



FIRST UNITED NATIONS CONGRESS ON THE PREVENTION
OF CRIME AND THE TREATMENT OF OFFENDERS

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PRISON LABOUR

NOTE ON VARIOUS ASPECTS OF PRISON LABOUR

Memorandum prepared by the Secretariat

I. Introductory Note

1. For the discussion on "Prison Labour" the Section of the Congress dealing with that particular matter will have at its disposal, as basic documents, the following: the Survey on "Prison Labour" (ST/SCA/SD/5); the Report on "Prison Labour" adopted by the European Consultative Group in 1954 (ST/SCA/SD/EUR/4, Annex III); and the "Standard Minimum Rules" (A/CONF.6/C.1/L1), in particular Rules 72-77, dealing with the work of prisoners. The purpose of these notes is to offer to the Congress other possible points of view on prison labour than those contained in the above-mentioned documents, and to offer some considerations on certain aspects of the problem. Therefore, the memorandum should not be considered as representing the point of view of the Secretariat, but as an information paper.

II. Aspects of "Prison Labour" as
part of the programme of work
of the United Nations

2. According to the recommendations of the first Group of Experts in the field of the Prevention of Crime and the Treatment of Offenders, which was convened in

August 1949, as well as the point of view expressed by the Social Commission at its 5th Session, December 1949, Prison Labour, as part of the programme of work of the Bureau of Social Affairs, should be considered taking into account the following aspects:

- a) the training of the prisoner;
- b) the maintenance of the prisoner's dependents;
- c) the economy of the prison;
- d) its relationship to the national economy.

3. Although formulated in a different way, these basic aspects were essentially maintained in the questionnaire on prison labour sent to all United Nations correspondents in the field of the prevention of crime and treatment of offenders, as well as ILO correspondents. This questionnaire later served as the basis for the preparation of the survey on "Prison Labour" (ST/SOA/SD/5).

III. Nature of Prison Labour

4. Prison labour is considered by some as an aspect of labour in general, and as such it is construed as the prisoner's right, sometimes as his "moral" right. This point of view may be regarded as supported by the fact that in some countries a right to work is generally recognised. Occasionally it has been stated that the prisoner's right to work is also reinforced by the fact that the right to work is proclaimed in the Universal Declaration of Human Rights. (1)

(1) Article 23:

- "1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests."

5. Another point of view is that prison labour should be considered as an obligation imposed upon the prisoner. One antecedent to this point of view can be found in the relevant discussions at the Fifth International Congress of the I.P.P.C. (Paris, 1895).⁽¹⁾ Historically such a point of view seems to be partly related to the conception that prison labour is part of the punishment inflicted. A variety of this point of view is that of considering that the prisoner is under the "moral obligation" of working.⁽²⁾

6. A different point of view is that of considering prison labour as part of the treatment of prisoners. As such it is imposed upon the prisoner not as an obligation more or less related to punishment but as part of a "cure" directed to the social rehabilitation of the offender. Such a point of view seems to avoid the objections raised against the thesis of maintaining the "right to work". In principle, it seems that the recognition of such a right implies the recognition of all the other rights inherent in the right to work as described in the Universal Declaration of Human Rights. The question arises - can all those rights be recognised to the prisoner? Can the penal administrations comply with the exercise of all these rights? In studying these questions it seems advisable to take into account the special juridical situation created between the State or, for that matter, the community on the one hand, and the prisoner on the other hand, as a result of the latter's conviction. Such a situation does not suppress the fundamental right to work that the prisoner, like everyone else, has, but restricts its exercise by him as a result of his special situation. On the other hand, this special situation does require that the prisoner should undergo treatment, of which prison labour is an essential part.⁽³⁾

(1) See "Deliberations of the International Penal and Penitentiary Congresses", by N.K. Teeters, 1949.

(2) See "Report on Prison Labour" (ST/SOA/SD/EUR/4, Annex 3).

(3) The relevant Hague resolution states that prison labour should be considered not as an additional punishment but as a method of treatment of offenders. At the same time, the resolution considers prison labour as a right and as an obligation. Although somewhat qualified by the adjective "moral" a similar opinion was maintained by the European Consultative Group at its second session (ST/SOA/SD/EUR/4).

7. As part of the treatment, the organization of prison labour seems to be susceptible of greater individualization and from a practical point of view offers greater flexibility. Such a point of view does not mean that owing to the social character assigned to the rehabilitation, the organization of prison labour should not take into account the economic aspects which arise with regard to the prisoner's family and with regard to the economy of the institution and region or country concerned. Although important, however, these economic aspects are clearly subordinate to the rehabilitation character assigned to prison labour.

IV. Remuneration

8. It seems that with few exceptions prison labour is not remunerated and even when there is some form of remuneration, it is considered rather as a token than as a salary or a wage. This situation seems to be due to a variety of factors including the fact that in certain countries prison labour is still regarded as part of punishment or as something closely related to it.

9. Although the principle of equal remuneration for equal work has been gaining ground⁽¹⁾ among penologists, it seems that in practice the existing methods of remuneration are in the majority of cases very far from such a goal⁽²⁾.

10. If prison labour is considered as a right it should be paid in accordance with the existing norms and practices applied to free labour. If, on the contrary, prison labour is considered as an obligation resulting from the punishment inflicted, it could be maintained that no remuneration is needed. If on the other hand the obligation to work is not part of the punishment but something independently imposed upon the prisoner, such a point of view does not necessarily mean that compulsory prison labour should not be paid. The terms obligation and remuneration are not mutually exclusive.

11. To what extent can the principle be maintained that equal remuneration

(1) Although recognizing the existing difficulties the afore-mentioned Hague resolution did recommend the principle of equal remuneration for the same kind of work, inside or outside the prison. A similar point of view was maintained by the European Consultative Group.

(2) See "Prison Labour" ST/SOA/SD/5, Chapter V.

should be applied to all prisoners working in the prisons?⁽¹⁾ To what extent would it be desirable for rehabilitation purposes to maintain a distinction between training in order to acquire good working habits and vocational training on the one hand and prison labour proper on the other? To what extent do these distinctions affect the question of remuneration of prison labour? These and other related questions all appear to be pertinent in this connexion. Such other questions are, for example, whether prison labour as part of treatment should be considered as covered by the existing international and national provisions regulating labour, and to what extent is the relationship between the prisoner and the State similar to that between worker and employer. With regard to the latter question it may be said that although the relationship between the State and the prisoner is not similar to that between worker and employer, the organization of prison labour, including remuneration, should follow as closely as possible the organization of free labour.⁽²⁾ With regard to the first question, it may be said that the fact of considering prison labour as part of the treatment is not an argument against establishing equal remuneration as far as possible and for social rehabilitation purposes, as the aim; on the contrary it is an argument in favour of so doing. Such equality, however, is not always immediately applicable to all prisoners, for obvious reasons. Very often a substantial number of prisoners are not used to work or do not know how to work. In either case, training in good work habits seems to be an essential part of the treatment. In these cases, the question arises as to whether the education or training by work should be considered as labour,

(1) The Preamble to the Constitution of the International Labour Organisation, as amended in 1946, calls for general recognition of the principle of equal remuneration for work of equal value. The Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (1951) defines the term "equal remuneration" as including "the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment".

(2) See report by the Secretariat on "Standard Minimum Rules" (A/CONF.6/C.1/L.1)

more specifically as prison labour proper. On the other hand there is always the risk that remuneration may be avoided by extending the period of training unnecessarily.

12. The difficulties inherent in the question of the training of prisoners may be partly avoided if the training of prisoners is related to the previous background and living conditions of the prisoners and the probable kind of life that they are expected to lead after being released or put on parole. Here the question arises whether all prison labour should have a definite vocational value and if this vocational training can be achieved during imprisonment. Usually the real duration of imprisonment is far less than the period indicated in the sentence. On the other hand very long sentences necessarily require that under ordinary circumstances the training period should be limited to that portion of the sentence needed to attain the objectives of the training programme.⁽¹⁾ In a general way it can be said that those with long sentences, after having succeeded in the training period, are entitled to remuneration which in principle should be equal to that paid outside the prison for the same kind of work.

13. For those whose sentences are rather short, the training as stated above should take into account their background and possible occupation after release. In the less-developed countries, the majority of prisoners come from technically simple vocational backgrounds and very probably will be returning to such, and will not have occasion to utilize elaborate vocational training of the type often advocated in higher developed countries. Without thereby ruling out the

(1) In this connection, consideration might be given to the thesis that, in instances where sentences are long and the period of vocational training will be far less than the total period of imprisonment, vocational training should come at the end of the imprisonment. According to this point of view, this would enable the individual to return to society equipped with recent specialized training and will prevent deterioration of his skills by disuse in the institution following the completion of training. Against such an opinion, it could be argued that whatever vocational training the individual is to receive should be given as early as possible during the period of incarceration so that his work experience in prison could be at the highest level attainable. Such an early training period would enable the prisoner to earn better remuneration and eventually place a more substantial amount of money at his disposal upon release. This point of view forcibly implies that work inside the prison should be geared to the skills and training of the inmates and, whenever this is not feasible, suitable employment outside the institution should be arranged.

possibility of giving certain prisoners in less-developed countries more elaborate training, depending on individual circumstances, it is suggested that as a general rule the training of prisoners should be directed toward improving in a realistic way the skills that they will ordinarily utilize. For example, agricultural methods should be taught in order to gain more knowledge or experience of crop rotation, use of fertilizers, insect control, better use of tools, etc. By the same token the manufacture of goods in the prisons should be taught in a way that although improved techniques and methods are employed, neither are technically very remote from those used generally. Briefly, training in good work habits and prison labour "per se" should aim at an improvement of existing techniques and methods but should not be completely unrelated to or remote from the possibilities that the prisoner may meet either when on parole or released.

14. From the preceding, and as a basis for discussion, the following conclusions may be drawn:

- a) The term "prison labour" seems to be a flexible one, not always expressing a definite kind of labour but also referring to a training directed towards the education of the prisoner in order that the latter becomes used to work or learns how to work;
- b) The question of remuneration is closely related to that of training and cannot be solved without taking the latter into account;
- c) Remuneration and training are related to the development of the country concerned, and to the personal and social conditions in which the prisoner will normally work after being released. As far as possible, prison labour and related training should facilitate the improvement of those personal and social conditions;
- d) The application of the principle of equal remuneration seems to be determined by the foregoing considerations, vocational and professional requirements, which in many cases are related to the length of the sentence, and the kind of work performed by the prisoner.

15. Another question closely related to that of remuneration is the manner in which remuneration is apportioned. In this connexion the following factors are generally taken into consideration: the prisoner; his family; the maintenance of the prisoner himself, payment of indemnity to the victim of the offence; and the judicial expenses or court fees.

16. The relative weight attached to these different factors varies from country to country, but this question is of less importance than the question how far the system of apportionment used corresponds to a realistic view of the remuneration of prison labour. It can be said that some of the deductions which are made are maintained on the basis of legal rather than social considerations. Without denying that penal sanctions are legally as well as socially justified, the question arises as to the extent to which the aim of punishment should play such a decisive rôle in the remuneration of prison labour. If, as stated, the latter is conceived as part of the treatment, it would be reasonable to conclude that the only desirable system of apportionment is that serving the social functions assigned to prison labour. Among them that of the prevention of crime by the rehabilitation of the offender plays an important rôle. This rehabilitation implies, among other things, the reinforcement of the prisoner's responsibility vis-à-vis his family.

17. At present when remuneration of prison labour is often non-existent or practically so, it could be said that the system of apportionment laid down by a considerable number of criminal laws becomes, more often than not, a fiction.

18. The thesis that the prisoner should contribute a portion of his earnings to the cost of imprisonment is somewhat unrealistic. In this respect it may be said that such charges cannot be deducted when the remuneration is at a very low level, barely high enough to meet the prisoner's minor personal needs. To that it may be added that if such a deduction is considered as a contribution to the general cost of prison administration, it seems to be going too far to argue that that cost, which involves so many items, should be shared by the prisoner.

Even assuming, moreover, that the prisoner's contribution refers only to food and clothing, the question arises whether the satisfaction of such fundamental needs is not supposed to be fully supported by the State as a consequence of the exercise of the penal function assigned to it. It could also be added that in countries where remuneration for prison labour is very low and the cost of prison administration relatively high, the proportion between remuneration and costs would show that such a system of deductions is not only unrealistic but does not moreover facilitate the rehabilitation of the prisoner.⁽¹⁾ In this respect it

(1) For information about remuneration see "Prison Labour", Chapter V (ST/SOA/SD/5).

may be remembered that the maintenance of old buildings in constant need of repair or of costly maximum-security prisons increases considerably the costs of the Prison Administration in many countries. These costs are also gradually increased by the necessity of paying better a personnel which is becoming more and more professional. The conclusion would be that as long as the principle of equal remuneration is not applied it would be unrealistic to maintain a system of deductions which does not correspond to the reality.

19. With regard to court fees it may be maintained that as a public authority the Administration of Criminal Justice should not need the negligible financial support that offenders may occasionally provide. With regard to the victim of the offence the situation seems to be somewhat more complicated but here again a realistic approach should be taken. Without denying the principle of indemnity to the victim of the offence the question arises whether the payment of such indemnity is in fact feasible with the present organization of prison labour.

20. Following the precedent of the revised text prepared by the International Penal and Penitentiary Commission in 1951, the draft "Standard Minimum Rules for the Treatment of Prisoners" submitted by the Secretariat to the Congress refers only to the prisoner and to his family in connection with remuneration.⁽¹⁾

21. Another question closely related to that of remuneration seems to be that of replacing it by or combining it with a system by which the performance of a certain amount of prison labour results in a reduction of the term of imprisonment. Against such a system it may be said that it assigns to prison labour a rôle which does not correspond to the concept of treatment, of which prison labour is only an aspect. It is the results obtained by the application of the treatment as a whole and not the output of work which should reduce imprisonment.

22. In summary, it can be said:

- a) As far as possible, the principle of equal remuneration for equal work, inside or outside prison, should be applied;
- b) If this is not possible, the present levels of remuneration should be raised in order that prison labour may be remunerated adequately;
- c) A distinction in remuneration should be made between training in order to acquire good working habits, vocational training and prison labour proper.

(1) A/CONF.6/C.1/L.1, pp. 110-111.

23. Equal or adequate remuneration will not only facilitate the rehabilitation of the offender but also alleviate considerably the economic burden at present carried by Prisoners' Aid Societies. It will also somewhat reduce the need for social assistance to the prisoner or his family by social services, whether public or otherwise.

24. There is here a mutual relationship between social assistance and treatment of offenders. If an adequate organization of the former can to a certain extent prevent crime, an appropriate treatment of offenders can also, to a certain extent, lighten the relief work of a number of social services.

V. Economic Aspects of Prison Labour

25. Even though prison labour should be organized with reference to the economy of the institution and that of the country or region concerned, such relationship should in no case imply the subordination of prison labour to an economic factor. If prison labour is part of the treatment applied to the prisoner, its aim is the social rehabilitation of the offender. An exclusively economic view of prison labour would seriously undermine this principle.

26. The first step towards bringing prison labour into the appropriate relationship with economic needs would be to provide the prisoner, by means of suitable training, with skills necessary for work upon release from the institution. In this respect, what has already been said about the necessity of relating training to available and suitable occupational or working opportunities seems to be essential. An elaborate technical training with no possible application would not be advisable from an economic point of view.

27. Secondly, in organizing prison labour the necessary steps should be taken in order to maintain the continuity of occupation after release. As long as continuity is not maintained, especially as a result of the reluctance of employers to employ ex-prisoners, the effectiveness of prison labour programmes and related training will be seriously jeopardized. In this respect the responsibility of the State or the Community and individual seems to be evident. In fact, it would be extremely important for the State itself to be the first in taking the steps necessary to remedy the present situation.

28. With regard to the economy of the institution it can be maintained that the institution's aim should be to organize its production within the framework of the national or regional economy and not as an isolated economic entity, whose main purpose is either to achieve economic self-sufficiency, or at least to maximise production in order to offset part of the institution's cost. Economic self-sufficiency and maximum production are desirable only when either of them is the by-product of prison labour organized purely with a view to social rehabilitation.

29. The economy of an institution is influenced among other factors by the structure of the institution itself. Big prisons with large numbers of inmates may occasionally be a success from the economic point of view but much more often than not they make the treatment of the prisoner more difficult. Without hampering progressive penological aims, the widespread use of open institutions will undoubtedly facilitate a closer relationship between prison labour and the regional or national economy, especially in the less developed countries, primarily because of their essentially agricultural character.

30. As far as the national or regional economy is concerned the planning of prison work should always take into account: a) the objectives it is desired to reach by means of the treatment; b) the economy of the region or the country concerned; and c) the extent to which public or private enterprises may be interested or affected by the production of the penal institutions. In this respect it must be borne in mind that although the State is very often its own most important customer, it must nevertheless organize prison labour in accordance with the purpose assigned to it. In order therefore to improve working conditions but, even more important, to integrate prison labour as far as possible in the national or regional economy, private enterprise should be brought into the prison. At the same time, as many prisoners as possible should work outside the prison in private enterprises. Such a system necessarily implies an adequate control by the proper authorities in order to avoid exploitation. In this respect the question arises to what extent modern penology demands the revision of the existing systems: lease, contract, piece-price, etc. These systems, historically speaking, appear to be based on ideas or conditions that penology is seeking to abolish. Primarily, it seems that these ideas or conditions are: prison labour only as a means of contributing as much as possible to the administrative budget; lack of social dignity of prison labour; absence of appropriate training programmes; prevalence of big walled prisons; lack or inadequacy of schemes for the remuneration of prison labour.

31. The convenience of relating prison labour to the national or regional economy raises the important question, especially in the less developed countries, of using prison labour in the construction of public works. The history of such use is unfortunately not very encouraging. Historically it appears in many cases as a form of exploitation. Without denying that it took place on many occasions further consideration of the problem might show that such exploitation was the result of the methods used in the organization of work and not an automatic result of using prison labour for public works. Actually the exploitation of prisoners took or can take place irrespective of the type of work involved. The problem seems to be one of organization.

32. The organization of prison labour raises, among others, the question of the working schedule. Very often it is recommended that normal working hours should be applied. Although historically such a recommendation implies great progress, the question arises as to the extent to which a normal working schedule can be maintained in an institution where treatment is the foremost objective. The social rehabilitation of prisoners is not an easy task. For obvious reasons many time-consuming factors have to be taken into account especially custody, security and control. The conclusion would be that the normal working schedule of seven or eight hours of prison labour proper cannot be easily maintained in penal institutions.

33. Since prison labour proper should be combined with adequate training and other aspects of social rehabilitation, it would seem preferable to maintain an intensive rather than an extensive working schedule. If properly organized an intensive work schedule would not substantially reduce the present output of institutions, very often based on a normal working schedule rather loosely enforced.

34. If prison labour is organized along the lines of the national or regional economy, with the participation of private industry, and under proper penological supervision, the possibility exists that the present difficulties concerning competition may be to a certain extent reduced. Most of these difficulties seem to be the result of the traditional habit of treating prison labour as a thing apart. Its integration into the framework of the national or regional economy,

although demanding a certain amount of special dispositions, will make it easier not only to solve the problem of competition but also to extend to the prisoners the social security benefits which free workers enjoy. Such questions as how the integration should be effected, whether or not it should be gradually introduced, and to what extent it requires the co-operation of other authorities besides prison authorities, are also questions to be discussed by the Congress.

35. Finally, closely related to the organization of work are the questions of forced labour, already mentioned, and the work of untried prisoners. The latter question deserves careful consideration. The situation of a convicted prisoner is totally different from that of an untried person. In principle it seems that prison labour may be carried out by untried prisoners only on a voluntary basis.⁽¹⁾ Any compulsory work might be considered as a form of forced labour.

36. With regard to the definition of forced labour it seems that the definition contained in the relevant International Labour Convention at present in force should be modified in order to take into account the modern conception of prison labour.⁽²⁾ In the discussion of this particular matter the assistance of the ILO will be essential.

(1) See A/CONF.6/C.1/L.1, rule 90, p. 113.

(2) The Forced Labour Convention, 1930, defines forced labour in such a way as to include certain types of prison labour which may be considered desirable in modern penal practice. The subject of forced labour is, however, to be discussed again at the 1956 Session of the International Labour Conference and in that connection the International Labour Office has already sent Governments a questionnaire which seeks, *inter alia*, to determine what might constitute an acceptable definition, whether work or service exacted as a consequence of a conviction in a court of law should, subject to certain conditions, be excluded from that definition, and if so the nature of those conditions. The ILO has requested Governments to send in their replies by 6 October 1955. (Questionnaire contained in Forced Labour, Report VI, to the 39th Session of the International Labour Conference, 1956, ILO, Geneva, 1955).

This archiving project is a collaborative effort between United Nations Office on Drugs and Crime and American Society of Criminology, Division of International Criminology. Any comments or questions should be directed to Cindy J. Smith at CJSmithphd@comcast.net or Emil Wandzilak at emil.wandzilak@unodc.org.