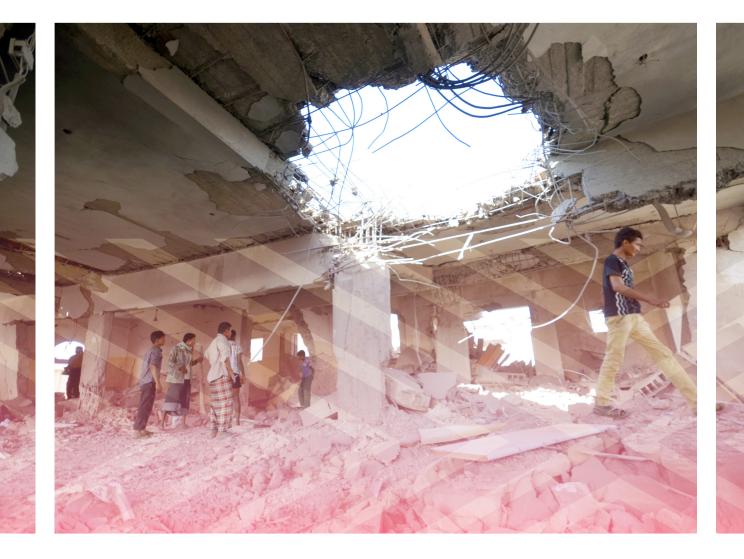PENAL
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Fragile and conflict affected settings:

Prisons and criminal justice systems

A policy briefing for the international community and national authorities
with case studies on Yemen and the Central African Republic

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Prisons and criminal justice systems
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Contents

Introduction

Armed conflict has increased on a dramatic scale over the past decade. Since 2008, 75 countries and contexts have been considered fragile at least once, and in 2016 around 1.8 billion people were living in fragile contexts.[1] In 2020, before the coronavirus pandemic hit, 23 per cent of the world's population was living in a fragile context, affecting 76.5 per cent of all those living in extreme poverty globally.

In conflict and fragile settings, the various aspects of criminal justice systems – from law enforcement and prosecution, to courts and the prison system – collapse alongside other core government functions. In restoring peace and the rule of law, there is a need to focus on these different arms of the justice system in a coordinated way to ensure accountability (including for war crimes) and to restore government functions and for the public sector.

One of the vital aspects in re-establishing a justice system that is overlooked, or frequently neglected, is the prison system. In this briefing, we demonstrate the need for an increased focus on the role of penitentiary institutions in peacebuilding as a requisite for achieving a functioning judicial system, core government functions and sustainable peace.

In working towards a criminal justice system that meets international standards, including the United Nations Nelson Mandela Rules and Bangkok Rules, there is a critical need to reconsider the use of imprisonment as the primary, or only, response to crime. This has become even clearer in light of the global coronavirus pandemic. New infection prevention and control (IPC) strategies are necessary, which, in the context of prisons, have the reduction of overcrowding and its associated risks at their core.

Reducing prison overcrowding and tackling police accountability, among other key challenges in justice systems, requires a system-wide approach. Our recent and ongoing work in Yemen and the Central African Republic (CAR) has demonstrated that without engagement from all of the actors involved in rebuilding justice institutions the progress can be slow. Whilst building on lessons learnt elsewhere, it is also critical to have context-specific plans and solutions.

Non-governmental organisations (NGOs), like Penal Reform International (PRI), play an important role in delivering development assistance, with a total of 15-17 per cent of development assistance in fragile contexts being delivered by NGOs in 2016.[2] As non-political actors, NGOs can be critical in the neglected area of prisons, including by coordinating and mobilising international and national actors to secure necessary funding and bolster political will.

For 30 years, PRI has worked in fragile, conflict and post-conflict settings in various countries, promoting human rights-based, fair and effective criminal justice systems. This briefing draws on the recent work of PRI, particularly in Yemen and the CAR. Working with partners, we have been able to tackle some of the most common problems faced by justice actors such as the police and prisons. This briefing outlines these problems, explores solutions and includes 10 key recommendations for advancing the Sustainable Development Goals and human rights protection in the most difficult contexts.

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1. OECD, *States of Fragility 2020*.
2. For more analysis see, Penal Reform International/Thailand Institute of Justice, *Global Prison Trends 2020*.

Background

Criminal justice systems that are devastated by years of conflict commonly face a lack of resources and an absence of trained personnel and cannot function effectively. Rebuilding such systems is an important element in contributing to the stabilisation of conflict-torn countries and restoring confidence in government.

In conflict and fragile settings, authorities are faced with meeting both the immediate needs of a damaged criminal justice system and the challenge of implementing institutional reform.

In post-conflict settings, there is no 'one size fits all' solution to the process of disarmament, demobilisation and reintegration (DDR). There is no specific roadmap and no direct path to stabilisation; plans require frequent re-evaluation, as they can be stalled or derailed by renewed conflict, as has occurred in Somalia, South Sudan and Mali.

The state cannot rebuild its institutions alone. A disarmament, demobilisation and reintegration process requires partnership and input to engage governments, the local community and civil society. Initiatives need adequate funding and oversight to encourage accountability and discourage corruption. There needs to be adequate time for implementation and evaluation of results from the various interventions.

Once the DDR process progresses, further stabilisation of the country and the return of public trust require security sector reforms to transform government regimes into institutions that respect human rights and international law. The security sector is comprised of armed forces, border guards and intelligence services, while the police, gendarmerie, judiciary, prosecutors and prisons make up the law enforcement sector.

The traditional approach to addressing instability and insecurity through the security sector is to provide funding, often with no expectation of increased accountability or governance. Each security actor plays an important role in stabilisation, but reform of one institution without a plan that includes the entire security sector, as well as community engagement, is a recipe for failure. Lessons learned have shown that without these two elements, governments are less invested in security sector reforms, and there are, for instance, risks of corruption.

Rebuilding criminal justice systems based on the rule of law

Under the principle of the rule of law, all persons and institutions, including those of the state, are subject to and accountable to law that is fairly applied and enforced. During periods of conflict, the rule of law breaks down, and the principles of equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and legal transparency all suffer.

The human cost of the breakdown of the rule of law

Ibrahima and Basmas stories described below and overleaf are not uncommon in countries where the criminal justice system is broken due to conflict – where rights can be violated, and freedom can be easily taken by those who should respect and enforce the law. In states where there is conflict or in post-conflict settings, it is common that people in prison have no mechanism to seek justice or redress, and where they can there is often little accountability.

Building criminal justice systems based on rule of law

A fair, equitable and accountable justice system serves the interests of the population by ensuring public safety and security while upholding fundamental rights. The protection of these rights builds public trust in the legitimacy of government. Strengthening the rule of law involves respect for the norms of international law, fairness in the application of the law, separation of powers, participation in decision-making, avoidance of arbitrariness, and transparency. It includes recognising that the primary responsibilities of states are to protect people from crimes against humanity and war crimes. The rule of law is a fundamental pillar of the humanitarian and human rights agendas.

To restore social order, organisations and institutions require the return of peace and economic prosperity. There are numerous challenges for the government to contend with. As military forces withdraw from regions, the void can often lead to an increase in criminal activity which wreaks havoc on the population. Even if police

Ibrahima's story

Ibrahima is 28 years old and married with four children. He has little formal education but is able to provide for his family with the crops he grows in his fields and the paid work he does for others.
One day, he was working in his field when two gendarmes arrived. After confirming his name and without any other questions or explanations, they escorted him to the local prison and detained him. A military officer asked him his name and recorded it in a ledger and he was then placed in an overcrowded cell.

Subsequently, the prison director, who had been absent the past three weeks, noted Ibrahima`s case was lacking documentation. Neither the military officers nor Ibrahima could provide any information explaining the reason for detention. Without any

documentation such as a warrant, Ibrahima could be considered unlawfully detained unless the paperwork was just delayed.

The director contacted the local gendarmerie and was told Ibrahima was detained because of a complaint made by a prominent local businessman alleging Ibrahima had made threats against him. The director met Ibrahima a second time and informed him of the reasons for his imprisonment. Ibrahima explained he had a contract with a local businessman to remove the weeds from his field for a sum of money. Once the work was completed, the businessman refused to pay him. Based on the information provided, the prosecutor released Ibrahima from prison. No action was taken against the gendarmes or the military officers for arbitrarily detaining Ibrahima.

Basma's story

Basma is a 14-year-old girl in prison awaiting trial. One moment she was playing with her siblings, and the next she was taken by the police and put in prison. She doesn`t understand what she did wrong, nor what she is accused of. Eighteen months have passed, and she continues to wait for her family to take her home, but they say she has to talk to a judge first.

No one will speak to her – not the military officers nor any of the people she is detained with, except for one woman who is accused of sorcery. She told Basma the other women think she is a sorceress too. Basma is afraid of her so she keeps to herself most of the time, but it is difficult to be alone. She is not a sorceress, but simply a child playing a childish game that someone mistook for sorcery.

Basma misses her family and looks forward to their weekly visit. They bring her food every day and, as she eats, she imagines being home and eating with them. Her family has no money to pay for a lawyer so Basma continues to wait. The prosecutor, like many others in the country, is afraid of sorcery and is content to let her case linger indefinitely.

make arrests, the penal code is outdated, leading to a spike in crime. Laws may need to be reviewed and amended to address crimes like trafficking, organised crime, money laundering and violence against women. It is not just a matter of enforcing laws, but some pre-existing laws may have been tools of oppression by the state against certain people or groups or may violate existing internationally recognised human rights standards. Thus, re-establishing law and order in a post-conflict state is a challenging task that often requires an overhaul of the criminal justice system, supported by technical assistance from donor countries and civil society.

Rebuilding criminal justice systems in Yemen and the Central African Republic

Yemen

Background

The Republic of Yemen is a country in crisis with a tumultuous history of fighting between government forces, political rivals and Houthi tribesmen. Yemen resulted from the unification in 1990 of tribal elements of North Yemen with the once British ruled and subsequently Soviet Union ruled economic centre of South Yemen. The merger did not go smoothly, with conflict erupting between the political leaders. This led to the War of Secession in 1994 and the defeat of the southern forces.

In 2011, a wave of pro-democracy protests – the Arab Spring – spread across the Arab world, including in Yemen, with protesters condemning poverty and official corruption. With increased unrest, security forces from other regions moved to support the capital, leaving room for the rebel groups to take hold. In 2012, President Saleh was injured in a bomb blast and went to Saudi Arabia for treatment, leaving Vice President Hadi to take over in his absence. Under an internationally mediated agreement, presidential power was transferred to Vice President Hadi. The agreement also called for Yemen to hold a political meeting, the National Dialogue Conference, that would allow Yemen's political factions and segments of civil society to exchange views about the transition and the new constitution.

In March 2013, Yemen began its National Dialogue Conference with the completion of a document in January 2014. The document is a roadmap to drafting a new constitution and continues to be a guide for reform. Yemen remained divided under President Hadi with challenges from Houthi rebels. A year into Hadi's term, the economy continued to plummet.

In 2018, the United Nations intervened, and an eventual ceasefire was implemented which included a withdrawal of forces, yet intermittent fighting continued through 2019. Despite all efforts, the country remains divided between the Houthi government in the North and the elected political organisation in the South. In early 2020, fighting continued with Houthi missile strikes, and Saudi Arabian air strikes, with civilians bearing the cost in lives. Saudi Arabia, facing economic uncertainly, announced a unilateral ceasefire in April 2020.

Economic insecurity in Yemen

Yemen's population is fragile after enduring years of conflict, environmental disasters (heavy rains and flooding) and disease (cholera, tuberculosis, HIV and COVID-19). For example, heavy rains in April and June 2020 impacted the lives of tens of thousands of people, destroying shelters, damaging infrastructure and disrupting services. Flooding cut off main roads, interrupting much needed food and medicines to devastated areas.

According to the United Nations Office for the Coordination of Humanitarian Affairs' (OCHA) Yemen Situation Report[3] of November 2020, over 3.65 million people in Yemen are displaced with 14.3 million in acute need of aid. The current level of foreign aid reaching Yemen is only half of what is needed. Exacerbating the situation, air strikes in the North have caused nearly 1,000 casualties from January to mid-July 2020. During this same period, Yemen recorded more than 154,000 cases of cholera.

The COVID-19 pandemic has added to the medical crisis. According to Oxfam, 'COVID-19 related fear and stigma have discouraged many Yemenis from seeking health care, contributing to significant underreporting and lack of treatment for cholera cases.'[4] COVID-19 has not only taken lives but livelihoods, impacted trade and exacerbated Yemen's economic problems. One outcome of less revenue for government is that civil servants are paid sporadically, potentially fuelling further unrest.

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3.   United Nations OCHA Yemen Situation Report downloaded 24 November 2020; reports.unocha.org/en/country/yemen.
4.   USAID Fact Sheet #10 Fiscal Year (FY) 2020; reliefweb.int/report/yemen/yemen-complex-emergency-fact-sheet-10-fiscal-year-fy-2020, p3.

Prison in Yemen.

Criminal justice system in Yemen

The criminal justice system in Yemen has been devastated from years of fighting, a lack of trained personnel and a lack of funding. The police, prosecutors, judiciary and prisons are an important element in the stabilisation of the country and restoring confidence in government.

Even prisons were not spared in air strikes that took place at the beginning of the war. Prisons were destroyed in Aden, Taiz, Emran, Sadah, Aben, Al-Dalea and El-Biedah. The air strikes led to escapes with some detainees joining armed groups. Some other prisons, including those in Hadramaut (Al-Mokala Prison) fell under the control of Al-Qaeda.

Prisons in Yemen are managed by the Ministry of the Interior, through the Correctional and Rehabilitation Department (CRD), in accordance with Prisons Law No. 48 of 1991, and the Prisons Regulations No. 221 of 1999 and the Prison Regulations for the prison department No. 4 for 1999. The CRD is responsible for 37 prisons in both the North and the South. Official statistics of the prison department show that on 4 October 2020, there were 6,556 people detained in prisons, among them 120 women and 112 children. The prison population has dropped drastically from almost 13,000 prisoners in early 2020 before the COVID-19 pandemic, due to a government initiative to release people in efforts to reduce overcrowding as a major risk factor for the transmission of COVID-19.

The Department of Public Prosecutions plays an important oversight and coordination role regarding detention. A deputy prosecutor-general is assigned to each central prison with the primary responsibility, among others, to ensure that all individuals held in custody are lawfully detained and to address issues arising in the transport of detainees to and from court for hearings. The central prisons hold a mixture of people on remand and sentenced (both short- and long-term). Although many prisons have attempted to classify and separate people by cell, true implementation has been hampered by architectural design, prison management and overcrowding. Therefore, people mix freely during the day within cell blocks and yard areas.

Prison security is maintained in the interior by unarmed prison guards under the direction of the Prison Authority, and at the exterior perimeter by armed security staff assigned by the Ministry of the Interior. Staff receive little or no specialised training beyond short, ad hoc training courses. Consequently, prison personnel have a poor understanding of their role, limiting their ability to control and care for detainees. Many will delegate much of their power and functions to detainees, such as key control. Inadequate staff skills and training are one of the greatest weaknesses inhibiting the proper function of the Yemeni prison system.

The political and security instability in some areas of Yemen raises some serious challenges for penal reform; without reform, there is high risk of people being subjected to torture or facing arbitrary detention. Ultimately, Yemeni prisons fall short of the minimum international standards such as the UN Nelson Mandela Rules. Education and training in human rights-based approaches to criminal justice are needed to reform the justice-sector components including the police, prosecution and corrections.

In 2018, PRI conducted an assessment of five central prisons: Al-Amanah Prison in Sanaa, Ibb Prison, Thamar Prison, Al-Mansoura Rehabilitation Centre in Adan and Al-Mukallah Rehabilitation Centre in Hadramawt. One of the key findings was the lack of capacity-building and training received in the field of prison management, specifically in the human rights-based approach to prison management and the treatment of women in prison. For instance, in Mukalla Prison, only the head of the prison, and no staff in Aden, had received training on prison management, and none of the staff (who were newly hired in 2018) had received any training in these areas. Subsequently, PRI conducted a series of workshops for staff in northern and southern Yemen on the treatment of women in prison, in line with the UN Bangkok Rules, and the human rights-based approach to prison management.

Assistance and aid in Yemen

Yemen is a country facing extraordinary challenges with continued fighting, the collapse of institutions, a failing economy, joblessness, poverty and chronic food insecurity. The United Nations and other partners are committed to providing humanitarian and development assistance. There is a Special Envoy of the Secretary General for Yemen, as well as a United Nations Resident Coordination Office known as the United Nations Country Team. The United Nations Country Team is made up of representatives of 21 resident and non-resident agencies – such as the World Food Program and the United Nations Educational, Scientific, and Cultural Organisation (UNESCO) – who carry out specialised programmes in Yemen. The purpose of the United Nations Country Team is to provide a coordinated response to Yemen's national priorities and needs within the framework of the Sustainable Development Goals. These goals focus on ending poverty, protecting the environment and climate, and ensuring that all citizens enjoy peace and prosperity.

Penal Reform International (PRI) has provided support and assistance to Yemen with the drafting of a new law for prisons, the creation of standard operating procedures and a classification and filing system for prisons. Other support given in the area of prisons includes providing rehabilitation and reintegration programmes for people in prison, upgrading health services including the creation of 10 clinics, provision of medicines to treat cholera and assistance in responding to the COVID-19 pandemic, including through establishing 26 isolation rooms for cases of COVID-19.

Central African Republic

Background

A civil war involving government forces, rebels from the Séléka coalition and anti-balaka militias has been ongoing in the Central African Republic (CAR) since 2012. The CAR was once ruled by France but gained its independence in 1960, after which time the country was ruled by a series of autocratic leaders. Democratic elections were held in 1993, but the President was removed in a military coup in 2003. This was followed by years of civil war between government forces and rebels with several peace agreements to follow. Over 14 armed groups vied for control of territory and the resources within the CAR. In 2017, a ceasefire was signed by these armed groups, yet fighting continues with its greatest impact on the country's population. According to a report of the UN OCHA,[5] 659,000 people have

been internally displaced due to fighting and require humanitarian aid to meet their basic needs for shelter, food, water and healthcare.

Economic insecurity in the Central African Republic

The vast majority of the CAR's population engages in subsistence farming with over 70 per cent of the population living in rural areas. International prices for cash crops, inflated costs for imports caused by poor transportation into the country, the continued smuggling of diamonds across the border, and political unrest and government mismanagement have strained the economy. There is no direct access to the sea, no railways, and only about 600 kilometres of paved roads, making it difficult to move products and people. The CAR is a country ravaged by decades of armed conflict, underdevelopment and natural disasters like floods and desertification.

The humanitarian situation continues to worsen as a result of the downward plunge of the economy, the spread of violent conflict, rising food insecurity and the global impact of COVID-19. The country is heavily dependent on multilateral foreign aid to provide services the government has failed to provide. The presence of numerous foreign personnel and organisations in the country, including peacekeepers, provides an important economic boost. Should humanitarian actors disengage, and should the state be slow to take over, this would result in a deterioration of the humanitarian situation across all sectors.

The criminal justice system in the Central African Republic

A key priority for international actors working in post-conflict settings such as in the CAR is to transfer the control of prisons to civilian agencies and professionalised staff. In 1980, the responsibility for prison management was transferred to the Ministry of Justice, and a national penitentiary law was adopted in April 2012. The law included the objectives for demilitarisation of the prison system, but its implementation was delayed by fighting across the country. Not only was the prison service impacted, but all government security institutions were plagued by issues: lack of equipment, personnel, crumbling infrastructures, insufficient budgets and conflicting roles.

Prison security outside of the capital, Bangui, is provided by the Central African Armed Forces (FACA). This conflicts with the military's primary role of protecting the state from external enemies, and as a

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5.   UN OCHA Central African Republic Humanitarian Dashboard, January–June 2020, page 1.

Workshop on COVID-19 prevention measures for prison staff and detainees from Nagaraba, Camp de Roux and Bimbo, Central African Republic, 2020.

result they do not have the competencies required to carry out the responsibilities within the framework of international human rights standards. Prisons are plagued by incidents such as riots, mass escapes, the entry of prohibited objects such as drugs and weapons, and collusion between prisoners who were former military and the military personnel guarding them. The military's role also does not extend to the implementation of judicial decisions since they are not part of the criminal justice system.

Prior to the years of conflict in the CAR there were 38 prisons, but today only 13 are operational. With such limited facilties across the country, detainees are often placed far from families and community support. Prisons are managed by the Prison Administration of the Ministry of Justice. In the capital region in and around Bangui, recently trained civilian staff manage the prisons, while security functions are carried out by the military with support from the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) forces.

The shared responsibilities between FACA and the Prison Administration present some challenges. The Prison Administration has neither power nor authority over the military. They can request but cannot direct actions to be taken because they have no line of authority. This can lead to confusion and unreasonable delays in responding to emergencies because decisions have to be conveyed through the military chain of command. Other challenges include:

- military units rotate every six months and are replaced by personnel unfamiliar with prison routines and procedures, which poses security problems, including escapes;

- the military provides reinforcement to community security forces should there be an incident, leaving insufficient personnel to deal with incidents in the prison;

- the military, unfamiliar with the rule of law and criminal justice procedures, has greater potential to arbitrarily detain people, including detaining someone without proper documentation, as in the case of Ibrahima (page 4).

Aid and assistance in the Central African Republic

Concerned with the status of security, humanitarian and human rights, and the political crisis impacting the CAR, the United Nations Security Council, in April 2014, mandated a mission, MINUSCA, to deploy peacekeeping operations in the CAR with the priorities of protecting civilians, supporting the transition process, facilitating humanitarian assistance, and promoting and protecting human rights.

In 2017, MINUSCA began the process of developing a national strategic plan for the demilitarisation of prisons in the CAR, working in partnership with the host country, the United Nations Country Team and organisations like the United Nations Development Programme (UNDP), the International Red Cross (ICRC) and PRI. The strategy included a review of the current state of prisons in the CAR, the development of a strategy for change to improve prison security and a process to demilitarise prisons.

The plan is based on five pillars:

1. **Security and humanisation of detention;**
2. **Safety and security of prisons;**
3. **Security of the prison environment and the professionalization of the prison administration;**
4. **Security of prisons and the legal security of prisoners;**
5. **Public and political security and the reintegration of convicted prisoners.**

In May 2019, the government, in collaboration with PRI as the implementation partner of MINUSCA, developed an action plan based on these strategies. This became the roadmap to creating a modern and professional prison administration led by well-trained civilian prison personnel armed with the necessary knowledge, skills and penitentiary practices. The government has since launched a recruitment process to hire 300 civilian penitentiary officers and managers to replace military personnel. They were divided into two groups with staggered starts; the second group is expected to complete their training in 2022.

Personnel: police, penitentiary, military

Police are entrusted by the government to maintain public peace and order, enforce laws, prevent and detect crime. But in times of conflict, they are displaced from their roles as criminal justice professionals. In some cases, they are conscripted to fight rebels or they may have had to flee their communities.

Police reform in conflict and fragile contexts usually involves the recruitment of new officers, training and providing the necessary equipment to carry out their functions. It takes approximately two years to fully train a police officer and decades to achieve sufficient numbers required across a country. Additional training will be required as new laws come into effect. In addition to recruitment and training, police stations in poor condition need renovation or reconstruction. As the number of police officers increases, arrests increase, and then the burden is transferred to the courts, and places of detention, including prisons.

The application of the rule of law may not always be fairly and justly applied. This may be due to a lack of training and awareness of correct police procedures or an unwillingness to follow them. In southern Yemen, PRI has worked with the Ministry of the Interior (MOI) to recruit and train 700 female officers, through establishing a women's police academy and supporting the creation of a women's police unit within the MOI. These initiatives are an important contribution to bolstering gender equality and participation of women in peacebuilding efforts.

To the community, the police and gendarme are the face of the rule of law, but penitentiary officers, who also contribute to safer communities, are invisible, working in prisons among those who have often been left behind or forgotten by society at large. Being a prison officer is sometimes wrongly viewed as being a step below the police, less worthy because their contributions go unnoticed. This perception can impact the ability to hire competent individuals. Prisons are also provided with fewer resources – to the detriment of the community – as they provide an essential component to restoring peace and security. Rehabilitation needs to be at the centre of prison strategies so they can fulfil their purpose of reducing recidivism. To succeed, these strategies must be adequately funded and resourced.

Without the ability to provide a rehabilitative prison environment and rehabilitation programmes responsive to individual needs and causes of offending, the time people spend in prison may make them more likely to commit crime. Toxic prison environments can breed more crime or radicalisation to violent extremism. People in prison who have not received rehabilitative support are more likely to reoffend and return to prison. Well-trained prison officers with the knowledge, skills and abilities can make a significant difference in reducing the number of violent incidents in prison and contribute to protecting the community in the longer-term through rehabilitative processes, as well as in the shorter-term, through stopping the smuggling of weapons into prisons or preventing escapes. They can model pro-social behaviours, and support reintegration efforts through encouragement and assistance. Prison officers can – and do – provide much more than just 'security'.

Prisons in fragile and conflict settings: realities and international standards

Key international standards

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) were revised and adopted by the 193 member states of the United Nations General Assembly in 2015. They set out the basic minimum standards for the management of prisons which apply to all persons imprisoned.

Shelter, food, cooking facilities, potable water, sanitation, healthcare and rehabilitation programmes are required. There are also rules that relate to maintaining the safety and security of the prison.

The Nelson Mandela Rules are complemented by the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), adopted in 2010. This set of rules gives guidance on meeting the specific needs of women in prison and encourages the use of non-custodial alternatives to reduce their imprisonment.

Security

Prison security is comprised of two elements: static security and dynamic security. Static security includes the physical infrastructure of the prison, such as the bricks and mortar that contribute to maintaining a safe and secure environment. Perimeter walls or fencing, towers, gates that control movement of people and goods in and out of the facility form the security infrastructure. In conflict, fragile or post-conflict settings, prison infrastructure is often damaged or destroyed. Prisons left intact are forced to accommodate individuals beyond their capacity.

Prisons in conflict zones are targets for rebels for attack to obtain the return of their fighters or recruit new fighters in exchange for their freedom. Detainees are often moved to locations the military can more easily defend. In the CAR, several prisons damaged or in disrepair were rebuilt or renovated through contributions from international partners. Soon after the construction was completed at one prison, there were issues with the workmanship and a section of

the perimeter wall fell, providing an opportunity to escape. Such challenges are not uncommon in countries in conflict.

Dynamic security is the second essential element of safer prisons. A dynamic security approach combines positive staff–prisoner relationships with fair treatment and purposeful activities for people in prisons that contribute to their future reintegration into society. Relationships between staff and detainees provides valuable intelligence and may alert decision makers of an impending event. Relationships between prison personnel and community members may result in information about unusual movements and activities and serve as an early warning system for potential problems for the prison. Prison officials in turn can inform the chain of command to have the military or police on alert and gain valuable time to prepare for any eventuality.

In addition to static and dynamic security elements, equipment and materials contribute to the safety and security of prisons. These include equipment used in searching, and lighting – all in short supply in both Yemen and CAR.

Maintaining the safety and security of a prison also requires well-trained personnel. The Ministry of Justice in the CAR has prioritised training staff and developing the required knowledge, skills and practices needed. While in Yemen, PRI developed a comprehensive training manual for prison staff on dynamic security and developed a set of Standard Operating Procedures (SOPs) to direct action in the case of security incidents, including the role of the use of force and dealing with riots and strikes. Furthermore, PRI will be developing SOPs to address corruption in the CAR's prisons.

In 2018, PRI invested in creating a classification system for the prisons in Yemen. However, its applicability on the ground was always challenged by the poor infrastructure and overcrowding. Since the reduction in the prison population associated with the coronavirus pandemic, there has been higher levels of implementation.

Accommodation and infrastructure

In general, prison infrastructures in fragile and conflict settings may be in poor states and in desperate need of reconstruction and renovation to comply with minimum international standards for cell space, lighting, ventilation, sanitary installations, bathing and shower installations for general hygiene. The state, occupied with rebuilding the economy and government institutions, makes the penitentiary system a low priority. In the interim, prison populations tend to increase over time, straining limited cell capacity and resulting in overcrowding. In the CAR, the prison population went from 764 prisoners spread over 38 prisons in 2015 to 1,200 prisoners spread over 13 prisons in 2020; 25 prisons were too damaged to be occupied. With fewer prisons, penitentiary officials resort to accommodating prisoners wherever they can, resulting in overcrowded conditions. Refurbishing and renovating prisons has not achieved the desired result of relieving overcrowding. In Yemen, the prison population in October 2020 averaged 6,514 spread over 37 facilities (3,014 prisoners in 12 facilities in South Yemen; 3,500 prisoners in 25 facilities in North Yemen). South Yemen prisons are overcrowded with less capacity as compared to the North.

Food

Rule 22 of the Nelson Mandela Rules provides: 'Every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. Drinking water shall be available to every prisoner whenever he or she needs it.' In post conflict countries, prison systems struggle to meet the basic needs of prisoners. Supply chains devastated by years of conflict are slow to be re-established, resulting in food insecurity.

The CAR provides 30 cents USD per detainee per day to meet all of their needs. To supplement diets, prison officials allow families to deliver food to the prison. Those without family support are left vulnerable. Staff also experience periods of insufficient rations. Consequently, they may be tempted to take meals destined for those they supervise. Having a physician or competent public health body to regularly inspect and advise the prison director on the quantity, quality, preparation and service of food would require an increase financial contribution by the state.

Yemen is experiencing the world's largest humanitarian crisis. During five years of conflict, millions of citizens have been brought to the brink of famine, with 17 to 19 million people in urgent need of food assistance.[6]

Yemen, with no natural fresh sources of water, could become the first country in the world to run out of water. The infrastructure of kitchens inside prisons in Yemen is extremely poor with a lack of basic cooking equipment and unhygienic conditions for the preparation of clean and safe food. There is a lack of food supplies, and many people in prison depend on the food that they receive from their families who are also struggling in poverty.

Healthcare

Rule 24 of the Nelson Mandela Rules provides: 'The provision of health care for prisoners is a state responsibility. Prisoners should enjoy the same standards of health care that are available in the community...'

In conflict, fragile and post-conflict settings, this rule and other relevant provisions relating to healthcare for people in prison remain unimplemented due to a lack of resources such as medicines, equipment and trained medical professionals. There may not be sufficient qualified healthcare professionals to meet the needs of those individuals in prison, or to provide the treatment required.

Overcrowding

Overcrowding affects the safe management of prisons and results in poor management practices. It affects every aspect of the prison regime, placing a heavy burden on basic infrastructure, sanitation and the mental health of those detained, as well as staff. Addressing overcrowding in prisons is an urgent need. Both Yemen and the CAR have approximately 70 per cent of their prison populations in pre-trial detention with the balance serving a sentence.

Overcrowding leads to a lack of space and inability to separate the pre-trial population from those sentenced, in violation of the Nelson Mandela Rules. People in prison are forced to share cells and common areas. Overcrowding also places a strain on medical care, food supplies and space for social interactions. A multi-pronged approach is needed to tackle overcrowding, involving a range of actors including police and courts, but too often they are plagued by challenges which hinder the process.

The provision of legal aid is an important element of reducing overcrowding, particularly where there are high levels of pre-trial detainees. PRI is working with local non-governmental organisations in both the CAR and Yemen to provide legal aid to those detained.

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6. According to the United States Agency for International Development (USAID) Fact Sheet on Yemen.

In Yemen, there is also an initiative to support judges with the aim of promoting alternatives to imprisonment for women and children.

A frequently used approach to managing overcrowding is the long-term plan to build new prisons or the short-term plan to transfer detainees from overcrowded prisons to less crowded prisons. Both approaches have positive and negative consequences, but overall once space becomes available, judges are quick to fill it, choosing to remand individuals because there is space rather than to consider alternatives to imprisonment in appropriate cases.

One tool in managing prison overcrowding is a classification system, which helps to 'triage' the population, reduce the number and frequency of incidents, and improve safety and security. This would permit security staff to manage the risk of violence against staff and people detained, reduce the number of escapes and contribute to public safety. It is also important to classify in the context of violent extremism and risks of radicalisation.

Rehabilitation programmes

The purpose of imprisonment as laid out in the Nelson Mandela Rules is 'primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.'

Therefore, rehabilitation programmes should be designed to address factors linked to criminal behaviour, literacy and academic development, and employment skills. They require a greater investment in human and financial resources and time for participants to complete. To be effective, rehabilitative programmes should be tailored to the individual's needs.

Programmes can contribute to removing stigmatisation and overcoming community fears. They can also contribute to the safe return of individuals to the community. Some people may need employability skills to earn a living and prepare them for a job in the community upon release. Sufficient funds are needed to deliver the programme, pay for the creation of dedicated space, pay the salary of an instructor, purchase tools and materials – all before the right participants are chosen and the programme is delivered. Often such programmes become a single occurrence because there is no annual funding from the state.

Programmes should be gender sensitive, taking into account that women usually face specific barriers in accessing programmes and services in prisons and there are often limited rehabilitation opportunities available to them. Programmes that do exist are often heavily gendered and do not cater for their particular backgrounds and rehabilitation needs. Women in prison also face unique challenges after their release, including greater levels of stigmatisation.

Providing for women (and their children) in prison

The percentage of women and children in prison is low in both Yemen and the CAR. This may present challenges in providing separate prisons or living units, especially in rural regions. In many prisons, women can care for their children under two years of age. Although women can maintain a bond with their infant while in prison, if she has older children they stay with her husband and/or extended family members in the community. If the mother has no one to take care of her older children, they may stay with her in prison.

There was a case of a 16-year-old girl living with her siblings and mother in prison because she had nowhere else to go. Children living with their imprisoned parent are not enrolled in school, and they often live in harsh conditions with small food rations having to be shared with children. Prison officials do not have funding from the state to pay for the needs of these children; therefore, it is not uncommon for staff to seek the assistance of non-governmental organisations to obtain basic medicines, etc.

PRI has established mother and baby units in seven prisons in Yemen to provide an environment where children's needs can be better met.

Women are in prison for a range of offences, ranging from murder to minor petty offences. In the CAR, women and young girls are frequently imprisoned for sorcery as is the case of Basma. Many people are afraid of sorcery so out of fear, those accused may never get their day in court. Many women do not have the financial means to pay for a lawyer.

Efforts need to be made to implement the UN Bangkok Rules to provide women-specific treatment. There is also a great need in conflict, fragile and post-conflict settings to challenge the fact that (as the Bangkok Rules note) many women are in prison as a direct or indirect result of the multiple layers of discrimination and deprivation, often experienced at the hands of their husbands or partners, their family and the community. Widespread domestic violence against women and sexual abuse prior to imprisonment have been documented in many countries worldwide.

10 Recommendations

Ten recommendations for restoring peace and the rule of law by building effective criminal justice systems

1 Responses and assistance must be context specific

Any work towards assisting countries in fragile, conflict or post-conflict settings with financial and technical support must be context specific and enable the government and other local actors to lead. This includes ensuring that legal reforms and other measures to rebuild criminal justice systems support national needs, aspirations and culture.

2 Whole-justice sector strategies

Without a national strategy for reforming the justice sector that has been agreed upon by all parties engaged in a conflict, there can be no peace and security. Adequate attention and resources should be dedicated to all of the various arms of the justice sector, including law enforcement, judges, prosecutorial services and prisons. A key part of this is funding from international partners specifically for the justice sector, including investment in ensuring linkages are strengthened between the various arms. There is frequently a need to undertake legal reforms to halt unnecessary arrest and detention in cases involving petty or minor offences which overburden systems.

3 Reduce the use of detention, particularly pre-trial detention

To reduce levels of overcrowding and the associated human rights violations, there is a need to lower the number of people in prison, particularly those held in pre-trial detention. This can be achieved by focusing on such areas as reviewing and amending laws, decriminalising minor and petty offences, choosing alternatives to imprisonment, early release programmes and introducing proportionate sentencing. Court processes should be reviewed with regard to ensuring effectiveness, the right to a speedy trial and the right to counsel for all defendants.

4 Prisons must be demilitarised with a transfer to civil service

The role of civilian penitentiary staff is to contribute to the protection of society by maintaining the security of the prison while exercising reasonable, safe, secure and humane control and focusing on rehabilitation and social reintegration. Prison staff need to be trained to maintain security while interacting with people they supervise and encouraging and assisting them to become law abiding citizens. Through PRI's work in the CAR, it is clear that roadmaps to demilitarisation and reform of prisons require a multi-year, multifaceted approach to transition from the military- or police- led institutions to a civil service.

5 Design a criminal justice system that has rehabilitation and reintegration at its core

The purpose of prisons is not to punish but to rehabilitate and reintegrate prisoners and return them to the community at the end of their sentence with the skills and tools to rebuild a law-abiding life and, thus, reduce recidivism. Each aspect of a prison regime, and the treatment of detainees by any authority including the police, should have this in mind. Furthermore, a focus on rehabilitation and reintegration has a major impact on safety and security in institutions. Authorities may depend on NGOs and other partners to deliver essential services, including rehabilitation programmes or vocational training as temporary solutions, but the state must ensure a longer-term and sustainable plan to meet their obligations under international standards.

6 Prioritise prison file management systems

In line with Rules 7 and 8 of the Nelson Mandela Rules, prisoner file management systems should be developed as a priority. Such systems can prevent arbitrary detention and protection of human rights, including accountability for ill-treatment. Effective prisoner file management is an essential prerequisite for the proper classification and allocation of detainees, as well as for carrying out their individual needs and risk assessments, all of which contribute to prisoner rehabilitation, reintegration and the reduction of recidivism. Information about the nature of the offence, sentence length and ongoing behaviour in prison should, therefore, be taken into account in ongoing personal support and training programmes for people in prison and for responding to physical and mental health needs.

7 Manage the prison population through an effective classification system

A classification system has been described as a 'cornerstone of an effective prison system'. Its purpose is to individualise risk and needs for better rehabilitation and safety. Classification enables the prison administration to differentiate and ensure that the right security level and rehabilitation programmes or needs are met. Without a proper classification system, as is common in fragile and conflict settings, people are often held in higher security than necessary which brings a range of harmful impacts including less opportunities to access rehabilitation programmes and less contact with the outside world.

8 Invest in capacity building of prison staff, including a focus on dynamic security

Whether there is new staffing or existing staff in place in prisons, the need for capacity building and training is usually vital for the effective and safe management of people detained in fragile, conlifct and post-conflict settings. Security and safety, including the concept of dynamic security, should be an essential part of training (see page 11 for more discussion on the benefits of dynamic security). Any such initiatives should be context-specific, and take into account the need for training on the treatment of certain groups, including those more vulnerable. Training should not be limited to the theoretical presentation of laws and regulations, but should be practical and include scenario-based training.

9 Healthcare must be supported and funded, including disease transmission control strategies

Many countries in fragile and conflict settings, including the CAR and Yemen, have been impacted by contagious diseases like tuberculosis, cholera, malaria, HIV and now COVID-19. Where there is a shortage of healthcare providers, medicines, and protective personal equipment in general, people in detention often go without (as do the staff supervising them). In overcrowded prisons the risks are even greater, and it is, therefore, essential that healthcare is a priority in rebuilding prison capacities. Food provision, clean water for drinking and sanitation, and access to basic medicines form key components of this.

10 Gender-specific and child-friendly systems

The unique challenges and human rights violations against women and children in criminal justice systems in fragile, conflict or post-conflict settings need to be tackled in any work to rebuild justice systems. International standards make a clear call for alternatives to imprisonment for both women and children, recognising the specific damage of detention faced by these groups. This should be a priority area of any justice reform in peacebuilding efforts. Given that both women and children make up a minority in prison populations, specific strategies should be developed to ensure that they are not forgotten.

About Penal Reform International

Penal Reform International (PRI) is an independent non-governmental organisation that develops and promotes fair, effective and proportionate responses to criminal justice problems worldwide. We work to promote criminal justice systems that uphold human rights for all and do no harm. We run practical human rights programmes and support reforms that make criminal justice fair and effective. Our primary objectives are to secure trials that are impartial, sentencing practices that are proportionate and promote social rehabilitation, and humane conditions of detention where alternatives to imprisonment are not possible. We work through country missions, regional hubs, remote coordination, and through partners.

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