementation process for possible cooperation in this area.

Outcome: Development of a road map on the establishment of the NPM in Benin. **The roadmap foresees the establishment, by law, of a new national institution to serve as a NPM.** To ensure the independence of the mechanism, it is recommended, among others, that the legislation on NPM will include :

- An appropriate procedure for the appointment of expert members
- A powerful mandate for the NPM
- An appropriate procedure for approval of budget and resources necessary for implementation.

The seminar nominated a '**Working Group**' comprised of 9 people to follow up on the implementation of the seminar recommendations. In particular they will assist the Ministry of Justice to **draft the NPM legislation**. They are also tasked to advocate for the adoption of the legislation by Parliament and for the appointment of competent NPM members.

The Working Group held its first meeting the day after the seminar, facilitated by the APT, where they discussed a preliminary draft of a NPM establishment law.

The Minister of Justice attended this meeting, where he expressed his support and reiterated to the APT delegation his commitment for an effective implementation of the OPCAT in Benin.

APT will continue to provide technical assistance and advice to the Working Group as well as to other Benin actors, including Ministry of Justice and Parliament, during the NPM establishment process.

Further cooperation between the APT and the future NPM to whom the APT could provide training on issues such as monitoring places of detention, in order to insure effective implementation of the OPCAT obligations.

The Benin NPM model and the experience in the NPM establishment process will serve as an example for other African countries.

Judges and Prosecutors: The Prevention and Investigation of Torture

Tbilisi, Georgia: On 15 December 2007 the APT and the Centre for the Protection of Constitutional Rights (CPCR) co-sponsored a one-day seminar in Tbilisi for judges and prosecutors on the prevention and investigation of torture.

Using the Georgian translation of the University of Essex's 'Combating Torture: A Manual for Judges and Prosecutors' the participants explored a number of crucial topics including the absolute prohibition of torture in international law, safeguards against torture for those deprived of their liberty, the role of judges and prosecutors in protecting detainees from torture and conducting investigations and inquiries into acts of abuse.

The APT and CPCR were supported by two international experts, Mike Kellett and Eric Svanidze, both of whom have considerable experience in the subject area.

As a result of this event a group of approximately twenty judges and other experts learnt about their duties and responsibilities to prevent and investigate acts of torture and other forms of ill-treatment. It is also expected that there will be greater access and use of the University of Essex's manual in Georgia and an enhanced awareness of the important lessons contained therein.

This seminar was the first of a series of events planned on the subject in Georgia in 2007-2008. A second seminar is planned outside of Tbilisi for the first half of 2008.

Monitoring Places of Detention

Excerpts from www.apt.ch

Advice on how to actually design and carry out a programme of visits; available online in Arabic, French, English, Korean, Portuguese, and Spanish

WHY A GUIDE ON MONITORING PLACES OF DETENTION?

Transparency and independent control of the public administration form part of any system based on the principles of democracy and the rule of law. This is especially true in the case of monitoring the power of the State to deprive people of their liberty. Monitoring the treatment and conditions of detention of persons deprived of their liberty through unannounced and regular visits is one of the most effective means of preventing torture and ill-treatment.

The idea of external and independent monitoring places of detention has made considerable progress over the past few years. It is now widely accepted that one of the best safeguards against torture and ill-treatment is for places of detention consistently to be as transparent as possible, allowing regular access by reputable members of the public. This positive evolution is reflected in the adoption on 18 December 2002 of the Optional Protocol to the United Nations Convention against Torture (OPCAT), whose objective is "to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment".

Under the OPCAT, the main obligation to prevent torture lies at the domestic level, as State Parties will have to "set up, designate or maintain one or several national preventive mechanisms". New mechanisms will need to be set up or existing mechanisms will have to be adjusted in line with the OPCAT criteria.

This development should not exclude or be detrimental to other forms of monitoring at the domestic level. In this context, the present practical guide aims to serve as a useful tool for promoting effective preventive visits by any monitoring group or body at the national level.

This guide addresses any person or body entitled to monitor and carry out visits to places of detention at the national level. As mentioned above, primary users will be members of mechanisms set up or designated as "national preventive mechanisms" under the OPCAT.

The overall objective of the guide is to promote effective domestic visiting bodies, newly established or existing ones, by increasing their professionalism and thus their impact in preventing torture and improving conditions of detention.

Specific objectives are:

- To provide concrete advice and recommendations on the methodology of visits through the different steps (preparation, implementation and follow-up);
- To promote cooperation between different domestic visiting bodies, as well as between national and international bodies;
- To present in a practical, thematic way the different international standards relevant to monitoring places of detention;
- To provide information on the content of the OPCAT, which for the first time in an international human rights treaty sets out clear criteria and guarantees for the independence and effective functioning of "national preventive mechanisms";

In so doing, to assist in preventing mechanisms being set up in a way that contradicts the OPCAT principles. The guide is structured as follows:

- The first chapter contains a general introduction on the importance of monitoring conditions of detention.
- The second chapter briefly sets out the existing international and domestic mechanisms, and makes special reference to the features of national preventive mechanisms as set out by the OPCAT.
- The third chapter is of a more operational nature, describing how to conduct a visit from preparation to follow-up.
- The last chapter sets out, theme by theme, the aspects of detention that should be considered during a visit and comments upon the corresponding provisions in international standards