

Penal Reform Strategies in Asia and the Pacific:

**The Experience of
Penal Reform International
and Partners
on Prison Reform and Access to Justice**

Penal Reform International

October 2003



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Executive Summary

As the primary method of crime prevention and combating crime in Asia and the Pacific, imprisonment lies at the heart of the criminal justice process. Most persons in conflict with the law are subject to imprisonment rather than non-custodial alternatives.

Such persons are generally poor, young and have little if any legal literacy. They are subject to remand or pre-trial detention often because they are unable to meet bail demands and are subsequently imprisoned as a consequence of poverty, and not because they constitute a threat to society. Further, many prisoners are forced to spend longer periods in pre-trial detention than the maximum sentence for the offence with which they have been charged.

Pre-trial diversion measures such as alternative dispute resolution and mediation should be fully exhausted before consideration of formal court proceedings. Moreover, diversion measures at all stages of the criminal justice process are vital. Given that police across the region are prone to over-arrest, arrest without substantial grounds must be avoided and alternatives such as a caution or fine fully utilised. Safeguards to limit the over-use of police and judicial custody require strengthening. Furthermore, revitalising and reinvigorating non-custodial measures including community service and other applicable methods is essential to prevent exposure of persons not considered a threat to society to hardened criminal behaviour in prison and the perpetual cycle of crime and re-offence.

Penal and criminal justice systems of the region are overloaded, discriminatory, under-resourced and vulnerable to corruption. Given that penal systems and penal law reform remain a low priority, prisoners continue to be housed in inadequate, dilapidated infrastructure while outdated penal legislation, primarily concerned with prisoner confinement and control rather than rehabilitation and re-socialisation, remains in place. Moreover, given the extent of overcrowding in many prisons of the region, prison administrations are heavily burdened and often forced to focus on daily management concerns rather than long-term strategies to support the rehabilitation of offenders.

Prison services around the region are inadequately trained, ill equipped, under-resourced and lack the necessary institutional support to develop into a professional body. Thus, international standards pertaining to good prison management practices are not realised.

Exposure to disease, physical abuse and unsanitary conditions coupled with inadequate diet and medical provisions and the stresses of living in cramped conditions results in long-term physical and psychological problems for prisoners and has resulted in deaths.

Vulnerable persons including women and accompanying children, juveniles, the mentally ill, the elderly and drug-addicts are most susceptible to abuse and ill treatment in prison and social isolation, ill health and long-term trauma upon release. In most countries of the region, child offenders come into contact with adult offenders for prolonged periods of time. In many instances, this contact takes the form of imprisonment alongside adults, where children are exposed to criminal behaviour and are vulnerable to abuse and exploitation. There is an urgent need, therefore to maintain a separate juvenile justice system in countries across the region in order that international standards regarding child rights are upheld and children are diverted towards the community and appropriate social support structures and away from a life of institutionalisation. Moreover, the

specific needs of vulnerable prisoners with regard to education, vocational instruction, psychosocial support and health care require immediate address.

Efforts directed at achieving criminal justice reform related to the penal system focus on various strategies directed at strengthening access to justice at the local level through informal justice; achieving transparency within the prison system as a means of protecting prisoners and improving conditions of detention; and socially constructive non-custodial measures which encourage the social re-integration of offenders.

Where appropriate, elements of informal justice and community-based justice such as alternative dispute resolution including mediation should be incorporated into the formal justice system with a view to making the whole system more user-friendly and accessible to the poor.

Address of the weaknesses and gaps in the criminal justice system must be considered holistically with a view to achieving equal access to the law and equal treatment before the law. At the same time, each stage of the process from that of arrest and investigation must be systematically addressed in parallel with efforts directed at strengthening the whole process. In this regard, greater coordination and collaboration between all criminal justice system agencies is vital given that such agencies are often more competitive than collaborative.

Penal reform organisations and practitioners around the region seek to secure community safety by preventing re-offence through the rehabilitation of offenders, establishment of dignified conditions of detention and support for community involvement and participation in prisons. Currently, however, places of detention remain largely closed, isolated institutions outside of the purview of civil society and the wider community. In consequence, prisoners remain vulnerable to abuse, exploitation and ill treatment in prison. Moreover, efforts to encourage prisoners to become productive members of society post-release such as that of training, skill development and work in prison need to be updated and reinvigorated. Indeed, vocational training in prisons around the region is focused primarily on outdated technology with limited consideration of the skills required to obtain meaningful, adequately remunerated and dignified employment post-release.

Address of lack of transparency and corruption within prison institutions including the establishment of necessary checks and balances by way of greater community involvement in prisons is the first issue that must be addressed if penal reform and access to justice is to be achieved. In this regard, the establishment of an independent and impartial monitoring body responsible to review conditions of detention and the treatment of prisoners on a regular basis is vital. The establishment of conditions for effective prison functioning including address of overcrowding, legislative reform, strengthening the capacity of the prison service, and improvement of the physical conditions of prisons, are moreover, fundamental to uphold the dignity and rights of prisoners and staff alike.

Penal Reform International (PRI) and partners across the region work with government and alongside all agents of the criminal justice system in collaborative partnership to develop and realise international human rights standards with regard to law enforcement, prison conditions and prison standards. Cost-effective and locally appropriate initiatives include training key stakeholders such as prison personnel and police officers in good prison management and application of the UN Standard Minimum Rules for the Treatment of Prisoners and other relevant international instruments. PRI supports the provision of legal aid to vulnerable prisoners, practitioner exchanges and

study visits across regions and internationally. The organisation supports the drafting of progressive legislation and reviews conditions of detention in collaboration with prison departments with a view to identifying locally appropriate collaborative strategies for improvement.

BACKGROUND OF THE PROBLEM

The poor are denied access to justice and security across Asia and the Pacific for reasons related to entrenched corruption specifically within the judiciary and amongst law enforcement agencies.¹ Corruption coupled with the lack of accountability of government and failure to uphold the rule of law is reflected in the failure to shield law enforcement officials from the executive and political influence. The lack of transparency and accountability within penal systems perpetuated by impunity has resulted in denial of justice and few safeguards for the accused.² Penal systems around the region remain largely closed, unaccountable institutions, distant from public scrutiny given the relatively weak powers of national bodies such as human rights commissions to take action against transgressions within prisons.³ Thus, corrupt practices over limited access to goods and services within prison systems such as food, medicine, transport, prisoner entitlements as well as physical protection ensure that international standards pertaining to prisoners' rights and prison conditions are not upheld.⁴

The region is characterised by weak democracies and undemocratic, repressive political systems. This reality coupled with entrenched corrupt and discriminatory practices result in the arbitrary arrest and detention of persons who are unable, for reasons of financial limitation and powerlessness to secure their way out of the criminal justice system. In many countries, the formal justice machinery does not function effectively. A backlog of thousands of cases, lack of sufficient legal aid and interpreters leads to lengthy delays and a process that is costly, time consuming and highly disruptive for those involved.⁵ Moreover, discrimination evident in every society of the region against women, juveniles, minorities, the mentally ill and foreigners is reflected and exacerbated in the criminal justice system through a combination of the overloaded state machinery and lack of skills and awareness amongst the poor to engage in formal justice.

Low state prioritisation of penal systems and indeed penal law reform is reflected in realities including the continuing utilisation of old dilapidated infrastructure, (including prisons constructed in the early 1900s) and outdated penal legislation.⁶ Such outdated legislation governing the administration of prisons whose objectives include that of confinement and safe custody through punitive measures rather than that of rehabilitation and social reintegration provide little or no effective guidance on reform and rehabilitation activities for prison staff to engage in. Yet, in many countries such as Fiji, Sri Lanka, and Bangladesh, there is an over-reliance on imprisonment reflected in the fact that it is used as the primary method of combating crime and crime prevention and thus, first resort of the courts. Indeed, across the region, bail is rarely used and prison is often the first resort of the courts both before and after trial. While various alternative mechanisms to imprisonment exist across the region, in many countries they are under-utilised and not well administered.⁷ Moreover, practices pertaining to alternative or non-custodial measures often amount to an extension of state control and corruption evident within the prison system.

Improvement in access to justice in terms of the prison system is impeded across the region by corruption and lack of good governance. Such realities lead to constraints including lack of political will and financial commitment to engage in prison reform; prison overcrowding and the multiple challenges implied; insufficient disclosure of information to the public resulting in the stereotyping of offenders; limited public sympathy for prison management; and a general lack of understanding of the objectives of incarceration. Cooperation between outside agencies such as independent human rights monitoring bodies, socially inclusive non-government organisations and voluntary agencies as well as specialised governmental agencies remains limited. Failure to realise prisoners' rights in

places of detention represents the realities of corruption, an overall lack of understanding amongst prison and police officials of their respective roles and responsibilities, socially held attitudes regarding prisons as places for retribution, and the dehumanisation of prisoners in society which is reflected in the prison system.⁸

The enactment of anti-terrorist and national security legislation as a response to internal armed conflict in countries such as Sri Lanka, India and Nepal, political turmoil in countries such as Fiji and cross-border insurgency in countries such as India and Pakistan has provided state security forces with greater powers of arrest and detention with fewer checks and safeguards for detainees.⁹ This reality has led to greater transgressions on the part of law enforcement officials. Conversely, measures to counteract terrorism imposed over the past years have provided regimes with new-founded justification for long-standing repression. In terms of prison staff security, moreover, the detention of trained combatants brings additional challenges to prison management.

Prison conditions

Prison systems across the region share similar problems including the legacy of archaic colonial-era legislation. In Bangladesh, as one case in point, prisons continue to be regulated by the 1894 Jail Code. Prisons are generally overcrowded, dilapidated and fail to uphold most basic humanitarian standards of hygiene and sanitation, nutrition and medical care. Diseases such as tuberculosis, jaundice and skin disease are common in overcrowded prisons. (Odhikar 2001). A study conducted by the National Human Rights Commission of India in 1999 found that nearly seventy-nine percent of deaths in judicial custody (other than those attributable to custodial violence) were as a result of infection of tuberculosis (NHRC 1999). Medical services and the supply of medicines are often extremely limited. In Bangladesh, as one extreme case in point, there are no medical staff personnel within the Directorate of Prisons to provide medical services in prisons in contravention of fundamental rights instruments pertaining to persons subject to denial of liberty.¹⁰

Unbearable conditions of detention caused by overcrowding, corruption and abuses of power, lack of hygiene and poor diet cause jail revolts. Such riots and revolts are often met with the use of brutal force by part of prison personnel who often do not have the training, capacity or numbers to deal with such events appropriately. In some instances, such excessive use of force in prisons in countries including Bangladesh has resulted in deaths.¹¹

Monitoring places of detention is fundamental as a mechanism through which humane treatment of detainees and decent conditions of detention can be promoted in accordance with international standards including the UN Standard Minimum Rules for the Treatment of Prisoners.¹² Methods of monitoring include internal inspection by high-ranking prison officials, judicial monitoring and independent investigation by an external body such as a national human rights commission or widely representative prison visitors board. In many countries of the region, however, all forms of monitoring are weak or remain largely unimplemented. In countries such as Bangladesh and Sri Lanka, district magistrates are obliged under domestic law to visit prisons on a regular basis yet rarely do so, if at all (UNDP 2002). Moreover, while legislation may provide for an independent investigation body such as that of a board of visitors, which may have the authority to receive and investigate complaints from prisoners in confidence, such bodies are yet to be fully functional. In other instances, a national human rights commission may be responsible for monitoring places of

detention but limited mandate, lack of resources and limited capacity can weaken the impact of such institutions to advocate for prisoners' rights and improvement of conditions.

Overcrowding of prisons is a characteristic of many prisons around the region particularly those situated in cities and populated towns.¹³ While the underlying causes of overcrowding vary across countries of the region, in general terms, the primary reason rests with the fact that imprisonment is utilised as the main recourse of the criminal justice system and not, in accordance with international standards, a means of last resort. Overcrowding causes a variety of problems in terms of prison management and the treatment of offenders leading to financial, resource and human rights problems. It can hinder reform and undermine constructive efforts directed at the rehabilitation of offenders, the very objective of penal law. While conditions vary from one country to the next, reasons for overcrowding include the slow progress of cases and delays in investigating and processing cases, limited use of bail, restrictions on the use of bail and unrealistic bail conditions.¹⁴ Other reasons include the imprisonment of drug addicts and the mentally ill.¹⁵ In most countries with prison overcrowding, inadequate use of alternatives and in some instances, limited judicial discretion to suspend punishment at the trial stage, limited early release measures and limited use of parole cause over-reliance on custodial sanction.¹⁶ Thus, in countries such as India, Pakistan, Sri Lanka and Bangladesh, the over-representation of remand or under-trial prisoners who comprise more than 70 percent of the total prison population contributes considerably to prison overcrowding.¹⁷ While not as substantial, the remand population for most remaining countries of the region remains significant as many countries have a remand population of between twenty to 35 percent.¹⁸

Prison overcrowding constrains the prison administration, stretches already scarce resources such as accommodation, bedding, food and medical services, and opportunities for education and vocational training directed at the rehabilitation and socio-economic reintegration of offenders. The extremely low ratio of staff to prisoners resulting from overcrowding which impacts upon the security of officials often ensures that prisoners remain locked up for extended periods of time in contravention of international standards.¹⁹ The Standard Minimum Rules for the Treatment of Prisoners specifically states that prisoners specifically states that prisoners should enjoy at least one hour of suitable exercise in the open air per day weather permitting (Rule 21(1)). Overcrowding hinders the ability of prison management to uphold the rights of prisoners and prison standards including that of classification and the segregation of remand and convicted prisoners.²⁰ Moreover, overcrowding further exacerbates bribery surrounding legal entitlements, visiting rights, transportation to and from court and scarce resources such as food and medicine.²¹

Professionalism of prison services

Other characteristics of the criminal justice system in relation to the prison system include the lack of professionalisation of prison services which is reflected at all stages including that of recruitment, general and specialised training (in areas such as juvenile justice, the rehabilitation of women prisoners and other vulnerable groups). This reality results from the poor working conditions and support services available to prison officials including low salary, poor entitlements such as that of housing and limited career and capacity development opportunities. Such realities lead to high turnover of staff and absenteeism, ill health and general lack of incentive reflected in a low level of professional pride and dignity in work. This is further exacerbated by the social stigma surrounding

prisons and prison officials reflected in the social isolation and stereotyping of prison staff.

Given the generally poor conditions of service and status of officials engaged in the administration of justice (including low pay, limited career and capacity development opportunities), such officials have little incentive to change or challenge entrenched corrupt and abusive practices.²² Moreover, political instability, lack of security and dramatic socio-economic changes experienced across the region impacts directly on the composition of prison populations, the structure of penitentiary services and the constraints and challenges faced by prison management and staff.

Most countries of the region do not have a long-term strategic approach for the management of prisons and professionalisation of the prison service. In countries such as Nepal, there is no separate prison officer cadre and no minimum period for staff to prisons. Where the highest positions within the service are held by civil servants, frequent transfer from department to department can prevent the development of penal expertise. Moreover, the contribution and impact of officials at the highest level in recommending and realising improvements to prisons is restricted.

The lack of an effective, centralised information system is a problem faced by many countries. Without access to consolidated, up-to-date records of the status of prisoners and of prison staff, effective monitoring of the whereabouts, legal status and health of prisoners is extremely difficult. Moreover, coordination between penal facilities with regard to transportation of prisoners and related issues becomes extremely problematic.

Vulnerable prisoners

Discrimination evident in each society of the region against women, juveniles, minorities, the mentally ill and foreigners is reflected in the criminal justice system. Many persons who come into conflict with the law are young, of a lower socio-economic background and have a limited education and thus low or no level of legal literacy.²³ In terms of vulnerability, persons most in need of legal protection, equal access to justice and specialised treatment are most susceptible to abuse and discrimination within the criminal justice system. They are persons who are already socially disadvantaged including women and accompanying children, juveniles, drug addicts, the mentally ill, foreigners, minorities and the elderly.²⁴ Imprisoning members of poor families (and particularly the bread-earners) divides families, entrenches them further into poverty and ultimately exposes children to even greater vulnerability.

In many countries across the region, children are detained in custody for petty offences such as vagrancy for which their families are not immediately informed, they themselves are denied access to a lawyer, and in many instances, denied access to trial in a juvenile or children's court and held alongside adults in detention where they are exposed to criminal influences and vulnerable to ill-treatment.²⁵ In countries without adequate dental records and socially-supported compulsory birth registration, determining the age of the child at arrest is difficult and often leads to corruption on the part of the police who increase or fabricate the age of the child. Moreover, in contexts where children are utilised for political purposes such as that in Bangladesh where children are used by political parties to take part in strikes, picketing and in carrying out dangerous activities, the risk of abuse upon arrest is considerable (Odhikar 2002). While provisions for segregation of children from adults, detention as a last resort and rights to

immediate access to social workers and legal representation exist in domestic law in countries such as the Philippines, Bangladesh and Nepal, they are regularly violated.²⁶ Indeed, juveniles in many countries of the region are held alongside adults in prison.²⁷

Despite the fact that women suffer greater social isolation (alienation and stigmatisation), psychological and mental stress in prison being away from their families, women are more frequently detained in prison further away from their homes than male prisoners because of the need to maintain gender segregation and the limited capacity of prison administrations to house women prisoners in separate accommodation.²⁸ In other situations, women's prisons are attached to men's prisons, resulting in exposure to potential mistreatment and abuse.²⁹ In some countries of the region, women under-trials and convicted prisoners are not segregated as a result of limited space.³⁰

Imprisonment of women is extremely damaging for them and has a greater effect on the families they leave behind and yet, in China and Thailand, the female prison population is growing at a greater rate than that for men.³¹ The lack of trained and specialised staff in general and of female staff to deal with women in conflict with the law including police, prison officials, and health professionals coupled with limited understanding of judges about the circumstances of women who appear before them ensures that women are often subject to ill or inappropriate treatment, intimidation and harassment.³² The general lack of awareness about the procedures at all stages of the criminal justice and of rights and entitlements vis-à-vis criminal justice agencies is one of the greatest obstacles for women in the criminal justice system.³³ While no distinction should be made between women and men on the type of work they are offered to be involved in, women prisoners are frequently offered work and vocational training which is restricted to domestic situations and has limited market value.³⁴

Foreigners languish in prisons around the region unable to secure repatriation entitlements. In some instances, claims of national identity are not supported by respective embassies and consulates and such persons languish in prison in threat of being declared stateless. Many prisoners remain in detention at the completion of their sentence for lack of repatriation arrangements with their own country.³⁵

Community-based access to justice and legal literacy

Most people around the region are unable to access the formal justice system for reasons including lack of awareness of the law and lack of resources to access the law. In some instances, deliberate obstacles to access the courts are placed by those with vested interests. In other contexts, the need to access the courts is offset by the failure of the state to ensure confidence in security and justice agencies.

Rural villagers, specifically vulnerable persons including women, minorities, the elderly and youth, who are most in need of protection of the law are least likely to be aware of their rights and the remedies available for redress. Moreover, they are most unlikely to possess the necessary support, leverage, understanding and opportunity to enforce their own rights in a court of law. The formal justice system is removed from the realities of villagers who either seek to have their dispute resolved locally by local systems or suffer in silence. Local conflict resolution strategies in some contexts do, however, reflect local power relations and bias based on gender, class and caste resulting in further discrimination and injustice.

The ability of persons to access justice and realise their rights is dependent upon legal literacy and access to information. Legal literacy is fundamental to promote the rule of law and its principles and to protect human rights and fundamental freedoms. Challenges to access to information include that of poverty and social exclusion, illiteracy, linguistic diversity, physical remoteness, poor transport and social isolation" (DFID 2000).

Problems resulting from a lack of adequate legal awareness and access to legal representation particularly for poor and vulnerable groups involved in the criminal justice process is reflected in the over-representation of remandees and short-term, petty offenders in prisons around the region. Moreover, the lack of a proper documentation system hinders assessment of the needs and legal status of prisoners and limits the ability of prisoners to access justice. Paralegal services are not well understood nor developed in countries of the region. Yet, the utilisation of paralegals is recognised as a cost-effective means of reaching and providing effective legal assistance and raising legal awareness in prisons and can provide the impetus for greater cooperation between key agents of criminal justice system including prison officials, magistrates and the police.

PRACTICAL ANALYSIS

Where applied in contexts where good governance does not exist, methods to address the lack of access to justice in the region are in threat of merely extending the level and reach of corruption and control of the state. Thus, address of corruption and the challenges in accessing justice in relation to the penal system is required at all stages of the process including that of arrest and pre-trial, the court stage, prisoner rehabilitation in detention and social reintegration following release. Such measures pertain to the role of the police, courts, prison administration, community and civil society.

Penal reform strategies around the region include:

Informal Justice	The development and reform of traditional justice systems at the village or local level directed at providing access justice to rural communities.
Transparency within the prison system	Achieving greater transparency and accountability of prison services vis-à-vis encouraging greater openness in practices, coordination amongst agencies of the criminal justice system, and securing access for independent monitoring by non-government and community-based organisations.
Non-custodial measures	Socially constructive alternatives to imprisonment directed at the socio-economic rehabilitation of offenders based on restorative justice principles.

Informal justice

Justice can be made more accessible by the adoption of informal or traditional justice systems, which can exist to supplement or complement the formal justice system under circumstances where good governance exists. Informal justice does not constitute a substitute to the formal system but rather provides disputants with the feasible option of having one's grievances addressed locally rather than by a court far away. Supplementary mechanisms to the formal justice system such as non-formal dispute resolution methods should never be seen as competition to the courts or as a better alternative. Moreover, they should not exist as systems that in practice exclude the poor and powerless from the fundamental right to access the formal machinery. They must serve as supportive structures that provide a viable cost-effective opportunity to resolve a dispute amicably within one's own community.

Where universal rights are applied and national legislation upheld, informal justice mechanisms such as mediation provide the opportunity of having one's grievances heard by a competent mediator and a dispute resolved amicably in negotiation rather than in competition with an opposing party.

Informal justice systems should exist as a legitimate component of the rule of law and must be incorporated wherever possible into the formal system to ensure greater accessibility to the poor and development of a less daunting, more user friendly system. Where effective, alternative dispute resolution can assist in resolving a social conflict before it develops into a legal dispute or takes on a criminal nature. In resolving issues locally, such mechanisms assist in keeping people out of the criminal justice system and thus away from socially disruptive

and damaging prisons. To be effective, however, such methods must be highly participatory and involve a wide variety of local actors.

Many traditional and informal justice systems mirror power relations of patronage and class evident in a community in which they operate. While the objective is to ensure that women play an equal role in presiding over disputes and as disputants, the reality is that discrimination against women in many societies is often reflected in the structure of such bodies and in the nature of their deliberations. In South Asia, the revitalisation of community based justice or traditional justice systems such as *shalish* in Bangladesh, *lok adalats and shalish* in India and *panchayats* in Nepal face the challenge of providing a space where all forms of socio-political discrimination based on caste, class, gender, ethnicity, occupation and religion are neutralised. Such mechanisms have the potential to provide greater access to a less expensive, fairer, quicker and restorative-based justice and encourage general awareness of human rights in communities in which they operate. Yet, they face a number of challenges in this regard including the threat of adherence to the status quo and local power structures and thus, tacit approval of various forms of bias manifest in the community in which they sit.

Rural-based Mediation in Bangladesh

The legal system in Bangladesh is overloaded, retributive, confrontational, expensive, time consuming and remains, therefore, beyond the reach of the country's agrarian and impoverished majority. Indeed, any experience the poor may have with the formal system is usually at the hands of the wealthy powerful elite and thus negative and disempowering as few are able to use the system voluntarily.

In light of these realities, Bangladeshis have redirected their focus towards alternative dispute resolution (ADR) mechanisms designed to provide legitimate redress of grievance in light of the overburdened, inaccessible and overloaded court machinery. ADR in Bangladesh, like that in other countries of South Asia and beyond, draws on traditional rural practices of dispute resolution whereby community members and village elders gather to mediate a conflict and arrive at a resolution agreeable to all involved parties. In the Bangladesh context, the reformed and revitalized rural practice of "shalish" has become a widely accessible mode of dispute resolution. It is considered less confrontational than litigation and its mechanisms more flexible as they permit greater focus on the actual needs of people in rural communities and promote outcomes which are satisfactory to all disputants.

The Madaripur Legal Aid Association (MLAA) was the first organization in Bangladesh to identify "shalish" as a foundation for cost-effective, expeditious and accessible justice for the disadvantaged. The MLAA took the bold step of incorporating new elements of "mediation" into the traditional shalish model, thus developing an ADR mechanism which became known as the Madaripur Model of Mediation (MMM). The MMM goes a step further than the traditional shalish system in that it seeks to address discriminatory practices (based on gender, class, caste, religion) which characterized the shalish system.

The effectiveness of the MMM is dependent upon locally-formed and based community mediation committees. At village level, there are currently 450 mediation committees. Each committee is made up of seven to ten members with a total of 1,164 women village-level members and 3,282 male village-level members. At the second level of union (in which one union comprises up to twenty villages), there are nine mediation committees each with a membership of between eight to fifteen members. A representative of each union committee is a member of a central or apex union committee. There are 50 apex union committees with a total membership of 658 persons including Mediation Workers.

A key impact of the development of alternative dispute resolution methods at the village level is growing awareness amongst villagers of rights under the law. Participation or observance of alternative dispute mechanisms including mediation has created growing interest in rights enshrined under the law specifically with regard to the situation of women and has led to increased interest and participation in community affairs. Yet continuous effort is required to ensure that awareness raising at the local level equips the poor and marginalized with the knowledge, skills and confidence to access the formal justice machinery and right to due process.

Transparency within the Prison System

Mechanisms and methods directed at greater transparency and accountability within the prisons system include the following.

Regular and ongoing access to prisons of independent non-governmental bodies

Ongoing monitoring by community groups and NGOs with a socially inclusive mandate is essential to the protection of prisoners from ill treatment and promotion of good decent detention conditions.

Prison Monitoring in Cambodia

Investigators of the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) Monitoring and Prison Project Offices visited nineteen civilian prisons and one military prison at least three times a month in 2001. "During these visits, staff conducted 2,324 interviews with pre-trial detainees and inmates to monitor human rights conditions in Cambodian prisons. Consistent interaction with prison populations brought the plight of mothers, children and pregnant women to the attention of LICADHO staff." (LICADHO 2002).

LICADHO medical team conduct monthly visits to twelve prisoners and have conducted 5,083 consultations with inmates and pre-trial detainees. LICADHO provides assistance in the form of medical care for inmates as well as supplementary food for mothers, children, and pregnant women. LICADHO's Children's Rights Office distributes food once a month to mothers with children and pregnant inmates, including canned fish, rice, cooking oil and sometimes canned or powdered milk.

The provision of paralegal services and legal aid

Paralegal services in providing a system of documenting prisoners' legal status is directed at increasing transparency in the prison system and improving access to justice for all prisoners. Legal aid is vital in circumstances where there are high numbers of remand prisoners and few with the means to retain a lawyer to submit a bail application or prompt trial. Paralegal services are vital where there are high numbers of prisoners who exist within an under-resourced and over-stretched system and suffer unnoticed.

Legal Aid in Pakistan

In Pakistan, free legal services provided to 20,000 persons detained unjustly, with focus on women prisoners, by the Lawyers for Human Rights & Legal Aid has helped to release 5,000 innocent persons from jail, mostly women and children. Since its inception in 1990, the NGO provided free legal assistance and counselling to 20,000 victims in places of detention in Sindh Province over a ten-year period.

The establishment of local human rights inspection and complaints mechanisms

While the institutionalisation of an internal complaints mechanism within the prison system such as a board of visitors is vital, the establishment of a local level independent human rights monitoring mechanism such as that of an ombudsman or local desk of a national human rights commission with a confidential complaints mechanism, is also essential.

A Model from India

The National Human Rights Commission of India has the power to visit any prison or other institution under the control of the State Government where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon. In this regard, the Commission investigates complaints, monitors prison conditions and issues instructions and guidelines on human rights in prisons to the all Chief Ministers and State administrations around the country.

Following receipt of a complaint from a convicted prisoner in Rajasthan Central Jail, the Commission's Investigation Team who conducted an inquiry into corruption amongst prison officials at the jail recommended departmental action against the Superintendent and Senior Medical Officer and upon revealing evidence of extortion and torture of prisoners, recommended that the State Government initiate a thorough inquiry into the prison administration and take necessary action against officials found guilty. The Commission ordered compensation to be paid to the complainant for harassment and deprivation suffered at the hands of prison officials. (National Human Rights Commission – India 2002-2003).

Collaboration between all criminal justice system agencies and stakeholders

Competition rather than cooperation between criminal justice agents is a major obstacle to reform and strengthening of the criminal justice and prison system. Initiatives directed at inter-agency cooperation directed at the establishment of a fair administration of justice for all can promote openness and transparency in prisons and places of detention. Communication mechanisms between agencies such as police, prison officials, judiciary, bar association, probation and welfare service, health service, local leaders, defence counsel and directorate of public prosecutions may include regular formal meetings, joint visits, reports, conferences, workshops and collaborative work to produce statistics and analysis.

Inter-agency collaboration in India

At the prison level, the involvement of health and social welfare, vocational training and educational departments is vital to ensure that prison management is able to fulfil its mandate to rehabilitate prisoners and encourage them to become productive members of society and law abiding citizens. Such support is also essential post-release. As one case in point, the Social Welfare Department of the Delhi Government in India provides loans to newly released prisoners for the establishment of self-employed units. (Tihar Prisons, Delhi 2003).

Collaboration promoting prisoner rehabilitation in Fiji

Collaboration can more easily permit prisoners to develop specialised, marketable skills and reach a competitive skill level with persons in the industry which is recognised by the industry. In Fiji, prisoners who complete trade training in engineering and joinery are accredited under the Fiji National Council standard. Such accreditation gives prisoners the chance to compete for employment in the open market upon release. (Asia Crime Prevention Foundation 1999)

Regional inter-agency collaboration in South Asia

In 1999 and 2002, Penal Reform International (PRI) brought together criminal justice practitioners, government officials, judges, lawyers, advocates, NGOs and civil society groups together from around South Asia to identify issues for regional cooperation and collaboration in the areas of penal reform with focus on vulnerable prisoners. With special focus on under-trial prisoners, women and juveniles in the prison system, the role and responsibilities of police, courts, prison and civil society were specifically addressed and the need for inter-agency collaboration and co-operation was recognised as essential for the delivery of justice.

Representatives of each country comprising both state and non-state actors came together to identify priority issues for collaborative address for 2003 and beyond while recognising the validity in addressing common concerns and challenges cooperatively at both national and regional levels.

'For human dignity – towards a Charter of Fundamental Rights of Prisoners' outlining the fundamental rights of prisoners and emphasising the role of the state in ensuring the safeguarding of such rights was adopted at the conference. The charter was drafted for the consideration of Member States of the United Nations, intergovernmental and non-governmental organisations and other entities and individuals for adoption at the Eleventh United Nations Congress on Crime Prevention and Criminal Justice in 2004 (PRI 2003c).

Civil society and community involvement in prisoner rehabilitation initiatives

Initiatives designed to promote self-sufficiency and the socio-economic rehabilitation of offenders are enriched by the involvement of civil society and local community actors. The involvement of such actors on a daily basis with prisoners and prison officials promotes accountability in prisons and mutual working relationships between staff, prisoners and external actors. Post-release support services provide the necessary security and support to realise prison-based initiatives directed at rehabilitation and preparation for release during imprisonment. Areas of involvement include that of vocational training and education, monitoring and participation in decision-making regarding the operation of the prison and treatment of prisoners and spiritual and humanitarian guidance and support for both prisoners and staff alike.

Civil society and local community involvement in Tihar Jail, Delhi, India

Over 40 NGOs, civil society actors and members of the local community including doctors, teachers, social workers, religious leaders are engaged in activities with prisoners at the six prisons which make up the Tihar Jail complex. Activities, which are directed at the rehabilitation and socio-cultural reintegration of prisoners post-release include education, counselling, yoga and meditation, vocational training, the operation of factories, provision of medical care, drug treatment and rehabilitation, legal aid, sports and recreational, agriculture. In some instances, prisoners receive remuneration for their work from civil society groups.

Non-Custodial Measures

Where corruption within the criminal justice system exists, alternatives to imprisonment amount to additional mechanisms of control, abuses of power such as bribery and denial of justice. Non-custodial measures should be implemented in parallel with pre-trial diversion measures such as caution and mediation mechanisms to ensure that the over-use of arrest and imprisonment are addressed systematically and holistically.

Non-custodial measures include that of:

- discharge (absolute and conditional);
- suspended sentences;
- fines;
- binding over; ³⁶
- compensation orders;
- attendance centre orders;
- supervision orders (with or without requirements);
- probation orders;
- remission of sentences and grant of amnesties;
- parole or release on licence;
- work release;
- community service orders.

Community service is an order of the court whereby the offender is offered the opportunity of compensating society for the wrong s/he has done by performing work for the benefit of the community instead of going to prison. Under the Fijian Community Work Act 1996, convicted offenders can be sent to appointed community leaders to perform community work rather than being imprisoned. While conceptually sound, the act remains largely ineffectual due to the financial and capacity constraints of the Fiji prison administration and the programme's reliance on volunteers (Asia Crime Prevention Foundation 1999).

Under the Sri Lankan Community-Based Corrections Act No 46 of 1999, 3,808 persons were placed in a community-based work project from February 2000 to April 2003 by six courts in Colombo as part of a pilot project. In instances where offenders do not report to work, they are referred back to the magistrate who either sends them back to work under the project or sends them to jail.

RECOMMENDATIONS

Address of corruption and lack of transparency in the justice system

- Strengthen administrative structures directed at addressing discretionary decision making while introducing performance standards for employees in which salaries are determined on the basis of performance and a more effective system of reward and punishment is clearly defined.
- Reducing procedural complexity and creating awareness amongst officials and users of the rules, norms and procedures governing the criminal justice and penal systems.
- Design of anti-corrupt policies with the necessary checks and balances.
- Development of common understanding amongst criminal justice stakeholders of the implications and consequences of prison corruption, its impact on the rule of law and awareness of the rules and regulations of the system with recognition of the advantages in upholding such rules.
- Commitment on the part of the state and respective ministry to improve the financial position of prison staff and ensure that staff benefit from measures to improve conditions of prisoners, such as food from prison farms, access to medical services and medicines.
- Establish and maintain a comprehensive system of internal monitoring, judicial monitoring and external assessment and investigation conducted by independent bodies.
- Strengthen existing mechanisms or establish an Ombudsman's office to receive and investigate all prisoners' complaints and requests in confidence and to assist in the achievement of equitable settlements or at least, the establishment of a system of mediation for disputes in which every detainee is able to make a complaint or request to the central administration without fear of reprisals or ill-harm.

Recommendations directed at promoting institutional integrity and accountability within the prison and criminal justice system include:

- Participation of a wide variety of state and non-state actors in the criminal justice machinery with established mechanisms of cooperation and collaboration between all involved stakeholders.
- Inclusion and public participation in criminal justice issues in areas including the drafting of legislation, provisions for greater public awareness of rights and criminal justice processes, public scrutiny of prisons and places of detention as state institutions that are to be held publicly accountable.
- The existence of an ethical, competitive and open tendering process within penal institutions given the reality that tenders are often awarded for reasons of patronage and power rather than cost-effectiveness and quality of service.
- Fulfilment of obligations on the part of the state with regard to both the public security and safety and the rights of offenders at all stages of the criminal justice process.

- Independence of the judiciary including separation of the judiciary from the executive and reform of the manner of selection of judges, management of judicial career, internal administration, resources and judicial processes.
- Shielding of the police from the executive and political influence and review of police powers.
- Establishment of a professional prison service with proper recruitment mechanisms, adequate training facilities and programmes from prison staff, career development opportunities as a means of developing pride in and loyalty to the service and responsibility for roles and duties within the system.
- Political commitment for reform and increased support for the modernisation of procedures of agencies involved in the administration of criminal justice is vital. Such methods include that of reform to scientific investigation and information management through computerisation, technological updating in the fields of criminal intelligence and forensic investigation such as the use of DNA technology and scientific procedures to accurately establish the age of juveniles.

Improving standards and conditions for effective prison functioning

There is a vital need to provide conditions for effective functioning of correctional facilities and corresponding criminal justice systems. In this regard, address of overcrowding is the first step towards addressing current prison management challenges and to provide conditions conducive to the appropriate treatment of prisoners.

- As prison overcrowding is largely reflective of problems within the criminal justice process, address of it must be holistic, with consideration of measures at the pre-trial, court and rehabilitation stages. Thus, where relevant the immediate reduction of the prison population to a more manageable number, which would thereby provide respite to a heavily burdened prison management is required. However, any reduction in the number of prisoners should not automatically result in a reduction in budgetary allocations to prisons.¹
- Reducing the prison population may take the form of mechanisms such as the establishment of a committee responsible to regularly review cases in prisons/lock-ups with the specific objective of identifying persons of particular categories for release in accordance with established criteria. The systematic procedure of release could take the form of suspension of prosecution and any other mechanism including judicial procedure. The review body could be formed under the auspices of the National Human Rights Commission or Ombudsman or take the form of a parliamentary committee or sub-committee of the relevant Ministry's Advisory Committee on Prisons. Secondly, in order to ensure that the particular categories identified for release are appropriate and socially acceptable, a study on the different offences for which fine defaulters are imprisoned is required. A study of this nature would further underscore non-custodial measures available under the law for which persons charged under certain categories of offences need not be imprisoned at the expense of the state.

¹ Protracted under-trial detention is a substantial financial and human resource burden on the state.

Other recommendations to improve conditions for effective prison and justice system functioning include:

- Reform and upgrading of prison legislation such as jail codes according to international standards including the Standard Minimum Rules for the Treatment of Prisoners and reconsideration of the objectives of denial of liberty as restorative rather than punitive and rehabilitation focused. This approach should also be reflected at the state level with the total abolition of the death penalty in compliance with the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty which should be fully endorsed.
- Restructuring and strengthening the capacity of the prison service by way of review of prison-based legislation, curriculum, job descriptions and career development, a comprehensive training, re-training and capacity support programme, and provision of resources including information technology directed at achieving positive cultural and behavioural change within the prison service. In view of this, a prison department strategic plan and a code of conduct for prison staff with clear guidelines on disciplinary proceedings for misconduct, corruption and abuse of power should be laid out. A period of minimum service for postings to the prison department should be established.
- Maintenance of adequate infrastructure and physical living conditions which uphold the rights of prisoners to dignity and self-esteem.
- Implementation of a policy of appropriate classification and categorisation of prisoners, aimed at reducing tension, facilitating appropriate rehabilitation programmes and allowing the adoption of dynamic security management, with the majority of prisoners held in open and semi-open detention centres.
- Strengthening of the justice system for speedy and fair processing of case finalisation with focus on all stages of the process from that of police investigation to trial and sentencing.
- Sentencing practices should reflect international standards and imprisonment should be utilised as a measure of last resort for the shortest possible period of time.
- Provision for and fulfilment of inspection and monitoring functions of magistrates and judges in prisons to review and process cases on the spot.
- Regular visits to prisons by probation officers and social welfare offices to review the status of detainees who may be entitled to probation or parole.
- Independent monitoring by a widely representative body such as that of a board of visitors responsible to monitor prison conditions and the treatment of prisoners.
- Immediate signatory and ratification of the UN Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and realisation of obligations under the Protocol to set up national mechanism to conduct visits to places of detention and to cooperate with the international monitoring experts.
- Fulfilment of international standards pertaining to the treatment of prisoners and their dignity with focus on physical conditions of detention (infrastructure,

sanitation and privacy, access to fresh air and space for exercise, medical care, nutritious food), physical safety in detention including that of protection from all forms of torture and ill-treatment, and access to the outside world including family, lawyers and medical care.

- The provision of legal aid and paralegal services to needy persons in conflict with the law is essential. In this regard, coordination mechanisms between stakeholders such as a national Legal Aid Commission, Attorney General's Department and all non-state organisations and NGOs at both the national and local levels providing legal aid to prisoners in order to ensure that no prisoner is denied the right to legal representation.
- Needs assessments and clear prison admission procedures should be conducted and maintained by qualified staff who are responsible to inform detainees of the rules and regulations of the prison and of their rights upon admission. A Prisoner's Handbook, written in clear, simple language should be published and made available to all prisoners in local languages.
- Clear categorisation of remand and convicted prisoners, women and men and segregation of such prisoners should be maintained at all times.
- A centralised system of record maintenance and cases filing should be established and maintained.
- Vocational training and skill development activities should be reviewed and updated based on marketable skills and meaningful employment.

Recommendations pertaining to children in conflict with the law

International and national commitments towards juveniles have mandated countries of the region to undertake various legal, administrative and executive measures to fulfil basic rights of children. However, such measures are not realised. There is, therefore, an urgent need to create a separate juvenile justice system in each country of the region.

- In order to realise international standards pertaining to child rights, juveniles must be treated as a separate category. This reality should be reflected at all stages of the process from apprehension, processing, disposition, placement, treatment and reintegration. Moreover, children below the age of eighteen should not be sent to prison.

Four key principles of the Convention on the Rights of the Child should prevail in any decision regarding a child in conflict with the law. These include:

1. The best interests of the child.
2. The principle of non-discrimination.
3. The right to life, survival and full social, physical and psychological development.
4. Respect for the views of the child.

In order to realise the best interests of the child in circumstances and his/her psychological and physical development are guaranteed and protected where children come into conflict with the law, measures and changes are required with address of the role of the police, juvenile courts or boards, child welfare committees, institutions such as shelter homes, non-institutional services, NGOs and social workers.

- The establishment of special juvenile police units trained in juvenile justice and responsible to deal exclusively with juvenile offenders are vital to ensure that children in conflict with the law are diverted to the community and thus away from the criminal justice system. Such police should function in close cooperation with community-based welfare agencies so as to ensure that all categories of children in need of care and protection are reached. Such units should operate in coordination with probation officers, social workers, NGOs and community leaders to ensure that such children are re-socialised and protected in non-institutional care to the fullest extent possible.
- Special juvenile courts or boards must be established and under no circumstances should a child be made to undergo proceedings in adult courts alongside adult offenders. Such a board must obtain a social investigation report from probation officers in each and every case before finalising the disposal of such a case. Disposal of cases pertaining to juveniles should take place within a period of four months at most in order that juveniles are not made to stay in institutional care for longer than absolutely necessary.² Sentences should focus to the fullest extent possible on probation or counselling or an alternative service under the supervision of a reputed organisation or institution with the support of family/guardians where appropriate. Institutionalisation should only be considered for the shortest period of time where alternative care is not conducive.
- Where detention of juvenile offenders is practiced, the well-being of the detained juvenile must be the primary focus. Priorities of custodial sentences should be education, rehabilitation and ultimately social reintegration. This view is consistent with the Convention on the Rights of the Child, which states that the treatment of children in conflict with the law should take account of the “desirability of promoting a child’s assuming a constructive role in society.” (Article 40.1). Children detained in any form of institution must be treated differently to adults as they are more amenable to change, susceptible to exploitation and negative influences and vulnerable to ill treatment. Moreover, children are undergoing social, physical and psychological change and development, which requires nurturing, support and special treatment. Where subject to institutionalisation, the loss of liberty faced by a juvenile should be restricted with differences in offences and offenders bore in mind. Thus, separate institutions such as homes for juveniles should be established including observation homes (for a stay of up to four months while cases are processed) and special homes where juveniles may be transferred for institutional care on the orders of a juvenile court/board.
- Given that many children who come into conflict with the law around the region are marginalised children who are at risk for reasons of lack of shelter and subsistence, under threat of death or injury, are mentally ill and physically challenged, suffer from a chronic disease or whose parents/guardians are unfit or incapable to control the abandoned. Such children are at risk, vulnerable to drug abuse or trafficking, socio-economic exploitation and may comprise victims of armed conflict, civil commotion or natural calamity. They require special attention as a vulnerable group.

² Penal Reform International and South Asia regional partners, Access to Justice and Penal Reform, Review and recommendations. Second South Asia Regional Conference 2002: Section 7. Recommendations on Theme 3 Juveniles/Children.

Recommendations regarding other vulnerable prisoners

- Statutory arrangements should be made for children accompanying women detainees in order that their growth and development is supported and nurtured.
- Drug-addicted prisoners and the mentally ill should be re-directed to specialised medical institutions for appropriate care and rehabilitation.

Recommendations regarding the non-custodial treatment of offenders

Revitalising and reinvigorating non-custodial alternatives including community service, probation, fines, and other applicable methods is vital.

- Awareness raising and orientation measures directed at relevant stakeholders with focus on the judiciary must be developed to ensure the effective and appropriate implementation of alternative measures.
- With a view to the full involvement of community leaders and non-government stakeholders in supporting alternative methods, community-based awareness raising and sensitisation on the social value and economic impact of non-custodial methods is required.
- Pre-trial detention and short-term prison sentences should be replaced by non-custodial measures wherever possible.
- Community services orders should be built into the sentencing options wherever possible for specified offences.³
- Probation and probation services need to be revived and reinvigorated.
- Fines consistent with the socio-economic means of offenders should be imposed for offences wherever possible.

Recommendations regarding informal justice

- Where appropriate, elements of informal justice and community-based justice such as alternative dispute resolution methods including mediation should be incorporated into the formal justice system with a view to making the whole system more user-friendly and accessible to the poor.⁴
- Informal justice mechanisms should comprise supportive structures that provide a viable cost-effective opportunity to resolve a dispute amicably within one's own community.
- Informal justice mechanisms should be non-discriminatory, participatory, voluntary and not exclude the poor from the fundamental right to access the formal machinery.
- Restitution and compensation should form a fundamental part of justice in the community.

³ Penal Reform International and regional partners, Penal Reform in South Asia, Recommendations for Penal Reform and Access to Justice. South Asia Regional Conference 1999: Alternatives to imprisonment.

⁴ International Centre for Prison Studies and Penal Reform International, A new agenda for penal reform. International Penal Reform Conference 1999.

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¹ The Transparency International Corruption Perceptions Index of 2002 lists Bangladesh as the most corrupt country of 102 countries surveyed. Other countries of the region featured as corrupt include Indonesia (96/102), Vietnam (85/102), Philippines and Pakistan (77/102 respectively), India (76/102), Thailand (64/102), China (59/102) and Sri Lanka (52/102).

² Amnesty International reported that complaints procedures, investigations and criminal prosecution of suspected perpetrators of human rights violations failed repeatedly to provide effective redress” in Malaysia. (Amnesty International 2003). In Cambodia, the US Department of State reported that the courts were subject to influence and interference by the executive, and there was widespread corruption among judges, virtually none of whom received a living wage.” (US Department of State 2003). In Indonesia, the US Department of State reported that widespread corruption continued throughout the legal system in 2002. “Bribes influenced prosecution, conviction, and sentencing in countless civil and criminal cases.” The “judiciary remained subordinate to the Executive and was often influenced by the military, business interests, and politicians outside of the legal system”. (US Department of State 2003).

³ Monitoring is a mechanism through which humane treatment of detainees and decent conditions of detention can be promoted in accordance with international standards including the UN Standard Minimum Rules for the Treatment of Prisoners.

⁴ In India, the National Human Rights Commission reported that the ongoing price for a torture-free prison stay in Central Jail, Rajasthan is allegedly Rs. 20,000 according to a complaint received by the Commission. The price demanded for emergency parole was allegedly Rs. 3,000 (National Human Rights Commission 2003). In Pakistan, prolonged solitary confinement was sometimes unlawfully used to punish detainees or extort money in 2002. (Amnesty International 2003b). In Cambodia, there were reports of the misappropriation of government ration allowances for purchasing prisoners’ food while families were often compelled to bribe prison officials in order to be able to provide food and other necessities permissible under the regulations. (US Department of State 2003). In the Philippines, prisoners were often found dependent on their families for food because of the insufficient subsistence allowance, and the need to bribe guards to receive food rations. (US Department of State 2003). There were reports of widespread corruption among prison guards in the Philippines in 2002. “Guards demanded that prisoners pay in order to receive food, to use sanitary facilities, and to avoid beatings by other prisoners...Some prominent prisoners and jailed celebrities received preferential treatment. Favored inmates reportedly enjoyed access to outside contacts, enabling them to trade in prostitution and drugs.” (US Department of State 2003).

⁵ “These problems arose primarily because of the lack of judicial accountability, combined with an absence of discipline and fragmentation of the litigation process and a lack of versatile alternatives to a full trial”. (Institute for the Study and Development of Legal Systems - Bangladesh) Overloaded courts and lack of judicial accountability is the reality in many countries including Indonesia, Malaysia, Vietnam and countries of South Asia. A study of litigants, remand prisoners, judges, lawyers, court staff and legal officers in Sri Lanka in 2002 found that most viewed the judicial system as not always fair and impartial; susceptible to corruption; not easily accessible; hardly ever affordable and slow and lethargic. (Marga Institute 2002).

⁶ Penang Prison in Malaysia was constructed in 1849 and is remains a functional prison. The Penal Code of Bangladesh dates back to 1860.

⁷ UNAFEI 2001.

⁸ Conditions in many prisons and police lock-ups in Thailand constitute cruel, inhuman or degrading treatment. As one example in point, death-row prisoners were kept in heavy shackles for prolonged periods in 2002 (Amnesty International 2003b). In Pakistan, nine detainees died in Faisalabad Central Prison from January to March 2002 when health care was denied despite instructions from the prison doctor. At least 40 people died in police custody or in prison as a result of torture during 2001 in Pakistan while in the first nine months 2002, twelve deaths in custody were recorded in Lahore alone. (Amnesty International 2003b).

⁹ It has also led to over-arrest, (arbitrary arrest and prolonged unlawful detention in some instances), the detention of persons on the basis of imputed political opinion and impunity for law enforcement officials which remains a resounding legacy of such conflicts.

¹⁰ Faisal, A.Z. "Violation of human rights inside prison." Human Rights Monitor. *The Daily Star*. Online Edition. Issue No. 94. 1 June 2003.

¹¹ From 1978 to 1996, at least 60 prisoners were killed of whom 58 were shot dead and hundreds were injured after at least eleven riots broke out and were quashed in prisons around the country. (Ain O Salish Kendra 1998). Other reasons for revolt include that of 'mafia' rules inside jail, torture and other forms of abuse, illegal punishment including the arbitrary use of fetters, prolonged imprisonment without a trial, lack of remedial measures and suppression rather than permanent solution of administration and management problems (Ain O Salish Kendra 1998).

¹² It should be noted that as of 20 August 2003, no country in Asia or the Pacific has signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which provides for independent international experts to conduct regular visits to places of detention in countries which are signatory to it and obliges such states parties to set up national mechanism to conduct visits to places of detention and to cooperate with the international experts.

¹³ In Fiji, as one case in point, prisons close to populated towns and cities exceed the authorised capacity. (Asia Crime Prevention Foundation 1999).

¹⁴ Many offenders unable to meet bail demands are subsequently deprived of their liberty as a consequence of poverty, not because of any relevant factor in criminal justice. These are the realities in countries such as PNG (Manek 1999) and Sri Lanka (Dias 2003).

¹⁵ Approximately half of Thailand's convicted prison population are drug offenders (UNAFEI 2001) including users and traffickers. In February 2002, prison officials reported that 83% of the 6,056 women incarcerated in Lard Yao Women's Prison, Nonthaburi Province were convicted of drugs offences (Amnesty International 2002). In Iran, approximately two-thirds of all offenders in prison are charged with drug-related offences. (Iranian delegation to PRI Conference 2003). The mentally ill are imprisoned in Nepal (Centre for Victims of Torture Nepal 2001).

¹⁶ Penal Reform International 2003b; UNAFEI 2001.

¹⁷ Asian Pacific Conference 2002; Dias 2003; Justice Anand 2003; Penal Reform International 2003. Citing an unnamed Bangladeshi NGO, the US Department of State noted that the average time of remand or pre-trial detention was between four to seven years in Bangladesh (US Department of State 2001).

¹⁸ Countries with between twenty to 35 percent prison remandees include Cambodia, Indonesia, PNG and Malaysia while Thailand has a remand population of approximately 40 percent (Asian Pacific Conference 2002; UNAFEI 2001).

¹⁹ In Fiji, the prison official to prisoner ratio in 1999 was 1: 8 or 10 prisoners (Taoka 1999). In Thailand, where the prison population is 100% over official capacity, the ratio of officials to prisoners was 1: 25 in 2001 (APCCA 2002). Other unbalanced ratios include the Philippines 1: 10, India 1: 6, Korea 1:5, China 1: 5 and Mongolia 1: 4 (APCCA 2002).

²⁰ In Nepal, segregation and classification does not take place while in Sri Lanka it is made extremely difficult in many prisons as a result of prison overcrowding.

²¹ Given limitations on transport and the high numbers of remandees due in court on a single day in prisons around the region, passage is often secured through bribery of prison and police officials. Video conferencing between court and prison is one method utilised in some countries to address the problem of producing under-trials promptly before the courts. However, its use may undermine the fundamental rights of under-trial detainees. (Thomson-Senananyake 2003).

²² UNAFEI: Resource Material Series No. 57.

²³ The 22nd APCCA defined the "typical" prisoner is a young adult (aged between 20 to 35 years), unemployed, of a lower socio-economic background with limited or no educational achievement. (APCCA 2002).

²⁴ Penal Reform International 2000; Shankardass 1999.

²⁵ Such is the case in the Philippines (Amnesty International 2003a, 2003b) and Bangladesh (Odhikar 2001). In Cambodia, juveniles are imprisoned alongside adults. (US Department of State 2003).

²⁶ Philippines (Amnesty International 2003a, 2003b). Bangladesh legislation provides for a separate system of arrest, trial and sentencing of juveniles and yet such provisions are not always followed or are frequently violated. (Nayeem Wahra & Aminul Islam 2002). From October 1999 to January 2000, 476 children were sent to Dhaka Central Jail alone in violation

of the Children's Act 1974 of whom only 19 were re-sent to Tongi Correctional Centre (Odhikar 2002). In Nepal there is no separate place for juveniles either in police custody or in prison despite the fact that the Children's Act of Nepal clearly prohibits children being lodged alongside adult criminals (Sharma 2002).

²⁷ Juveniles are held alongside adults in prison in Pakistan in contravention of international and domestic standards. In Punjab Province, all under-trial female children are placed in the women's wards of prisons and all convicted female children are imprisoned in the Women's Prison, Multan (AGHS Child Rights Cell 2002).

²⁸ APCCA 2000: Agenda Item Two: Women Prisoners.

²⁹ Most women prisoners in Nepal are under-trials living in crowded prisons attached to men's prisons. Under such circumstances, women have become pregnant during imprisonment. (Nembang 2002). In Cambodia, there was inadequate separation of male and female prisoners. (US Department of State 2003).

³⁰ This is the reality in Sri Lanka where in addition, classification of women prisoners according to age, offence, health and other consideration is not practiced due to lack of facilities and funds. (Ekanayake 2002).

³¹ 2000 National.

³² Penal Reform International 2000.

³³ Penal Reform International 2000.

³⁴ Work for women prisoners in Vietnam and Malaysia includes tailoring, knitting, handicrafts, fine arts and weaving. (APCCA 2000: Agenda Item Two: Women Prisoners)

³⁵ In Pakistan, as one case in point, foreign nationals were detained in Pakistan prisons as at March 2003 at the completion of their sentence despite a recommendation for release by a committee of supreme and high court judges and the existence of a 2002 law on repatriation of foreign prisoners. (Human Rights Commission of Pakistan, personal communication, March 2003).

³⁶ Binding over is usually applied to persons below eighteen years of age and literally "binds" the offender over against a specific amount of money where the offender agrees to be of good behaviour for a specific period of time and in the case of juveniles, where a guardian is bound over to ensure that the offender does comply.