

Working Paper Series on Prison Reform**Working Paper 1: Civil society and prisons: the “invisible bars” challenge***Amado Philip de Andrés**María Noel Rodríguez**Guilherme Augusto Doin*

Scope of the challenge

This working paper is designed to assist prison leaders in elaborating a policy for joint work with civil society organizations willing to cooperate with the fulfilment of international human rights standards in prisons, such as the **informal monitoring mechanisms**. Unarguably, there are significant benefits when considering the interaction between the prison service and civil society. Non-Governmental Organizations (NGOs) might build powerful mechanisms to prevent human rights abuses and corruption in prisons, ensuring transparency and accountability and even offering prison services, such as educational, religious and professional programmes. In order to take advantage of such benefits, it is necessary that prison leaders be aware of the different mandates of NGOs and the objectives of their work in the prison context.

Some NGOs might have special and institutionalized mandates regarding the control of prisons facilities, such as the case of Member States which have already established National Preventive Mechanisms (NPM) in the context of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman, and Degrading Treatment or Punishment. Other civil society organizations might be mandated by International Treaties with specific obligations in this domain, such as the International Committee of the Red Cross (ICRC)¹. Although this paper offers general concepts regarding the work of **formal monitoring bodies** involving civil society organizations (*e.g.*, NPM and ICRC) the authors will not focus on the latter.

The main scope of this publication is to assist prison leaders in the Central American and the Caribbean regions on how to cooperate with NGOs willing to **complement the work of formal monitoring bodies**. At the same time, our purpose is to support NGO directors and representatives in understanding the challenge that their presence represents for governmental authorities within the prison system. In order to do so, a practical “Michigan case study” methodology will be used, trying to put governmental authorities in “the shoes” of civil society leaders, and *vice-versa*. This “role play” game, referred here as the “invisible bars challenge” might be useful to understand the complexities of this necessary and inevitable (and sometimes tense) interaction between prison systems and civil society organizations.

This publication is divided in three sections: (1) first, it will address the different roles of NGOs in the prison context, separating **formal** from **informal** independent prison monitoring; (2) the second part will explain the benefits of cooperation between prisons systems and civil society organizations, offering an overview on the details that must be addressed by prison leaders before engaging in cooperation with civil society organizations as informal independent monitors; (3) while the third part will assist both prison leaders and NGO directors/representatives in coordinating efforts to improve prison conditions.

¹ As explained in Section I, item 2.

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**Keeping transparency:
Fair play while maintaining order**

The work of formal and informal monitoring bodies is essential to guarantee the existence of a prison system free from torture, and other cruel, inhumane or degrading treatment. Such bodies have an important role in “detecting, assessing and analysing the risk to human dignity posed by overemphasis on security measures”². In this sense, it is clear that ensuring human dignity must be the first priority for prison leaders. As simple as it may sound, this task represents a complex **duty of care** to governments. Therefore, prisons staff must be aware of their obligation to ensure that the suffering involved in the places of detention does not exceed the level inherent in the deprivation of liberty.

Another important guiding principle in this matter is that **deprivation of liberty does not mean deprivation of all human rights**. While in detention, prisoners should be able to enjoy great part of their human rights, including the right to physical and moral integrity, the right to express their opinion, to have contact with their family, amongst others, even if some of these rights are partially controlled by State authorities. Also, in fulfilling their international obligations regarding the social reinsertion vocation of prisons, governments should take advantage of the period of detention in order to give access to social rights normally denied to these persons before their

² APT, “Balancing security and dignity in prisons: a framework for preventive monitoring”.

imprisonment. Under this human rights-based approach, the deprivation of liberty should be used as an opportunity to guarantee the access of the right to health, education, culture, and others to persons in prisons.

Along with ensuring human dignity and other basic rights of persons deprived from liberty, prison leaders would need to consider another important priority in their careers: the maintenance of safety, security and order inside prison centres. This equation “Rights v. Order” represents a delicate challenge for prison staff and also for civil society representatives acting in defence of the rights of these persons (Figure 1). Solving this equation is not an easy task, although is extremely necessary so as to ensure the well-being of prisoners as well as the safety of society as a whole.

In democratic societies, governmental authorities are not the only “mathematicians” responsible to solve these complex social equations. New theories in public administration have been proving that efficiency in democracy is directly associated with the level of citizens’ participation in the provision of public services. Prisons, as any other public service, should not be excluded from this guiding principle³. In this sense, prison managers should perceive civil society organizations **as new hands and new minds coming to support the improvement of prison conditions**.

³ For a fresh analysis of new public sector reform, and citizens’ participation, refer to “Analytics for Government: The smart way to cut costs, optimize performance and deliver reform in the public sector”, White Paper Discussion Document by SAS, 2013.

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What does the Academy say about civil society participation in the provision of public services?

“The first reason is our belief that through active participation we can most likely achieve the best political outcomes, outcomes that reflect the broad judgments of the people as a whole or the considered judgments of specific groups *and* are consistent with the norms of democracy. Second, through participation, we might fulfill what Thompson calls the democratic objective, “attaining rules and decisions which satisfy the interests of the greatest number of citizens” (Thompson 1970, 184). Through widespread public participation in civic affairs, **citizens can help assure that the individual and collective interests are being heard and responded to by Governmental officials**”.

(Denhardt, *The New Public Service: serving, not steering*, p. 50).

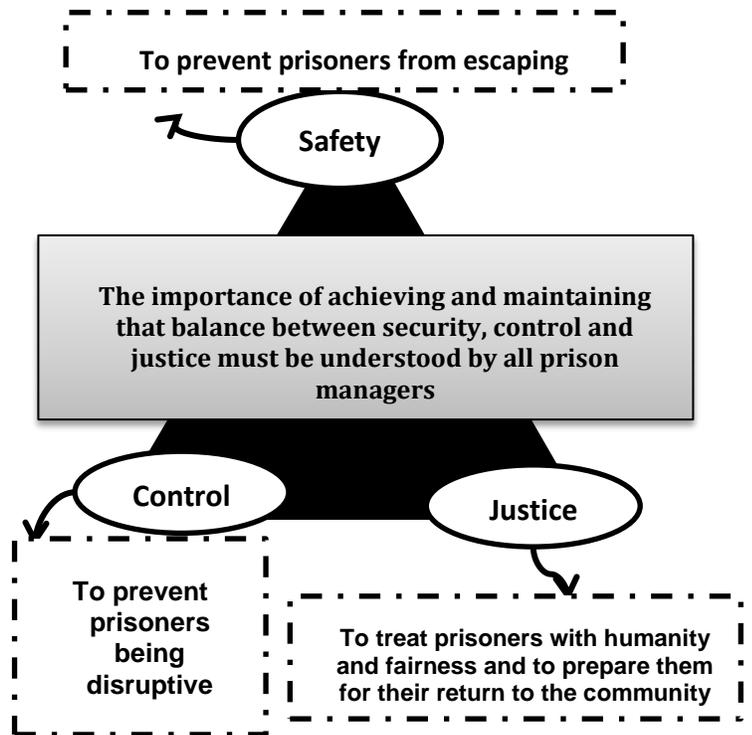
International Human Rights Law also assures the important role played by civil society organizations in the prison context. The United Nations Standard Minimum Rules in the Treatment of Prisoners stresses that prison staff should liaise with civil society and provide public information on a regular basis.

Standard Minimum Rule 46 (2)

The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.

Another important challenge is that prisons are often perceived as hermetic and closed institutions. This situation is the result of the traditional secondary importance given to prisons within government structures, and the obvious obstacles in managing the imprisonment of human beings. As prisoners depend on prison staff to fulfil with their basic daily needs - from food to safety - the lack of social scrutiny might serve as an excuse for the provision of a bad public service. Another problem of an aloof prison system distant from society is that prison staff might also be falsely accused of mistreating prisoners.

Figure 1⁴



⁴ Based in the conclusions of Professor Andrew Coyle: “A Human Rights approach to Prison Management”.

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In this sense, it has been stated that “Community intervention has potential to not only benefit prisoners but through reform of the system to benefit prison staff”⁵. It is clear that NGOs are powerful mechanisms to make prisons transparent. However, the question remains on “How prison managers should start to cooperate with NGOs?” The main objective of this paper is to answer this question presenting the concerns that NGO’s presence inside prison centres represents to prison leaders. These concerns shall be addressed in this publication as the “**legitimate concerns and expectations**” of both prison staff and civil society leaders.

**The story of Martha and John:
Legitimate concerns and expectations**

In order to exemplify the complexity of cooperation between prison leaders and civil society, we will present a hypothetical situation which aims to reflect the reality of numerous prison systems worldwide: the story of Martha and John. Martha is the director of the prison system of State A. She has to deal with many problems on a daily basis such as overcrowding, lack of human and material resources, security issues, corruption cases, and others. On the other hand, John is the representative of a local NGO willing to cooperate with the prison system of State A in the full compliance of their international obligations. John understands the complex situation faced by the prison

⁵ Commonwealth Human Rights Initiative (CHRI), “Community participation in prisons: a civil society perspective”. 2008.

system of State A, however, his NGO has as main objective to protect prisoners from gross violations of human rights.

John approaches Martha hoping to enter into prison facilities and to elaborate a report on the conditions of imprisonment in State A’s prison centres. From this moment on, many legitimate concerns and expectations appears for both of them.

The first concern for Martha is making sure whether John represents a formal or informal monitoring mechanism. But what is the difference between them?

**SECTION I
DIFFERENTIATING FORMAL AND INFORMAL
MECHANISMS**

FORMAL v. INFORMAL MONITORING MECHANISM

Formal monitoring mechanisms are normally structures composed of governmental and/or non-governmental organizations mandated by an international or national legal instrument to monitor prison conditions and to ensure compliance of the international obligations by prison authorities. On the other hand, informal monitoring mechanisms are composed of NGOs who are not mandated by any legal instrument or special agreement to neither visit detention centers nor interview in private with prisoners or prison staff.

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1. National Preventive Mechanisms (NPM)

Some NGOs participate of formal independent bodies that are mandated to control and supervise prison systems and other places of detention. One of the most important independent bodies mandated with such tasks are the NGOs participating at the National Preventive Mechanism, hereinafter referred to only as NPM. These bodies are mandated by the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

As the Director of the Prison System of State A, Martha should have been involved in the process of creation of the NPM. In any case, as the Director of the Prison System, Martha should be aware of the composition, mandate and framework of the NPM in her country.

According to the OPCAT, governments that have ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) must put in place within one year of ratification, arrangements for the inspection of all places of detention so as to prevent torture and other forms of cruel, inhuman or degrading treatment. “These arrangements must ensure there are bodies in place which:

- Are independent;
- Have a clear authority in law;
- Are adequately resourced;
- Have free and unfettered access to places of detention;

- May make recommendations”⁶.

In the process of designation and implementation of NPM, the organization APT (Association to the Prevention of Torture) recommends that:

“The widest possible range of relevant actors should be included in the discussions, including governmental officials, civil society, national human rights institutions, existing visiting bodies, parliamentarians, and in some cases regional and international inter-governmental and non-governmental organizations”.

APT, “Establishment and designation of National Preventive Mechanisms”, p. 11.

In the case where State A is a signatory of the CAT, and its Optional Protocol, it is important that both Martha and John be aware of the need of establishing a National Preventive Mechanism. This independent body should be created by a legal instrument and John’s organization should make great efforts to take part in its inception process.

If designated as a member of the NPM, John would have the power to exercise regular visits in accordance with the provision of the NPM framework. Such visits to prison facilities would include the right to conduct

⁶ Commonwealth Human Rights Initiative (CHRI), “Community participation in prisons: a civil society perspective”, p. 124, 2008.

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private interviews with prisoners and to report to Martha its key findings.

It is most likely that NGOs contacting directly with Prison authorities are to be **outside of the framework of NPM**. As a consequence, these NGOs do not participate of a formal control mechanism and do not have the mandate to visit prison facilities without the express consent of prison authorities. One of the most important exceptions to this rule shall be explained in the following topic.

2. The International Committee of the Red Cross (ICRC)

The International Committee of the Red Cross (also referred here as the ICRC) is an international non-governmental organization created in 1863 with its headquarters in Geneva, Switzerland. It runs its operations based on the principles of independence, impartiality and neutrality. Its mandate was conferred by the State Parties to the 1949 Geneva Conventions. The ICRC functions as one of the main guardians of International Humanitarian Law, coming in the protection and assistance to the victims of armed conflicts or internal strife. In prisons, the main purpose of the ICRC is “purely humanitarian” so as to “[...] preserve the physical and moral integrity of detainees, to prevent any abuse to which they may be subjected and to ensure decent material conditions”⁷.

Also, the ICRC shall act in the protection of foreigner prisoners without diplomatic representation in the country of arrest.

Following the ICRC methodology of work, in situations outside international or internal conflict, this organization normally signs a Special Agreement with States, giving the ICRC’s detention delegates the prerogatives of visiting prison centers and interviewing with prisoners and staff in private, just like the representatives of the NPM.

In the case where John is one of the detention delegates of the ICRC, prison authorities of State A should be aware of any special agreement with this organization. Such agreement normally operates on a confidentiality basis, which means that any report elaborated by an ICRC delegate will not be published until the State has the chance to comply with its recommendations. ICRC cooperation is important considering the vast expertise of this organization in the provision of material and engineering service for prison authorities.

In this case, it is a *condition sine qua non* that Martha and her team have access to the special agreements signed with the International Committee of the Red Cross, prior to holding coordination meetings with its delegates.

The methodology of work of the ICRC with States outside traditional international or national conflict will be used as a model for the work of the prison system with NGOs willing to act as informal monitoring bodies.

⁷ ICRC, “How visits by the ICRC can help prisoners cope with the effects of traumatic stress”, 2008.

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Legitimate concerns of Martha regarding NPM and ICRC’s visits in prison facilities

Even if in both cases NGO’s representatives are mandated to visit and interview prisoners and staff, Martha and her team would have legitimate concerns regarding such visits. The main concerns might be:

1. Ensuring a safe environment for members of the NPM and ICRC delegates;
2. Preparing prison staff to receive such formal monitoring bodies; and
3. Assuring the necessary follow-up attention to these “formal visitors”.

As for this publication, we would advise Martha and any other prison leader to:

1. **Get to know the special mandates of each of the formal monitoring bodies**, considering that in most of the cases, such mandates are discussed only at a higher level of the government (*e.g.* Law of creation of the NPM; Agreement with the ICRC).
2. **Request the assistance of such mechanisms for the preparation of prison staff**. It is important that Martha seeks special training for prison staff where representatives of NPM and delegates of the ICRC might take part to explain their role in the prison context.
3. **Assure that a component of “Formal Monitoring Bodies” is included in the curricula of the National Penitentiary Academy**.

4. **Issue special security protocols** to guarantee the proportionality of body searches to these “formal visitors”, in accordance with the provisions of the OPCAT, National Law, or the terms of Agreement (in the case of the ICRC).
5. It is important that Martha **takes part in the coordination and follow-up meetings with these formal monitoring visiting bodies**. This will ensure the level of accountability and willingness of the governmental authority in complying with the recommendations referred to by such special bodies.

Once Martha is certain that John is not a member of the NPM, nor a detention delegate of the ICRC, it becomes clear that he represents a NGO willing to complement the work of the formal monitoring mechanism. The legitimate concerns and expectations of both Martha and John in this case will be explained in the following section.

SECTION II**ENGAGING IN COOPERATION WITH NGOs**

Martha, the Director of the Prison System of State A is now aware that John is not a member of the NPM or any other formal monitoring body. In this section we will study the challenges posed by and ways of approaching NGOs as informal mechanisms in the prison context. In order to explain this “approach dilemma” we will try and understand the first legitimate concern posed by Martha and John.

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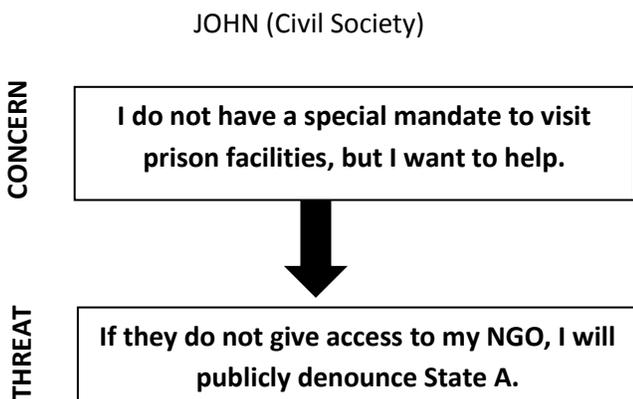
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John’s main concern, as the representative of the local NGO, is: **“I do not have a special mandate to visit prison facilities, but I want to help”**. On the other hand, Martha’s main concern is **“What would the benefit be of letting John’s NGO enter our prisons?”**

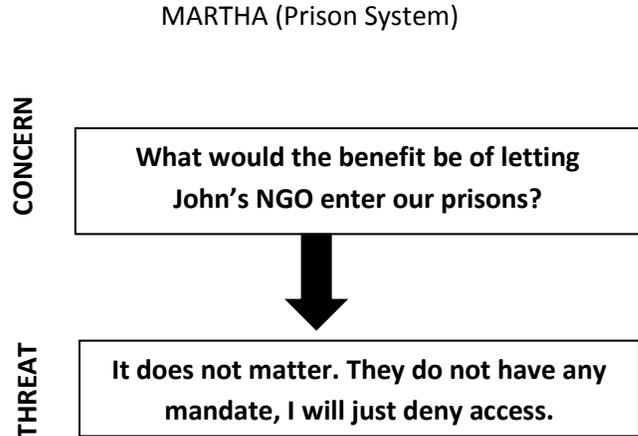
Now that we understand the legitimate concern of each character in our role play, we will try and explain the two possible approaches for engaging in cooperation with NGOs. We will separate this approach in two groups: the negative approach and the positive approach.

The negative approach

In the negative approach scenario, the legitimate concern of each character is transformed into a threat towards the other.



The same concern-to-threat process will be suffered by Martha as the governmental authority, as follows:



This approach might be effective; however, it might take time and be counterproductive in building negative trusting relationship between John and Martha. As a consequence, it may well compromise a potential cooperative framework between the prison system and the NGO.

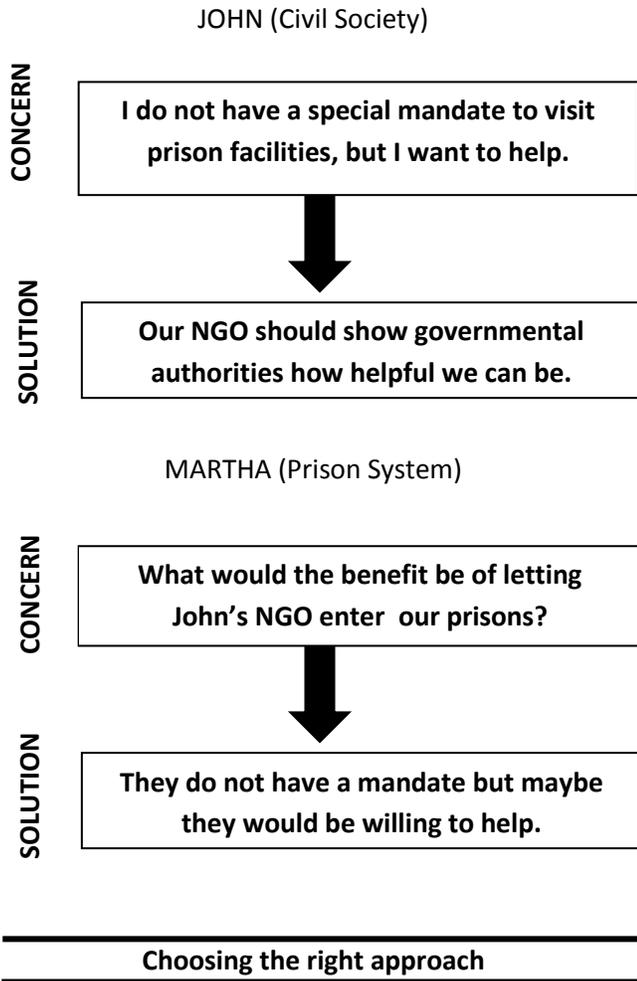
The positive approach

If the negative approach is based on *threats*, the positive approach is based on *solutions*. In this sense for each legitimate concern comes a legitimate solution. The characters shall then engage in an argumentative process where they aim to present solutions to each other.

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The most important idea to keep in mind is that NGO leaders put themselves “in the shoes” of prison leaders first. Just like Martha, the majority of Directors of Prison Systems would be more reluctant to open prisons to NGOs if these organizations fail to prove the benefits of their work.

In this paper, we will concentrate our efforts in assisting John’s organization to explain the four most important benefits brought by NGOs to prison systems.

Benefits of NGOs in the prison context

- i. Preventing human rights abuses

Just like NGOs participating in formal monitoring mechanisms, one of the main benefits of NGO’s presence inside prison centres is the prevention of human rights abuses. Some NGOs working in the prevention of torture and other cruel, inhuman or degrading treatment inside prisons might even support the implementation of the NPM once the State concerned has signed the Optional Protocol of the CAT. In general, these NGOs follow a methodology similar to and complementary with the NPM and other formal independent monitoring bodies. Sometimes they may act with governmental and inter-governmental authorities mandated to visit prison centres.

A wide range of NGOs litigating cases at the national and international level provide this specific benefit. Normally, once they have represented a victim of human rights violations, and count with a case-law decision, they concentrate their efforts on the

Normally, NGOs should decide which approach to use on a case-by-case basis. When States are reluctant to accept their presence in the prison context they might have to choose the “negative approach”. On the other hand, it is advisable that NGOs always privilege the “positive approach” before recurring to the other more restrictive one.

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implementation of the respective judicial order. So as to take advantage of their willingness to support prison authorities in complying with their legal binding obligations, prison leaders should hold special coordination meetings with their representatives and invite them to conduct specialized training for prison staff.

Also, as a result of their work, it is most likely that prison staff feel more secure of not being falsely accused of mistreating prisoners.

Many NGOs working to prevent human rights abuses inside prisons are international non-governmental organizations working as partners of local NGOs with similar objectives. Under this special category of NGOs, one may find international and regional recognized organizations, such as Human Rights Watch, the Association for the Prevention of Torture (APT), Amnesty International (AI), the Centre for Justice and International Law (CEJIL), and others.

ii. Preventing corruption

Prisons are especially vulnerable to corruption. The existence of a hermetic structure, the daily work with members of criminal groups and other sophisticated organized crime organizations, the ongoing under remuneration of prison staff, the lack of specific rules and procedures are all elements that contribute to the existence and promotion of corruption within the prison system.

NGOs might be powerful mechanisms to prevent the widespread of corruption, assisting prison authorities to carry out Corruption Risk Assessments, support public campaigns to raise awareness of this particular problem, or even offering training to prison staff on this subject.

Furthermore, international Law recognizes the importance of having government institutions working together with civil society organizations in the fight against corruption.

Article 13. Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. [...]

United Nations Convention Against Corruption
(UNCAC).

One of the most important international Non-Governmental Organizations that works with this topic

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is Transparency International (T.I.) and its network of national Chapters. This organization has dedicated specific publications to the prevention of corruption inside prisons and might serve as an important source of knowledge for the training of prison personnel⁸.

iii. Linking prisoners and their families

Many grassroots NGOs throughout the world are particularly concerned with liaising prisoners and their families, friends and community. This might be a hard task, especially in countries affected by international or national conflicts and post-conflict countries. These NGOs may be formed by relatives of persons deprived of liberty and they work normally consists on assisting prisoners to maintain contact with persons from their communities.

These NGOs might also have special project activities for the restitution and reconciliation of victims and the rehabilitation of prisoners. Their work is then, normally combined with the next topic.

Contact with the outside world

37. Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.
[...]

Standard Minimum Rules for the Treatment of Prisoners

iv. Offering sustainable prison services

There are many NGOs that develop specific projects for the provision of prison services inside prison centres. These organizations are normally voluntary-based institutions which develop social reinsertion and vocational programmes inside prison facilities, such as manufactory workshops, educational classes, professional skills development, and others.

In this case, prison leaders and NGOs directors should put in place a “continuity plan” in order to guarantee that their activities will not be interrupted in a short time period. It is advisable that a joint fundraising plan for the activities provided by the NGO be presented by the organization, so as to build a trustful relationship with prison staff and prison managers.

Considering the work of NGOs in the development of social reinsertion activities, it should be noted that many organizations are religious-based institutions. In this case, it is necessary to guarantee universal access to the services provided by these organizations, including to prisoners who do not profess the religion of the institution leading the activity.

Also, in many States, prisoners participating in educational and professional activities developed by the prison system, and also by NGOs, might be given the right of deducing from their sentence a pre-established proportion of days remaining to regain their freedom (early release mechanism). If this is the case, national law should regulate all the necessary procedures for reducing or commuting sentences,

⁸ Transparency International, “Corruption in Prisons”.

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establishing the minimum requirement so as an activity provided by a NGO might be considered as a deductible activity.

Combining benefits

In most cases where NGOs cooperate with prison systems, all the aforementioned benefits are combined. Also, NGOs might use a combined-benefit strategy in order to gain the trust of prison leaders who are more reluctant to cooperate with them.

In the case where John, as a representative of an NGO willing to specifically prevent human rights abuses in the prison centres of State A, finds that the prison system Director, Martha, will be unwilling to accept the entrance of his organization, John might consider the possibility of adopting a combined-benefit strategy.

This strategy could be explained as follows: firstly, the NGO offers prison services such as educational programmes to prisoners (e.g., language lessons or religious services). While providing such services, the NGO is able to have access to prison centres and it may progressively convince prison leaders of letting them conduct a primary assessment of the prison conditions in a specific prison centre. The important thing is always to know how to build a trustful relationship between the NGO and the managers of the prison system.

“An added benefit of such an arrangement is that it can act as an informal type of independent monitoring of all that goes on in the prison. **The visitors will interact with staff and come into regular contact with prisoners in a way which will enable them to observe problems and spot signs of abuse.** Their presence should be an encouragement to good inter-personal relations. The presence of civil society representatives can be preventive, stopping abuses before they occur. Formal inspection procedures will often only identify failures after they have occurred. The comments of these visitors on what they see in prison will have an added importance in that they will be based on their experience and expectations of society outside the prison. As a result they may be in a position to question and challenge established prison procedures.”

Prof. Andrew Coyle

**THE CASE OF NGO “COLECTIVO ARTESANAS”
IN GUATEMALA**

The NGO “Colectivo Artesanas” works in Guatemalan prisons promoting the rights of women in prisons. Their work includes a special methodology for assisting the Guatemalan Prison System in implementing the Bangkok Rules (the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders). In order to do so, they started their activities with handcraft workshops for women in prisons and later they developed monitoring activities to prevent human rights abuses. Their work represents a best practice amongst NGOs in prisons, combining different benefits for Prison Systems.

For more info, please visit:

<http://www.reglasdebangkokguatemala.org/?mo=1&uni=14>

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NGO’s strategic planning

Prisons are a serious and vital public service. Considering this guiding principle, NGOs willing to cooperate with prison systems should make sure that their organization has the competence, expertise, proper structure and resources to do so. Enhancing their own organization before engaging in cooperation with prison authorities is very important and might avoid unnecessary interruption of the fulfilment of the organization’s commitment towards the prison system.

Some strategic planning tools might be useful to NGOs willing to assist government in the prison domain.

- **S.W.O.T. Analysis:** this type of analysis allows organizations to identify the Strengths, Weaknesses, Opportunities and Threats (S.W.O.T) of a specific programme or activity. NGOs are encouraged to use this tool in order to identify their strengths and weaknesses regarding the applicability of their resources and expertise destined to a “prison programme”.
- **Fundraising/Sustainability Plan:** considering that NGOs are non-for-profit organizations and normally base their activities on extraordinary donations, it is important that a “Fundraising/Sustainability plan” be presented to prison leaders before implementing the “prison programme”. The objective is to reassure prison managers that the cooperation

will not suffer from an unexpected interruption, at least in the short/med term.

- **Mapping partners:** another important task of NGOs is to identify the possibility of involving partners (especially from governmental and civil society institutions) in their “prison programmes”. It would then be easier for prison leaders to manage a group of NGOs rather than each organization individually.

QUESTIONS TO BE ADDRESSED BY PRISON AUTHORITIES BEFORE NGO’S ENTRANCE IN PRISONS

It is now time for Martha, as the Director of the Prison System of State A, to address a series of questions before granting John’s NGO entrance inside prison facilities. Overemphasis on security is a problem that usually generates human rights violations in the prison context. However, all prisoners and prison staff must enjoy the right of a safe environment. This principle ensures the need for prison leaders to exercise the necessary control which will finally result in the maintenance of the order inside prison facilities.

At this point, the most important action is to make sure that all measures designed to provide security in prison facilities are adequately regulated by Law, and other administrative procedures. This legal approach will minimize the negative impact of the excessive use of force by prison staff while maintaining order.

Considering this scenario, it is now possible to better understand the legitimate concerns and expectation of

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both Martha (Prison Manager) and John (Civil Society Representative) in two important aspects: 1) entrance procedures of NGOs representatives to prison facilities; and 2) the accreditation process and signature of agreement between the prison system and the NGO.

1. Entrance procedures

Regarding the safety of prison facilities and the procedures for granting access to visitors in prisons, the legitimate concern of each character is:

Martha’s concern (Prison Manager)

“Who will enter in the prison center? What if a representative of John’s NGO is bringing illegal products to prisoners?”

John’s concern (Civil Society Representative):

“Am I going to be safe inside the prison? Will I have to go through the same security inspections as all the other visitors?”

It is very important to bear in mind that “Prisons are not public places. Some level of security needs to be maintained; hence not every organization can be granted access for any purpose”⁹. In this order of ideas, prison leaders should put in place security procedures for any person attempting to enter a prison facility,

⁹ Commonwealth Human Rights Initiative (CHRI), “Community participation in prisons: a civil society perspective”, p. 238,

after assessing the risks that a specific visitor represents to the prison system.

Martha’s concern is legitimate and must be properly addressed through **the establishment of a specific protocol**, indicating how prison staff charged with prison security shall proceed with the inspections and body searches of NGOs representatives. Adequate training regarding the right of privacy and honour must be provided to those officials working directly with the inspections and body searches.

With regard to John’s concern, it is necessary to properly inform him about the motives and the techniques that will be used to inspect him or any other representative of his NGO before entering a prison facility. It is advisable that John be received at the entrance by prison staff before the first visit of his NGO where he and other representatives might clear all their doubts regarding security issues for entering prisons, including with a small training in case of emergency.

2. Accreditation and signature of agreements with NGOs

Security procedures designed to NGOs representatives are not the only cause of concern amongst prison staff and NGO’s members. The accreditation of organizations might also generate other concerns which will be closely addressed in this sub-section.

Concerning the accreditation process of NGOs, Martha might have the following concern:

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Martha’s concern (Prison Manager)

“If I let one NGO in, how many others will come after? Will I count on enough personnel to liaise with NGOs?”

On the other hand, John’s concern might be:

John’s concern (Civil Society Representative):

“How can I be granted proper accreditation for my organization? What are the requirements that we must fulfill?”

Following the inter-active methodology used in this paper, we would strongly advice both actors to put themselves “in the shoes” of the other. John should

What should the most important criteria be for NGO accreditation?

“Accreditation criteria could range across several factors including **knowledge, expertise, performance, track-record, commitment level, availability of funds, and reputation for humanitarian work.**”

Commonwealth Human Rights Initiative (CHRI), “Community participation in prisons: a civil society perspective”, p. 238/9

understand that liaising with NGOs might cost precious human and material resources for the Prison System of State A - resources that the majority of prison systems worldwide are in lack of. He should realize that their presence might open the gates for other NGOs to do the same. On the other

hand, Martha should understand that John’s organization is trying to assist the Prison System and

that they might be confused regarding the procedures and requirements for accrediting their organization.

Once John understands Martha’s legitimate concern, he should undertake all possible efforts in order to invite other NGOs of his community willing to work with similar projects with the prison system, creating networks of civil society organizations. Such networks might save time and resources for the NGOs involved and also for the prison system.

As for Martha, she should remember that the best way of avoiding irregularities in any procedure with the Public Administration is to always act under the “legality principle”. In this sense, her team should work on the publication of written rules and guidelines for all NGOs willing to gain accreditation for their services with the prison system.

Considering the very nature of prisons, only selected organizations should be allowed to enter prison facilities. That is why, there is a need for objective criteria in order to allow access to NGOs, limiting the subjectivity of Prison Managers, who might be accused of benefiting a specific NGO before others.

As a result of the accreditation process, prison systems should create **special agreements with NGOs**. These agreements might take the form of a Memorandum of Understanding (MoU) or any other type of document existing under national legislation.

The MoU should be a written document, addressing the following legitimate concerns:

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Martha’s concern (Prison Manager)

“Once I let John’s NGO in, what would their “powers” be?”

John’s concern (Civil Society Representative)

“Is there a document containing what our NGO might or might not do?”

The MoU should:

- **Set mandates and expectations:**

The first priority in designing a MoU between prison systems and NGOs is to be clear on the expectations of the NGO presence in the prison system. It is also very important that Martha listen to her staff so as to take all the necessary views on the proposed activity of John’s NGO into consideration. After that, the MoU should be drafted following a participative process, involving representatives from the NGO or concerned network of NGOs.

- **Demarcation of responsibilities:**

It is imperative that the responsibilities of the NGO and the Prison System are well established. The guiding principle here is that NGO’s services should never replace the obligations and duties of prison staff and the work of formal monitoring bodies. A key recommendation at this point is using NGO’s services to create capacities amongst prison staff which might guarantee sustainability to the NGO’s project.

In other words, the MoU should answer at least the following questions: Who is allowed to enter?; When is he/she allowed to enter?; How should he/she proceed inside the prison?; What may he/she do?; and Which part of the prison facility he/she is not allowed to enter?

SECTION III WORKING TOGETHER

Working together with civil society is still a very sensitive issue for many public administrators. In prisons this is especially true, considering that it is most likely that prison staff and prison managers do not count with any experience in working with these organizations.

It is not possible to foresee all the practical scenarios that might implicate the joint work between Prison Systems and NGOs. Actors involved in this interaction should normally base their decision on a case-by-case approach.

In this last section of the position paper, we will try and offer five important pointers that should guide prison leaders and NGOs in maintaining a good work and cooperation environment.

The below recommendations are to be considered especially in the case where the NGO is engaged in preventing human rights abuses in prisons, and the organization has been allowed to elaborate reports through visits of prison facilities.

Working Paper Series on Prison Reform**Working Paper 1: Civil society and prisons: the “invisible bars” challenge***Amado Philip de Andrés**María Noel Rodríguez**Guilherme Augusto Doin***1. Coordination meetings***It is important to talk. Always.*

Coordination meetings should be held **before, during and after** the development of an activity by an NGO in the prison context. Such meetings might even take a more institutionalized nature through the establishment of round tables between prison staff and civil society organizations. Some States have institutionalized Participatory Prison Councils¹⁰. These initiatives may support the decision making process of prison policies, allowing Prison Leaders to share the responsibility with civil society organizations.

2. Analysing recommendations*Know how to be critical.**Know how to receive criticisms.*

It is not easy for a civil servant to show the main shortcomings of his/her institution. Sometime NGOs might find resistance from prison staff and prison directors in accepting their reports and recommendations. That is why, it is important that NGOs know how to draft and present their key findings. A good technique is always to start commenting on the best practices of prison staff in a particular prison facility.

As for Prison Directors, it is imperative to know how to accept criticism, since all public managers should be transparent and accountable for their decisions.

Another important suggestion for Prison Managers and NGOs' representative is the importance of giving priority to the most urgent recommendations. In this sense, NGOs' representative should bear in mind the lack of resources of public service. Knowing to prioritize is a key action of any manager and civil society should assist governments in elaborating a “Plan of Action” in order to accomplish their recommendations, otherwise they will only be “words on paper” without any practicable effect.

3. Implementing recommendations*NGOs: new hands and new brains coming to help*

NGOs are normally specialized institutions and therefore, many of them count with the work of high-level experts. That is why, when implementing recommendations, it is very important for Prison Leaders to take advantage of NGO's capacities and their willingness to assist.

So as to assist governments in implementing the recommendations, NGOs could prioritize urgent and non-urgent actions. They could also map short-term actions which do not involve considerable use of resources.

¹⁰ In Brazil each city should count with a “Community Prison Council”. More information: <http://www.conselhopenitenciarario.alov.br/institucional/conselho-penitenciarario/o-que-e-o-conselho-penitenciarario>.

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4. Follow-up visits*Cooperation takes time*

Working with prisons is a continuous process. That is why civil society organizations should stick to a plan that includes follow-up visits and long term activities inside prison facilities. It is impossible to assist government from a comfortable office desk. Once NGOs are granted with the possibility of entering inside prisons they should be present as much as possible, including during the implementation of their key recommendations.

Prison staff should also be aware that cooperating with NGOs is a long term activity. They should be trained on how to receive and to support NGO’s activities inside the prison centre.

5. Publicity and use of information*NGO’s preventive action*

Concerning the prevention of human rights abuses in prisons, NGOs and State authorities might take many lessons from the work of the International Committee of the Red Cross. As mentioned above, this organization works under a confidentiality basis which allows States’ authorities to get to know the delegates reports and giving them time to implement their recommendations.

Many NGOs working to prevent human rights abuses should benchmark the methodology of the ICRC. In this sense, during the elaboration of the MoU it is advisable

to include a “Confidentiality Clause” where any report and recommendation from a NGO may be discussed with prison staff and prison authorities, before being published. This approach guarantees that the work of Civil Society shall be seen as a preventive work. In the event where prison authorities demonstrate their resistance in coordinating meetings with NGOs representatives and implementing their recommendations, then civil society organizations should be allowed to make free use of the collected information.

It is noteworthy to mention that there are specific institutionalized mechanisms mandated to receive misconduct reports against prison authorities. NGOs willing to proceed only with such reports should then seek engagement with such specialized institutions before liaising with the Prison System.

CONCLUSIONS

Prisons, as traditional closed institutions, are more likely to suffer from the lack of social interest which has been at the root of many of its problems worldwide. Human rights abuses, corruption, lack of human and material resources, amongst others, are all obstacles that might be solved with the assistance of Non-Governmental Organizations willing to take action to support States in the fulfilment of their international obligations.

Prison leaders acting under the legality principle, establishing written procedures and protocols for the

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accreditation and signature of agreements with NGOs, will be better prepared to build a trustful and constructive cooperation with civil society.

There is an urgent need for transparency and civil society participation within the prison service in the region. This position paper attempts to shed light on how Prisons Systems and Civil Society Organizations may jointly enhance the rights of persons deprived from liberty, transforming prison’s bars in the exact way they should always be: invisible to eyes of Justice.

This paper aims at supporting the work which has already been initiated by the Central American Integration System (SICA) and CARICOM in rendering prison reform an integral part of public administration reform in Central America and the Caribbean. The participation of NGOs in the prison reform process is proving to be a sustainable and mutually-beneficial strategy in both regions.

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